

DATE: November 16, 2004

In re:

SSN: -----

Applicant for Security Clearance

ISCR Case No. 03-15144

ECISION OF ADMINISTRATIVE JUDGE

PHILIP S. HOWE

APPEARANCES

FOR GOVERNMENT

Marc Curry, Esq., Department Counsel

FOR APPLICANT

Pro Se

SYNOPSIS

Applicant incurred nine delinquent debts. Applicant has not undertaken any efforts to settle or pay these debts. She has paid her current debts while taking care of her three children. Applicant did not mitigate the financial consideration security concerns. Clearance is denied.

STATEMENT OF THE CASE

On July 7, 2004, the Defense Office of Hearings and Appeals (DOHA), under 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 detailed reasons under Guideline F (Financial Considerations) 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 a security clearance for Applicant, and recommended referral to an Administrative Judge to conduct proceedings and determine whether clearance should be granted, continued, denied, or revoked.

In a signed and notarized statement, dated August 5, 2004, Applicant responded to the SOR allegations. She requested a hearing. This case was assigned to me September 15, 2004. On September 27, 2004, a Notice of Hearing was issued setting the hearing date for October 7, 2004. On that date, I convened the hearing to consider whether it is clearly consistent with the national interest to grant Applicant's security clearance. Applicant waived the 15 notice period (Tr. 11). The Government presented five exhibits, all of which were admitted into evidence. Applicant submitted no exhibits. I received the transcript (Tr.) of the hearing on October 15, 2004.

FINDINGS OF FACT

Applicant admitted all but one of the SOR allegations (subparagraphs 1.h). 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 the

same, I make the following additional findings of fact:

Applicant is 38 years old. She works for a security company that has contracts with the government for electronic alarms at various government facilities. Applicant is divorced and has three children. Applicant's oldest daughter is a college student and her youngest is 3 years old. Applicant does not own a car, works at night, and lives with her sister who works during the day. Applicant uses her sister's car to drive to work. Applicant does not have any credit cards. She does have a checking account and a 401K account. Applicant borrowed money from her 401K account to pay some current bills. Applicant also owes her sister about \$20,000 which she is repaying. Applicant does not have enough money to pay the delinquent debts listed in the SOR. (Tr. 36 to 43, 49; Exhibits 1 to 4)

Applicant's debts and their current status are as follows:

SOR ¶	CREDITOR AND AMOUNT	CURRENT STATUS	RECORD
1.a.	Auto purchase \$7,961	Wrecked in accident; insurance paid \$4000. Applicant has not paid the balance, nor has she contacted the creditor	Exhibits 2 to 5 Tr. 21, 22; Answer
1.b.	Credit card from 1994 to 1999 \$717	No effort to pay because of lack of funds. Will try to pay in the future.	Exhibits 2 to 5; Answer; Tr. 17, 18
1.c.	Credit card \$2,506	Creditor wants \$2500 to settle this account and subparagraph 1.d. Applicant does not have that amount of money except in her 401K. \$2500 is the amount she borrowed from the 401K and is repaying.	Exhibits 2 to 5; Tr. 22, 23; Answer
1.d.	Credit card \$1,276	See previous entry.	Exhibits 2 to 5; Answer; Tr. 23 to 25
1.e.	Bank credit card \$859	No progress on payment.	Exhibits 2 to 5; Answer; Tr. 25, 26
1.f.	Mail order purchased \$292	No repayment.	Exhibit 2 to 5; Answer; Tr. 226, 27
1.g.	Car repossessed \$9,204	Made payments of \$292 for 6 months.	Exhibits 2 to 5; Answer; Tr. 27, 28
1.h.	Former husband's car repossessed. \$8,258	Divorce decree makes former husband responsible for this debt.	Exhibits 2 to 5; Answer; Tr. 28 to 30
1.i.	Pay day loan company debt \$360	Not repaid	Exhibits 2 to 5; Answer; Tr. 30, 31

Applicant filed for bankruptcy under Chapter 7 in 1996. She was discharged in bankruptcy in January 1997. Subsequently, her husband left her, later returned, and they are now divorced. During that same period, she incurred

these delinquent debts and has not repaid them. Applicant consulted a credit counseling service that told her it could not arrange a viable repayment plan for her, and that bankruptcy was the best course of action for her. Applicant does not want to file bankruptcy again. (Tr. 18 to 20, 31, 32, 46; Exhibits 2 to 5)

POLICIES

"[N]o one has a 'right' to a security clearance." *Department of the Navy v. Egan*, 484 U.S. 518, 528 (1988). 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 judgement, as well as freedom from conflicting allegiances and potential for coercion, and willingness and ability to abide by regulations governing he use, handling, and protection of classified information." Exec. Or. 12968, *Access to Classified Information* § 3.1(b) (Aug. 4, 1995). Eligibility for a security clearance is predicted upon the applicant meeting the security guidelines contained in the Directive.

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. Enclosure 2 to the Directive sets forth adjudicative guidelines that must be carefully considered according to the pertinent Guideline in making the overall common sense determination required.

Each adjudicative decision must also include an assessment of: (1) the nature, extent, and seriousness of the conduct; (2) the circumstances surrounding the conduct, and the extent of knowledgeable participation; (3) how recent and frequent the behavior was; (4) the individual'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 or recurrence (See Directive, Section E2.2.1. of Enclosure 2). Because each security case presents its own unique facts and circumstances, it should not be assumed that the factors exhaust the realm of human experience or that the factors apply equally in every case. Moreover, although adverse information concerning a single condition may not be sufficient for an unfavorable determination, the individual may be disqualified if available information reflects a recent or recurring pattern of questionable judgment, irresponsibility, or other behavior specified in the Guidelines.

Based upon a consideration of the evidence as a whole, I find the following adjudicative guideline most pertinent to an evaluation of the facts of this case:

Guideline F: Financial Considerations

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.

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

- (1) A history of not meeting financial obligations.
- (3) Inability or unwillingness to satisfy debts.

Conditions that could mitigate security concerns include:

None

CONCLUSIONS

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

With respect to the allegation involving Guideline F, the Government established its case. Applicant is delinquent on eight accounts of the nine alleged. The ninth account is owed by her former husband. Disqualifying Conditions (DC) 1 and 3 apply.

Regarding the application of Mitigating Conditions (MC), I do not find any that apply in this case because Applicant's failure to pay these debts was a continuing course of conduct. While Applicant does have three children for whom she must care, and she has paid other current debts, she has exerted no effort to pay these bills. Four of them are under \$1000 and she could have arranged installment payment plans to pay them. Or, she could have borrowed money from her 401K to pay other delinquent debts. Applicant has not made even the slightest effort to pay these debts. Therefore, I conclude the guideline against Applicant.

FORMAL FINDINGS

Formal Findings as required by Section E3.1.25 of Enclosure 3 of the Directive are hereby rendered as follows:

Paragraph 1 Guideline F: AGAINST APPLICANT

Subparagraph 1.a.: Against Applicant

Subparagraph 1.b.: Against Applicant

Subparagraph 1.c.: Against Applicant

Subparagraph 1.d.: Against Applicant

Subparagraph 1.e.: Against Applicant

Subparagraph 1.f.: Against Applicant

Subparagraph 1.g.: Against Applicant

Subparagraph 1.h.: For Applicant

Subparagraph 1.i.: Against Applicant

Subparagraph 1.j.: Against Applicant

DECISION

In light of all the circumstances and facts presented by the record in this case, it is not clearly consistent with the national interest to grant or continue a security clearance for Applicant. Clearance is denied.

Philip S. Howe

Administrative Judge