

DATE: September 11, 2006

In re:

SSN: -----

Applicant for Security Clearance

ISCR Case No. 05-07353

DECISION OF ADMINISTRATIVE JUDGE

ELIZABETH M. MATCHINSKI

APPEARANCES

FOR GOVERNMENT

Braden M. Murphy, Esq., Department Counsel

FOR APPLICANT

Pro Se

SYNOPSIS

Applicant is legally responsible for \$34,419 in delinquent credit card debt incurred for her benefit. A mortgage lender is pursuing collection of another \$48,177 on an installment loan Applicant and her former spouse entered into during their marriage. In April 2006, Applicant retained legal counsel to resolve the issue of her liability with regard to this mortgage and to pursue a bankruptcy discharge of her legitimate debt. Financial considerations concerns persist where Applicant's personal financial situation remains tenuous and the debts are unresolved.

STATEMENT OF THE CASE

On November 2, 2005, the Defense Office of Hearings and Appeals (DOHA) issued a Statement of Reasons (SOR) to the Applicant. The SOR detailed reasons under Guideline F, financial considerations, 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 the Applicant. [\(1\)](#)

On November 29, 2005, Applicant answered the SOR and requested a hearing before a DOHA administrative judge. The case was assigned to me on February 2, 2006, and I convened a hearing on April 20, 2006. Six government exhibits and six Applicant exhibits were admitted, and testimony was taken from Applicant, as reflected in a transcript received May 3, 2006.

FINDINGS OF FACT

DOHA alleged under Guideline F that Applicant owed delinquent debt totaling \$69,818, \$35,000 of which was for a second mortgage. Applicant denied the two minor debts, averring the \$194 telephone debt in ¶ 1.a. had been incurred by her former spouse and she had paid the \$205 medical debt in ¶ 1.e. Applicant also indicated that, on their divorce, her ex-husband was responsible for the mortgages, including the second mortgage (¶ 1.f.), and she had made her payments as required before the divorce. Applicant attributed the credit card debt to one year of unemployment and a halving of

her income on her return to work. She added she had considered filing for bankruptcy but would "rather just let the 'charge offs' stand, and work at rebuilding [her] credit in the future."

Applicant's admissions to delinquent debt are incorporated as findings of fact. After a thorough review and consideration of the evidence of record, I make the following additional findings:

Applicant is a 38-year-old senior job project administrator who has worked for her current employer, a defense contractor, since March 2003. She works at a U.S. military installation where she provides administrative support (setting up international meetings and conferences, arranging travel and maintaining calendars of U.S. government civilian employees, working with the foreign disclosure office as to what can and cannot be released) for a group involved in coordinating with foreign governments on the procurement and setup of a joint tactical information system. She held an interim secret-level clearance until it was withdrawn in 2005. She requires a secret clearance for her duties.

A high school graduate, Applicant was a federal civil service employee from July 1988 to October 1992. She served as secretary to a military colonel at the same installation where she presently is a DoD contractor employee. Applicant held a secret-level security clearance and had classified access during that time.

In October 1992, Applicant left government service to work as office manager for her former supervisor, who had retired from the U.S. military and opened up a new office in another state for a locally based defense contractor. While in that position, Applicant got married in late April 1994.

In February 1995, Applicant started working for a temporary agency as she wanted to explore employment opportunities in the business world. In March or April 1995, Applicant was sent on a temporary assignment to a major credit card company. In November 1995, Applicant became a full-time employee of the credit card company.

In September 1995, Applicant and her husband took out an \$82,924 mortgage loan to purchase their home. Monthly loan repayments were \$778. In November 1996, Applicant and her spouse took out a second mortgage of \$30,000. They also overextended themselves on credit, charging on accounts opened in Applicant's name (¶¶ 1.c. and 1.d.) appliances for the home, among other things. On two other of her credit card accounts, Applicant took cash advances totaling about \$17,000 to help out her parents-in-law who had financial problems of their own. Her in-laws were supposed to make the payments on the debts. One account reached a high credit balance of \$10,850 before it was eventually satisfied after collection. To satisfy the debt, Applicant, who could legally access their account after her divorce from their son, transferred the funds from their account to hers without their knowledge. She had attempted to obtain their permission before hand without success.

