

DATE: December 29, 2006

In Re:

SSN: -----

Applicant for Security Clearance

CR Case No. 04-08788

DECISION OF ADMINISTRATIVE JUDGE

KATHRYN MOEN BRAEMAN

APPEARANCES

FOR GOVERNMENT

Daniel F. Crowley, Esquire, Department Counsel

FOR APPLICANT

Pro Se

SYNOPSIS

Applicant's financial problems continue to raise security concerns because of her failure to resolve all her debts to several remaining creditors. While she resolved some of her larger debts through re-financing her home, she failed to explain her plan to resolve the remainder of the debts even though she has other assets. Applicant provided no evidence she sought financial counseling or planned to file for bankruptcy to resolve her persistent debts. On the other hand she attested she has sought medical help for her bipolar condition which led to her criminal misconduct. Thus, Applicant mitigated security concerns over her misdemeanor criminal conduct as she has established clear evidence of rehabilitation and has not had any additional arrests since the last shoplifting incident in March 2003. Clearance is denied.

STATEMENT OF THE CASE

The Defense Office of Hearings and Appeals (DOHA) issued a Statement of Reasons (SOR) to the Applicant on June 7, 2005. The SOR detailed reasons why the Government could not make the preliminary positive finding that it is clearly consistent with the national interest to grant or continue a security clearance for the Applicant. ⁽¹⁾ The SOR alleges specific concerns over criminal conduct (Guideline J), and finances (Guideline F). Applicant responded to these SOR allegations in an Answer notarized on September 26, 2005, and requested a decision be made as an administrative determination.

Subsequently the Department Counsel prepared a File of Relevant Material (FORM) on March 31, 2006, which was forwarded to her on April 4, 2006, with instructions to supply information within 30 days of receipt. She received the FORM on April 11, 2006. She did submit information within the 30 day time period. Department Counsel posed no objection. Her submission was admitted as Exhibit A. The case was assigned to me on July 20, 2006.

FINDINGS OF FACT

After a complete and thorough review of the evidence in the record, and upon due consideration of that evidence, I

make the following findings of fact:

Applicant, 57 years old, has been employed by a defense contractor in State #1 as an assembler since October 1974. She completed a Security Clearance Application (SF 86) on August 13, 2003. (Item 4; Exhibit A)

Applicant married in 1965 and divorced in 1978; she remarried in 1983 and divorced in 1993. (Item 4) Applicant stated that she is married, but provided no date of the re-marriage. (Exhibit A)

Criminal Conduct and Finances

Applicant revealed in her SF 86 a 1995 arrest for Assault & Battery in State #1 where she was awarded two years probation; she reported also a pending charge for Shoplifting in January 2003 in State #2 where she was awarded probation. She also admitted a garnishment by the Internal Revenue Service (IRS) of \$7,441.38 that began in April 2002 as well as an IRS tax lien in the same amount. She also admitted a 1996 credit card debt that was in collection and a 1996 credit card debt that was 90 days delinquent. Her mortgage was also 90 days delinquent in June 2003. (Exhibit 4)

Applicant provided an Statement to the Defense Security Service (DSS) in October 2003 where she stated she paid a \$300 fine for the 1995 Assault and Battery on three police officers, but was awarded no probation as Appellant had not been arrested before. She also reported that the outcome on an earlier shoplifting charge was not guilty. For the charge for shoplifting in January 2003 which she had reported on her SF 86 was pending, Applicant was fined \$500 for the misdemeanor. She stated she was given no probation. (Item 5) In May 2004 she provided a DSS Statement that explained that in March 1995 she was arrested for assault and battery on three police officers; she was found guilty and sentenced to one year probation. In May 1996 all of the cases were dismissed. Also, she was arrested in 2001 for shoplifting and in December 2001, the case was continued without a finding. In March 2003 she was again re-arrested for shoplifting in the same mall; and was fined \$1,000 with \$600 suspended, but she was not allowed to enter the mall for two years. (Item 10) Court records confirmed she was awarded one year probation in April 1995 and the matter was dismissed in May 1996. (Item 7) Court records showed that the October 2001 charge was resolved without a finding provided she continued medical treatment. Her March 2003 Class A Misdemeanor was resolved by a plea of guilty where she was fined \$1,000, with \$600 suspended; she paid a \$480 fine and was barred from the shopping center for two years. (Items 8, 9, 13)

