

DATE: June 29, 2006

In re:

SSN: -----

Applicant for Security Clearance

ISCR Case No. 05-01413

DECISION OF ADMINISTRATIVE JUDGE

ROGER C. WESLEY

APPEARANCES

FOR GOVERNMENT

Jason Perry, Department Counsel

FOR APPLICANT

Pro Se

SYNOPSIS

Appellant has a history of delinquent debts and four judgments she accumulated as a result of increased child responsibilities following her loss of child support and periods of temporary unemployment. She has not been able to document any payment initiatives and fails to mitigate security concerns about her finances. Applicant also fails to refute or mitigate allegations that she falsified her security clearance application by omitting her unpaid judgments and most of her debts over 180 and 90 days delinquent, respectively. Clearance is denied.

STATEMENT OF CASE

On August 25, 2005, the Defense Office of Hearings and Appeals (DOHA), under Executive Order 10865 and Department of Defense Directive 5220.6 (Directive), dated January 2, 1992, issued a Statement of Reasons (SOR) to Applicant. The SOR detailed reasons 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, and recommended referral to an administrative judge for determination whether clearance should be granted or continued.

Applicant responded to the SOR on October 17, 2005, and elected to have his case decided on the basis of the written record. Applicant received the File of Relevant Material (FORM) on November 30, 2005. Applicant was afforded 30 days in which to respond to the FORM. Applicant did not respond to the FORM. The case was assigned to me January 23, 2006.

SUMMARY OF PLEADINGS

Under Guideline F, Applicant is alleged to have (a) 23 delinquent debts exceeding \$24,000.00 and (b) four judgments exceeding \$3,200.00. Under Guideline E, she is alleged to have falsified her security clearance application (SF-86) of February 2003 by omitting her judgments after answering yes to question 37 and omitting all but two of her delinquent debts when answering questions 38 and 39 (inquiring about debts over 180 and 90 days delinquent, respectively).

For her response to the SOR, Applicant admitted her delinquent debts and all but two of her listed judgments, which she claimed to involve the same judgment creditor. Applicant admitted to falsifying her SF-86, while claiming laziness and the impression that she thought she answered the questions correctly. She explained that she knew she was behind in her debts, but was just not aware of the exact amounts.

FINDINGS OF FACT

Applicant is a 43-year old prospective employee for a defense contractor who seeks a security clearance. The allegations covered in the SOR and admitted to by Applicant are incorporated herein by reference and adopted as relevant and material findings. Additional findings follow.

Applicant married in 1985 and has two children from the marriage. Applicant and her first husband (H1) separated in 1999 and divorced in May 2001. Even before her divorce, she had fallen behind with her finances and accumulated a number of delinquent debts and judgments for \$766.00 (in October 1999) and \$913.00 (in September 2000).

As a single parent with two small children to raise and limited child support following her divorce, Applicant fell further behind in her debts. Over the course of the ensuing three years, she held part time jobs as a substitute school teacher and temporary office worker. When her child support payments ceased altogether, she fell even deeper into debt. By May 2004, she had become delinquent with many more of her creditors (23 in all, totaling more than \$24,000.00), with no payment plan to address her creditors. For the most part her debts were either charged off or referred to collection. However, two of her creditors obtained adverse judgments against her: one in July 2002 for \$1,060.00 and another in May 2004 for \$1,449.00.

In a signed, sworn statement given to a DSS agent in May 2004, Applicant acknowledged her debts and indicated she was working with a debt consolidation service to pay off the debts listed in the credit report. She cited temporary loss of child support payments, additional child responsibility, and temporary job loss for her adverse judgments and debt delinquencies. Her personal financial statement reported net monthly income of \$1,868.78, monthly expenses of \$1,386.00, and a net monthly remainder of \$482.18 (*see ex. 6*).

By May 2005, though, Applicant had made little visible progress with her debt consolidation plan. While claiming she was continuing to work with the debt consolidation service, she cited no payment plan or payments to the service or individual creditors (*see ex. 5*).

Based on Applicant's most recent credit report of November 2005, her finances do not appear to have appreciably improved. Her November 2005 credit report lists the same five judgment creditors as well as many of her old debts. Afforded the opportunity to respond to the FORM with updated financial information, Applicant declined to provide information about the status of her carried unpaid judgments and delinquent debts.

Asked to complete an SF-86 in February 2003, Applicant failed to list her unpaid judgments (either by name, date, or approximate amount). While she answered yes to question 27(a) (inquiring about any unpaid judgments), she did not identify any of the outstanding judgments entered against her. Applicant attributes her omissions to laziness, not deliberate omission. However, she did not disclaim knowledge of the three adverse judgments and provides no tangible explanation for identifying the judgments.

