

DATE: January 16, 2007

In Re:

SSN: -----

Applicant for Security Clearance

CR Case No. 05-01011

DECISION OF ADMINISTRATIVE JUDGE

JOHN GRATTAN METZ, JR

APPEARANCES

FOR GOVERNMENT

Daniel F. Crowley, Esquire, Department Counsel

FOR APPLICANT

Pro Se

SYNOPSIS

Applicant's financial irresponsibility renders her an unsuitable candidate for a security clearance. Clearance denied.

STATEMENT OF THE CASE

Applicant challenges the 13 September 2005 Defense Office of Hearings and Appeals (DOHA) Statement of Reasons (SOR) recommending denial or revocation of her clearance because of financial considerations.⁽¹⁾ Applicant answered the SOR 18 November 2005, and requested a hearing. The case was assigned to me 9 March 2006, and I convened a hearing 8 June 2006. DOHA received the transcript (Tr.) 15 June 2006.

PROCEDURAL ISSUES

At the hearing, I left the record open to give Applicant an opportunity to produce any of the claimed documentation that she said she had, but did not bring to the hearing. Applicant timely provided several documents, to which Department Counsel did not object. Accordingly, I admit those documents as A.E. H.

FINDINGS OF FACT

Applicant admitted the allegations of the SOR, except for SOR 1.d. Accordingly, I incorporate her admissions as findings of fact. She is a 35-year-old purchasing specialist for a defense contractor. She has never applied for a clearance before.

Applicant has struggled with her finances since at least 1994, when she had an automobile voluntarily repossessed. She attributes her financial troubles to poor choices she has made, and the pressures of being a single mother without child support (since 2003). She also experienced periods of underemployment before obtaining her current employment in 2004.

The nine debts alleged in the SOR total nearly \$13,000. The creditors at SOR 1.f. and 1.g. (both automobile repossessions) obtained judgments on their claims. Applicant has been aware of the government's concern over her financial condition since her subject interview in May 2003 (G.E. 7). At that time, she stated that she was current with the debt at SOR 1.h., had reached repayment agreements with the judgment creditors at SOR 1.f. and 1.g., and disputed the debts at SOR 1.a., 1.c., and 1.d. However, in the wake of the subject interview, she remembered what the debt at SOR 1.d. was for, and paid it in June 2003 (A.E. B).

In March 2005, DOHA issued financial interrogatories to Applicant asking the status of all the debts now alleged in the SOR. Receipt of the interrogatories spurred Applicant into a flurry of activity. By the time she submitted her answers in April 2005 (G.E. 8), she claimed to have paid, and ultimately provided corroboration of payment, on the debts SOR 1.a. (A.E. D), 1.b. (A.E. H), 1.c. (A.E. H), and 1.i. (A.E. H). She still disputed the debt at SOR 1.d., although, in fact, she had paid that debt nearly two years earlier. She claimed to have reached repayment agreements with the creditors at SOR 1.e., 1.f., 1.g., and 1.h., and provided a copy of money order receipts for an April 2005 payment to the creditors at SOR 1.f., 1.g., and 1.h. This was the second time she claimed to have reached a repayment agreement with the judgment creditors at SOR 1.f. and 1.g. However, this time the required payments for each had been reduced. She claimed to have made a payment on the debt at SOR 1.e., but provided no corroboration. In June 2005, she satisfied the creditor at SOR 1.f. (A.E. C). ⁽²⁾

At hearing, Applicant testified to, and her records confirmed, the sporadic nature of her payments to the creditors at SOR 1.f. and 1.g. She still has no corroboration of her claimed payments on the debt at SOR 1.e., but also noted that the creditor had charged the account off and was no longer pursuing repayment. At one point, a creditor had obtained a garnishment order against Applicant, which had resulted in the seizure of a bank account with about \$2,000 in it. Applicant reached a repayment schedule with the creditor, and the money was returned to her. However, instead of using any of the funds to satisfy her past due debts, she spent the money on living expenses and did not make regular payments to the creditor as agreed. She has taken financial management courses through her church (A.E. F), which has enabled her to be better about having a budget (A.E. G). However, she has displayed a disturbing trend of decreasing the amount of her monthly payments over time, particularly to her two judgment creditors. For example, in her May 2003 sworn statement, she had agreed to pay the creditor at SOR 1.g. \$225 per month. By the time of her April 2005 interrogatories, the amount was reduced to \$200 per month. It is now in her budget at \$100 per month. And these numbers do not reflect the fact that she had not been consistent in meeting these payment obligations. Further, her payment record with the creditor at SOR 1.h was so spotty that the creditor sold the account to a collection agency in November 2005, for an amount virtually unchanged from the amount alleged in the SOR. On 16 June 2006, Applicant reached a repayment agreement with the new creditor that would satisfy the remaining balance by making four scheduled payments between June 2006 and the end of August 2006.

