

DATE: December 29, 2004

In Re:

SSN: -----

Applicant for Security Clearance

ISCR Case No. 03-06821

ECISION OF ADMINISTRATIVE JUDGE

CLAUDE R. HEINY

APPEARANCES

FOR GOVERNMENT

Edward W. Loughran, Department Counsel

FOR APPLICANT

Pro Se

SYNOPSIS

The SOR alleged Applicant owed eight debts totaling approximately \$22,000. One debt was paid and the others discharged in bankruptcy. It was also alleged she gave false answers on her security clearance application. The available information is sufficient to mitigate or extenuate the negative security implications stemming from the debts and personal conduct. Clearance is granted.

STATEMENT OF THE CASE

On December 8, 2003, the Defense Office of Hearings and Appeals (DOHA) issued a Statement of Reasons (SOR) to Applicant, stating that DOHA could not make the preliminary affirmative finding [\(U\)](#) it is clearly consistent with the national interest to grant or continue a security clearance for Applicant. On January 28, 2004, Applicant's answer to the SOR and request for a hearing was received. I was assigned the case September 1, 2004. On September 1, 2004, a Notice of Hearing was issued scheduling the hearing which was held on September 20, 2004.

The Government's case consisted of ten exhibits (Gov Ex). The Applicant relied on her own testimony and five exhibits. (App Ex) Following the hearing, additional documents were received, provisions having been made at the time of the hearing for their submission following the hearing. Department Counsel having no objection to their admission, the submissions were admitted as App Ex F. The transcript (tr.) of the hearing was received on September 30, 2004.

FINDINGS OF FACT

The SOR alleges Financial Considerations and person conduct. Applicant acknowledges the debts but denies she falsified her Security Clearance Application, Standard Form (SF) 86. Those admissions are incorporated herein as findings of fact. After a complete and thorough review of the evidence in the record, and upon due consideration of same, I make the following additional findings of fact:

The Applicant is 47 years old, has worked for a defense contractor since January 2001, and is seeking to obtain a security clearance. Applicant and her husband are over-the-road, long-haul truckers who own and operate their own truck. They have been hauling government freight since November 1992. Those that know her indicate she has maintained a high standard of quality and performance. "A person not only skilled in her profession, but deserving of respect for her knowledge and professionalism in the manner in which she carries out her duties." (App Ex B-1)

Applicant and her husband had no financial problems until 1998 when Applicant experienced difficulties getting paid for services provided:

. . . we would get paid and then we'd have to take time off and argue with them for about a week to get what was coming. So then we lost time. We were constantly getting farther behind . . . We'd have to take all of our paperwork and copies of our bills and everything else to get our money. (Tr. 53)

In 1998, they refinanced their home before their financial problems began. In February 2000, Applicant employed a debt consolidation company to help them. They made \$795 per month payments through the company for 14 or 15 months--until April 2001. Six of the debts (a, b, c, d, g, and h) were listed in the SOR were included in this repayment plan. (App Exs C and D) The arrangement ended when her creditors contacted her telling her they were not getting paid and were still assessing late fees. In January 2002, the truck's engine blew up that resulted in a \$22,000 repair bill and being out of work for seven weeks. The debt before they got back on the road was \$34,000, which has been repaid. In March 2003, the truck was paid off. In April 2003, Applicant's husband injured his back and was off from work for 14 months during which time he received workman's compensation. The type of freight hauled by Applicant requires two drivers. With her husband's back injury, both Applicant and her husband were out of work as truckers. Applicant got a job as a store clerk bring home \$1,000 per month and disability insurance paid \$2,100 per month. (Tr. 81) Before her husband's back injury their take home pay was averaging \$6,000 per month.