Applicant stated that she has had no arrests in the past few years. She explained that she has bipolar illness and is taking medication for it. While she has had an addiction to shopping in the past, she is getting help and is making progress. She has been seeing her doctor [\(2\)](#) for more than five years and continues to see him monthly or twice a month as needed. (Exhibit A)

Applicant in October 2003 had a net monthly remainder of \$755 to resolve her debts: she had a monthly take-home pay of \$4,384, monthly household expenses of \$2,924, and household debt payments of \$705. She has assets of approximately \$95,750 include the value of her home and two cars. (Item 5)

Applicant stated that her husband planned to help her pay her overdue debts when he received money from the death of his son who was killed in a car crash in May 2005. She planned to straighten out some of her bills and stated that it would "happen soon," but she provided no timetable or plan. (Exhibit A)

Applicant and her husband re-financed property in February 2005 and as part of the HUD settlement, her tax lien and other bills were paid as indicated below:

SOR 2.a. Applicant admitted a debt to Creditor #1 for \$542 for an account charged off as a bad debt and placed for collection in 2000. (Answer; Item 11)

SOR 2.b. Applicant admitted a debt to Creditor #2 for \$523 for a judgment entered against her in December 2002. (Answer; Item 11)

SOR 2.c. Applicant admitted a debt to Creditor #3, the IRS, for \$7,441 in taxes, penalties and interest as well as a Federal Tax Lien filed against her in January 2003; however she stated she had paid this debt; her HUD-1 Settlement

statement shows a payment of \$5,262.99 for the Federal Tax Lien. (Answer; Item 11; Exhibit A)

SOR 2.d. Applicant admitted a debt to Creditor #4 for \$2,576 for a debt placed for collection in June 2003. (Answer, Item 11)

SOR 2.e. Applicant admitted a debt to Creditor #5 for \$1,223 for an account charged off as a bad debt prior to June 2004. She resolved this debt by payment of \$1,554 in February 2005. (Answer; Item 11, Exhibit A)

SOR 2.f. Applicant admitted a debt to Creditor #6, for \$50 for an account charged off as a bad debt prior to June 2004.. (Answer, Item 11)

SOR 2.g. Applicant admitted a debt to Creditor #5, for \$1,463 for an account charged off as a bad debt prior to 2004. She resolved this debit by payment of \$1,011 in February 2005. (Answer; Item 11; Exhibit A)

SOR 2.h. Applicant admitted a debt to Creditor #7 for \$2,805 for an account charged off as a bad debt prior to June 2004. (Answer; Item 11)

SOR 2.i. Applicant admitted a debt to Creditor #5 for \$500 for a debt charged off as a bad debt prior to June 2004. (Answer; Item 11)

SOR 2.j. Applicant neither admitted nor denied the information incorporated from subparagraphs 1.b. and 1.c. (Answer)

Other than her HUD-1 settlement statement, noted above, Applicant failed to provide sufficient information on what progress or plan she has made to settle her outstanding accounts with her other creditors. For example, she failed to say either what her future plans were for making payment arrangements or for seeking discharge of her dated debts in bankruptcy. She did document financial resources in a \$2,318 investment account statement from 2005, but did not indicate how she planned to use this resource. (Exhibit A) While she sought medical help for her bipolar condition, she provided no evidence that she sought any other assistance or financial counseling to help her manage her finances more effectively.

