

DATE: February 9, 2005

In Re:

SSN: -----

Applicant for Security Clearance

ISCR Case No. 03-08980

DECISION OF ADMINISTRATIVE JUDGE

THOMAS M. CREAN

APPEARANCES

FOR GOVERNMENT

Braden M. Murphy, Esq., Department Counsel

FOR APPLICANT

Peter R. Maignan, Esq.

SYNOPSIS

Applicant is an administrative assistant for a defense contractor. She was arrested five times in nine years for minor offenses. Three of the cases were either not prosecuted or resulted in acquittal. Applicant had significant delinquent debt on her initial credit report. She contested some of the delinquent debts as erroneous entries and most were removed from her latest credit report. Two are still being contested. Applicant also paid off the delinquent debts she did not contest. Applicant has mitigated the security concerns for financial considerations and criminal conduct. Clearance is granted.

STATEMENT OF THE CASE

On May 5, 2004, the Defense Office of Hearing and Appeals (DOHA) issued a Statement of Reasons (SOR) detailing the basis for its decision to not grant a security clearance to Applicant. The action was taken under Executive Order 10865, *Safeguarding Classified Information Within Industry* (Feb 20, 1990), as amended and modified, and Department of Defense Directive 5220.6, *Defense Industrial Personnel Security Clearance Review Program* (Jan 2, 1992), as amended and modified (Directive). Applicant acknowledged receipt of the SOR on May 11, 2004. The SOR alleges security concerns under Guideline J (Criminal Conduct), and Guideline F (Financial Considerations) of the Directive.

Applicant answered the SOR in writing on June 4, 2004. She admitted all of the allegations under Guideline J and admitted one and denied the rest of the allegations under Guideline F. She requested a hearing before an administrative judge. The request for a hearing was received by DOHA on June 14, 2004. Department Counsel was prepared to proceed with the case on November 3, 2004, and the case was assigned to me on November 10, 2004. A notice of hearing was issued on December 6, 2004, and the hearing was held on January 5, 2005. Six government exhibits, four Applicant exhibits and the testimony of the Applicant were received during the hearing. The transcript was received on January 12, 2005.

FINDINGS OF FACT

Applicant is 34 years old and has worked for three years as an administrative assistant for a defense contractor. She is

the mother of two teenagers who live with her and she is providing their support. She now receives some support from the father of one of the children.⁽¹⁾ A credit report showed Applicant had significant delinquent debt.⁽²⁾ Applicant became aware of the extent of her indebtedness when she was provided a copy of her credit report in 2003.⁽³⁾

She submitted a security clearance application on November 7, 2002.⁽⁴⁾ Applicant was arrested for shoplifting in April 2003 when she was 22-years-old. She pled guilty and paid a fine.⁽⁵⁾ Applicant was arrested in November 1993 for disorderly conduct when she was a passenger in a car pulled over by a police officer. The charges were dismissed.⁽⁶⁾ Applicant was arrested for stealing items from her employer in August 1998 but the charges were dismissed.⁽⁷⁾ Applicant was arrested for driving while intoxicated in November 2000 but she was found not guilty.⁽⁸⁾ Applicant was arrested in August 2002 for attempting to drive a vehicle while impaired and her blood alcohol content by Breathalyzer was .15. She pled guilty, was placed on probation before judgment, and ordered to attend alcohol abuse cases. Upon completion of her probation in 2004, the finding of guilty was removed from her record. She pled guilty because she was informed by court personnel the judge would not extend her case, and if she pled guilty she would only pay a small fine and ordered to attend alcohol abuse classes.⁽⁹⁾

Applicant had a number of delinquent debts listed on her credit report in 2002.⁽¹⁰⁾ Applicant was not aware of some of the debts and contested others. She made efforts to clear up her credit and the latest credit report does not list many of these debts.⁽¹¹⁾ Applicant was unaware of debts 2.a and 2.b of the SOR since they were for a credit card in her name that someone else was using. Applicant has sent affidavits to the credit card company that she has not used this card but there has been no determination if she is responsible for the debts. The debts are still on her credit report.⁽¹²⁾

Applicant was not aware of debts 2.c and 2.d of the SOR that appeared on her credit report. She sought clarification of the reports from the credit card companies and the reports were removed and no longer appear on her latest credit report.⁽¹³⁾

Applicant did not know she was indebted for a hospital bill listed as debt 2.e of the SOR. She thought the bill had been paid by her insurance company. As soon as she was informed of the bill, she paid it and it no longer appears on her latest credit report.⁽¹⁴⁾