Likewise, Applicant answered yes to questions 28a and 28b (inquiring about debts over 180 and 90 days delinquent, respectively). In the space provided for listing her debts, she supplied the names of two creditors holding accounts with Applicant over 180 and 90 days delinquent, respectively: her debt with creditor 1.o (claiming just \$4,000.00 owed) and creditor 1.s (a delinquent student loan of \$1,150.00). She attributed her omissions of her other debts to uncertainty of the exact amounts.

By her own acknowledgments, Applicant was generally aware of the judgments entered against her at the time she completed her SF-86, as well as her debts over 180 and 90 days delinquent. She furnishes no explanations for not listing the names of the judgment holders and creditors with obligations over 180 and 90 days delinquent. From the only statements she provides, she exhibits general knowledge of the judgments and debts she was asked to identify, but did not list the debts (save for the two creditors she listed). Based on the information supplied by Applicant, inferences of

knowing and wilful omissions cannot be averted.

POLICIES

The Adjudicative Guidelines of the Directive (Change 4) list Guidelines to be considered by judges in the decision making process covering DOHA cases. These Guidelines require the judge to consider all of the "Conditions that could raise a security concern and may be disqualifying" (Disqualifying Conditions), if any, and all of the "Mitigating Conditions," if any, before deciding whether or not a security clearance should be granted, continued or denied. The Guidelines do not require the judge to assess these factors exclusively in arriving at a decision. In addition to the relevant Adjudicative Guidelines, judges must take into account the pertinent considerations for assessing extenuation and mitigation set forth in E2.2 of the Adjudicative Process of Enclosure 2 of the Directive, which are intended to assist the judges in reaching a fair and impartial common sense decision.

Viewing the issues raised and evidence as a whole, the following adjudication policy factors are pertinent herein:

Financial Considerations

The Concern: An individual who is financially overextended is at risk at having to engage in illegal acts to generate funds. Unexplained influence is often linked to proceeds from financially profitable criminal acts.

Personal Conduct

The Concern: Conduct involving questionable judgment, untrustworthiness, unreliability, lack of candor, dishonesty, or unwillingness to comply with rules and regulations could indicate that the person may not properly safeguard classified information.

Burden of Proof

By virtue of the precepts framed by the Directive, a decision to grant or continue an applicant's security clearance may be made only upon a threshold finding that to do so is clearly consistent with the national interest. Because the Directive requires Administrative Judges to make a common sense appraisal of the evidence accumulated in the record, the ultimate determination of an applicant's eligibility for a security clearance depends, in large part, on the relevance and materiality of that evidence. As with all adversary proceedings, the Judge may draw only those inferences which have a reasonable and logical basis from the evidence of record. Conversely, the Judge cannot draw factual inferences that are grounded on speculation or conjecture.

The Government's initial burden is twofold: (1) It must prove any controverted fact[s] alleged in the SOR and (2) it must demonstrate that the facts proven have a material bearing to the applicant's eligibility to obtain or maintain a security clearance. The required showing of material bearing, however, does not require the Government to affirmatively demonstrate that the applicant has actually mishandled or abused classified information before it can deny or revoke a security clearance. Rather, consideration must take account of cognizable risks that an applicant may deliberately or inadvertently fail to safeguard classified information.

Once the Government meets its initial burden of proof of establishing admitted or controverted facts, the burden of persuasion shifts to the applicant for the purpose of establishing his or her security worthiness through evidence of refutation, extenuation or mitigation of the Government's case.

CONCLUSION

Appellant is a prospective DoD contractor employee with a considerable history of delinquent debts she accumulated during and after her marriage and failed to resolve for many years following her 2001 divorce. She accumulated delinquent debts and judgments (four of them altogether) as a result of increased child responsibilities following her loss of child support and periods of temporary unemployment. While she inquired about debt consolidation, she provides no documentation indicating she followed through with her debt consolidation initiatives.

Security concerns are raised under Guideline F (financial considerations) of the Adjudicative Guidelines where the individual appellant is so financially overextended that he or she is at risk of having to engage in illegal acts to generate funds. Appellant's accumulation of delinquent debts and judgments and her failure to mount any sustained effort to resolve them warrant the application of two of the disqualifying conditions (DC) of the financial guideline: E2.A6.1.2.1 (*A history of not meeting financial obligations*) and E2.A6.1.2.3 (*Inability or unwillingness to satisfy debts*).

