

DATE: October 31, 2005

In Re:

SSN: -----

Applicant for Security Clearance

ISCR Case No. 04-06854

DECISION OF ADMINISTRATIVE JUDGE

MATTHEW E. MALONE

APPEARANCES

FOR GOVERNMENT

Ray T. Blank, Esquire, Department Counsel

FOR APPLICANT

Pro Se

SYNOPSIS

Applicant owes over \$11,000 in delinquent debt consisting primarily of personal credit card accounts either charged off as business losses or being sought through collection agencies. Applicant has not paid or made sufficient attempts to resolve her debts, and her current financial situation is unsound. She failed to mitigate the resulting security concerns under Guideline F (financial considerations), and her request for a security clearance is denied.

STATEMENT OF THE CASE

After reviewing the results of Applicant's background investigation, adjudicators for the Defense Office of Hearings and Appeals (DOHA) were unable to make a preliminary affirmative finding⁽¹⁾ it is clearly consistent with the national interest to give Applicant a security clearance. On December 7, 2004, DOHA issued to Applicant a Statement of Reasons (SOR) alleging facts that raise security concerns addressed in the Directive under Guideline F (financial considerations). Applicant timely answered the SOR (Answer), admitted all of the allegations therein, and requested a hearing.

The case was assigned to me on July 5, 2005, and I convened a hearing on August 4, 2005. The parties appeared as scheduled and the government presented seven exhibits (GE 1 through 7), which were admitted without objection. Applicant testified in her own behalf. DOHA received the transcript (Tr) on August 17, 2005.

FINDINGS OF FACT

After a thorough review of the pleadings, transcript, and exhibits, I make the following essential findings of fact:

Applicant is 33 years old and employed by a defense contractor as an assembler, a position for which she needs a security clearance. On August 14, 2003, she submitted a security clearance application (SF 86) to initiate the background investigation needed to assess her suitability for access to classified information. In the SF 86, Applicant

listed four debts greater than 180 days past due totaling about \$4,760. The ensuing investigation by the Defense Security Service (DSS) produced a credit bureau report in October 2003 that showed Applicant has accrued seven credit accounts past due between 30 and 120 days, and 10 accounts either in collection or charged off by the creditors as business losses.

Applicant is a single mother of one who receives no financial support from the child's father. Her delinquent debts consists mainly of personal credit cards she has used since the early 1990s. The one exception is that Applicant also owes a hospital \$50 for medical services (most likely a co-payment) associated with the birth of her only child in February 2000. Her use of personal credit increased after her child was born.

Applicant has worked for her current employer since 1993; however, she was unemployed after being laid off for 11 months in 1996/1997, and again from December 2001 until April 2003. Each time, Applicant supported herself through credit cards and unemployment compensation. As of the hearing, Applicant had been informed by her supervisors that there may be another lay-off from September 2005 through at least the end of the calendar year. She has no prospects for alternative employment.

In a March 2004 interview with a DSS agent, Applicant discussed her history of delinquencies. She acknowledged struggling with paying her credit card debts even before her first layoff. She has made only minimal and sporadic payments to her creditors, and asserts she does not have the means to do so.

During the most recent layoff, after her unemployment benefits ran out, Applicant moved in with her mother to cut expenses. She still lives there and contributes on average \$600 to the household expenses each month. According to a personal financial statement (PFS) Applicant provided in response to DOHA interrogatories, Applicant's income less expenses showed she has about \$500 left over each month. This net remainder does not, however, reflect any payments to her creditors. In July or August 2004, Applicant contacted a credit counseling service and met with them once; however, since August 2004, Applicant has not followed up with the credit counselors or taken any other action to address her delinquencies.