In April 1999, Applicant and her spouse separated. She left with just her clothes and some family heirlooms. That November, Applicant opened up a new credit card account (¶ 1.b.). In December 1999, Applicant and her spouse entered into a property settlement agreement pending final dissolution of their marriage. Each was to be responsible for the consumer credit obligations incurred in his/her own name. As to Applicant, this included individual revolving charges opened in May 1997 and May 1998 on which were owed respective balances of about \$11,138 (¶ 1.d.) and \$10,104 (¶ 1.c.). All personal property was divided so that the party then in possession retained exclusive control; so Applicant kept her vehicle, a 1999 economy car financed in May 1999 on which she was making timely payments of \$380. Her spouse assumed sole possession of the marital home. Beginning in July 2000, Applicant was to make the monthly payment of \$203 on the second mortgage (¶ 1.f.) for two months and her spouse the payment for the third month with the schedule to continue until May 2003 when the second mortgage was satisfied. He had until May 2003 to refinance the first mortgage in his name only, at which time Applicant was to sign over her share of the house to him.

Applicant was granted a divorce from her spouse in March 2000. She received a job promotion to senior site analyst in information technology. Transferred to a new area, she ran up charges totaling about \$10,389 on a credit card (¶ 1.b.) to move and establish her new domicile. Applicant testified she paid her ex-husband \$12,000 to cover her share of the second mortgage (Tr. 32, 62), although she provided no documentation of the claimed electronic transfers of funds from her personal account to their joint checking account.

Finding it difficult to keep up with her credit card obligations, Applicant arranged to repay her consumer credit debt through a credit counseling company in 2001. She did not follow through as she lost her job in November 2001. Her

problems on the job started after she allowed another senior site analyst without authorization access to the network through her computer so that he could get the job done. She was placed on probation and her access to the network was restricted. After she subsequently made a change to the network without authorization, she was involuntarily terminated for violation of a company policy that she claims she had not known about. She was out of work for about 13 months. During this lengthy unemployment, she cashed in all her stocks and 401(k) assets of between \$20,000 and \$30,000 to cover her living expenses as well as borrowed from her father.

Applicant's ex-husband paid \$850 on the second mortgage in early 2002. In April 2002, Applicant's ex-husband filed for Chapter 7 bankruptcy, listing as secured claims the two mortgages on the marital home with \$14,000 of the \$29,000 balance of the second mortgage unsecured. He expressed an intent to reaffirm the second mortgage, and listed Applicant as a creditor, although it is not clear from her ex-spouse's petition whether it was because of her payments to him for the second mortgage. The primary mortgagor filed for relief from the automatic stay so that it could maintain its lien and pursue legal remedies, which was granted in June 2002. In July 2002, Applicant's ex-husband was granted a Chapter 7 discharge. Applicant was led to understand that the home was subsequently foreclosed on.

In summer 2002, Applicant moved to her present locale. In December 2002, Applicant began working as a network administrator at a small call services center, at about half of the salary she had earned in the employ of the credit card company. In early March 2003, she started her current job. Needing a secret-level clearance for her duties, she completed a security clearance application (SF 86) on arch 21, 2003. She listed her employment termination in November 2001 for "supposedly" violating the company's policy regarding network administration, and one delinquent VISA debt incurred by her in-laws on her account.

