

DATE: November 30, 2006

In Re:

SSN: -----

Applicant for Security Clearance

ISCR Case No. 05-03453

DECISION OF ADMINISTRATIVE JUDGE

CHARLES D. ABLARD

APPEARANCES

FOR GOVERNMENT

Nicole Noel, Esq., Department Counsel

FOR APPLICANT

Pro Se

SYNOPSIS

Applicant mitigated security concerns relating to financial considerations growing out of loss of income and medical costs uncompensated by insurance for Applicant, her son, and her husband. Chapter 7 bankruptcy was recently discharged for \$30,000.00 in delinquent debt largely caused by those medical expenses. The current financial situation for the family indicates little likelihood of recurrence. Clearance is granted.

STATEMENT OF CASE

On March 21, 2006, the Defense Office of Hearings and Appeals (DOHA), pursuant to Executive Order 10865, *Safeguarding Classified Information Within Industry*, as amended and modified, and Department of Defense Directive 5220.6, *Defense Industrial Personnel Security Clearance Review Program* (Directive), dated January 2, 1992, as amended and modified, 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. DOHA recommended the case be referred to an administrative judge to determine whether a clearance should be granted, continued, denied, or revoked.

On May 8, 2006, Applicant responded to the SOR allegations, and requested a hearing. The matter was assigned to me on September 1, 2006. A notice of hearing was issued on September 5, 2006, for a hearing on September 19, 2006, and held that day. The government offered five exhibits and Applicant offered seven. All were accepted into evidence. The transcript was received on September 27, 2006.

FINDINGS OF FACT

Applicant admitted all of the SOR allegations all of which except one were delinquent debts that were the subject of a bankruptcy. After a complete review of the record, I make the following additional findings of fact:

Applicant is a 42-year-old employee of a defense contractor who works as a program administrator dealing with

financial issues. She and her husband filed for bankruptcy under Chapter 7 in 2004 which was discharged in May, 2006 (Exh. C 2). Twenty eight delinquent debts totaling \$32,000.00 were included on the SOR and all but one were included in the bankruptcy.

The events leading up to the bankruptcy were as follows:

Applicant's husband and his father had a farm and ranch operation when his father died in 2001. Because the income from the enterprise had been somewhat marginal, the family decided to sell the property and pay off the mortgage. Her husband began a job selling insurance. This was not successful and he took other jobs until March, 2006 when he was diagnosed with cancer requiring treatment.

In 2002, and 2003, Applicant had a series of female medical problems resulting in major surgery. Those medical expenses not compensated by insurance totaled \$ 2,300.00 and were included in the bankruptcy (SOR 1.a. 3, 4, 13, 14, and 23). While starting her recuperation, their son was involved in a serious motorcycle accident that resulted in extensive medical expenses including air evacuation not fully compensated by their insurance totaling nearly \$25,000.00. (SOR 1.a. 1,2,4,5,8,13,16,17,18,25, and 26). In 2003, her husband had surgery which added another \$500.00 to the family medical expenses (SOR 1.a. 10, and 11) (See Exh. B Medical records for all three family members).

Applicant and her husband began credit counseling in March, 2004, and filed for bankruptcy one month later. They still receive financial counseling from a program in their church. The debt listed at SOR 1.a.12 for \$1,798.00 for furniture purchased in 1998 was not included in bankruptcy but has recently been paid in full through \$75.00 monthly payments.

Applicant and her husband have been married for 21 years and have two children, a daughter age 22 and a son who is 18. The daughter is in college and the son has recently graduated from high school. The family is well regarded in their community and are active in their church and community life (TR. 55). She is a well regarded employee of her company respected for her honesty and work ethic (Exhs. F and G and TR. 59).

Applicant's monthly pay from her employer is \$4,500.00 and she has a part time job in a bank that pays her an additional \$300.00 per month. Because of her husband's current illness he is now receiving Social Security disability payment of \$1,019.00 per month (Exh. E). They have recently re-financed their home to consolidate mortgage payments of \$664.00 per month (Exh. C 3 and 4). They have no car payments and no additional debt except to a hospital for \$1,800.00 connected with her husband's illness. A payment plan has been agreed to for monthly payments of \$75.00 which she is paying regularly.

