

DATE: March 31, 2005

In Re:

SSN: -----

Applicant for Security Clearance

ISCR Case No. 03-06863

DECISION OF ADMINISTRATIVE JUDGE

CHRISTOPHER GRAHAM

APPEARANCES

FOR GOVERNMENT

Sabrina Elaine Redd, Esq., Department Counsel

FOR APPLICANT

Pro Se

SYNOPSIS

Applicant, a 44-year-old employee of a federal contractor, has sustained severe financial reversals due to a former spouse's business failure and subsequent, but unexpected, separation and divorce. In spite of several judgments against her, she has made steady progress in reducing her indebtedness and has successfully mitigated questions and doubts as to her security eligibility and suitability. Clearance is granted.

STATEMENT OF THE CASE

On September 23, 2004, the Defense Office of Hearings and Appeals (DOHA), pursuant to Executive Order 10865, *Safeguarding Classified Information Within Industry*, dated February 20, 1960, as amended and modified, and Department of Defense Directive 5220.6, *Defense Industrial Personnel Security Clearance Review Program* (Directive), dated January 2, 1992, as amended and modified, issued a Statement of Reasons (SOR) to Applicant. The SOR alleged facts under Guideline F (financial considerations), detailing reasons why DOHA could not make the preliminary affirmative finding under the Directive that it is clearly consistent with the national interest to grant or continue Applicant's security clearance, and recommended referral to an administrative judge to determine whether a clearance should be granted, continued, denied or revoked. The SOR detailed financial instability as the reasons why DOHA could not find that it is clearly in the national interest to grant or continue a security clearance.

In a sworn written statement, dated November 18, 2004, Applicant responded to the allegations in the SOR, attaching ten pages of documents. Department Counsel submitted a file of relevant material (FORM) in support of the Government's preliminary decision, a copy of which was received by Applicant on January 7, 2005. Applicant was afforded the opportunity to file objections and submit material in refutation, extenuation, or mitigation by February 7, 2005. Applicant submitted a response to the FORM by letter dated February 22, 2005. On March 7, 2005, Department Counsel's memo stated no objection to the materials submitted by Applicant. The case was assigned to me on March 16, 2005.

FINDINGS OF FACT

Applicant has admitted to 6 of 19 allegations pertaining to financial matters under Guideline F (subparagraphs 1.a. through 1.s.). Those admissions are incorporated herein as findings of fact. After a complete and thorough review of the evidence in the record, I make the following additional findings of fact:

Applicant is a divorced, 44-year-old employee of a federal contractor seeking to obtain a security clearance. ⁽¹⁾ She was employed by this contractor in 1985, and has had a security clearance since 1995. ⁽²⁾ She has a history of unpaid debts going back to 1998. ⁽³⁾ To better understand Applicant's financial picture, the following chart sets forth each unpaid debt alleged in the SOR, the type, amount and the current status. ⁽⁴⁾

SOR ¶	DELINQUENT	TYPE DEBT	AMOUNT	CURRENT STATUS ⁽⁴⁾
1.a.	August 1998	collection account	\$ 1,542.00	PAID AE1 ⁽⁵⁾
1.b.	August 1998	collection account	\$ 6,721.00	<i>EX SPOUSE</i> AE2
1.c.	September 1998	collection account	\$ 872.00	PAID AE3
1.d.	October 1998	collection account	\$ 755.00	<i>EX SPOUSE</i>
1.e.	June 1999	collection account (n/s/f)	\$ 103.59	PAID BY HER MOTHER
1.f.	July 1999	judgment	\$ 1,133.00	PAID AE4
1.g.	December 1999	collection account (n/s/f)	\$ 137.00	PAID
1.h.	December 1999	collection account	\$ 721.00	PAID AE5
1.i.	March 2000	judgment	\$11,565.07	\$1994.55 REMAINING
1.j.	March 2000	judgment	\$ 8,778.68	SAME AS 1.h. AE6
1.k.	June 2001	collection account	\$ 679.92	UNPAID - SETTLEMENT OFFER
1.l.	July 2001	judgment	\$ 6,689.62	PAID AE7
1.m.	November 2001	judgment	\$16,549.00	UNPAID - <i>Ex SPOUSE</i> GARNISHMENT AE8
1.n.	October 2002	retail credit account	\$ 458.00	UNPAID - SETTLEMENT OFFER
1.o.	January 2003	retail credit account	\$ 1,321.00	UNPAID - SETTLEMENT OFFER
1.p.	July 2003	automobile repossessed - deficiency	\$12,000.00	UNPAID
1.q.	April 2004	collection account-utility	\$ 180.00	NOT A CUSTOMER
1.r.	July 2004	n/s/f check	\$ 92.23	DENIED
1.s.	January 2003	delinquent college account	\$ 7,066.68	PAID AE9