Applicant work and character references (A.E. A) extol her honest, trustworthiness, and work ethic.

POLICIES AND BURDEN OF PROOF

The Directive, Enclosure 2 lists adjudicative guidelines to be considered in evaluating an Applicant's suitability for access to classified information. Administrative Judges must assess both disqualifying and mitigating conditions under each adjudicative issue fairly raised by the facts and circumstances presented. 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 for or against Applicant. However, specific adjudicative 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. Considering the SOR allegations and the evidence as a whole, the relevant, applicable, adjudicative guideline is Guideline F (Financial Considerations).

Security clearance decisions resolve whether it is clearly consistent with the national interest to grant or continue an Applicant's security clearance. The government must prove, by something less than a preponderance of the evidence, controverted facts alleged in the SOR. If it does so, it establishes a *prima facie* case against access to classified information. Applicant must then 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.

Persons with access to classified information enter into a fiduciary relationship with the government based on trust and confidence. Therefore, the government has a compelling interest in ensuring each Applicant possesses the requisite judgement, reliability, and trustworthiness of those who must protect national interests as their 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.⁽³⁾

CONCLUSIONS

The Government established a case for disqualification under Guideline F disqualifying conditions 1 and 3,⁽⁴⁾ and Applicant did not mitigate the security concerns. Although her spotty employment may have exacerbated her financial problems, she acknowledges that her financial problems are due largely to her poor financial choices.⁽⁵⁾ Her repayment efforts have been haphazard. She paid one debt after her May 2003 subject interview, but had to be spurred by DOHA interrogatories in March 2005 to address several of the debts between April 2005 and June 2005. She came to the hearing with three debts (1.e., 1.g., and 1.h) unresolved. Assuming that she paid as agreed post-hearing, the debt at SOR 1.h. will have been satisfied by August 2006. However, given her past history of making repayment agreements and not meeting them, it would be premature to assume the payments will be made. Applicant has been in her current job since 2004, yet the progress she has made on her debts has been inconsistent, and not truly indicative of a good-faith effort to pay her bills.⁽⁶⁾ Rather, Applicant appears to have addressed some of her debts (1.b. and 1.c.) only with the prodding of the interrogatories and SOR. This is irresponsible financial behavior and suggests that Applicant is unwilling to meet her financial obligations unless compelled to. Even giving her the benefit of the progress she has made in establishing a realistic budget and in paying six of the nine debts alleged in the SOR, it appears too early to tell if Applicant has regained sufficient control of her finances to avoid financial problems in the future. I conclude Guideline F against Applicant.

FORMAL FINDINGS

Paragraph 1. Guideline F: AGAINST APPLICANT

Subparagraph a: For Applicant

Subparagraph b: For Applicant

Subparagraph c: For Applicant

Subparagraph d: For Applicant

Subparagraph e: Against Applicant

Subparagraph f: For Applicant

Subparagraph g: Against Applicant

Subparagraph h: Against Applicant

Subparagraph i: For 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. Clearance denied.

John G. Metz, Jr.

Administrative Judge

1. Required by Executive Order 10865 and Department of Defense Directive 5220.6, as amended (Directive).
2. However, it is not clear from the records, whether she paid the account in full or agreed on a settlement number with the creditor.
3. *See, Department of the Navy v. Egan*, 484 U.S. 518 (1988).
4. E2.A6.1.2.1. A history of not meeting financial obligations; E2.A6.1.2.3. Inability or unwillingness to satisfy debts
5. E2.A6.1.3.3. The conditions that resulted in the behavior were largely beyond the person's control (e.g. loss of employment. . .).
6. E2.A6.1.3.6. The individual initiated a good-faith effort to repay overdue creditors or otherwise resolve debts.