In January 2003, a judgment was filed against her husband by a credit card company. On April 6, 2004, Applicant's husband filed for bankruptcy protection under Chapter 7 of the bankruptcy code. The bankruptcy attorney informed Applicant she did not have to be included in the bankruptcy unless she was a co-applicant on any of the debts. Since she was not a co-applicant, but merely a co-user, she was not obligated on the debts. (Tr. 34, 57) On July 19, 2004, her husband's debts were discharged. (App Ex D) Applicant and her husband have approximately \$40,000 worth of equity in their home and \$30,000 equity in their truck.

The SOR lists eight debts totaling approximately \$22,000. A summary of those debts is provided in the following table:

		Creditor	Amount	Current Status
1	a	Financial Company for jewelry	\$1,316	Discharged in husband's 2004 bankruptcy.
2	b	department store debt	\$6,182	Discharged in husband's 2004 bankruptcy.
3	c	department store debt	\$2,308	Discharged in husband's 2004 bankruptcy.
4	d	bank card debt	\$5,584	Discharged in husband's 2004 bankruptcy.
5	e	furniture store debt	\$2,328	Discharged in husband's 2004 bankruptcy.
6	f	credit card company	\$332	Not Applicant's debt.
7	g	bank credit card	\$3,632	Discharged in husband's 2004 bankruptcy.
8	h	bank debt	\$2,776	Discharged in husband's 2004 bankruptcy.
		Debt alleged in SOR	\$24,458	

It was alleged \$332 was owed on a credit card. Applicant was never on that account and never had a credit card. Her husband and her stepson had cards, but not her. The account has been paid.

In August 2002, Applicant completed her SF 86 and answered "no" to question 21, which asked about felony arrests. In August 1987, she had been arrested for passing a bad check on a closed account, a Class D felony. The charges were dismissed in August 1987. When she discovered a couple of checks had bounced, she sent money orders to pay for them. After being contacted by the sheriff's department, she contacted an attorney, and sent him copies of everything.

Two weeks later the attorney contacted her and said "It's all been taken care of. Don't worry about it." (Tr. 60) Applicant did not know she had been charged with a felony. Additionally, she incorrectly thought the SF 86 was concerned about arrests within the previous seven years and this was outside of that time frame.

Applicant also answered "no" to questions 39, which asked her if she was currently more than 90 days delinquent on any debt. She did not list the debts because she was not the co-applicant on any of the accounts. When she asked her company's security officer, he informed her one usually listed debts where the party was a co-applicant. (Tr. 61) She does not have credit cards for some of these listed debts which appear on her credit.

POLICIES

The Adjudicative Guidelines in the Directive are not a set of inflexible rules of procedure. Instead they are to be applied by Administrative Judges on a case-by-case basis with an eye toward making determinations that are clearly consistent with the interests of national security. In making overall commonsense determinations, Administrative Judges must consider, assess, and analyze the evidence of record, both favorable and unfavorable, not only with respect to the relevant Adjudicative Guidelines, but in the context of factors set forth in section E 2.2.1. of the Directive. The government has the burden of proving any controverted fact(s) alleged in the SOR, and the facts must have a nexus to an Applicant's lack of security worthiness.

The adjudication process is based on the whole person concept. All available, reliable information about the person, past and present, is to be taken into account in reaching a decision as to whether a person is an acceptable security risk. Although the presence or absence of a particular condition for or against clearance is not determinative, the specific adjudicative guidelines should be followed whenever a case can be measured against this policy guidance.

Considering the evidence as a whole, this Administrative Judge finds the following adjudicative guidelines to be most pertinent to this case:

Financial Considerations, Guideline F, the Concern: An individual who is financially overextended is at risk of having to engage in illegal acts to generate funds. Unexplained affluence is often linked to proceeds from financially profitable criminal acts. E2.A6.1.1.

Conditions that could raise a security concern and may be disqualifying include:

1. A history of not meeting financial obligations. (E2.A6.1.2.1.)
3. Inability or unwillingness to satisfy debts. (E2.A6.1.2.3.)