Sometime in March or April 2003, Applicant incurred medical costs that were not covered by insurance. In October 2003, a local hospital placed a \$205 debt for collection (¶ 1.e.). In April 2003, she filed her federal income tax return for the previous year. Because she had cashed in her 401(k) and stocks, she owed a federal tax liability of almost \$8,000. She arranged with the Internal Revenue Service (IRS) to repay the debt at \$200 per month. Two of the credit card debts she had taken responsibility for in the divorce (¶¶ 1.c. and 1.d.), as well as the credit card debt she incurred in her relocation in 2000 (¶ 1.b.), became seriously delinquent during her unemployment. In May 2003, debt balances of \$10,389 (¶ 1.b.), \$10,104 (¶ 1.c.), and \$11,138 (¶ 1.d.) were charged off by the respective creditors. These debts were not listed on her SF 86. In December 2003, Applicant received a demand for payment of the second mortgage on the marital home.

A check of Applicant's credit on February 6, 2004, revealed the three charged off credit cards (¶¶ 1.b., 1.c., 1.d.) as well as the VISA card debt incurred by her in-laws that had been satisfied after collection. The second mortgage on the marital home was listed on her credit report as sixty days past due on a balance of \$29,189 with date of last activity February 2002. The first mortgage was listed as having a zero balance because of foreclosure. Two unpaid collection accounts were reported: the \$205 in emergency services placed in October 2003, and a \$198 (balance \$194) telephone services debt placed in January 2001 (¶ 1.a., disputed by Applicant). Several other accounts were rated "pays as agreed," including her auto loan which she had satisfied in full with the funds withdrawn from her 401(k).

On March 11, 2004, Applicant was interviewed by a special agent of the Defense Security Service (DSS) about the outstanding delinquencies. Applicant did not contest the validity of those debts in ¶¶ 1.b., 1.c., and 1.d. She denied any knowledge of the telephone debt (¶ 1.a.) and telephoned the collection agency during the interview. She was informed it was a mistake and should be removed from her credit record. Applicant averred that she had paid her ex-husband \$12,000 to cover her share of the second mortgage but had since learned none of that money went to pay the loan. She provided a personal financial statement showing a net monthly remainder of \$597 after payment of expenses (no rent costs as she was living with friends in a home owned by her parents), ⁽²⁾ \$200 to the IRS, and \$650 to her father and a friend for personal loans. Not making any payments on her delinquent credit card debts, Applicant expressed her intent to consult with a financial advisor to consolidate or pay off her credit card delinquencies.

Applicant's credit report of September 19, 2005, showed no progress in repaying her debts, and the balance of ¶ 1.d. had increased to \$13,926 as of August 2005. The second mortgage was still listed on her credit report, although with no update since April 2002 when the account had a reported balance of \$29,189. No new credit card delinquencies were listed.

On November 2, 2005, DOHA issued an SOR to Applicant alleging financial considerations concerns because of the three delinquent credit card debts, the telephone and medical debts in collection, and the second mortgage. Applicant denied any liability for the telephone and medical debts, as she had found out that her ex-husband had opened the telephone account in August 1999 after they had separated, and she had paid all of her past medical bills. She contended she had paid her share of the second mortgage. As for the credit card debt accumulated in her name during her marriage, Applicant indicated she had considered filing for bankruptcy but other "personal issues" in her life had delayed resolution.⁽³⁾ Since the creditors had stopped calling, she would "rather just let the 'charge-offs' stand, and work at rebuilding [her] credit in the future."

In December 2005, Applicant received a demand for payment of the entire balance of the second mortgage, a reported \$48,177.73. In March 2006, Applicant worked a reduced schedule of 32 hours a week as she was experiencing work-related stress, with a loss of \$400 to \$600 in pay. On receipt of her income tax refund in March, she had to buy a refrigerator at a cost of \$800 for her living quarters in the home she shares with her brother and his family. She started back full-time in early April. Her annual salary for full-time work is about \$46,000.