The debts listed in subparagraphs 1.a., c., e., f., g., h., i., and s. are paid. The debts in subparagraph 1.i. and j. are the same debt, and a continuing garnishment has reduced the amount owing to \$1994.55. The utility debt listed in subparagraph 1.q. is denied because Applicant was never a customer of that utility. Subparagraph 1.r. is denied as Applicant closed the checking account in 2002 and the bank gave her no notice of any account deficiency. The debts in subparagraphs 1.b. and d. are being paid by Applicant's former spouse. Debts unpaid are those listed in subparagraphs 1.k., m., n., o., and p. Of these outstanding obligations, 1.m. involves a credit card used by her former spouse in his business. Because she could not afford legal representation at the time of her divorce in 2000, Applicant was saddled with this debt, which is now in the form of a judgment, with a garnishment set to commence when the judgment of 1.i. is satisfied. She is contemplating legal action against her former spouse. Applicant has submitted offers of settlement and compromise on the debts in 1.k., n., and o. Her automobile was voluntarily repossessed in 2004 which resulted in a deficiency of \$12,000. There was a history of mechanical problems with the car resulting in several thousand dollars of repairs. Applicant is seeking legal counsel to determine if consumer litigation against the dealer is financially worthwhile.

Looking at total debts of over \$68,000.00, Applicant has paid about \$28,000.00; her ex husband is paying on \$7,500.00; she is contemplating litigation against her former husband to recover the judgment against her for debts incurred by him during the marriage, and the automobile dealer for her repossessing deficiency, which together amount to \$28,500.00; and the remaining debts (\$4,000.00) are being paid by Applicant. ⁽⁶⁾

In 1997, Applicant's husband walked out of the home and they stayed separated until divorcing in 2000. It was a shock to her both emotionally and financially. Her then husband's business began to fail and he often used credit cards in her name to pay his bills. He was unemployed for four months in 1998 and six months in 2000. Applicant was left with paying a mortgage, automobile loan, insurance and the support of a child. Because of her extreme financial condition she was not able to afford an attorney to represent her during the divorce proceedings. She subsequently sought financial counseling from a debt consolidation company and the estimates were more than she could afford to pay. Creditors were unrelenting and she was sued by several of them. She contemplated bankruptcy but feared losing her home, the credit consequences and the potential adverse impact on her security clearance.⁽⁷⁾ She has elected to and has consistently worked to pay down the balances on her obligations. Nearly 12 of 19 of the nineteen debts listed in the SOR have been paid.

POLICIES

"[No] one has a 'right' to a security clearance."⁽⁸⁾ 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."⁽⁹⁾ 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 coercion, and willingness and ability to abide by regulations governing use, handling, and protection of classified information."⁽¹⁰⁾ Eligibility for a security clearance may be adjudicated using the security guidelines contained in the Directive.

Enclosure 2 of the Directive sets forth personnel security guidelines, as well as the disqualifying conditions (DC) and mitigating conditions (MC) under each guideline. In evaluating the security worthiness of an applicant, the administrative judge must also assess the adjudicative factors listed in ¶ 6.3 of the Directive: nature and seriousness of the conduct and surrounding circumstances; frequency and recency of the conduct; age of the Applicant; motivation of the applicant, and the extent to which the conduct was negligent, wilful, voluntary, or undertaken with knowledge of the consequences involved; absence or presence of rehabilitation; and probability that the circumstances or conduct will continue or recur in the future.

Initially, the Government must establish, by substantial evidence, conditions in the personal or professional history of the applicant that disqualify, or may disqualify, the applicant from being eligible for access to classified information.⁽¹¹⁾ The Directive presumes a nexus or rational connection between proven conduct under any of the disqualifying conditions listed in the guidelines and an applicant's security suitability.⁽¹²⁾

Once the Government establishes a disqualifying condition, the burden shifts to the applicant to rebut, explain, extenuate, or mitigate the facts.⁽¹³⁾ An applicant "has the ultimate burden of demonstrating that it is clearly consistent with the national interest to grant or continue his security clearance."⁽¹⁴⁾ A person who has access to classified information enters into a fiduciary relationship with the Government based on trust and confidence. The Government, therefore, has a compelling interest in ensuring each Applicant possesses the requisite judgment, reliability and trustworthiness of one who will protect the national interests as his or her own. The "clearly consistent with the national interest" standard compels resolution of any reasonable doubt about an Applicant's suitability for access in favor of the Government.⁽¹⁵⁾ Decisions under this Directive include, by necessity, consideration of the possible risk an applicant may deliberately or inadvertently fail to protect or safeguard classified information. Such decisions entail a certain degree of legally permissible extrapolation as to potential, rather than actual, risk of compromise of classified information.

