

DATE: September 29, 2006

In re:

SSN: -----

Applicant for Security Clearance

ISCR Case No. 05-01457

DECISION OF ADMINISTRATIVE JUDGE

ROGER C. WESLEY

APPEARANCES

FOR GOVERNMENT

Kathryn D. MacKinnon, Department Counsel

FOR APPLICANT

Pro Se

SYNOPSIS

Applicant has a history of delinquent debts she accrued during periods of unemployment. Applicant has since paid most of her accumulated debts, worked out repayment arrangements with three of the remaining, and successfully disputed the other remaining two debts. Applicant by her demonstrated good-faith payment efforts mitigates security concerns associated with her delinquent debts, and she successfully mitigates allegations of falsification of her security clearance application (SF-86). Clearance is granted.

STATEMENT OF THE CASE

On August 12, 2005, the Defense Office of Hearings and Appeals (DOHA), pursuant to Executive Order 10865 and Department of Defense Directive 5220.6 (Directive), dated January 2, 1992, issued a Statement of Reasons (SOR) to Applicant, which 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 for Applicant, and recommended referral to an administrative judge to determine whether clearance should be granted, continued, denied or revoked.

Applicant responded to the SOR on August 23, 2005, and requested a hearing. The case was previously assigned to another judge and was assigned to me on April 24, 2006, and was scheduled for hearing on May 31, 2006. A hearing was convened on May 31, 2006, for the purpose of considering whether it would be clearly consistent with the national interest to grant, continue, deny, or revoke Applicant's security clearance. At hearing, the Government's case consisted of four exhibits; Applicant relied on one witness (herself) and five exhibits. The transcript (R.T.) was received on June 15, 2006.

PROCEDURAL ISSUES

Before the close of the hearing, Applicant requested leave to keep the record open to permit her the opportunity to supplement the record with payment information regarding her SR debt and \$300.00 FC judgment. There being no

objection from the Government, and good cause being demonstrated, Applicant was afforded 14 days to supplement the record. The Government, in turn was allowed seven days to respond. Applicant timely supplemented the record following an additional extension with documentation of her payment of her FC judgment and payment arrangements with her SR debt. The post-hearing submissions were not objected to by the Government and are accepted as exhibits G through L, respectively.

SUMMARY OF PLEADINGS

Under Guideline F, Applicant is alleged to have accumulated 12 delinquent debts between 1999 and August 2003 exceeding \$7,000.00, and including two judgments for \$449.85 and \$361.88, respectively.

Under Guideline E, Applicant is alleged to have falsified her security clearance application (SF-86) of September 10, 2003, by omitting her unpaid judgments and debts over 180 days delinquent and currently over 90 days delinquent, respectively. For her response to the SOR, Applicant admitted her debts and unpaid judgments but denied any intent to falsify her SF-86.

STATEMENT OF FACTS

Applicant is a 33-year-old administrative assistant 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.

Between 1996 and August 2003, Applicant accumulated debts that due to unemployment problems (one period of unemployment in 1998 and another in 2003) she was unable to pay. Her efforts to work out a repayment arrangement with a local Consumer Credit Consolidation (CCC) company in 2003 were unsuccessful due to her insufficient income at the time (*see ex. 2; R.T., at 46-48*). With the help of her regained employment (beginning in 2003) and subsequent income tax refunds, she was able to pay off a number of her debts in full and enter into monthly payment arrangements on most of the remaining ones (*see ex. D; R.T., at 51, 66-72*).

Applicant currently nets \$753.29 bi-weekly (*see ex. J*). From her net monthly income, she pays out approximately \$1,300.00 in monthly payments on her old debts and current obligations (*i.e.*, her student loan related to her past enrollment in junior college, utilities, gas and groceries). This leaves her with approximately \$158.00 a month for clothing and emergencies (*see exs. 3 and C; R.T., at 33-34, 63, 73-80*). She has received annual raises and expects to receive a raise in August 2006 (*R.T., at 81*).

