

DATE: November 20, 2006

In re:

SSN: -----

Applicant for Security Clearance

ISCR Case No. 03-26848

ECISION OF ADMINISTRATIVE JUDGE

PHILIP S. HOWE

APPEARANCES

FOR GOVERNMENT

Julie R. Edmunds, Esq., Department Counsel

FOR APPLICANT

Pro Se

SYNOPSIS

Applicant is 55 years old, widowed, and works for a defense contractor as a telecom analyst. Her financial difficulties arose because of her late husband's fatal illness that developed after 2001. His medical expenses consumed her income after he ceased working. She mitigated the financial considerations security concern. Clearance is granted.

STATEMENT OF THE CASE

The Defense Office of Hearings and Appeals (DOHA) declined to grant or continue a security clearance for Applicant. On February 8, 2005, DOHA issued a Statement of Reasons⁽¹⁾ (SOR) detailing the basis for its decision-security concerns raised under Guideline F (Financial Considerations) of the Directive. Applicant answered the SOR in writing on March 17, 2005 and elected to have a hearing before an administrative judge. The case was assigned to me on April 20, 2006. On June 15, 2006, I convened a hearing to consider whether it is clearly consistent with the national interest to grant or continue a security clearance for Applicant. The Government and the Applicant submitted exhibits that were admitted into evidence. DOHA received the hearing transcript (Tr.) on June 26, 2006.

FINDINGS OF FACT

Applicant's admissions to the SOR allegations are incorporated here as findings of fact. After a complete and thorough review of the evidence in the record, and full consideration of that evidence, I make the following additional findings of fact:

Applicant is 55 years old, widowed in 2005, and works for a defense contractor as a telecommunications analyst. She earns about \$2,700 monthly. When her late husband was alive and working as a maintenance man he earned about \$2,000 net monthly. He was diagnosed with cirrhosis of the liver in 2000 before they married. His condition worsened later and he also was diagnosed with hepatitis C. His health declined from 2001 until he died on June 28, 2005.

Applicant had health insurance, but the prescription medications and other expenses of her husband's illness consumed

most of her income. He stopped working in July 2002 and drew social security disability payments of \$1,078 monthly. Their reduced income was insufficient to pay all their bills in a timely manner. Applicant ceased paying most bills on time and devoted herself and income to taking care of her husband. (Tr. 21, 26, 34-40; Answer; Exhibits 2, E, I)

Applicant and her husband built a new house in 2001. The mortgage payment is \$1,463 monthly. They also owned a small house that they rented. The mortgage payment for that house is \$575 monthly. The last renters wrecked and departed the house in November 2005. Applicant is renovating that house and intends to move into it in July 2006. She will then sell the larger home, netting about \$25,000 at current values on the sale. (Tr. 29, 30, 35, 48; Answer; Exhibit 2)

Applicant received the insurance proceeds on her late husband totaling about \$90,000. She gave some of the money to her husband's children, paid off the loan on the pickup truck she drives to work, paid funeral expenses of about \$11,000, and other tardy bills so that all are current, including the mortgages. She has \$50,000 remaining, from which she pays the renovation expenses on the smaller house. When that project is completed in July 2006 Applicant will pay the remaining debts owed. She paid the two department store bills of \$1,272 and \$219.52 on September 23, 2005. (Tr. 23-25, 31, 40-42, 44; Answer; Exhibits 2-7, A, B, E-I)

Applicant will pay the three remaining delinquent debts after she moves into the smaller home. The bank credit card debt of \$13,181, the department store debt of \$1,099.59, and the balance owed on her voluntarily repossessed vehicle of \$5,365 will be paid, and can be paid, from the balance of the insurance proceeds Applicant now holds in her savings account. She allowed the car to be repossessed during her husband's illness because she could not maintain the payment schedule and he could not drive due to weakness caused by the illness. (Tr. 22, 26, 27, 47, 56; Answer; Exhibits 2-7)

Applicant and her late husband owed state and federal income taxes due to under withholding. Her husband received a lump-sum disability payment, and withdrew his retirement money, triggering a tax liability because of insufficient withholding. Applicant paid all tax liabilities. (Tr. 14-16; Exhibits C and D)

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 authorized the Secretary of Defense or his designee to grant applicants eligibility for access to classified information "only upon a finding that it is clearly consistent the national interest to do so." Exec. Or. 10865, *Safeguarding Classified Information with Industry*

§ 2 (Feb. 20, 1960). Eligibility for a security clearance is predicated upon the applicant meeting the security guidelines contained in the Directive. An applicant "has the ultimate burden of demonstrating that it is clearly consistent with the national interest to grant or continue his security clearance." ISCR Case No. 01-20700 at 3.

