

DATE: September 29, 2006

In re:

SSN: -----

Applicant for Security Clearance

CR Case No. 05-11354

DECISION OF ADMINISTRATIVE JUDGE

ARTHUR E. MARSHALL, JR.

APPEARANCES

FOR GOVERNMENT

Ray T. Blank, Jr., Esq., Department Counsel

FOR APPLICANT

Pro se

SYNOPSIS

Applicant is a 53-year-old office assistant working for a defense contractor. Shortly after refinancing their home in 2004, she discovered her husband was having an affair. The couple separated and, left to cover expenses solely on her own, she filed for Chapter 7 Bankruptcy while undergoing some health issues. Of approximately \$5,500 in debts, she has satisfied about \$1,500, is in repayment or has made arrangements to repay approximately \$1,030, and the remainder consists of disputed medical bills her health insurer did not address. Applicant has mitigated security concerns. Clearance is granted.

STATEMENT OF THE CASE

On March 30, 2004, Applicant applied for a security clearance and submitted a Security Clearance Application (SF-86). On January 17, 2006, the Defense Office of Hearings and Appeals (DOHA) issued a Statement of Reasons (SOR) to Applicant, pursuant to Executive Order 10865, *Safeguarding Classified Information Within Industry*, February 20, 1960, 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. The SOR detailed reasons, under Guideline F (Financial Considerations) and Guideline E (Personal Conduct), 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 a clearance should be granted, continued, denied, or revoked.

In a notarized statement, dated February 28, 2006, Applicant responded to the SOR allegations, and elected to have her case decided on the written record in lieu of a hearing. Department Counsel submitted the government's written case on May 22, 2006. A complete copy of the file of relevant material (FORM) was provided to Applicant, [\(U\)](#) and she was afforded an opportunity to file objections and submit material in refutation, extenuation, or mitigation. Any such submissions were due by June 30, 2006. Applicant's response to the FORM, dated August 15, 2006, was admitted into the record without objection by Department Counsel. The case was assigned to me on August 29, 2006.

FINDINGS OF FACT

Applicant's admissions to the allegations in the SOR are incorporated herein. In addition, after a thorough and careful review of the evidence and exhibits, I make the following findings of fact:

Applicant is a 53-year-old office assistant for a defense contractor. She has worked for the same employer since February 2002. Prior to her current employment, Applicant worked as a drawing clerk in the shipbuilding industry for 19 years, and received certification in Basic Keyboarding, Windows 95/NT, and Excel. She is divorced and has two grown children.

Throughout her adult life and career, Applicant has always carried some debt. She has, however, struggled to make ends meet and to address her obligations. Some debt was already existent when, in the early part of 2004, Applicant and her husband refinanced their home. A few months later, she discovered that her husband was being unfaithful in their marriage, and the couple separated. Unable to afford the payments on the refinanced home herself, and with her estranged husband unwilling to contribute to those payments or her upkeep, she filed for Chapter 7 Bankruptcy protection in October 2004. While the bankruptcy gave her some relief in the wake of her husband's desertion and eventual divorce, she was unaware of the full extent of the debt that remained.

On March 20, 2004, Applicant completed and signed a SF-86 application. In response to Question 37 (**Your Financial Record - Unpaid Judgments** *In the last 7 years, have you had any judgments against you that have not been paid?*), Applicant answered "no." The SOR alleges she should have included the judgment noted as SOR allegation 1.b, below. When answering Question 38 (**Your Financial Delinquencies - 180 Days** *In the last 7 years, have you ever been over 180 days delinquent on any debt(s)?*), she wrote "no." The SOR alleges that she should have listed those accounts listed in SOR subparagraphs 1.c and 1.f through 1.j. Applicant did not know the contents of her credit bureau report at the time she signed her SF-86, and did not intend to provide misleading or false answers on any of the SF-86 questions.

