

DATE: November 29, 2004

In Re:

SSN: -----

Applicant for Security Clearance

ISCR Case No. 04-01235

DECISION OF ADMINISTRATIVE JUDGE

MARTIN H. MOGUL

APPEARANCES

FOR GOVERNMENT

Jennifer I. Campbell, Esq., Department Counsel

FOR APPLICANT

Pro Se

SYNOPSIS

Applicant has had a long history of financial difficulties, including significant debts for past due Federal taxes, and the filing of two bankruptcies. The majority of these debts have not been resolved. Applicant knew or should have known that the information that she provided to the Government in a Security Clearance Application (SCA) in 2000, regarding her financial situation, was materially incorrect and incomplete. Mitigation has not been shown. Clearance is denied.

STATEMENT OF THE CASE

On July 7, 2004, the Defense Office of Hearings and Appeals (DOHA), 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 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) and Guideline E (Personal Conduct) 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 or denied.

In a signed, sworn statement, dated August 2, 2004, Applicant responded to the SOR allegations, and she requested a clearance decision based on a hearing record.

This case was assigned to this Administrative Judge to conduct a hearing and issue a written decision on October 12, 2004. A Notice of Hearing was issued to the parties on October 19, 2004, and the hearing was held on November 3, 2004.

At the hearing, Department Counsel offered fifteen documentary exhibits (Exhibits 1-15) and no witnesses were called. Applicant appeared without counsel, offered 9 documentary exhibits (Exhibits A through I) and offered her own

testimony. All documentary evidence was entered into evidence without objection. After the hearing, the record was left open for Applicant to offer additional documentary exhibits regarding her bankruptcy and alleged payment of other debts. Applicant offered additional timely documents, which have been marked collectively as Exhibit J. This final exhibit was not objected to by Department Counsel and has been entered into evidence. The transcript (TR) was received on November 17, 2004.

FINDINGS OF FACT

In the SOR, the Government alleges that a security risk may exist under Adjudicative Guideline F (Financial Considerations) and Guideline E (Personal Conduct) of the Directive. The SOR contains twenty three allegations, 1.a. through 1.w., under Guideline F and 2 allegations, 2.a. and 2.b., under Guideline E. In her Response to the SOR (RSOR), Applicant admitted all of the SOR allegations except: 1.a., 1.b., 1.m., 2.a., and 2.b. The admitted allegations are incorporated herein as a Findings of Fact.

After a complete and thorough review of the evidence in the record, including Applicant's Answer to the SOR, the documents and the live testimony, and upon due consideration of that evidence, I make the following additional Findings of Fact:

Applicant is a 53 year old employee of a defense contractor employee which seeks a security clearance on her behalf. She is married, and she has four children.

Paragraph 1 (Guideline F - Financial Considerations)

The SOR lists twenty debts that Applicant has owed, 1.a. through 1.t, under Adjudicative Guideline F., with three additional allegations. The debts will be discussed in the order that they were listed in the SOR.

1.a. This overdue debt to the Internal Revenue Service (IRS) is cited in the SOR in the amount of \$62,411 on a Federal tax lien filed against Applicant on arch 2003. Applicant admitted a debt was due and owing, but contended that the total amount owed was approximately \$22,970. (RSOR) (Exhibit J). At the hearing he testified that she had an agreement with the IRS to resolve the debt but after failing to fulfill her requirement, the agreement was voided (TR at 43-46). I find that she currently owes \$22,970 on this debt.

1.b. This overdue debt to the IRS is cited in the SOR in the amount of \$5,589 for unpaid taxes for tax years 1994 and 1995. In her RSOR, Applicant admitted she owes \$5,209 but only for tax year 1994. I find that she owes an additional \$5,209 to the IRS.

1.c. This overdue debt to Creditor 2 is in the amount of \$125. In her RSOR and at the hearing, Applicant admitted that this debt is due and owing (TR at 46). In her post hearing submission Applicant now contends that she has resolved this debt, (Exhibit H), but the evidence is not persuasive. I find that Applicant owes the entire amount stated.

1.d. This overdue debt to Creditor 3 is in the amount of \$147. In her RSOR and at the hearing, Applicant admitted that this debt is due and owing (TR at 46). In her post hearing submission Applicant now contends that she has resolved this debt, (Exhibit H), but the evidence is not persuasive. I find that Applicant owes the entire amount stated.

1.e. This overdue debt to Creditor 4 is in the amount of \$540. In her RSOR, Applicant admitted owing this debt. At the hearing, and in her post hearing submission Applicant now contends that she has resolved this debt, (Exhibit H), but the evidence is not persuasive. I find that Applicant owes the entire amount stated.

1.f. This overdue debt to Creditor 5 is listed in the SOR in the amount of \$78. In her RSOR and at the hearing, Applicant admitted that this debt is due and owing (TR at 48-49). I find that Applicant owes the entire amount stated.

1.g. This overdue debt to Creditor 6 is listed in the SOR in the amount of \$853. In her RSOR and at the hearing, Applicant admitted that this debt is due and owing (TR at 49). In her post hearing submission Applicant now contends that she has resolved this debt, (Exhibit H), but the evidence is not persuasive. I find that Applicant owes the entire amount stated.