Applicant disputed two of the listed debts in the SOR (creditors 1.a and 1.k), which have since been deleted from two of her credit reports (*R.T., at 56-58*). Another debt (a medical debt in collection with SR) is the subject of a payment arrangement between Applicant and the creditor. Under agreed arrangements with the creditor, Applicant pays \$50.00 a month on the debt (*see ex. D; R.T., at 57-67*). She documents her monthly payments to this creditor (*exs. G and L*). She documents (*see exs. H and I*), too, that she satisfied the two judgments listed in the SOR (creditors 1.f and 1.m).

Applicant has a four-year old son that she provides for without any support from the child's father (*R.T., at 89-90*). Despite her continuous efforts to enlist assistance from the local child support enforcement agency, she has been unsuccessful to date in obtaining child support from the child's father. In a May 2006 letter to Applicant, the child support agency confirmed its inability to get in touch with the child's father (*see ex. L*).

Asked to complete her SF-86 in September 2003, Applicant omitted both her unpaid judgments with FC and IC and her delinquent debts in the last seven years over 180 and 90 days delinquent. At the time, Applicant knew her credit was not "up to par" and was embarrassed about it, but did not know the extent of them (*see ex. F; R.T., at 38-39*). Still, she admitted to not wanting to discuss her debts in the SF-86 she completed and to deliberately omitting the financial information asked for (*R.T., at 41-42*).

When she completed her SF-86, her supervisor told her that she could expect to be interviewed by a DSS agent about her application. When interviewed by a DSS agent for the first time some five to six months later, she acknowledged her debts up front after being informed by the interviewing agent that her "credit would be an issue," but before the agent

confronted her with the individual delinquent debts (R.T., at 42-45, 83-88, 91-92). After Applicant admitted to having delinquent debts, the agent showed her a credit report containing historical data on the listed debts. Applicant was interviewed by a second DSS agent several months later and was again asked about her debts. Before this second agent showed her an updated credit report, she again acknowledged having delinquent debts (R.T., at 84-88, 91-92).

Applicant has excellent character references (*see ex. A*). Her supervisor describes her as a very conscientious and dependable employee who provides a fine moral example for her child. A co-worker describes Applicant as an exceptional example to their team and a welcome addition to their staff (*ex. A*). Applicant's six-month performance reviews for 2004 and 2005 credit her with very good job performance and training initiative (*see ex. B*).

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 E.2.2 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 Statement of Reasons 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.

CONCLUSIONS

Applicant, who is well regarded by her employer, accumulated a number of delinquent debts between 1998 and 2003 that remained unresolved until after the issuance of the SOR in August 2005. Unable to afford the necessary monthly payment to satisfy the minimum requirements of a local credit counseling firm, she explored ways of paying off the creditors individually, but without much success before the issuance of the SOR. Security concerns arise as well over Applicant's omissions of her two judgments and debts over 180 and 90 days delinquent, respectively, from the security clearance application she completed in September 2003.

Applicant's finances

Applicant accrued considerable delinquent debt between 1998 and 2003 during periods of unemployment. Her employment-related problems in covering her debts were compounded by the absence of child support from the father of her four-year old son. Without sufficient resources to cover her mostly consumer-related debts when she was not gainfully employed, her creditors either mounted aggressive collection efforts (with two obtaining judgments against her), or they charged off the debts. Altogether, Applicant accrued over \$7,000.00 in delinquent debts (12 in all) that she has since paid, worked out repayment arrangements, or successfully disputed (resulting in the removal of the two debts involved, *i.e.*, creditors 1.a and 1.k).

Based on Applicant's accumulation of delinquent debts and outstanding judgments, two disqualifying conditions (DC) of the Adjudicative Guidelines for financial considerations apply: E2.A6.1.2.1 (*A history of not meeting financial obligations*) and E2.A6.1.2.3 (*Inability or unwillingness to satisfy debts*).

Clearly, Applicant's debts can be traced to extenuating circumstances associated with her unemployment periods (1998 and again in 2003) and her added child support burdens. Mitigation is present, too, as demonstrated by her payment of most of her covered debts (eight in all), her payment arrangements with three of her remaining creditors, and the removal from her credit reports of the two creditors she disputed. Applicant may take advantage of two of the mitigating conditions for financial considerations. E2.A6.1.3.3 (*The conditions that resulted in the behavior were largely beyond the person's control*) of the guidelines to extenuate her debt delinquencies is clearly applicable. So, too, she may avail herself of the mitigation benefits of E2.A6.1.3.6 (*The individual initiated a good-faith effort to repay overdue creditors or otherwise resolve debts*).