At issue in the SOR are the bankruptcy and the following debts which were noted on her credit bureau report as of November 2005:

SOR 1.b - ADVERSE JUDGMENT FOR \$465: This judgment was entered in error. Applicant's balance on an apartment rental of \$276.50 was paid on July 10, 2001, within 40 days of vacating the rental property. ⁽²⁾

SOR 1.c - COLLECTION ACCOUNT FOR APPROXIMATELY \$782: This debt was apparently incurred for a course or class that Applicant did not complete. She has contacted the business to initiate a payment plan and to complete the course. ⁽³⁾

SOR 1.d - COLLECTION ACCOUNT WITH CABLE COMPANY FOR APPROXIMATELY \$465: This debt was satisfied with the July 10, 2006, return of a cable converter box. ⁽⁴⁾

SOR 1.e - COLLECTION ACCOUNT WITH CABLE COMPANY FOR APPROXIMATELY \$221: Repayment on this account resumed in July 2006, and the balance owed is currently \$250. ⁽⁵⁾

SOR 1.f - MEDICAL COLLECTION ACCOUNT FOR APPROXIMATELY \$224: Although Applicant admits that she owes on this regional hospital account, she has shown that some of the balance is attributable to her ex-husband and his daughter, and that she has commenced repayment on the balance in around July 2006. ⁽⁶⁾

SOR 1.g - MEDICAL COLLECTION ACCOUNT FOR APPROXIMATELY \$2,218: Although Applicant admits that she owes on this cardiovascular account, she is not aware as to why her health insurance did not pay on it. She is investigating this balance and disputes total liability. ⁽⁷⁾

SOR 1.h - COLLECTION ACCOUNT WITH BANK FOR \$297: This account was settled in full on October 14, 2004. ⁽⁸⁾

The following obligation was existent as of June 2005:

SOR 1.i - MEDICAL COLLECTION ACCOUNT FOR APPROXIMATELY \$707: Although Applicant admits liability for this account, she is not aware as to why her health insurance did not pay on it. She is investigating this balance and disputes total liability. [\(9\)](#)

The following obligation was existent as of June 2004:

SOR 1.j - MEDICAL COLLECTION ACCOUNT FOR APPROXIMATELY \$50: Although Applicant admits liability for this orthopedic physician's account, she is not aware as to why her health insurance did not pay on it. She is investigating this balance and disputes total liability. [\(10\)](#)

Today, Applicant's credit report is much improved. [\(11\)](#) Of the approximately \$5,430 originally at issue, she has addressed approximately \$1,227 of the debt alleged. Of the remaining approximately \$4,203, approximately \$3,200 is disputed medical debt which should have been processed by her health insurer between 2004 and the present. That leaves approximately \$1,003, which has either been put into repayment or for which repayment is being arranged. She currently lives alone and frugally. Applicant has expressed her resolve to address the remainder of her debt.

POLICIES

Enclosure 2 of the Directive sets forth adjudicative guidelines to be considered in evaluating a person's eligibility to hold a security clearance. Included in the guidelines are disqualifying conditions (DC) and mitigating conditions (MC) applicable to each specific guideline. Additionally, each security clearance decision must be a fair and impartial commonsense decision based on the relevant and material facts and circumstances, the whole-person concept, along with the factors listed in the Directive. Specifically these are: (1) the nature and seriousness of the conduct and surrounding circumstances; (2) the frequency and recency of the conduct; (3) the age of the applicant; (4) the motivation of the applicant, and the extent to which the conduct was negligent, willful, voluntary, or undertaken with knowledge of the consequences; (5) the absence or presence of rehabilitation; and (6) the probability that the circumstances or conduct will continue or recur in the future. Although the presence or absence of a particular condition or factor for or against clearance is not outcome determinative, the adjudicative guidelines should be followed whenever a case can be measured against this policy guidance.