Debt 2.f of the SOR is a bill for phone service in Appellant's name incurred by Appellant and her sister when they lived together. Her sister was to pay the bill when Appellant moved out but her sister did not pay the bill. When Appellant learned of the bill she contacted her sister and her sister paid the bill.⁽¹⁵⁾ The debt is not listed on Applicant's latest credit report.⁽¹⁶⁾

Debt 2.g of the SOR was a bill owed for cell phone service. When Applicant learned of the bill, she contacted the collection company and informed them it was paid.⁽¹⁷⁾ The bill is not on Applicant's latest credit report.⁽¹⁸⁾

Debts 2.h and 2.k of the SOR are bills for electric service in an apartment Applicant rented under a Department of Housing and Urban Development (HUD) program. When she learned of the debt on her credit report, Applicant contact the credit reporting agency and had the debts removed from her latest report. The debts are not listed on her latest credit report.⁽¹⁹⁾

Debt 2.i of the SOR is for an overdrawn checking account. Applicant's pay was electronically credited to her account by her employer. Unfortunately, her employer had financial problems and some electronic transfers were not honored by Applicant's bank. Applicant wrote checks on the account not knowing the pay was not credited. Applicant paid the account when advised of the debt and it was removed from her latest credit report.⁽²⁰⁾

Debt 2.j of the SOR was for a hospital bill. Applicant believed it was incorrectly report on her credit report. She contacted the collection agency to inform them it was not her bill. It has been removed from her latest credit report but Applicant had no explanation why it was removed.⁽²¹⁾

Debt 2.1 of the SOR was for a cell phone bill which Applicant was financially unable to resolve when the charges were incurred. After Applicant received the SOR in May 2004, Applicant paid the bill and it is not on her latest credit report. [\(22\)](#)

The only debts still outstanding on Applicant's credit report are debts 2.a and 2.b of the SOR for approximately \$1,654. Applicant is contesting the debts and the disagreement has not been settled.

Applicant enrolled in financial counseling after she was advised in March 2003 she had significant debt. [\(23\)](#) The financial counseling has assisted her in resolving her financial situation by showing her how to manage her bills and pay on time. She is no longer overextended on her bills and pays her bills on time. [\(24\)](#) Applicant's salary is approximately \$38,000 per year and she has structured her finances with the help of credit counseling to leave her approximately \$300 per month in discretionary funds. [\(25\)](#)

To show Applicant's financial situation, Department Counsel presented documentary information that Applicant's wages were garnished in July 2003. [\(26\)](#) Applicant explained that her wages were never garnished. She took out a loan and part of the process was to sign a letter permitting the lender to garnish her wages if payments were not paid. This letter is the documentary information introduced by Department Counsel. Applicant has made all payments and the wages have not been garnished. [\(27\)](#)

POLICIES

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." [\(28\)](#) 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 judgement, 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." [\(29\)](#) Eligibility for a security clearance is predicated upon the applicant meeting the security guidelines contained in the Directive.

The Directive sets out the adjudicative guidelines for making decisions on security clearances. Enclosure 2 of the Directive sets forth adjudicative guidelines for determining eligibility for access to classified information, and it lists the disqualifying conditions (DC) and mitigating conditions (MC) for each guideline. Each clearance decision must be fair, impartial, and a commonsense decision based on the relevant and material facts and circumstances, the whole person concept, and the factors listed in the Directive ¶ 6.3.1 through ¶ 6.3.6

"The adjudicative process is an examination of a sufficient period of a person's life to make an affirmative determination that the person is eligible for a security clearance." [\(30\)](#) An administrative judge must apply the "whole person concept," and consider and carefully weigh the available, reliable information about the person. [\(31\)](#) An administrative judge should consider: (1) the nature, extent, and seriousness of the conduct; (2) the circumstances surrounding the conduct, to include knowledgeable participation; (3) the frequency and recency of the conduct; (4) the applicant's age and maturity at the time of the conduct; (5) the voluntariness of participation; (6) the presence or absence of rehabilitation and other pertinent behavioral changes; (7) the motivation for the conduct; (8) the potential for pressure, coercion, exploitation, or duress; and (9) the likelihood of continuation of recurrence. [\(32\)](#)

A person granted access to classified information enters into a special relationship with the government. The government must be able to repose a high degree of trust and confidence in those individuals to whom it grants access to classified information. The decision to deny an individual a security clearance is not necessarily a determination as to the loyalty of the applicant. [\(33\)](#) It is merely an indication that the applicant has not met the strict guidelines the President and the Secretary of Defense have established for issuing a clearance.