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 of the Directive sets forth personnel security guidelines, as well as the disqualifying conditions (DC) and mitigating conditions (MC) under each guideline that must be carefully considered in making the overall common sense determination required.

In evaluating the security worthiness of an applicant, the administrative judge must also assess the adjudicative process factors listed in ¶ 6.3 of the Directive. Those assessments include: (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.

The decision to deny an individual a security clearance is not necessarily a determination as to the loyalty of the applicant. *See* Exec. Or. 10865 § 7. 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 establish, by substantial evidence, conditions in the personal or professional history of the applicant that disqualify, or may disqualify, the applicant from being eligible for access to classified information. The Directive presumes a nexus or rational connection between proven conduct under any of the disqualifying conditions listed in the guidelines and an applicant's security suitability. *See* ISCR Case No. 95-0611 at 2 (App. Bd. ay 2, 1996). All that is required is proof of facts and circumstances that 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. ISCR Case No. 00-0277, 2001 DOHA LEXIS 335 at **6-8 (App. Bd. 2001). Once the Government has established a *prima facie* case by substantial evidence, the burden shifts to the applicant to rebut, explain, extenuate, or mitigate the facts. *See* Directive ¶ E3.1.15. An applicant "has the ultimate burden of demonstrating that is clearly consistent with the national interest to grant or continue his security clearance. ISCR Case No. 01-20700 at 3 (App. Bd. 2002). "Any doubt as to whether access to classified information is clearly consistent with national security will be resolved in favor of the national security." Directive ¶ E2.2.2. "[S]ecurity clearance determinations should err, if they must, on the side of denials." *Egan*, 484 U.S. at 531. *See* Exec. Or. 12968 § 3.1(b).

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

Guideline F:Financial Considerations: *The Concern*: An individual who is financially overextended is at risk of having to engage in illegal acts to generate funds. E2.A6.1.1

CONCLUSIONS

Applicant has three delinquent debts totaling about \$19,500. She has sufficient assets to repay these debts, but has not done so. Disqualifying Conditions (DC) 1 (A history of not meeting financial obligations E2.A6.1.2.1), and DC 3 (Inability or unwillingness to satisfy debts E2.A6.1.2.3) apply.

Applicant's husband was seriously ill from 2001 until his death on June 28, 2005. Applicant devoted her time, energy, and financial resources to caring for him. His medication and medical costs, not covered by insurance, consumed her monthly income, in addition to the ordinary expenses each month. The illness was unexpected and adversely affected their total income when he stopped working and drew disability at half the amount of his previous income. Mitigating Condition (MC) 3 (The conditions that resulted in the behavior were largely beyond the person's control, such as an unexpected medical emergency, or a death. E2.A6.1.3.3) applies to Applicant's situation.

MC 6 (The individual has initiated a good-faith effort to repay overdue creditors or otherwise resolve debts. E2.A6.1.3.6) applies. Applicant has paid two debts, and committed to paying the remaining three debts after July 2006 when her next home is renovated after the damage her tenants caused. She has the resources to pay the debts, but is holding the money in savings to cover the renovations and her move from the larger house she owns as her first priority. Her record of debt payment and the payment of the 2003 taxes shows her commitment to pay her debts, even when faced with adversity. She has a logical plan to accomplish her goals of paying her debts and reducing her expenditures.

The whole person concept, by examining the unique circumstances of Applicant's situation, the time period in which the debt delinquencies arose, the motivation for the non-payment being the excessive financial costs of a major illness and the devotion of her efforts to caring for her husband while he was ill, the unlikelihood this type of situation will ever arise again in her life, shows that Applicant is not a risk if granted a security clearance. Her financial problems arose because of her husband's fatal illness, not for any other reasons. Therefore, I conclude this Guideline F concern for Applicant.

FORMAL FINDINGS

The following are my conclusions as to each allegation in the SOR:

Paragraph 1. Guideline F: 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

DECISION

In light of all of 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.

Philip S. Howe

Administrative Judge

1. Pursuant to Exec. Or. 10865, *Safeguarding Classified Information within Industry* (Feb. 20, 1960), 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).