

DATE: November 30, 2006

In re:

SSN: -----

Applicant for Security Clearance

CR Case No. 05-01398

DECISION OF ADMINISTRATIVE JUDGE

CHRISTOPHER GRAHAM

APPEARANCES

FOR GOVERNMENT

Jennifer I. Goldstein, Esq., Department Counsel

FOR APPLICANT

Pro Se

SYNOPSIS

Applicant is a special operations dispatcher for a defense contractor. For the past ten years she had a history of delinquent debts. Twice using Chapter 13 bankruptcy, she is resolving her indebtedness and paying her creditors. Also, she has demonstrated a more mature attitude in handling her financial affairs. She successfully mitigated the security concerns about financial considerations. 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. As required by Department of Defense Directive 5220.6 ¶ E3.1.2 (Jan. 2, 1960), as amended, DOHA issued a Statement of Reasons (SOR) on June 19, 2006, detailing the basis for its decision - security concerns raised under Guideline F (Financial Considerations) of the Directive. Applicant answered the SOR in writing on July 17, 2006, and requested a decision without a hearing. Department Counsel submitted a file of relevant material (FORM) in support of the government's case, a copy of which was received by Applicant on August 15, 2006. Applicant was afforded the opportunity to file objections and submit material in refutation, extenuation, or mitigation by September 15, 2006. Applicant filed no response. The case was assigned to me on September 25, 2006.

FINDINGS OF FACT

Applicant admitted all allegations contained in the SOR except the allegation in subparagraph 1.a. Those admissions are incorporated herein as findings of fact. After a complete and thorough review of the evidence in the record, and upon due consideration of same, I make the following additional findings of fact:

Applicant is a 34-year-old special operations dispatcher for a defense contractor. ⁽¹⁾ She is married and has one step-child. ⁽²⁾ She has no prior military service. In May 2002, she was fired from a job when she fell asleep at work, due to the fact that she cared for her young child at home during the day and was working nights. ⁽³⁾

Applicant's financial problems commenced around January 1996, when her sister wrecked her car eight days after her automobile insurance lapsed. The damages were about \$7,000. Her credit union wrote off the loss and closed out her account.⁽⁴⁾ In January 1999, she and her husband got "carried away" using their credit cards and were unable to pay their bills in a timely manner.⁽⁵⁾ Applicant filed her first Chapter 13 bankruptcy petition on September 9, 1997.⁽⁶⁾ It was dismissed in 1999 for late payments. She re-filed Chapter 13 again on October 25, 1999.⁽⁷⁾ The case was closed in 2000, with no debts owing.⁽⁸⁾ In 2002, she lost her job and was unemployed for about three months. She worked with her creditors to resolve her inability to remain current until she was again employed.⁽⁹⁾ On April 23, 2004, she filed another Chapter 13 bankruptcy petition, and is currently paying the trustee \$620 per month to fulfill her obligation to the bankruptcy court.⁽¹⁰⁾ The following debts were listed in the SOR:

| SOR ¶ | Debt | Amount | FORM Item: | Current Status |
|-------|--------------------|----------|-----------------------------|----------------------|
| 1.a. | Collection account | \$225.00 | 5, at 1; (11) 6, at 1. (12) | Listed in bankruptcy |
| 1.b. | Cable TV | \$185.00 | 5, at 2; 6, at 1. | Listed in bankruptcy |
| 1.c. | Collection account | \$185.00 | 5, at 1. | Listed in bankruptcy |
| 1.d. | Medical bill | \$26.00 | 6, at 1. | Listed in bankruptcy |
| 1.e. | Medical bill | \$100.00 | <i>Id.</i> | Listed in bankruptcy |
| 1.f. | Credit card | \$555.00 | 6, at 2. | Listed in bankruptcy |

These debts total \$1,276. Applicant is uncertain about the credit card debt of \$555, as she thinks it might have been included in her 1997 bankruptcy. That case was concluded in 2000, so the debt may be paid. She does not know. She agreed to pay the amount if it is determined she owes it.⁽¹³⁾ She also entered into a stipulated judgment on December 18, 2003, in the amount of \$4,821.04, plus statutory interest of 8%, compounded annually, paying \$225.00 per month until paid. It was listed in her 2004 bankruptcy petition.⁽¹⁴⁾ She currently is paying her creditors, including the bankruptcy trustee, and has incurred no new debts.⁽¹⁵⁾

POLICIES

"No one has a 'right' to a security clearance."⁽¹⁶⁾ 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."⁽¹⁷⁾ The President 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 with the national interest to do so."⁽¹⁸⁾ Each security clearance decision "must be a fair and impartial common sense determination based upon consideration of all the relevant and material information and the pertinent criteria and adjudication policy."⁽¹⁹⁾ An applicant "has the ultimate burden of demonstrating that it is clearly consistent with the national interest to grant or continue his security clearance."⁽²⁰⁾

Enclosure 2 of the Directive sets forth personnel security guidelines, as well as the disqualifying conditions (DC) and mitigating conditions (MC) under each guideline. 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: nature and seriousness of the conduct and surrounding circumstances; frequency and recency of the conduct; age of the Applicant; motivation of the applicant, and the extent to which the conduct was negligent, wilful, voluntary, or undertaken with knowledge of the consequences involved; absence or presence of rehabilitation; and probability that the circumstances or conduct will continue or recur in the future. The decision to deny an individual a security clearance is not necessarily a determination as to the loyalty of the applicant.⁽²¹⁾ It is merely an indication the applicant has not met the strict guidelines the President and the Secretary of Defense have established for issuing a clearance.