The sole purpose of a security clearance determination is to decide if it is clearly consistent with the national interest to grant or continue a security clearance for an applicant. [\(12\)](#) The government has the burden of proving controverted facts. [\(13\)](#) The burden of proof is something less than a preponderance of evidence. [\(14\)](#) Once the government has met its burden, the burden shifts to an applicant to present evidence of refutation, extenuation, or mitigation to overcome the case against

her. [\(15\)](#) Finally, the applicant has the ultimate burden of persuasion to obtain a favorable clearance decision. [\(16\)](#)

No one has a right to a security clearance [\(17\)](#) and "the clearly consistent standard indicates that security clearance determinations should err, if they must, on the side of denials." [\(18\)](#) Any reasonable doubt about whether an applicant should be allowed access to sensitive information must be resolved in favor of protecting such sensitive information. [\(19\)](#) The decision to deny an individual a security clearance is not necessarily a determination as to the loyalty of an applicant. [\(20\)](#) 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 security clearance.

Based upon consideration of the evidence, I find the following adjudicative guidelines most pertinent to the evaluation of the facts in this case:

Guideline F - Financial Considerations. *The Concern:* 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. [\(21\)](#)

Guideline E - 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. ⁽²²⁾

Conditions pertaining to these adjudicative guidelines that could raise a security concern and may be disqualifying, as well as those which would mitigate security concerns, are set forth and discussed in the conclusions below.

CONCLUSIONS

I have carefully considered all the facts in evidence and the legal standards. The government has set forth arguments for disqualification under both Guideline F (Financial Considerations) and Guideline E (Personal Conduct). For clarity, I will discuss each separately.

Financial Considerations

The government has provided evidence that Applicant sought Chapter 7 Bankruptcy protection in 2004 and that she currently has outstanding debts. Applicant admits that she filed for bankruptcy, has maintained some degree of debt throughout her adult life, and currently has some debt which remains outstanding or are disputed. Consequently, under Guideline F, Financial Considerations Disqualifying Condition (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.

With the government's case established, the burden shifts to Applicant to present evidence of refutation, extenuation, or mitigation to overcome the case against him. Here, Applicant admits that her debts have been multiple in number. She also concedes that, not counting those medical accounts she disputes, at least two delinquent accounts remain unpaid. Therefore, neither Financial Considerations Mitigating Condition (FC MC) E2.A6.1.3.1 (*the behavior was not recent*) nor FC MC E2.A6.1.3.2 (*it was an isolated incident*) applies.

When Applicant and her husband refinanced their home in early 2004, she had no idea what the remainder of the year would bring. By mid-year, she discovered her husband's infidelity, they separated, he ceased contributing to her upkeep and the house payments, and she faced health problems as the couple moved toward divorce. As a result, she declared Chapter 7 Bankruptcy to start her post-marital life with a relatively clean slate as a single woman. Based on these facts, 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)*) applies.

There is no evidence that Applicant has received financial counseling. This is unfortunate since the such counseling could aid her in more efficiently satisfying her meager debt balance and assist her in better managing her obligations in the future. In the absence of such counseling, however, 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.

Of the approximately \$5,430 originally at issue, she has addressed approximately \$1,227 of the debt alleged. Of the remaining approximately \$4,203, approximately \$3,200 is disputed medical debt which should have been processed by her health insurance company within the last two years. That only leaves about \$1,000, a sum which has either been put into repayment or for which repayment is being arranged. In her demonstration that some of the debts alleged were previously satisfied, and by showing her efforts to work out a payment plan on two of the debts, Applicant has shown that she has acted in good-faith with regard to her meager debt. ⁽²³⁾ FC MC E2.A6.1.3.6 (*[t]he individual initiated a good-faith effort to repay overdue creditors or otherwise resolve debts*) applies.

Personal Conduct

The Regulation also sets out several potentially disqualifying and mitigating conditions under Guideline E. Here, the government first argues that Applicant intentionally falsified material facts when she failed to disclose the adverse judgment noted in the SOR at subparagraph 1.b. As shown by Applicant, her negative answer to the question of whether she had any unpaid judgments was correct: the unpaid balance on that apartment rental was paid within 40 days of her

vacating the property in 2001, the judgment was entered in error, and counsel for the apartment complex ultimately moved to have the judgment vacated. Therefore, her answer on Question 37 of the SF-86 was clearly correct, and not the product of an intent to falsify, conceal, or mislead.