While Applicant's accrued debts are accompanied by some extenuating circumstances (*viz.*, her 2001 divorce, loss of child support and lack of steady good paying work following her divorce), for the most part her finances have permitted some modest attempts to pay on her old creditors with the resources available to her through debt consolidation or other means.

Applicant's debts are not extenuated or mitigated enough to enable her to take advantage of any of the mitigating conditions at this time. Her cited periods of temporary employment since her divorce, while problematic, do not appear to have been so prolonged as to preclude her addressing her delinquent debts in modest ways, either through her claimed debt consolidation service or with her creditors individually within the five years that have elapsed since her 2001 divorce. Extenuation and mitigation are not demonstrated sufficiently to enable her to invoke 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 received counseling for the problem and there are clear indications that the problem is being resolved or is under control*), or E2.A6.1.3.6 (*The individual initiated a good-faith effort to repay overdue creditors or otherwise resolve debts*).

Holding a security clearance involves the exercise of important fiducial responsibilities, among which is the expectancy of consistent trust and candor. Financial stability that reflects good judgment, reliability and trustworthiness in a person cleared to access classified information is required precisely to inspire trust and confidence in the holder of the clearance. Applicant's lack of any demonstrated repayment efforts with the resources available to her precludes her mitigation of security concerns associated with her financial difficulties at this time.

Taking into account all of the facts and circumstances surrounding Applicant's debt accumulations and steps she has taken to resolve them, unfavorable conclusions are warranted based on the presented record with respect to the allegations pertaining to Applicant's financial difficulties that are covered by Guideline F.

Security concerns over Applicant's judgment, reliability and trustworthiness are raised under Guideline E, too, as the result of her omissions of her debts in the SF-86 she completed in February 2003. By failing to list her judgments and debts over 180 and 90 days delinquent, respectively, Applicant failed to furnish materially important background information about her judgments and debts that was needed for the Government to properly process and evaluate her security clearance application. Applicant does not deny knowledge of her judgments and debts and is unable to avert inferences she omitted her debts knowingly and wilfully.

Overall, Applicant's omission explanations are not persuasive enough to enable her to demonstrate the allegations of falsification of his SF-86 governed by Guideline E are unsubstantiated or otherwise mitigated. Considering all of the evidence produced in this record, favorable conclusions warrant with respect to the allegations covered by Guideline E (personal conduct).

In reaching my decision, I have considered the evidence as a whole, including each of the E 2.2 factors enumerated in the Adjudicative Guidelines of the Directive.

FORMAL FINDINGS

In reviewing the allegations of the SOR and ensuing conclusions reached in the context of the FINDINGS OF FACT, CONCLUSIONS, CONDITIONS, and the factors listed above, this Administrative Judge makes the following FORMAL FINDINGS:

GUIDELINE F (FINANCIAL): AGAINST APPLICANT

Sub-para. 1.a: AGAINST APPLICANT

Sub-para. 1.b: AGAINST APPLICANT

Sub-para. 1.c: AGAINST APPLICANT

Sub-para. 1.d: AGAINST APPLICANT

Sub-para. 1.e: AGAINST APPLICANT

Sub-para. 1.f: AGAINST APPLICANT

Sub-para. 1.g: AGAINST APPLICANT

Sub-para. 1.h: AGAINST APPLICANT

Sub-para. 1.I: AGAINST APPLICANT

Sub-para. 1.j: AGAINST APPLICANT

Sub-para. 1.k: AGAINST APPLICANT

Sub-para. 1.l: AGAINST APPLICANT

Sub-para. 1.m: AGAINST APPLICANT

Sub-para. 1.n: AGAINST APPLICANT

Sub-para. 1.o: AGAINST APPLICANT

Sub-para. 1.p: AGAINST APPLICANT

Sub-para. 1.q: AGAINST APPLICANT

Sub-para. 1.r: AGAINST APPLICANT

Sub-para. 1.s: AGAINST APPLICANT

Sub-para. 1.t: AGAINST APPLICANT

Sub-para. 1.u: AGAINST APPLICANT

Sub-para. 1.v: AGAINST APPLICANT

Sub-para. 1.w: AGAINST APPLICANT

Sub-para. 1.x: AGAINST APPLICANT

Sub-para. 1.y: AGAINST APPLICANT

Sub-para. 1.z: AGAINST APPLICANT

GUIDELINE E (PERSONAL CONDUCT): AGAINST APPLICANT

Sub-para. 2.a: AGAINST APPLICANT

Sub-para. 2.b: AGAINST APPLICANT

Sub-para. 2.c: 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 Applicant's security clearance. Clearance is denied.

Roger C. Wesley

Administrative Judge