POLICIES

"[N]o one has a 'right' to a security clearance." *Department of the Navy v. Egan*, 484 U.S. 518, 528 (1988). 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." *Id.* at 527.

An evaluation of whether the applicant meets the security guidelines includes consideration of the following factors: (1) the nature, extent, and seriousness of the conduct; (2) the circumstances surrounding the conduct; (3) the frequency and recency of the conduct; (4) the individual's age and maturity at the time of the conduct; (5) the voluntariness of participation; (6) the presence or absence of rehabilitation and other behavioral changes; (7) the motivation for the conduct; (8) the potential for pressure, coercion, exploitation, or duress; and (9) the likelihood of continuation or recurrence.

Directive, ¶ E2.2.1. Security clearances are granted only when "it is clearly consistent with the national interest to do so." Executive Order No. 10865 § 2. *See* Executive Order No. 12968 § 3.1(b).

Initially, the Government must establish, by something less than a preponderance of the evidence, that conditions exist in the personal or professional history of the applicant which disqualify, or may disqualify, the applicant from being eligible for access to classified information *See Egan*, 484 U.S. at 531. The applicant then bears the burden of

demonstrating it is clearly consistent with the national interest to grant or continue a security clearance. "Any doubt as to whether access to classified information is clearly consistent with national security will be resolved in favor of the national security." Directive, ¶ E2.2.2. "[S]ecurity clearance determinations should err, if they must, on the side of denials." *Egan*, 484 U.S. at 531. *See* Executive Order No. 12968 § 3.1(b).

CONCLUSIONS

Upon consideration of all the facts in evidence, and after application of all appropriate adjudicative factors, I conclude the following with respect to all allegations set forth in the SOR:

Applicant's delinquent debts and filing for bankruptcy prompted the allegation of security concern under Guideline F since an individual who is financially overextended is at risk of having to engage in illegal acts to generate funds. (E2.A6.1.1.) Conditions that could raise a security concern and may be disqualifying include a history of not meeting financial obligations (E2.A6.1.2.1.) and evidence of inability or unwillingness to satisfy debts. (E2.A6.1.2.3.) Mitigating Conditions (MC) might include the fact that the conditions that resulted in the behavior were largely beyond the person's control (E2.A6.1.3.3.), and 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.A6.1.3.4.) ,and the person has initiated a good-faith effort to repay overdue creditors or otherwise resolve debts. (E2.A6.1.3.6.).

Applicant and her family encountered a series of medical and financial misfortunes over the

past four years that were beyond their control and, in combination, caused a breakdown in the family finances. The family has stuck together through these problems and, through the hard work of Applicant with her present employment in the defense industry and part time work, they are now in a position to keep on a sound financial footing. The present health problems of her husband has generated some additional debt but the social security payments now being made seem sufficient to overcome any likely problems. They sought, received, and continue financial counseling. The bankruptcy discharge has relieved them of the debts that were primarily caused by the son's accident. Thus, I find the three mitigating conditions applicable.

In all adjudications the protection of our national security is of paramount concern. Persons who have access to classified information have an overriding responsibility for the security concerns of the nation. The objective of the security clearance process is the fair-minded, commonsense assessment of a person's trustworthiness and fitness for access to classified information.

The "whole person" concept recognizes we should view a person by the totality of their acts and omissions. Each case must be judged on its own merits taking into consideration all relevant circumstances, and applying sound judgment, mature thinking, and careful analysis. Applicant impressed me at the hearing as a competent person who had taken charge of family financial and medical problems that were largely beyond her control and would continue to do so to insure that there would be no recurrence. The combination of events for the family created a compounding of the difficulties and there is little likelihood of a continuance or recurrence of the problems that gave rise to this proceeding.

After considering all the evidence in its totality, and as an integrated whole to focus on the whole person of Applicant, I conclude that a security clearance should be granted.

FORMAL FINDINGS

Formal findings as required by the Directive (Par. E3.1.25) are as follows:

Paragraph 1. Guideline F: FOR APPLICANT

Subparagraphs 1.a.(1)-(28): For Applicant

DECISION

In light of all of the circumstances presented by the record in this case, it is clearly consistent with the national interest

to grant or renew a security clearance for Applicant. Clearance is granted.

Charles D. Ablard

Administrative Judge