1.h. This overdue debt to Creditor 7 is listed in the SOR in the amount of \$1,042. In her RSOR and at the hearing, Applicant admitted that this debt is due and owing (TR at 48-49). I find that Applicant owes the entire amount stated.

1.i. This overdue debt to Creditor 8 is listed in the SOR in the amount of \$515. In her RSOR and at the hearing, Applicant admitted that this debt is due and owing (TR at 49). I find that Applicant owes the entire amount stated.

1.j. This overdue debt to the same creditor, Creditor 8 is listed in the SOR in the amount of \$350. In her RSOR and at the hearing, Applicant admitted that this debt is due and owing (TR at 50). I find that Applicant owes the entire amount stated.

1.k. This overdue debt to Creditor 9 is listed in the SOR in the amount of \$14,563. In her RSOR and at the hearing, Applicant admitted that this debt is due and owing (TR at 50). I find that Applicant owes the entire amount stated.

1.l. This overdue debt to Creditor 10 is listed in the SOR in the amount of \$250. In her RSOR and at the hearing, Applicant admitted that this debt is due and owing (TR at 50). I find that Applicant owes the entire amount stated.

1.m. This overdue debt to Creditor 11 is listed in the SOR in the amount of \$169. In her RSOR and at the hearing, Applicant denied that this debt is due and owing (TR at 50-51). Applicant could offer no evidence to establish that she had paid this debt. The Government offered a credit report, dated April 17, 2002, that lists this debt as outstanding (Exhibit 4). I find that Applicant owes the entire amount stated.

1.n. This overdue debt to Creditor 12 is listed in the SOR in the amount of \$296. In her RSOR and at the hearing, Applicant admitted that this debt is due and owing (TR at 51). I find that Applicant owes the entire amount stated.

1.o. This overdue debt to Creditor 13 is listed in the SOR in the amount of \$1,470. In her RSOR and at the hearing, Applicant admitted that this debt is due and owing (TR at 52). I find that Applicant owes the entire amount stated.

1.p. This overdue debt to Creditor 14 is listed in the SOR in the amount of \$2,086. In her RSOR, Applicant admitted that this debt is due and owing. However, at the hearing Applicant was not certain if this debt is due and owing, and she testified that she would offer post hearing evidence if she had paid this debt (TR at 54). Applicant offered no evidence post hearing regarding this debt. I find that Applicant owes the entire amount stated.

1.q. This overdue debt to Creditor 15 is listed in the SOR in the amount of \$496. In her RSOR and at the hearing, Applicant admitted that this debt is due and owing (TR at 5455). I find that Applicant owes the entire amount stated.

1.r. This overdue debt to Creditor 16 is listed in the SOR in the amount of \$4,290. In her RSOR and at the hearing, Applicant denied that this debt is still due and owing as she contends it was resolved through garnishment (TR at 55). Exhibit C establishes that she has resolved this debt. I find that this debt is no longer due and owing by Applicant.

1.s. This overdue debt to Creditor 17 is listed in the SOR in the amount of \$616. In her RSOR and at the hearing, Applicant could neither admit nor deny that this debt is due and owing (TR at 56-57). Exhibit 4 establishes that this debt is outstanding. I find that Applicant owes the entire amount stated.

1.t. This overdue debt to Creditor 18 is listed in the SOR in the amount of \$821. In her RSOR and at the hearing, Applicant denied that this debt is still due and owing. Exhibit H establishes that she has resolved this debt. I find that this debt is no longer due and owing by Applicant.

1.u. Applicant filed a voluntary petition for Chapter 13 bankruptcy which discharged her debts in March 1998. At the time her listed assets totaled \$3,180 and her liabilities totaled \$20,866.

1.v. Applicant filed a voluntary petition for Chapter 7 bankruptcy which discharged her debts in July 1992. At the time her listed assets totaled \$1,935 and her liabilities totaled \$61,661.

1.w. Applicant was arrested in October 1994 and charged with Unlawful Issuance of Bank Drafts, a felony. She was found guilty and sentenced to serve 20 days in jail, one year probation, pay fees of \$253, restitution of \$3,166, and to

not possess credit cards or checking accounts.

Paragraph 2 (Guideline E - Personal Conduct)

Applicant completed a signed, sworn Security Clearance Application (SCA) on April 11, 2002:

Question #38 asks, "In the last 7 years, have you been over 180 days delinquent on any debt(s)?" Applicant answered "No" to this question. At the time she completed the SCA, Applicant was delinquent on all of the debts discussed above, and she should have answered "yes" to this question and included the debts listed in the SOR which were overdue, as discussed above.

Question #39 asks, "Are you currently over 90 days delinquent on any debt(S)?" Applicant answered "No" to this question. At the time she completed the SCA, Applicant was delinquent on a judgement from 1997 in the amount of \$1,122, as alleged in 1.e. of the SOR. Applicant should have answered "yes" either to this question and included the debts listed in the SOR, which were overdue, as discussed above.

