

DATE: April 19, 2006

In Re:

SSN: -----

Applicant for Security Clearance

CR Case No. 05-05816

DECISION OF ADMINISTRATIVE JUDGE

BARRY M. SAX

APPEARANCES

FOR GOVERNMENT

Candace Le'i, Department Counsel

FOR APPLICANT

Pro Se

SYNOPSIS

This 61-year-facility security officer was alleged to have three delinquent debts, totaling more than \$26,000.00, as shown on a credit report. These debts substantially arose during her three-year marriage, which ended in 1996. Applicant alleges, and the court documents confirm, that these debts were made the legal responsibility of her husband. Applicant was not made aware of the delinquency of these debts until years later. She has submitted the court order to the credit reporting services. The Government has not established that these debts were her legal obligation to pay, or that she has acted improperly in not paying them. In any case, mitigation has been established. Clearance is granted.

STATEMENT OF THE CASE

On November 7, 2005, the Defense Office of Hearings and Appeals (DOHA), pursuant to Executive Order 10865 and Department of Defense Directive 5220.6 (Directive), dated January 2, 1992, as amended, issued a Statement of Reasons (SOR) to the Applicant. The SOR detailed reasons why DOHA could not make the preliminary affirmative finding required under the Directive that it is clearly consistent with the national interest to grant or continue a security clearance for the Applicant. The SOR recommended referral to an Administrative Judge to conduct proceedings and determine whether a clearance should be granted, denied or revoked.

On November 19, 2005, Applicant responded to the allegations set forth in the SOR, and elected to have a decision made by a DOHA Administrative Judge after a hearing. The case was assigned to me on December 28, 2005. A Notice of Hearing was issued on January 19, 2006, setting the hearing for February 9, 2006. At the hearing, Department Counsel introduced five exhibits (Government's Exhibits (GX) 1-5). Applicant testified, and offered nine exhibits (Applicant's Exhibits (AX) A-I). The transcript was received at DOHA on February 24, 2006.

FINDINGS OF FACT

Applicant is a 61-year-old facility security officer employee. The 2003 SOR contains three allegations under Guideline

F (Financial Considerations). Applicant admits the existence of the debts, but denies they are her responsibility to pay. All specific allegations are accepted and incorporated herein as Findings of Fact.

After considering the totality of the evidence, I make the following additional FINDINGS OF FACT as to the status, past and present, of each SOR allegation

Guideline F (Financial Considerations)

Applicant has *not* been shown to be indebted to the following creditors (alleged approximate delinquent amounts cited):

1.a. - Credit Card Company A - \$6,691.00.

1.b. - Bank B - \$9,242.00.

1.c. - Credit Card Company C - \$10,834.00

POLICIES

Each adjudicative decision must also include an assessment of nine generic factors relevant

in all cases: (1) the nature, extent, and seriousness of the conduct; (2) the circumstances surrounding the conduct, to include knowing participation; (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 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 (Directive, E.2.2.1., on page 16 of Enclosure 2). I have considered all nine factors, individually and collectively, in reaching my overall conclusion.

The eligibility criteria established by Executive Order 10865 and DoD Directive 5220.6 identify personal characteristics and conduct that are reasonably related to the ultimate question of

whether it is "clearly consistent with the national interest" for an individual to hold a security clearance. An applicant's admission of the information in specific allegations relieves the Government of having to prove those allegations. If specific allegations and/or information are denied or otherwise controverted by the applicant, the Government has the initial burden of proving those controverted facts alleged in the Statement of Reasons.

If the Government meets its burden (either by the Applicant's admissions or by other evidence) and proves conduct that creates security concerns under the Directive, the burden of persuasion then shifts to the Applicant to present evidence in refutation, extenuation or mitigation sufficient to demonstrate that, despite the existence of conduct that falls within specific criteria in the Directive, it is nevertheless consistent with the interests of national security to grant or continue a security clearance for the Applicant.

A person seeking access to classified information enters into a fiduciary relationship with the Government based upon trust and confidence. As required by DoD Directive 5220.6, as amended, at E2.2.2., "any doubt as to whether access to classified information is clearly consistent with the interests of national security will be resolved in favor of the nation's security."

CONCLUSIONS

Guideline F (Financial Considerations)

Applicant is 61 years old and is a Facility Security Officer for her employer, with responsibility for about 125

employees. Until 1992, she had an excellent credit history. In that year, she married r. X and moved to her present location to be with him. Mr. X had poor credit prior to the marriage, and took advantage of her higher rating (Tr at 26). The "marriage turned mentally abusive and lasted just over three years" (*Id.*).