Initially, the Government must present evidence to establish controverted facts in the SOR that disqualify or may

disqualify the Applicant from being eligible for access to classified information.⁽³⁴⁾ Thereafter, Applicant is responsible for presenting evidence to rebut, explain, extenuate, or mitigate facts.⁽³⁵⁾ An applicant "has the ultimate burden of demonstrating that it is clearly consistent with the national interest to grant or continue his security clearance."⁽³⁶⁾ "[T]he Directive presumes there is a nexus or rational connection between proven conduct under any of the Criteria listed therein and an applicant's security suitability."⁽³⁷⁾ "Any doubt as to whether access to classified information is clearly consistent with national security will be resolved in favor of the national security."⁽³⁸⁾

CONCLUSIONS

I carefully considered all of the facts in evidence and the legal standards discussed above. I reach the following conclusions regarding the allegations in the SOR:

Under Guideline J (Criminal Conduct), a security concern exists for a history or pattern of criminal activity creating doubt about a person's judgment, reliability and trustworthiness.⁽³⁹⁾ Applicant's arrests and convictions for various offenses brings the matter under Criminal Conduct Disqualifying Conditions; Directive ¶ E2.A10.1.2.1 (*allegations or admission of criminal conduct, regardless of whether the person was formally charged*); and Directive ¶ E2.A10.1.2.2 (*a single serious crime or multiple lesser offenses*). Applicant was arrested five times in nine years for various minor offenses. The five arrests meet the criteria of criminal conduct even if Applicant was not convicted of all of the offenses. She was convicted of two offenses, one was a finding of guilty but applicant was placed on probation before judgement, and two were not prosecuted. There was no evidence to indicate Applicant was guilty of criminal conduct for the offenses that were not prosecuted. None of the offenses were serious but they are multiple lesser offenses. I conclude the Criminal Conduct disqualifying conditions have been established.

The Criminal Conduct Mitigating Conditions to consider for Applicant are: Directive ¶ E2.A10.1.3.1 (*the criminal behavior was not recent*); Directive ¶ E2.A10.1.3.2 (*the crime was an isolated incident*); Directive E2.A10.1.3.5 (*acquittal*); and Directive ¶ E2.A10.1.3.6 (*there is clear evidence of successful rehabilitation*). Three of Applicant's arrests took place in the 1990s. The other two were in the early 2000s, and the latest was over two and a half years ago. The criminal offenses are not recent. Even though there are five arrests for criminal conduct, each was for a different minor offense so they are isolated incidents. Three of the arrests resulted in an acquittal or were not prosecuted. Applicant was either fined or placed on probation for two minor offenses for which guilty findings were assessed. All the arrests were for minor offenses and there have been no arrests in almost three years. Applicant has been working successfully and raising her children and there are clear signs of successful rehabilitation. Applicant's history or pattern of criminal activity does not create doubt about her judgment, reliability, or trustworthiness. I conclude Applicant has successfully mitigated the disqualifying conditions for Criminal Conduct.

Under Guideline F (Financial Conditions) a security concern exists for an individual who is financially irresponsible. An individual who is financial irresponsibility may also be irresponsible, unconcerned, or careless in their obligations to protect classified information. Behaving responsibly or irresponsibly in one aspect of life provides an indication of how a person may behave in other aspects of life.⁽⁴⁰⁾ Applicant's delinquent debts brings the matter within Financial Consideration Disqualifying Condition Directive ¶ E2.A6.1.2.2. (*a history of not meeting financial obligations*). Applicant's initial credit report revealed she had 12 delinquent debts. Applicant admitted eight of the debts were valid. She contested two, and denied two were valid. Applicant's admissions and the credit report are sufficient to establish the Financial Consideration disqualifying condition. I conclude the disqualifying condition has been established.

