

DATE: October 31, 2005

In Re:

SSN: -----

Applicant for Security Clearance

ISCR Case No. 03-11041

DECISION OF ADMINISTRATIVE JUDGE

CLAUDE R. HEINY

APPEARANCES

FOR GOVERNMENT

Robert E. Coacher, Esquire, Department Counsel

FOR APPLICANT

Timothy D. DeGiusti, Esquire

SYNOPSIS

Applicant owed 13 debts totaling approximately \$37,000. She has paid or has arranged payment on six of the debts totaling approximately \$11,000. The remaining seven debts were charged off between 1996 and 1999. They no longer appear on her credit report and are no longer enforceable as they exceed the state's statute of limitations. Her financial problems were caused by factors beyond her control. The record evidence is sufficient to mitigate or extenuate the negative security implications stemming from her debts. Clearance is granted.

STATEMENT OF THE CASE

On July 12, 2004, 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⁽¹⁾ it is clearly consistent with the national interest to grant or continue a security clearance for Applicant. Security concerns were alleged under Guideline F (Financial Considerations). DOHA recommended the case be referred to an administrative judge to determine whether a clearance should be granted, continued, denied, or revoked.

On July 22, 2004, Applicant answered the SOR and requested a hearing. On February 4, 2005, I was assigned the case. On March 8, 2005, a Notice of Hearing was issued scheduling the hearing which was held on March 24, 2005. The record was kept open to allow Applicant to submit additional documents. Several documents were received and admitted into the record, without objection. On April 7, 2005, DOHA received a copy of the transcript (Tr.).

FINDINGS OF FACT

Applicant is a 35-year-old computer-based-training developer who has worked for a defense contractor since October 2002, and is seeking to obtain a security clearance. Applicant is regarded by those who know her as a hard-working single mother who is dedicated to her daughter (App Ex G). Her work performance has resulted in an accomplishment award and an appreciation award (App Ex K).

In her response to the SOR, Applicant states her credit problems were the result of bad marital relationships during 1996 through 1999. Both relationships ended in divorce. She was divorced from her first husband in January 1996 (Gov Ex 6). Applicant assumed the majority of the marital debt from her first marriage (Tr. 38). She remarried in September 1996. In March 1997, six months after their marriage, her husband quit his job. Her second husband did not contribute to paying the bills. Applicant had a house with her first husband but sold it after the divorce because she was unable to continue the payments on the 21% note.

In August 1997, Applicant purchased a vehicle for \$8,918 (SOR paragraph 1.m). She had the vehicle a couple of months before returning it. After it was returned, she did not receive any notice of deficiency nor has legal action to obtain a deficiency judgment been instituted.

In the Spring of 1998, Applicant sought credit counseling with a consumer credit counseling service (CCCS) (App Ex B). Her creditors were unwilling to work with her and it was suggested she get a second job. Her position at the hospital would not allow for outside part-time work. After talking with the CCCS, she consulted with an attorney who informed her she could file bankruptcy or not. She was informed her debts would stay on her credit report the same amount of time, i.e., seven years. She chose not to pursue bankruptcy, but to work on reducing her financial obligations.

In October 1998, Applicant suffered a back injury--a torn disk--while pregnant. Her pregnancy delayed surgery. In April 1999, her daughter was born. Applicant had back surgery in August 1999 and May 2000. Applicant's back injury prevented her from working in her previous occupation. Following vocational retraining, she received an associate degree in May 2002 (Tr. 43) in web-based design and in October 2002, she obtained her current job.

In January 2002, she was divorced for the second time. Her husband has not paid the debts required of him in the divorce decree. Since her divorce, she has received only eight months of child support. In May 2002, Applicant brought an action to attempt to obtain past-due child support. A contempt citation against her ex-husband was issued (App Ex A). In February 2003 an administrative enforcement order was issued. Her ex-husband has not paid her the \$261 monthly child support owed. A total of \$1,850.90 was past due. (App Ex A)

Applicant is a single parent raising her daughter by herself. In August 2004, she purchased a mobile home on which she makes \$290 monthly mortgage payments. She purchased the trailer to reduce her monthly expenses (Tr. 57). Since obtaining employment, she replaced her car with a more reliable 1999 pick-up truck.