As of her hearing on April 20, 2006, her federal tax debt had been paid in full from her payments and IRS interception of about \$2,000 in tax refunds. She had repaid her friend for the personal loan but was still paying her father. She is current in her living expenses, which include rent of \$500 per month, cellular phone, and cable television, but lives paycheck to paycheck. Applicant has one credit card that she is not actively using. She has about \$30 to \$50 in her savings account. Applicant still owes about \$600 for radiology services she received in March/April 2003. Since April or May 2005, she has incurred out-of-pocket medical expenses of about \$250 per month (\$200 since about February 2006). In the past year, she paid veterinary costs of at least \$500 for the care of her dog.

On or before April 17, 2006, Applicant retained legal counsel to pursue bankruptcy. She has made no payments on her \$34,419 in delinquent credit card debt "because [she] wasn't sure if making a payment was going to mess [her] up in the long run as far as what the next steps were." (Tr. 84) Applicant hopes to avoid bankruptcy but will file if it is the only way to discharge her liability for the second mortgage.

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. The President has 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." Exec. Or. 10865, *Safeguarding Classified Information within Industry* § 2 (Feb. 20, 1960). Eligibility for a security clearance is predicated upon the applicant meeting the security guidelines contained in the Directive. An applicant "has the ultimate burden of demonstrating that it is clearly consistent with the national interest to grant or continue her security clearance." ISCR Case No. 01-20700 at 3.

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. The decision to deny an individual a security clearance is not necessarily a determination as to the loyalty of the applicant. *See* Exec. Or. 10865 § 7. It is merely an indication that the applicant has not met the strict guidelines the President and the Secretary of Defense have established for issuing a clearance.

Concerning the evidence as a whole, the following adjudicative guideline is most pertinent to this case:

Financial Considerations. An individual who is financially overextended is at risk of having to engage in illegal acts to generate funds. Unexplained affluence is often linked to proceeds from financially profitable criminal acts. (¶ E2.A6.1.1.)

CONCLUSIONS

Having considered the evidence of record in light of the appropriate legal precepts and factors, and having assessed the credibility of those who testified, I conclude the following with respect to Guideline F:

Under the financial considerations guideline, security concerns arise when the applicant is shown to have a history of excessive indebtedness, recurring financial difficulties, or a history of not meeting her financial obligations. The government must consider whether individuals granted access to classified information are, because of financial irresponsibility, in a position where they may be at risk of having to engage in illegal acts to generate funds. Applicant exhibited questionable financial judgment during her marriage, overspending on credit to furnish and equip her marital home, taking cash advances on her personal accounts to bail out her in-laws, and then trusting her in-laws to repay the obligations when they had a track record of financial mismanagement. On her divorce, Applicant was solely responsible for about \$21,242 in joint credit card debt incurred in the marriage. She ran up another \$10,389 in credit charges on a new account on her job relocation in March 2000. Applicant failed to make timely payments on these consumer credit accounts and they were subsequently charged off or placed for collection in May 2003. Furthermore, Applicant owes a \$205 medical debt that has been in collection since October 2003. She does not dispute that she incurred the services when she lacked insurance coverage, and has not met her burden of proving payment of the debt. Disqualifying conditions (DC) ¶ E2.A6.1.2.1. *A history of not meeting financial obligations*, and ¶ E2.A6.1.2.3. *Inability or unwillingness to satisfy debts*, apply.

With respect to the second mortgage on the marital home (¶ 1.f.), the assignee is pursuing her for \$48,177.73. (Ex. F) Under the property settlement, starting July 2000 Applicant was to make the loan payments for two months with her former spouse paying the third month. This schedule was to continue until May 2003 when the loan was to be paid in full by them paying their respective shares of any remaining principal. Applicant provided no documentation corroborating the \$12,000 in payments she made to her former spouse, but she was listed as a creditor on his bankruptcy petition, albeit not in relation to a specific debt. There is no obvious alternative explanation for her inclusion as a creditor. However, Applicant has not met her burden of showing she is no longer legally liable for the loan balance. While her former spouse was granted a discharge, the bankruptcy petition reflects his intent to reaffirm that debt. There is no evidence the debt was paid off in the foreclosure by the primary mortgagor or that the creditor's rights were altered by the property settlement between Applicant and her former husband. Whether the debt is \$29,189 as reflected in Applicant's December 2005 credit report (listed balance as of April 2002) or as high as \$48,177.73, it is sizeable in relation to Applicant's income and in active collection, increasing the financial pressures on her. DC ¶ E2.A6.1.2.3. applies, as Applicant does not have the ability at present to satisfy the debt.