Applicant testified that she completed an SCA, on which she changed her answer to "Yes" to the question regarding being over 180 days delinquent on any debt. Exhibit H shows an SCA completed by Applicant on March 7, 2000, where the answer "No" was crossed out and "Yes" was checked regarding debts more than 180 days overdue within the last 7 years. However, there were no debts listed. Additionally, she had "NO" checked regarding debts currently over 90 days overdue.

POLICIES

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 Enclosure 2 of the Directive sets forth adjudicative guidelines to be considered in evaluating an individual's security eligibility. The Administrative Judge must take into account the conditions raising or mitigating security concerns in each area applicable to the facts and circumstances presented.. Although the presence or absence of a particular condition for or against clearance is not determinative, the specific adjudicative guidelines should be followed whenever a case can be measured against this policy guidance, as the guidelines reflect consideration of those factors of seriousness, recency, motivation, etc.

Burden of Proof

Initially, the Government must prove controverted facts alleged in the Statement of Reasons. If the Government meets that burden, the burden of persuasion then shifts to the applicant to establish his security suitability through evidence of refutation, extenuation or mitigation sufficient to demonstrate that, despite the existence of disqualifying conduct, it is nevertheless clearly consistent with the national interest to grant or continue the security clearance.

A person who seeks access to classified information enters into a fiduciary relationship with the Government predicated upon trust and confidence. Where facts proven by the Government raise doubts about an applicant's judgment, reliability or trustworthiness, the applicant has a heavy burden of persuasion to demonstrate that he or she is nonetheless security worthy. As noted by the United States Supreme Court in *Department of the Navy v. Egan*, 484 U.S. 518, 531 (1988), "the clearly consistent standard indicates that security-clearance determinations should err, if they must, on the side of denials."

CONCLUSIONS

(Guideline F - Financial Considerations)

The Government has established its case under Guideline F. The record evidence clearly establishes Applicant's indebtedness. It shows Applicant has a long history of financial difficulties. The debts to the Federal government for past overdue taxes have not been resolved and are still due and owing. Applicant filed two bankruptcies in the past, because of financial difficulties, and there is no evidence that Applicant has learned how to handle her finances now any better than she did in the past.

Applicant's overall conduct pertaining to her financial obligations falls within Financial Considerations Disqualifying Condition (DC) E2.A6.1.2.1., and DC E2.A6.1.2.3.(A history of not meeting financial obligations, and an inability or unwillingness to satisfy debts). I find that no Mitigating Condition (MC) is applicable to this case.

Until Applicant makes a good-faith effort to resolve her debts, and she can establish a record of financial responsibility and stability, security concerns will continue to exist under Guideline F. I resolve Guideline F against Applicant.**(Guideline E - Personal Conduct)**

With respect to Guideline E, the evidence establishes that Applicant intentionally provided false material information to the Government in response to questions # 38, and #39 on the SCA she executed on March 7, 2000. Applicant was delinquent on the debts discussed above, and she should have answered "yes" to these questions and included on her SCA all of the debts listed in the SOR.

The Government relies heavily on the honesty and integrity of individuals seeking access to our nation's secrets. When such an individual intentionally falsifies material facts on a security clearance application, it is extremely difficult to conclude that she nevertheless possesses the judgment, reliability and trustworthiness required of clearance holders.

In reviewing the DCs under Guideline E, I conclude that DC E2.A5.1.2.2. applies because the information that Applicant provided in her SCA was known or should have been known by her to be omissions and concealment of relevant and material facts. Applicant did not offer any evidence that could have explained the answers she gave on the SCA. No MCs apply.

In this case, Applicant failed to offer any independent evidence indicating that she has reformed and is now reliable and trustworthy. This precludes a finding that it is now clearly consistent with the national interest to grant her access to classified information. I resolve Guideline E against Applicant.

FORMAL FINDINGS

Paragraph 1. Guideline F: AGAINST THE APPLICANT

Subparagraph a: Against the Applicant

Subparagraph b: Against the Applicant

Subparagraph c: Against the Applicant

Subparagraph d: Against the Applicant

Subparagraph e: Against the Applicant

Subparagraph f: Against the Applicant

Subparagraph g: Against the ApplicantSubparagraph h: Against the Applicant

Subparagraph i: Against the Applicant

Subparagraph j: Against the Applicant

Subparagraph k: Against the Applicant

Subparagraph l: Against the Applicant

Subparagraph m: Against the Applicant

Subparagraph n: Against the Applicant

Subparagraph o: Against the Applicant

Subparagraph p: Against the Applicant

Subparagraph q: Against the Applicant

Subparagraph r: For the Applicant

Subparagraph s: Against the Applicant

Subparagraph t: For the Applicant

Subparagraph u: Against the Applicant

Subparagraph v: Against the Applicant

Subparagraph w: Against the Applicant

Paragraph 2. Guideline E: AGAINST THE APPLICANT

Subparagraph a: Against the Applicant.

Subparagraph b: Against the Applicant

DECISION

In light of all the circumstances 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.

Martin H. Mogul

Administrative Judge