

DATE: December 27, 2006

In re:

SSN: -----

Applicant for Security Clearance

CR Case No. 05-05533

DECISION OF ADMINISTRATIVE JUDGE

MARY E. HENRY

APPEARANCES

FOR GOVERNMENT

Rita C. O'Brien, Department Counsel

FOR APPLICANT

Pro Se

SYNOPSIS

Applicant incurred unpaid debt subsequent to having prior debts discharged in bankruptcy. She lacks the financial resources to pay her current delinquent debts. She has not mitigated the government's concerns regarding her finances. Clearance is denied.

STATEMENT OF THE CASE

On May 25, 2006, the Defense Office of Hearings and Appeals (DOHA) issued a Statement of Reasons (SOR) to Applicant, 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 Security Clearance Review Program* (Directive), dated January 2, 1992, as amended and modified. The SOR detailed 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 a security clearance for Applicant. Specifically, the SOR set forth security concerns arising under Guideline F (Financial Considerations) of the Directive. DOHA recommended the case be referred to an administrative judge to determine whether a clearance should be granted, continued, denied, or revoked.

Applicant submitted an undated response to the allegations. She elected to have her case decided on the written record in lieu of a hearing.

Department Counsel prepared a File of Relevant Material (FORM) and provided Applicant with a complete copy on August 24, 2006. Applicant had 30 days from receipt of the FORM to file objections and submit material in refutation, extenuation, or mitigation. She did not submit a response or additional evidence. This case was assigned to me on November 1, 2006.

FINDINGS OF FACT

Applicant admitted the allegations under Guideline F in subparagraphs 1.b. through 1.n. Those admissions are

incorporated as findings of fact. She denied the remaining allegation. ⁽¹⁾ After a complete review of the evidence in the record and upon due consideration, I make the following findings of fact.

Applicant is a 34-year-old personnel assistant for a defense contractor. She has worked for this contractor for almost three years. She completed a security clearance application (SF 86) in April 2004. ⁽²⁾

Applicant attended college. She and her husband married in 1993 and divorced in 2000. She has custody of her three children. She receives \$675 a month in child support. ⁽³⁾

Applicant's most recent financial statement reflects a gross monthly income of \$3,188, including child support, and a net monthly income of \$2,501. Her estimated monthly expenses total \$3,029, leaving a monthly shortfall of more than \$500. She estimated her monthly expenses for clothing at \$200, for utilities at \$350, for car operational expense at \$350, and for miscellaneous expenses at \$250 for a total of \$1,050. I find these estimates to be high in light of her income. She acknowledges a monthly shortfall of \$61, not \$500. ⁽⁴⁾

Applicant filed for chapter 7 bankruptcy in 2001, and the bankruptcy court discharged all her debts, except for the three debts she affirmed, on December 5, 2001. Since this date, she has incurred 12 additional delinquent debts, totaling \$4,002. She admitted owing money to one cell phone company, which she paid, but she denies owing the \$870 wireless telephone bill listed in the SOR, stating that she never had an account with this company. Her August 2005 credit report does not list this ; however, her April 2006 does list this debt, indicating it was reported as over due in November 2004. In light of this information, I find this debt is not legitimate. She admitted the remaining debts, nine of which are for medical bills. These acknowledged debts total \$3,132. Although she stated an intent to pay these bills, she has not provided any documentation which shows payment or a repayment plan. She states that she could not pay her bills because of unanticipated expenses with her children, but has not provided further explanation about how she incurred these unpaid debts. ⁽⁵⁾

POLICIES

Enclosure 2 of the Directive sets forth adjudicative guidelines which must be considered in the evaluation of security suitability. An administrative judge need not view the adjudicative guidelines as inflexible ironclad rules of law. Instead, acknowledging the complexities of human behavior, these guidelines, when applied in conjunction with the factors set forth in the adjudicative process provision in Paragraph E2.2., Enclosure 2 of the Directive, are intended to assist the administrative judge in reaching fair and impartial common sense decisions.

Included in the guidelines are disqualifying conditions and mitigating conditions applicable to each specific guideline. Although the presence or absence of a particular condition or factor for or against clearance is not outcome determinative, the adjudicative guidelines should be followed whenever a case can be measured against this policy guidance. In addition, each security clearance decision must be based on the relevant and material facts and circumstances, the whole-person concept, and the factors listed in the Directive. Specifically, these are: (1) the nature, extent, and seriousness of the conduct; (2) the circumstances surrounding the conduct; (3) the frequency and recency of the conduct; (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 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. ⁽⁶⁾

The sole purpose of a security clearance determination is to decide if it is clearly consistent with the national interest to grant or continue a security clearance for an applicant. ⁽⁷⁾ The government has the burden of proving controverted facts. ⁽⁸⁾ The burden of proof is something less than a preponderance of the evidence. ⁽⁹⁾ Once the government has met its burden, the burden shifts to the applicant to present evidence of refutation, extenuation, or mitigation to overcome the case against her. ⁽¹⁰⁾ Additionally, an applicant has the ultimate burden of persuasion to obtain a favorable clearance decision. ⁽¹¹⁾

No one has a right to a security clearance, ⁽¹²⁾ and "the clearly consistent standard indicates that security clearance

determinations should err, if they must, on the side of denials." (13) Any reasonable doubt about whether an applicant should be allowed access to sensitive information must be resolved in favor of protecting such sensitive information. (14) Section 7 of Executive Order 10865 specifically provides industrial security clearance 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." The decision to deny an individual a security clearance is not necessarily a determination as to the allegiance, loyalty, and patriotism of an applicant. (15) 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.