The SOR alleges 13 debts totaling approximately \$37,000. A summary of those debts and their current status follows:

	Creditor	Amount	Current Status
1.a	VISA credit card	\$6,654	Charged off in 1996 and does not appear on her 2004 credit report.
1.b	department store debt	\$533	Charged off in 1996 and does not appear on her 2004 credit report.
1.c	department store debt	\$1,079	Charged off in 1997 and does not appear on her 2004 credit report.
1.d	department store debt	\$480	Charged off in 1997 and does not appear on her 2004 credit report.
1.e	jewelry store debt for wedding rings for second marriage	\$3,173	Paying \$50 per month. She has paid more than \$1,000 on the debt. See App Ex C.
1.f	collection agency for a credit card debt	\$605	Satisfied. See App Ex L.
1.g	credit card debt. Same debt as 1.1.	\$2,936	Charged off in 1998 and does not appear on her 2004 credit report.
1.h	collection agency for a department store	\$3,106	Satisfied. See App Ex C.
1.i	credit union auto loan for 1991 Chevrolet	\$3,099	Satisfied. See App Ex C.
1.j	electric bill	\$207	Paid. See App Ex C.

1.k	electric bill	\$583	Paid. See App Ex C.
1.l	credit card debt. Same creditor as 1.g.	\$5,594	Charged off in 1999 and does not appear on her 2004 credit report.
1.m	vehicle debt for a Mazda	\$8,918	Has not been contacted by creditor and does not appear on her 2004 credit report.
	Total debt alleged in SOR	\$36,967	

Applicant has \$13,566 in her 401(k) retirement program (App Ex E). Approximately \$250 per month is added to her 401(k) plan (Tr. 58). She has borrowed against her retirement program to pay her attorney fees. She used her tax refund to pay bills (Tr. 49). She had learned she must have a budget and allocate money for each expense. She realizes she must know how much she is spending. She is meeting her current obligations. Applicant is paid \$26 per hour and her gross pay is \$2,098 for two weeks (App Ex D). Applicant has approximately \$250 remaining after paying her monthly expenses (App Ex F). She is current on her monthly bills (Tr. 58) and is a frugal shopper (Tr. 101).

All the debts listed in the SOR were charged off between November 1996 and September 1999. The state has a five-year statute of limitations on contracts, agreements, or promises in writing. Those debts she has not paid or is not making payment on are beyond the five-year statute. Following her attorney's advice, she does not intend to make any payment on these debts. The debts listed in SOR 1.a, 1.b, 1.c, 1.d, 1.g, 1.l, and 1.m do not appear on Applicant's July 2004 credit report (Gov Ex 3). However, they do appear on her March 2003 credit report (Gov Ex 5).

POLICIES

The Directive sets forth adjudicative guidelines to be considered when evaluating a person's eligibility to hold a security clearance. Disqualifying Conditions (DC) and Mitigating Conditions (MC) are set forth for each applicable guideline. Additionally, each decision must be a fair and impartial commonsense decision based upon the relevant and material facts and circumstances, the whole person concept, and the factors listed in Section 6.3 of the Directive. The adjudicative guidelines 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. The presence or absence of a particular condition or factor for or against clearance is not determinative of a conclusion for or against an applicant. However, the adjudicative guidelines should be followed whenever a case can be measured against this policy guidance. Considering the evidence as a whole, I conclude the relevant guideline to be applied here is Guideline F (Financial Considerations).

BURDEN OF PROOF

The sole purpose of a security clearance decision is to decide if it is clearly consistent with the national interest to grant or continue a security clearance for an applicant. 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, an applicant from being eligible for access to classified information. The burden of proof in a security clearance case is something less than a preponderance of evidence, although the government is required to present substantial evidence to meet its burden of proof. Substantial evidence is more than a scintilla, but less than a preponderance of the evidence. 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. Additionally, the government must prove controverted facts alleged in the SOR. Once the government has met its burden, the burden shifts to an applicant to present evidence to refute, extenuate or mitigate the government's case. Additionally, an applicant has the ultimate burden of persuasion to obtain a favorable clearance decision. ⁽²⁾

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." 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. The "clearly consistent with the national interest" standard compels resolution of any reasonable doubt about an applicant's suitability for access to classified information in favor of protecting national security. Security clearance

determinations should err, if they must, on the side of denials.

CONCLUSIONS

A person's relationship with his 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 position of risk that is inconsistent with the holding of a security clearance. An applicant is not required to be debt free, but is required to manage her finances so as to meet her financial obligations. An applicant who is financially overextended is at risk of having to engage in illegal acts to generate funds. Directive E.2.A.6.1.1.

The Government has satisfied its initial burden of proof under Guideline F (Financial Considerations). The Applicant owed 13 debts totaling approximately \$37,000. Disqualifying Conditions (DC) 1 (E2.A6.1.2.1 *A history of not meeting financial obligations*) and 3 (E2.A6.1.2.3 *Inability or unwillingness to satisfy debts*) apply.