One additional comment is worthy of note. Applicant's allegiance, loyalty, and patriotism are not at issue in these proceedings. Section 7 of Executive Order 10865 specifically provides industrial security decisions shall be "in terms of the national interest and shall in no sense be a determination as to the loyalty of the applicant concerned." Security clearance decisions cover many characteristics of an applicant other than allegiance, loyalty, and patriotism. Nothing in this Decision should be construed to suggest I have based this decision, in whole or in part, on any express or implied

decision as to Applicant's allegiance, loyalty, or patriotism.

Having considered the SOR allegations and having reviewed the record evidence as a whole, I conclude the relevant adjudicative guideline to be applied here are those conditions listed under Guideline F (financial considerations) (FC), Directive, ¶ E2.A6.1.1. *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.*

CONCLUSIONS

Upon consideration of all the facts in evidence, and after application of all appropriate legal precepts, factors, and conditions, including those described briefly above, I conclude the following with respect to each allegation set forth in the SOR:

The Government has established its case under Guideline F. As indicated above, Applicant's financial situation deteriorated beginning in 1998. She has worked with her creditors to attempt to resolve her financial difficulties, she has paid garnishments on various judgments, she sought debt counseling, and chose not to wipe the slate clean by filing for bankruptcy under Chapter 7. Failure to pay outstanding financial obligations gives rise to Financial Considerations Disqualifying Condition (FC DC) E2.A6.1.2.1. (*A history of not meeting financial obligations*); and FC DC E2A6.1.2.3. (*Inability or unwillingness to satisfy debts*).

Applicant's financial condition, however, was due to the failure of her husband's business and the subsequent divorce which constitute sufficient reasons to justify the claim that her financial situation was largely beyond her control so as to bring this matter within the Financial Considerations Mitigating Condition (FC MC) E2A6.1.3.3. (*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)*).

In spite of a crushing debt obligation, Applicant has made a good-faith effort to gradually pay down her debts, even though some of those have been through garnishment. She is seeking legal advice to fight back against what appear to be an unfair property settlement and shoddy treatment by an automobile dealer. She sought debt consolidation counsel and has paid 11 and nearly 12 of 19 debts listed in the SOR. She has made several settlement offers. These actions qualify as meaningful efforts to resolve outstanding financial obligations, and thus, this matter comes within FC MC E2A6.1.3.6. (*The individual initiated a good-faith effort to repay overdue creditors or otherwise resolve debts*). It appears that Applicant's attitude toward her finances is healthy at this time.

Accordingly, I find the allegations in the SOR, subparagraphs 1.a. through 1.s., in Applicant's favor. For the reasons stated, I conclude Applicant is eligible for access to classified information.

FORMAL FINDINGS

Formal findings For or Against Applicant on the allegations set forth in the SOR, as required by ¶ E3.1.25 of Enclosure 3 of the Directive, are:

Paragraph 1. Guideline F: FOR THE APPLICANT

Subparagraphs 1.a. - 1.s. 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 Applicant's security clearance. Clearance is granted.

Christopher Graham

Administrative Judge

1. Item 3 (*Applicant's Answer to th FORM*) at 1; and Item 4 (*Applicant's Application for National Security Clearance SF86*) at 1.
2. Item 4, *supra*, at 1 and 6.
3. Item 1, *supra*, at 1-3; and Item 3 (*Applicant's Answer to SOR*) at 1-14.
4. *Id.*
5. AE refers to Applicant's Exhibits attached to her Answer, Item 3.
6. Item 3, *supra*, at 1-4.
7. Item 5 (*Applicant's Sworn Statement dated November 19, 2002*) at 2.
8. See *Department of the Navy v. Egan*, 484 U.S. 518, 528 (1998).
9. *Id.*, at 527.
10. Exec. Or. 12968, *Access to Classified Information* § 3.1(b) (Aug. 4, 1995).
11. *Egan, supra*, at 531.
12. See *ISCR Case No. 95-0611* at 2 (App. Bd. May 2, 1996).
13. See *ISCR Case No. 01-20700* at 3 (App. Bd. Dec. 19, 2002).
14. *Id.*, at 3.
15. See *Egan*; Directive ¶ E2.2.2.