Conditions that could mitigate security concerns include:

3. The conditions that resulted in the behavior were largely beyond the person's control (e.g., loss of employment, a business downturn, unexpected medical emergency, or a death, divorce or separation). (E2.A6.1.3.3.)
6. The individual initiated a good-faith effort to repay overdue creditors or otherwise resolve debts. (E2.A6.1.3.6.)

Personal Conduct, Guideline E, the Concern: Conduct involving questionable judgment, untrustworthiness, unreliability, lack of candor, dishonesty, or unwillingness to comply with rules and regulations could indicate that the person may not properly safeguard classified information.

Conditions that could raise a security concern and may be disqualifying include:

None Apply.

BURDEN OF PROOF

As noted by the United States Supreme Court in *Department of Navy v. Egan*, 484 U.S. 518, 528 (1988), "no one has a 'right' to a security clearance." As Commander in Chief, the President has "the authority to . . . control access to

information bearing on national security and to determine whether an individual is sufficiently trustworthy to occupy a position . . . that will give that person access to such information." *Id.* at 527. The President has restricted eligibility for access to classified information to "United States citizens . . . whose personal and professional history affirmatively indicates loyalty to the United States, strength of character, trustworthiness, honesty, reliability, discretion, and sound judgment, as well as freedom from conflicting allegiances and potential for coercion, and willingness and ability to abide by regulations governing the use, handling, and protection of classified information." Executive Order 12968, *Access to Classified Information* § 3.1(b) (Aug. 4, 1995). Eligibility for a security clearance is predicated upon the applicant meeting the security guidelines contained in the Directive.

Initially, the Government must establish, by substantial evidence, that conditions exist in the personal or professional history of the applicant which disqualify, or may disqualify, the applicant from being eligible for access to classified information. *See Egan*, 484 U.S. at 531. All that is required is proof of facts and circumstances which indicate an applicant is at risk for mishandling classified information, or that an applicant does not demonstrate the high degree of judgment, reliability, or trustworthiness required of persons handling classified information. Where the facts proven by the Government raise doubts about an applicant's judgment, reliability or trustworthiness, then the applicant has the ultimate burden of establishing her security suitability with substantial evidence in explanation, mitigation, extenuation, or refutation, sufficient to demonstrate that despite the existence of guideline conduct, it is clearly consistent with the national interest to grant or continue her security clearance.

Security clearances are granted only when "it is clearly consistent with the national interest to do so." *See* Executive Orders 10865 § 2 and 12968 § 3.1(b). "Any doubt as to whether access to classified information is clearly consistent with national security will be resolved in favor of the national security." Directive ¶ E2.2.2 "The clearly consistent standard indicates that security clearance determinations should err, if they must, on the side of denials." *See Egan*, 484 U.S. at 531. Doubts are to be resolved against the applicant.

CONCLUSIONS

The Government has satisfied its initial burden of proof under Guideline F, Financial Considerations. Under Financial Considerations, a person's relationship with her creditors is a private matter until evidence is uncovered demonstrating an inability or unwillingness to repay debts under agreed upon terms. Absent evidence of strong extenuating or mitigating circumstances, an Applicant with a history of serious or recurring financial difficulties is in a situation of risk inconsistent with the holding of a security clearance. Under Guideline F, an Applicant is not required to be debt free, but is required to manage her finances in such a way as to meet her financial obligations. The Applicant's financial history provides concern. Disqualifying conditions (DC) 1(A history of not meeting financial obligations) and 3 (Inability or unwillingness to satisfy debts.) apply.

In mitigation, there is no indication of extravagant expenditure. Until 1998, Applicant had experienced no financial difficulties. Her financial problems started then by slow payment from her employer. In 2000, Applicant and her husband attempted to resolve their debts through \$800 monthly payments to a debt consolation company. This arrangement included six of the eight creditors. In April 2001, after 14 or 15 months of payments, the arrangement ended when their creditors informed them they were not being paid in a timely manner.