POLICIES

Enclosure 2 of the Directive sets forth adjudicative guidelines to consider in evaluating an individual's security eligibility. They are divided into conditions that could raise a security concern and may be disqualifying and conditions that could mitigate security concerns in deciding whether to grant or continue an individual's access to classified information. But the mere presence or absence of any given adjudication policy condition is not decisive.

Based on a consideration of the evidence as a whole in evaluating this case, I weighed relevant Adjudication Guidelines as set forth below:

Guideline J - Criminal Conduct

The Concern: A history or pattern of criminal activity creates doubt about a person's judgment, reliability and trustworthiness.

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. Unexplained affluence is often linked to proceeds from financially profitable criminal acts.

The responsibility for producing evidence initially falls on the Government to demonstrate that it is not clearly consistent with the national interest to grant or continue Applicant's access to classified information. Then the Applicant presents evidence to refute, explain, extenuate, or mitigate in order to overcome the doubts raised by the Government, and to demonstrate persuasively that it is clearly consistent with the national interest to grant or continue the clearance. Under the provisions of Executive Order 10865, as amended, and the Directive, a decision to grant or continue an

applicant's security clearance may be made only after an affirmative finding that to do so is clearly consistent with the national interest. In reaching the fair and impartial overall common sense determination, the Administrative Judge may draw only those inferences and conclusions that have a reasonable and logical basis in the evidence of record.

CONCLUSIONS

Criminal Conduct

Applicant's criminal misconduct raised security concerns over a 1995 Assault and Battery on police officers where she was found guilty and sentenced to one year probation, later dismissed in 1996. After her 2001 arrest for shoplifting, Applicant had another 2003 misdemeanor arrest for shoplifting at the same mall where she paid a large fine and was barred from that mall for two years.

Subsequently, she sought medical help for her bipolar disorder and has not been arrested since 2003⁽³⁾. Under mitigation condition 4, I conclude that given her self-reported efforts to reform her conduct and seek medical treatment for her bipolar disorder that the pressures that led to this misconduct are unlikely to recur. Also, under mitigation condition 6, there is clear evidence of successful rehabilitation as she has taken significant steps to reform her conduct. After looking at the whole person and considering the Adjudicative Process factors and the Adjudicative Guidelines, I rule for Applicant on subparagraph 1.a. through 1.c. under SOR Paragraph 1.

Financial Considerations

The Government established disqualifying conditions⁽⁴⁾ that could raise a security concern because of Applicant's (1) history of financial problems and her, (2) Deceptive or illegal financial practices such as embezzlement, employee theft, check fraud, income tax evasion, expense account fraud, filing deceptive loan statements, and other intentional financial breaches of trust; (3) inability or unwillingness to satisfy all of her debts. Applicant had nine unresolved debts totaling approximately \$17,000 and two shoplifting arrests in 2001 and 2003, which led to a 2003 conviction and fine that also led to her being barred from a shopping center.

While admittedly her bipolar disorder was a condition that led her to overspend, I cannot discount that concern without a favorable medical prognosis that she can now control these impulses that led to her current financial difficulties. The potential for financial issues recurring remains as she provided insufficient evidence under mitigation condition 3, to show her financial problems were largely beyond her control and that her psychological condition is now controlled through medication.

To her credit Applicant provided proof of payment for several of the large debts, but failed to mitigate⁽⁵⁾ these financial concerns overall as she provided insufficient evidence of any plan to resolve the remainder of the long-standing debts. While she re-financed her home and paid off several of the debts, notably the IRS debt and tax lien and debts to a major creditor, as documented by the HUD settlement sheet, several large debts remain unresolved. Applicant provided no explanation as to why these other debts remain outstanding. Nor did she provide a timetable or a plan as to how to resolve the remaining debts. In fact, she provided evidence that she has paid only a few of these debts. Thus, the security concern remains that an individual who is financially overextended is at risk of having to engage in illegal acts to generate funds.