CONCLUSIONS

The government established its case under Guideline F. Financial Considerations Disqualifying Conditions (FC DC)

E2.A6.1.2.1. (*A history of not meeting financial obligations*) and FC DC E2.A6.1.2.3. (*Inability or unwillingness to satisfy debts*) apply.

Various conditions can mitigate the trustworthiness concerns arising from financial difficulties. The Directive sets out Financial Considerations Mitigating Condition (FC MC) 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)*). Applicant's bankruptcy in 1997 followed shortly after her sister had wrecked her car and Applicant had let the insurance lapse. Apparently, she had no additional expenses because the credit union wrote off her debt and closed out her account. Allowing her insurance to lapse, then letting her sister drive her car is lack of good judgment, although she had no way of knowing her sister would wreck her car. The extravagant spending by Applicant and her husband in 1999 does not qualify as an event beyond her control, and instead is evidence of irresponsible behavior. Losing her job is not a foreseen event, and the circumstances are understandable, because she was taking care of a young child by day, and working the night shift to make more income. The questionable behavior and irresponsible financial conduct outweigh the unexpected incidents and the mitigating condition does not apply.

FC MC 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*) does not apply as there is no evidence of Applicant seeking financial counseling.

FC MC E2.A6.1.3.6. (*The individual initiated a good-faith effort to repay overdue creditors or otherwise resolve bad debts*) is applicable. Notwithstanding her past history, Applicant has used Chapter 13 bankruptcy to resolve her financial problems. The 1997 petition was dismissed, re-filed in 1999, and closed in 2000, with debts paid. After losing her job in 2002, Applicant was again in financial difficulty. She filed a Chapter 13 petition in May 2004, the debts in the SOR are covered under this case, she is paying the trustee \$620 per month, she has accrued no new indebtedness, and is current with her other obligations. She is making a good-faith effort to pay her creditors. She has used the benefits of Chapter 13 bankruptcy and can reasonably be expected to pay off her remaining debts. I conclude Guideline F for Applicant.

Whole Person Analysis

"The adjudicative process is an examination of a sufficient period of a person's life to make an affirmative determination that the person is eligible for a security clearance." ⁽²²⁾ "Available, reliable information about the person, past and present, favorable and unfavorable, should be considered in reaching a determination." ⁽²³⁾ In addition to the disqualifying and mitigating conditions, I considered the "whole person" concept in evaluating Applicant's risk and vulnerability in protecting our national interests. ⁽²⁴⁾ I considered her age (34), her employment, and what might cause her to be in continual financial distress. She has had a ten-year history of financial delinquencies with the early years' problems attributable to her own irresponsibility. Letting car insurance lapse and spending wildly using credit cards is not evidence of good fiscal judgment. She has used the bankruptcy protection of wage earner plans. She has matured, is now paying her delinquent debts through the bankruptcy trustee, she has acquired no new debt, and she is staying current with her obligations not covered in bankruptcy. This improved responsibility in handling her financial matters no longer raises questions about her reliability and judgment. The totality of the record leads me to conclude that Applicant has the ability to protect classified information and to exercise the requisite good judgment and discretion expected of one in whom the government entrusts its interests. I conclude it is clearly consistent with the national interest to grant or continue Applicant's security clearance.

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

Subparagraph 1.f: For Applicant

DECISION

In light of all of the circumstances in this case, it is clearly consistent with the national interest to grant or continue a security clearance for Applicant. Clearance is granted.

Christopher Graham

Administrative Judge

1. Item 4 (Security Clearance Application (SF 86), dated October 22, 2004) at 1-2.
 2. *Id.* at 3.
 3. *Id.* at 6.
4. Item 9 (Applicant's Affidavit, dated August 2, 2004) at 1.
 5. *Id.*
6. Item 12 (U.S. Bankruptcy Court case documents, dated October 22, 1999) at 1-11.
7. Item 8 (U.S. Bankruptcy Court case documents, dated November 3, 2000) at 1-6.
 8. Item 9, *supra*, note 4, at 2.
 9. Item 9, *supra*, note 4, at 2-4.
10. Item 11 (U.S. Bankruptcy Court case documents, dated April 23, 2004) at 1-2.
 11. Item 5 (Credit Report, dated June 14, 2006) at 1.
 12. Item 6 (Credit Report, dated May 25, 2006) at 1.
 13. Item 3, (Answer to SOR, dated July 17, 2006) at 3.
 14. Item 11, *supra*, note 6, at 31-39.
 15. Item 9, *supra*, note 4, at 5.
16. ⁰*Department of the Navy v. Egan*, 484 U.S. 518, 528 (1988).
17. ⁰*Id.* at 527.
18. ⁰Exec. Or. 10865, *Safeguarding Classified Information within Industry* § 2 (Feb. 20, 1960).
19. ⁰Directive ¶6.2.
20. ⁰ISCR Case No. 01-20700 at 3 (App. Bd. Dec. 19, 2002).

21. ⁰See Exec. Or. 10865 § 7.

22. Directive ¶ E.2.2.1.

23. *Id.*

24. *Id.*