POLICIES AND BURDEN OF PROOF

A security clearance decision is intended to resolve whether it is clearly consistent with the national interest⁽²⁾ for an Applicant to either receive or continue to have access to classified information. The government bears the initial burden of producing admissible information on which it based the preliminary decision to deny or revoke a security clearance for the Applicant. Additionally, the government must be able to prove controverted facts alleged in the SOR. If the government meets its burden, it establishes that it is not clearly consistent with the national interest for the Applicant to have access to classified information. The burden then shifts to the Applicant to refute, extenuate or mitigate the government's case. Because no one has a "right" to a security clearance, the Applicant bears a heavy burden of persuasion.⁽³⁾ A person who has access to classified information enters into a fiduciary relationship with the government based on trust and confidence. The government, therefore, has a compelling interest in ensuring each Applicant possesses the requisite judgement, reliability and trustworthiness of one who will protect the national interests as his or her own. The "clearly consistent with the national interest" standard compels resolution of any reasonable doubt about an Applicant's suitability for access in favor of the government.⁽⁴⁾

To that end, the Directive sets forth adjudicative guidelines⁽⁵⁾ for consideration when evaluating an Applicant's suitability for access to classified information. Security clearance decisions must reflect consideration of disqualifying and mitigating conditions under each adjudicative issue applicable to the facts and circumstances of each case. Each decision must also reflect a fair and impartial common sense consideration of the factors listed in Section 6.3 of the Directive. The presence or absence of a disqualifying or mitigating condition is not determinative of a conclusion for or against an Applicant. However, specific applicable guidelines should be followed whenever a case can be measured against them as they represent policy guidance governing the grant or denial of access to classified information. Having considered the record evidence as a whole, I conclude the relevant adjudicative guideline to be applied here is Guideline F (financial considerations).

CONCLUSIONS

The government alleged the Applicant owes just over \$11,000 in delinquent debts through at least nine accounts (SOR ¶¶ 1.a through 1.i). Applicant has admitted owing these debts and testified at hearing she is willing to pay or otherwise resolve them, but lacks the means to do so. Further, the government presented sufficient admissible evidence to support the SOR allegations. These facts raise security concerns addressed in the Directive under Guideline F. Specifically, an applicant who is financially overextended through delinquent debt and poor personal financial management may be at risk of engaging in illegal acts to generate funds to resolve their fiscal difficulties. Failure to reasonably attend to personal finances may also indicate poor judgment and reliability in other facets of one's conduct.⁽⁶⁾ The available information here supports application of Guideline F disqualifying condition (DC) 1⁽⁷⁾ and DC 3.⁽⁸⁾

Having reviewed the Guideline F mitigating conditions, I conclude none apply. Applicant's financial difficulties have persisted since the early 1990s and pre-date any lapses in employment or difficulties attendant to single parenting. Even acknowledging her lay-offs may have been unforeseen events that partially caused and exacerbated her financial difficulties, Applicant took no action to pay or otherwise address her delinquencies when she was working. Even after experiencing two earlier lay-offs, she appears to have made no effort to find other work to tide her over should she be laid off as she expects. I conclude Guideline F against the Applicant.

I have carefully weighed all of the available evidence, and I have applied the appropriate disqualifying and mitigating conditions. Further, I have tried to make a fair and commonsense assessment of the record before me as required by Directive Section E2.2.3. Reasonable doubts persist, based on information about Applicant's financial problems, about her ability to protect classified information and to exercise the requisite good judgment and discretion expected of one in whom the government entrusts its interests. Absent substantial information to mitigate these doubts, which Applicant has failed to provide, I cannot conclude she has overcome the government's case.

FORMAL FINDINGS

Formal findings regarding each SOR allegation are as follows:

Paragraph 1, Guideline F (Financial): AGAINST THE APPLICANT

Subparagraph 1.a: Against the Applicant

Subparagraph 1.b: Against the Applicant

Subparagraph 1.c: Against the Applicant

Subparagraph 1.d: Against the Applicant

Subparagraph 1.e: Against the Applicant

Subparagraph 1.f: Against the Applicant

Subparagraph 1.g: Against the Applicant

Subparagraph 1.h: Against the Applicant

Subparagraph 1.i: 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 the Applicant. Clearance is denied.

Matthew E. Malone

Administrative Judge

1. Required by Executive Order 10865, as amended, and by DoD Directive 5220.6 (Directive), as amended.
2. *See Department of the Navy v. Egan*, 484 U.S. 518 (1988).
3. *See Egan*, 484 U.S. at 528, 531.
4. *See Egan*; Directive E2.2.2.
5. Directive, Enclosure 2.
6. Directive, E2.A6.1.1.
7. Directive, E2.A6.1.2.1. A history of not meeting financial obligations;
8. Directive, E2.A6.1.2.3. Inability or unwillingness to satisfy debts;