Neither has she met mitigation condition 4 as she failed to document that she has received or is receiving counseling to develop a plan to address all her financial problems. Notably, she said her husband would provide financial help, but she provided no timetable or plan. Looking at her as a whole person, Applicant stated she had long-term employment with the defense contractor; but she failed to provide any evidence, such as work references or evaluations, to establish how she is viewed on the job in order to establish her job stability and future ability to pay her debts. While she provided evidence of an investment account she did not explain how she would use that asset or other assets in the future to resolve these remaining debts.

After considering the Adjudicative Process factors and the Adjudicative Guidelines, I rule against Applicant under SOR Paragraph 2 as she failed to mitigate the allegations in SOR subparagraphs 2.a., 2.b., 2.d., 2.f., 2.h., 2.i. and 2.j. ; but I

rule for her on subparagraphs 2.c., 2.e., 2.g.

FORMAL FINDINGS

After reviewing the allegations of the SOR in the context of the Adjudicative Guidelines in Enclosure 2 and the factors set forth under the Adjudicative Process section, I make the following formal findings:

Paragraph 1. Guideline J: FOR APPLICANT

Subparagraph 1.a.: For Applicant

Subparagraph 1.b.: For Applicant

Subparagraph 1.c.: For Applicant

Paragraph 2. Guideline F: AGAINST APPLICANT

Subparagraph 2.a.: Against Applicant

Subparagraph 2.b.: Against Applicant

Subparagraph 2.c.: For Applicant

Subparagraph 2.d.: Against Applicant

Subparagraph 2.e.: For Applicant

Subparagraph 2.f.: Against Applicant

Subparagraph 2.g.: For Applicant

Subparagraph 2.h.: Against Applicant

Subparagraph 2.i.: Against Applicant

Subparagraph 2.j.: Against 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.

Kathryn Moen Braeman

Administrative Judge

1. This procedure is required by Executive Order 10865, as amended, and Department of Defense Directive 5220.6, dated January 2, 1992 (Directive), as amended by Change 4, April 20, 1999.
2. While she provided no diagnosis nor prognosis from him, I note she has had no additional arrests for shoplifting. She was hospitalized in June 2006, but she did not explain for what condition.
3. **E2.A10.1.3. Conditions that could mitigate security concerns include:** E2.A10.1.3. 1. The criminal behavior was not recent; E2.A10.1.3. 2. The crime was an isolated incident; E2.A10.1.3.3. The person was pressured or coerced into committing the act and those pressures are no longer present in that person's life;

E2.A10.1.3. 4. The person did not voluntarily commit the act and/or the factors leading to the violation are not likely to recur; E2.A10.1.3. 5. Acquittal; E2.A10.1.3. 6. There is clear evidence of successful rehabilitation.

4. E2.A6.1.2. Conditions that could raise a security concern and may be disqualifying include:

E2.A6.1.2.1. A history of not meeting financial obligations; E2.A6.1.2.2. Deceptive or illegal financial practices such as embezzlement, employee theft, check fraud, income tax evasion, expense account fraud, filing deceptive loan statements, and other intentional financial breaches of trust; E2.A6.1.2.3. Inability or unwillingness to satisfy debts; E2.A6.1.2.4. Unexplained affluence; E2.A6.1.2.5. Financial problems that are linked to gambling, drug abuse, alcoholism, or other issues of security concern.

5. E2.A6.1.3. Conditions that could mitigate security concerns include: E2.A6.1.3.1. The behavior was not recent; E2.A6.1.3.2. It was an isolated incident; E2.A6.1.3.3. The conditions that resulted in the behavior were largely beyond the person's control (e.g., loss of employment, a business downturn, unexpected medical emergency, or a death, divorce or separation); 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; E2.A6.1.23.5. The affluence resulted from a legal source; and E2.A6.1.23.6. The individual initiated a good-faith effort to repay overdue creditors or otherwise resolve debts.