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:

Financial Considerations - Guideline F: 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 adjudicative factors, I conclude the following with respect to the allegations set forth in the SOR:

Financial Considerations

The government has established its case under Guideline F as to allegations b through l and n. Applicant has a history of excessive, unpaid debt. She had much of her excessive indebtedness discharged by the bankruptcy court in 2001. Since then, she has incurred over \$3,000 in new delinquent debts, which are primarily medical bills. Applicant's financial problems clearly fall within the Financial Considerations Disqualifying Conditions E2.A6.1.2.1 (*A history of not meeting financial obligations*) and E2.A6.1.2.3 (*Inability or unwillingness to satisfy debts*). Allegation m is a factor which I must consider in making my decision, but is not a factor which invokes a disqualifying condition. Allegation a is found in favor of applicant.

A security concern based on financial problems can be mitigated in several ways. Applicant's debt problems have been ongoing for a number of years, and are not recent. Thus, she has not established a mitigating condition under Financial Considerations Mitigating Conditions (FC MC) E2.A6.1.3.1 (*The behavior was not recent*).

Applicant acknowledges owing eleven different debts and her 2001 bankruptcy, so her indebted is not an isolated incident. Thus, FC MC E2.A6.1.3.2 (*It was an isolated incident*) does not apply. Her statement that she could not pay these bills because of unidentified expenses with her children does not identify factors which may have been beyond her control, and thus, is not sufficient for E2.A6.1.3.3 (*The conditions that resulted in the behavior were largely beyond the person's control*) to apply.

She has not provided any evidence that she has received counseling for her financial problems, hence, FC MC 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*) is not applicable. Likewise, she has not provided any documentation showing a good faith effort to pay her bills, so FC MC E2.A6.1.3.6 (*The individual initiated a good faith effort to repay overdue creditors or otherwise resolve debts*) does not apply.

Whole Person Analysis

Protection of our national security is of paramount concern. Security clearance decisions are not intended to assign guilt or to impose further punishment for past transgressions. Rather, the objective of the adjudicative process is the fair-minded, common sense assessment of a person's trustworthiness and fitness for access to classified information. Thus, in reaching this decision, I have considered the whole person concept in evaluating Appellant's risk and vulnerability in protecting our national interests.

The issue before me is whether Applicant has presented sufficient evidence of extenuation, mitigation or changed circumstances to warrant a favorable security clearance decision. Her inability to pay her delinquent debts and her acknowledged monthly financial deficit raises security concerns. She has not demonstrated a willingness to accept responsibility for her overdue debts, which raises questions about her trustworthiness to hold a security clearance. Given that my decision turns on more than applying disqualifying and mitigating factors, I find that Applicant's unwillingness to resolve her delinquent debt weighs against granting her a security clearance. She has not mitigated the government's concerns under Guideline F. Accordingly, for the reasons stated, I find that it is not clearly consistent with the national interest to grant a security clearance to Applicant.

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 F : AGAINST APPLICANT

Subparagraph 1.a: For 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: Against Applicant

Subparagraph 1.i: Against Applicant

Subparagraph 1.j: Against Applicant

Subparagraph 1.k: Against Applicant

Subparagraph 1.l: Against Applicant

Subparagraph 1.m: For Applicant

Subparagraph 1.n: Against Applicant

DECISION

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

Mary E. Henry

Administrative Judge

1. Item 3 (Applicant's response to the SOR, undated) at 1-2.
2. Item 4 (Applicant's security clearance application, dated April 9, 2004) at 1-2.

3. *Id.* at 2-4; Item 6 (Applicant's undated answers to interrogatories) at 5.
4. Item 6, *supra* note 3, at 5.
5. *Id.* at 14-44; Item 7 (Credit Report, dated August 31, 2005) at 1-2; Item 8 (Credit report, dated April 28, 2006) at 1-2.
6. Directive, Enclosure 2, ¶ E2.2.1.1. through E2.2.1.9.
7. ISCR Case No. 96-0277 at 2 (App. Bd., July 11, 1997).
8. ISCR Case No. 97-0016 at 3 (App. Bd., December 31, 1997); Directive, Enclosure 3, ¶ E3.1.14.
9. *Department of the Navy v. Egan*, 484 U.S. 518, 528 (1988).
10. ISCR Case No. 94-1075 at 3-4 (App. Bd., August 10, 1995); Directive, Enclosure 3, ¶ E3.1.15.
11. ISCR Case No. 93-1390 at 7-8 (App. Bd. Decision and Reversal Order, January 27, 1995); Directive, Enclosure 3, ¶ E3.1.15.
12. *Egan*, 484 U.S. at 531.
13. *Id.*
14. *Id.*; Directive, Enclosure 2, ¶ E2.2.2.
15. Executive Order No. 10865 § 7.