Listed as in collection on Applicant's credit reports is a \$194 telephone debt (¶ 1.a.). Applicant has consistently maintained that she has had no knowledge of the debt. When Applicant contacted the collection agency in the presence of a DSS agent in March 2004, she was informed that the account was opened after she and her spouse had separated and that it was an error. While the original creditor has informed her she must pursue her ex-spouse for fraud, she did not incur the debt and knew nothing about it until she was shown her credit report in March 2004. A favorable finding is warranted as to that debt.

Mitigating condition (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)* applies. The medical debt in collection was for emergency care when she lacked insurance coverage. While she mismanaged her credit, the credit card debt in ¶¶ 1.b., 1.c., and 1.d. became seriously delinquent because of lengthy unemployment. Having been on probation for violation of a company policy, she was negligent in not educating herself as to the company policy, but she did not foresee the termination. Applicant relied on her ex-husband's assertions that the second mortgage was being taken care of.

Even where debt is not caused by financial irresponsibility, it may generate financial pressures of significant security concern. Her outstanding credit card delinquency of more than \$34,000--which she has never disputed--is three-quarters of her annual salary. As of December 2003, she knew that the lender for the second mortgage was pursuing collection of then about \$35,000. She has made no payments on those debts, and did not follow through on her March 2004 intent to obtain the assistance of a financial advisor, probably because she had to make monthly installment payments to the IRS for having withdrawn her 401(k) and cashed in her stocks when she was unemployed. Her admission in November 2005 that she would "rather just let the 'charge-offs' stand," is telling of a tenuous financial situation, as she has incurred

unexpected medical (mental health) costs for herself and veterinary costs (\$500) for her pet since 2005. A recent non-discretionary expenditure of \$800 for a refrigerator for her rental unit also set her back financially. She deserves significant credit for satisfying her federal income tax debt through installment payments totaling about \$6,000. She paid back personal loans extended to her by a friend. She has also eliminated any concerns of future credit card abuse by no longer relying on credit for purchases, and in April 2006 took an initial step toward resolving her debt by retaining legal counsel to pursue a likely bankruptcy. Although indicative of good faith on her part (¶ E2.A6.1.3.6. *The individual initiated a good-faith effort to repay overdue creditors or otherwise debts*), it is not clear from her track record when (or indeed if, given her preference to not file) she will follow through with the bankruptcy. She has only between \$30 and \$50 in savings and lives paycheck to paycheck. It is too soon to conclude that her financial problems are safely behind her. SOR ¶¶ 1.b., 1.c., 1.d., 1.e. and 1.f. are resolved against her.

FORMAL FINDINGS

Formal findings as required by Section 3, Paragraph 7 of Enclosure 1 to the Directive are hereby rendered as follows:

Paragraph 1. Guideline F: AGAINST THE APPLICANT

Subparagraph 1.a.: For the Applicant

Subparagraph 1.b.: Against the Applicant

Subparagraph 1.c.: Against the Applicant

Subparagraph 1.d.: Against the Applicant

Subparagraph 1.e.: Against the Applicant

Subparagraph 1.f.: Against the 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 is denied.

Elizabeth M. Matchinski

Administrative Judge

- 1.
2. Applicant testified that her father did not ask her to pay rent during that time ("my dad was letting it slide") because of the debt she already had. (Tr. 79)
3. Applicant was not specific about the personal issues, but she testified that she has been seeking a psychologist and a therapist for the past year to deal with a chemical imbalance that she has finally gotten under control. (Tr. 86)