Taking into account all of the circumstances of Applicant's accumulated debts and the good-faith efforts she demonstrated in satisfying her debts when she regained employment and established a workable budget for herself, favorable conclusions warrant with respect to subparagraphs 1.a through 1.m of the allegations governed by Guideline F.

Falsification issues

Posing potential security concerns, too, are Applicant's documented omissions of her covered judgment and delinquent debts from the SF-86 she completed in September 2003. She was aware she had delinquent debts at the time but was too embarrassed to acknowledge them in her SF-86. Based on the information she received from her supervisor she anticipated an opportunity to discuss her problem debts in a follow-up interview with a DSS agent. However, Applicant's explanations of her omissions were not enough to avert inferences of knowing and wilful omission, and E2.A5.1.2.2 (*The deliberate omission, concealment, falsification or misrepresentation of relevant and material facts from any personnel security questionnaire, personal history statement or similar form used to conduct investigations, determine employment qualifications, award benefits or status, determine security clearance eligibility or trustworthiness, or award fiduciary responsibilities*) is fully applicable.

Still, mitigation is available to Applicant, since she voluntarily disclosed her debts in the first opportunity afforded her to correct her earlier SF-86 omissions in her initial DSS interview within six months of completing her SF-86. Our Appeal Board has found the use of MC E2.A5.1.3.3 of the guidelines for personal conduct (*The individual made prompt, good-faith efforts to correct the falsification before being confronted with the facts*) to be available to applicants seeking mitigation where they demonstrated prompt correction of the omissions when first afforded a DSS opportunity (provided not too much time has elapsed after completing the SF-86). *Compare* ISCR Case No. 97-0289 (January 1998)

with DISCR Case No. 93-1390 (January 1995).

Applicant in the present case is on record with voluntarily disclosing her delinquent debts (albeit not by individual identification) when first asked about them by the DSS agent in her initial interview five to six months after completing her SF-86. She disclosed them again voluntarily when interviewed by a second DSS agent several months later. Her disclosures satisfy both prongs of E2.A5.1.3.3 and enable her to be credited with a prompt, good faith correction of her omissions. *See* DISCR Case No. 93-1390 (January 1995).

From a whole person standpoint, Applicant has inspired confidence and trust among her superiors and colleagues, which serves to reinforce overall assessments of her reliability and trustworthiness. Itigation is further strengthened by her first time exposure to the clearance process and her anticipation of being interviewed by a DSS agent.

Considering all of the evidence produced in this record and the available guidelines in the Directive (inclusive of the E.2.2 factors), favorable conclusions warrant with respect to subparagraphs 2.a through 2c of Guideline E.

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, I make the following FORMAL FINDINGS:

GUIDELINE F (FINANCIAL): FOR APPLICANT

Sub-para. 1.a: FOR APPLICANT

Sub-para. 1.b: FOR APPLICANT

Sub-para. 1.c: FOR APPLICANT

Sub-para. 1.d: FOR APPLICANT

Sub-para. 1.e: FOR APPLICANT

Sub-para. 1.f: FOR APPLICANT

Sub-para. 1.g: FOR APPLICANT

Sub-para. 1.h: FOR APPLICANT

Sub-para. 1.i: FOR APPLICANT

Sub-para. 1.j: FOR APPLICANT

Sub-para. 1.k: FOR APPLICANT

Sub-para. 1.l: FOR APPLICANT

Sub-para. 1.m: FOR APPLICANT

GUIDELINE E (PERSONAL CONDUCT): FOR APPLICANT

Sub-para 2.a: FOR APPLICANT

Sub-para 2.b: FOR APPLICANT

Sub-para. 2.c: FOR APPLICANT

DECISION

In light of all the circumstances presented by the record in this case, it is clearly consistent with the national interest to grant or continue Applicant's security clearance. Clearance is granted.

Roger C. Wesley

Administrative Judge