The Government's concerns are based on three specific delinquent debts, totaling approximately \$26,768.00. In her response to the SOR, Applicant admits the existence of all three debts. When she was divorced in April 1996, the divorce decree assigned responsibility for debts of \$42,000.00 (mobile home) and \$15,000.00 (capital gains tax) (total \$57,000.00) to Applicant and "\$7,000.00 (miscellaneous credit cards)" and \$1,500.00 (miscellaneous medical bills) to her husband. The husband had the addresses on the three accounts cited in the SOR changed to his new, separate, residence. She did not receive any statements on credit accounts. Although she was aware of the existence of the three debts, she did not know the amounts. It is clear that the husband understated the amount of the debts for which he was assuming responsibility by almost \$20,000 (Tr at 27).

After the divorce, Applicant started a new household, and kept current with her bills (Tr at 28). As part of the divorce settlement, she retained responsibility for five of her own debts, four of which bear names different from those on the SOR. Through a formal plan, payments began in 1999 and the debt was paid off in 2004 (GX 2). One of the five debts (\$5,049.00) bears the same name of creditor as that shown in SOR 1.a. (\$6,691.00). Applicant is not aware that there were two separate debts to this creditor and thought it was the same debt, ⁽¹⁾ which she has shown was paid off in 2004.

In 2003, Applicant notified the credit reporting services of the status of various debts. Trans Union investigated and deleted the debt cited in 1.b. and added a statement by Applicant for all other creditors explaining the court-ordered settlement that assigned existing credit card debts to the husband only (AX B).

She never received a statement from any of the three creditors and was not aware of the delinquent nature of the debts until "approximately five years after the divorce." Her attorney advised her not to pay the delinquent debts, gave her a letter to send to the collection agencies, and a second letter, with a statement in explanation, for her to send the credit reporting services, to be included any statement issued in her name (AX D). The letter from the attorney advises Applicant that she has no legal obligation to pay the debts assigned by the court to the husband (*Id.*) Contacts from the collection agencies stopped after she sent them t the letters form her attorney (Tr at 45). She has lived at the same address since 1993, and has never been delinquent on her house or any other accounts. She currently has only one credit card. She has about \$10,000.00 in a savings account and \$45,000.00 - \$50,000.00 in a 401(k) account (Tr at 49).

The Director of Security and three colleagues at Applicant's employer think highly of her integrity and trustworthiness, and recommend her for a security clearance (AX E-AX G). In 2004, she received two cash Awards for Excellence (AX H and AX I).

There are only three debts cited in the SOR. The SOR originated with information in a credit report that showed the three cited debts. In her closing argument, Department Counsel posited that two of the three debts are still valid and owing because they are still cited in the most recent credit report, the third having been "deleted." Credit reports are a valuable tool in Guideline F cases and are often accurate, but not always. Their accuracy depends on the input received from creditors and how that information is treated internally and entered into the next credit report.

It is unfortunately not uncommon for errors to occur, for a variety of reasons. Credit reports that combine information from all three major reporting agencies are helpful on this point. Sometimes, the same or similar information is shown from all three companies, but it is not uncommon for different information to appear. In any case, where an applicant challenges the accuracy of a credit report, the evidence challenging the Government's position must be carefully evaluated.

Applicant has produced an official court document from a divorce proceeding that allocates responsibility for "miscellaneous credit cards" to the husband *and no such "credit card" responsibility to Applicant*. A fair reading of this document supports Applicant's contention that she acted reasonable in believing she had no such responsibility, a belief supported several years later by a letter from her attorney to the credit bureau, which then had the responsibility of contacting the creditors.

The expressed concern in Guideline F cases is that "excessive debt" raises the risk of someone feeling forced to act illegally to generate funds to cover the debts. In context, that does not appear to be a substantive issue here. The other concern, derived from the language of the disqualifying conditions, is that the way in which debts are incurred, and the way in which they were resolved (or not resolved) may show questionable judgment, reliability, and trustworthiness.

I find nothing in the record to suggest financial misconduct by Applicant. To the degree that the Government's evidence establishes the existence of three delinquent debts, the divorce documents make a strong case against holding Applicant be legally responsible for those debts. Indeed, she showed a high degree of financial integrity in resolving, over a period of several years, the debts for which she did believe herself to be responsible. *Disqualifying Conditions* - None that are demonstrated by the facts.

The letters of commendation contain high praise for Applicant's integrity and work ethic, and recommend her for a security clearance (AX E). Nothing in the record detracts from these recommendations. Applicant has adequately demonstrated that she possesses the good judgment, reliability, and trustworthiness required of anyone seeking access to the nation's secrets.

FORMAL FINDINGS

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

Guideline F (Financial Considerations) For the Applicant

Subparagraph 1.a. For the Applicant

Subparagraph 1.b. For the Applicant

Subparagraph 1.c. 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 a security clearance for Applicant.

BARRY M. SAX

ADMINISTRATIVE JUDGE

1. The credit report (GX 9) shows two accounts with this creditor, with account different numbers. What this means has not been established. If there were two separate accounts, it seems that one was paid off by Applicant and the other was the responsibility of the husband.