The Financial Consideration Mitigating Conditions that should be considered for Applicant's financial situation are: Directive ¶ E2.A6.1.3.1 (*the behavior was not recent*); Directive E2.A6.1.3.4 (*The person has received or is receiving counseling for the problem and there are clear indications that the problem is being resolved or is under control*); and Directive ¶ E2.A6.1.3.6 (*the individual initiated a good-faith effort to repay overdue creditors or otherwise resolve debts*). Applicant took efforts to clear up her financial status after learning of the content of her credit report. She contested some debts on the report and paid off the delinquent debts she did not contest. The only delinquent debts still outstanding on Applicant's latest credit report are debts 2.a and 2.b of the SOR for the credit card used by another person. Applicant inquired about these charges and is working with the credit card company to determine her liability for the accounts. While the issue has not been resolved, Applicant is making efforts to resolve the debts. These debts

were incurred over five years ago and her behavior of incurring delinquent debts is not recent. When Applicant learned of the extent of her debt in the credit reports, she sought financial counseling and followed the guidance. Applicant made a good-faith effort and her delinquent debts are now resolved. I conclude Applicant has met her burden to mitigate the Financial Considerations disqualifying condition.

I carefully considered all of the circumstances in light of the "whole person" concept to determine a fair, impartial, and commonsense decision. 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 Section E3.1.25 of Enclosure 3 of the Directive, are:

Paragraph 1, Guideline J: FOR APPLICANT

Subparagraph 1.a.: For Applicant

Subparagraph 1.b.: For Applicant

Subparagraph 1.c.: For Applicant

Subparagraph 1.d.: For Applicant

Subparagraph 1.e.: For Applicant

Paragraph 2, Guideline F: FOR APPLICANT

Subparagraph 2.a.: For Applicant

Subparagraph 2.b.: For Applicant

Subparagraph 2.c.: For Applicant

Subparagraph 2.d.: For Applicant

Subparagraph 2.e.: For Applicant

Subparagraph 2.f.: For Applicant

Subparagraph 2.g.: For Applicant

Subparagraph 2.h.: For Applicant

Subparagraph 2.i.: For Applicant

Subparagraph 2.j.: For Applicant

Subparagraph 2.k.: For Applicant

Subparagraph 2.l.: For Applicant

DECISION

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

Thomas M. Crean
Administrative Judge

1. Tr. 83-85.
2. Exhibit 3 (Credit Bureau Report, dated November 13, 2002).
3. Exhibit 2 (Applicant's statement, dated March 12, 2003); Tr. 88.
4. Exhibit 1 (Security Clearance Application, dated November 7, 2002).
5. Tr. 26-27.
6. Tr. 28.
7. Tr. 28-30.
8. Tr. 30-32.
9. Tr. 32-36; Exhibit 7 (State district court record).
10. Exhibit 3 (Credit Bureau Report, dated November 13, 2002).
11. Exhibit A, (Credit Bureau Report, dated January 4, 2005).
12. Tr 39-42.
13. Tr. 44-46; Exhibit A (Credit Bureau Report, dated January 4, 2005).
14. Tr. 46-4; Exhibit C (Check #144, dated December 13, 2004).
15. Tr. 51-53.
16. Exhibit A (Credit Bureau Report, dated January 4, 2005).
17. Tr. 55-56.
18. Exhibit A (Credit Bureau Report, dated January 4, 2005).
19. Tr. 55-58.
20. Exhibit B (Letter of Notice, dated November 19, 2004); Tr. 58-61.
21. Tr. 61-62.
22. Tr. 64-67.
23. Exhibit D (Financial Counseling Agreement, dated March 21, 2003).
24. Tr. 71-74.
25. Tr. 93-96.
26. Exhibit 4 (Letter of Garnishment., dated July 9, 2003).
27. Tr. 80-83.

28. *Department of the Navy v. Egan*, 484 U.S. 518, 527 (1988).
29. Exec. Or. 12968, *Access to Classified Information* § 3.1 (b) (Aug. 4, 1995).
30. Directive ¶ E2.2.1.
31. *Id.*
32. Directive ¶¶ E2.2.1.1 through E2.2.1.9.
33. *See* Exec. Or. 10865 § 7.
34. Directive ¶ E3.1.14.
35. ISCR Case No. 01-20700 at 3 (App. Bd. Dec. 19, 2002); *see* Directive ¶ E3.1.15.
36. ISCR Case No. 01-20700 at 3 (App. Bd. Dec. 19, 2002).
37. ISCR Case No. 95-0611 at 2 (App. Bd. May 2, 1996) (quoting DISCR Case No. 92-1106 (App. Bd. Oct. 7, 1993))
38. *Egan*, 484 U.S. at 531; *see* Directive ¶ E2.2.2.
39. Directive ¶ E2.A10.1.1.
40. Directive ¶ E2.A6.1.1.