Applicant has settled and paid five of the debts (SOR 1.f, 1.h, 1.i, 1.j, and 1.k) and is making \$50 monthly payments on the jewelry store debt (SOR 1.e). Mitigating Conditions (MC) 6 (E2.A6.1.3.6 *The individual initiated a good-faith effort to repay overdue creditors or otherwise resolve debts*) applies to these debts. I find for Applicant as to these six debts.

Her financial problems arose largely from circumstances beyond her control, rather than her own negligence or misconduct. The first of the factors beyond her control were her ex-husbands. She and her first husband incurred debts based on a two-income household. Neither Applicant nor her first husband were too financially astute for they jointly purchased a home with a 21% interest note. When the divorce occurred, she took a majority of the debts. She shortly remarried an individual who was not financially stable. He convinced her to buy their wedding rings on credit and six months after the wedding quit his job. Divorces are factors beyond one's control.

The second factor is Applicant is a single mother having to raise her daughter without receiving the child support she is entitled to. She has had to incur legal fees in an attempt to obtain the child support, which has so far been unsuccessful.

The third factor was her previous job. She was working for a hospital that did not allow part time jobs. Applicant was prevented from getting a second job to pay off her debts. The fourth factor was her back injury. She underwent two surgeries and had to live on workman's compensation until she recovered sufficiently to allow her to return to work. Workman's compensation did not give her sufficient funds to make payments on her prior obligations. An unexpected medical emergency such as a torn disk is specifically listed in MC 3.

Following her back injury surgery she was unable to return to her previous job. She was out of work because she was no longer physically able to do her previous job. MC 3 contemplates loss of employment as a factor beyond one's control. After vocational retraining she went into a different career field and obtained her current job. MC 3 (E2.A6.1.3.3 *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)*) applies.

In considering the potentially disqualifying and mitigating circumstances in light of the "whole person" concept I find Applicant is a mature individual. The attorney advised her the debts would be removed from her credit report after seven years. The seven unpaid debts listed in the SOR were charged off between 1996 and 1999. The seven debts are beyond the state's five-year statute of limitation and are no longer enforceable. None of these debts appear on her most current credit report.

Certainly Applicant could have ignored her attorney's advice, after having paid for it, and contacted her creditors to arrange a repayment schedule on the unenforceable debts. However, as a single mother with limited income her ability to enter into repayment plans on these remaining debts would have been extremely restricted, especially when she was using the small amount of available funds to pay other debts listed in the SOR.

It is important to consider what Applicant has done since October 2002 when she obtained her current job. Her gross pay is approximately \$1,000 per week. After paying her expenses, she has approximately \$125 per week surplus. She is not financially overextended or at risk of having to engage in illegal acts to generate funds. With the debts and an

inability to pay them, Applicant discussed her finances with CCCS and with an attorney. She decided not to file for bankruptcy protection and worked to reduce her financial obligations. She purchased a trailer home to reduce her rent. Her friend claims Applicant is an extremely frugal shopper. She is current on her debts although not making payments on the seven listed debts. With this limited income, she has been able to repay \$11,000 worth of debt within a two and a half year period. She has more than \$13,000 in her retirement plan even after having to borrow from her plan to pay her legal expenses. She now has a monthly budget, and lives within that budget.

Under Applicant's current circumstances the likelihood of a recurrence of her previous financial problems is remote. The essence of the security concern raised by Guideline F, Financial Considerations, is that a person who is financially overextended is at risk of having to engage in illegal acts to generate funds. However, the unpaid debts listed in the SOR are no longer legally enforceable, therefore, they are not a potential source of pressure, coercion, or duress to engage in illegal acts. I conclude Applicant has mitigated the security concerns arising from her history of failing to meet her financial obligations and her inability to pay the debts written off between 1996 and 1999. I find for Applicant as to financial considerations.

FORMAL FINDINGS

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

Paragraph 1, Guideline F (Financial Considerations): 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

Subparagraph 1.f: For Applicant

Subparagraph 1.g: For Applicant

Subparagraph 1.h: For Applicant

Subparagraph 1.i: For Applicant

Subparagraph 1.j: For Applicant

Subparagraph 1.k: For Applicant

Subparagraph 1.l: For Applicant

Subparagraph 1.m: For 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 Applicant. Clearance is granted.

Claude R. Heiny

Administrative Judge

1. Required by Executive Order 10865, *Safeguarding Classified Information Within Industry*, as amended, and Department of Defense Directive 5220.6, *Defense Industrial Personnel Security Clearance Review Program* (Directive), dated January 2, 1992, as amended.
2. ISCR Case No. 93-1390 (January 27, 1995) at pp. 7-8; Directive, Enclosure 3, Item E3.1.15.