In January 2002, the truck's engine blew up, which resulted in a \$22,000 repair bill and their debts further increased by the seven weeks loss of work that resulted. In April 2003, Applicant's husband injured his back and was off from work for 14 months. During this time the household income was reduced by half, dropping from \$6,000 to \$3,100. All of these problems--pay problems with their employer, blown engine, medical problems resulting in lost time from work--were factors beyond Applicant's control. Mitigating Condition (MC) 3 (The conditions that resulted in the behavior were largely beyond the person's control (e.g., loss of employment, a business downturn, unexpected medical emergency, or a death, divorce or separation (E2.A6.1.3.3.)) applies.

In April 2004, Applicant's husband filed for Chapter 7 bankruptcy protection. In July 2004, seven of the SOR debts were discharged and Applicant's husband is no longer liable on these debts. Applicant was not a co-applicant on any of these accounts, but had use of the credit card for some of the accounts. One bank card debt (1.f, \$332), was not the Applicant's debt. She was not a co-applicant and did not have a credit card for this account. This account has been paid.

Except for the engine trouble and back injury, the amount of debts included in the bankruptcy would have been lower. Or, without the occurrence of these events, the bankruptcy might have been avoided all together. In any event, the bankruptcy has resolved these debts. MC 6 (The individual initiated a good-faith effort to repay overdue creditors or otherwise resolve debts E2.A6.1.3.6.) applies. I find for Applicant as to the financial considerations.

Under Personal Conduct, the security eligibility of an applicant is placed into question when that applicant is shown to have been involved in personal conduct that creates doubt about the person's judgment, reliability, and trustworthiness. Applicant failed to indicate on her August 2002 SF 86 her delinquencies on certain debts. She did not list them because she was not a co-applicant on the accounts. When she questioned her company's security officer, he told her one usually lists those debts where the person is a co-applicant. Following this advice, she did not list any delinquency because the accounts were not hers.

Applicant did not list a felony arrest because she did not know it was a felony. She bounced some checks, paid for them by money orders, hired an attorney, and her attorney told her all was taken care of. Felony arrests have to be listed regardless of when they occurred. Other arrests which occurred more than seven years before the completion of the SF 86 are not of concern. Applicant thought the arrest did not have to be reported because it was outside of the time frame.

Deliberate omission, concealment, or falsification of a material fact in any written document or oral statement to the Government when applying for a security clearance are certainly of security concern. But every inaccurate statement is not a falsification. A falsification must be deliberate and material. It is deliberate if it is done knowingly and willfully. I find her actions did not constitute deliberate and willful falsification. I find for Applicant as to Personal Conduct.

In reaching my conclusions I have also considered: the nature, extent, and seriousness of the conduct; the Applicant's age and maturity at the time of the conduct; the circumstances surrounding the conduct; the Applicant's voluntary and knowledgeable participation; the motivation for the conduct; the frequency and recency of the conduct; presence or absence of rehabilitation; potential for pressure, coercion, exploitation, or duress; and the probability that the circumstance or conduct will continue or recur in the future.

FORMAL FINDINGS

Formal Findings as required by Section 3., Paragraph 7., of Enclosure 1 of the Directive are hereby rendered as follows:

Paragraph 1 Financial .: FOR THE APPLICANT

Subparagraph 1.a.: For the Applicant

Subparagraph 1.b.: For the Applicant

Subparagraph 1.c.: For the Applicant

Subparagraph 1.d.: For the Applicant

Subparagraph 1.e.: For the Applicant

Subparagraph 1.f.: For the Applicant

Subparagraph 1.g.: For the Applicant

Subparagraph 1.h.: For the Applicant

Paragraph 2 Personal Conduct: FOR THE APPLICANT

Subparagraph 2.a.: For the Applicant

Subparagraph 2.b.: For the Applicant

DECISION

In light of all the circumstances presented by the record in this case, it is clearly consistent with the national interest to grant or continue a security clearance for the Applicant. Clearance is granted.

Claude R. Heiny

Administrative Judge

1. Required by Executive Order 10865, as amended, and Department of Defense Directive 5220.6 (Directive), dated January 2, 1992, as amended.