The government also argues that Applicant falsified material facts on her security clearance application when, in response to Question 38, she failed to list accounts which were delinquent over 180 days. Specifically, the government points to those accounts noted in the SOR at subparagraphs 1.c and 1.f through 1.j, as gathered from credit reports dated June 2004, June 2005, and November 2005. Applicant has shown, however, that the government's allegations are not necessarily accurate. For example, debt cited at SOR subparagraph 1.h, which the government gleaned from her November 2005 credit bureau report, had been satisfied previously in October 2004. Moreover, the credit reports at issue fail to clearly demonstrate that she was necessarily over 180 days delinquent on all the other accounts noted. Further, although Applicant conceded she has had some debts which have been past due for over 180 days, she specifically notes that she was not fully aware of what was contained in her credit reports at the time she completed her SF-86 in March 2004. Given that the credit reports upon which the government relies are all dated after March 2004, Applicant would have had to be prescient to have known what would eventually be disclosed on her credit bureau reports in the future.

Regardless, although the government has shown Applicant's answer to Question 38 is arguable incorrect with regard to some of the accounts it notes, this alone does not prove that she deliberately failed to disclose information about her finances or delinquencies. Applicant has denied intentional falsification. Deliberate omission, concealment, or falsification of a material fact in any written document or oral statement to the government when applying for a security clearance is a security concern. But every inaccurate statement is not a falsification. A falsification must be deliberate and material. It is deliberate if it is done knowingly and willfully. An omission concerning delinquencies is not deliberate if the person did not know of their existence. Here, the Applicant did not know any of the accounts at issue were delinquent. Consequently, neither Personal Conduct Disqualifying Condition (PC DC) E2.A5.1.2.2 (*[t]he deliberate omission, concealment, or falsification 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*), PC DC E2.A5.1.2.4 (*[p]ersonal conduct or concealment of information that increases an individual's vulnerability to coercion, exploitation, or duress, such as engaging in activities which, if known, may affect the person's personal, professional, or community standing or render the person susceptible to blackmail*), nor any of the other available disqualifying conditions apply.

I have considered all the facts and evidence in this matter. I also have considered the "whole person" concept in evaluating Applicant's risk and vulnerability in protecting our national interests with regard to the security concerns raised. She is a mature woman with considerable experience within the defense contract industry. When her husband left her and refused to contribute to her upkeep or the house payments, she found herself forced to file for bankruptcy protection while also dealing with personal health issues. Other than this one time deviation, Applicant's personal debt has generally been within manageable parameters. Indeed, the debt initially cited by the SOR was only about \$5,430, and she has shown that she has satisfied some of this debt, and that the majority of the balance is comprised of disputed medical bills. The amount of unresolved debt left is not large enough to be of security concern. As for whether she intentionally falsified her answers on the SF-86, she has demonstrated that her answer to Question 37 was correct, and the evidence does not demonstrate that she intentionally falsified her answer to Question 38. Taken together, Applicant has mitigated security concerns arising under the guidelines for financial considerations and personal conduct. Consequently, clearance is granted.

FORMAL FINDINGS

Formal Findings for or against Applicant on the allegations set forth in the SOR, as required by Section E3.1.25 of Enclosure 3 of the Directive, are:

Paragraph 1. Guideline F (Financial Considerations): 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

Subparagraph 1.g: For Applicant

Subparagraph 1.h: For Applicant

Subparagraph 1.I: For Applicant

Subparagraph 1.j: For Applicant

Paragraph 1. Guideline E (Personal Conduct): FOR APPLICANT

Subparagraph 1.a: For Applicant

Subparagraph 1.b: For Applicant

Subparagraph 1.c: For Applicant

DECISION

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

Arthur E. Marshall, Jr.

Administrative Judge

1. Applicant received a copy of the FORM on May 31, 2006.
2. Applicant's Response to the FORM, at 3-5. (Property Manager's letter of July 22, 2005, Attorney's July 26, 2005, Request to Vacate Judgment, and submitted Order Vacating Judgment).
3. Applicant's Response to the FORM, at 6-7 (Applicant's July 5, 2006, letter and July 26, 2006, Statement showing a current balance of \$887 and an arrangement to restart a payment plan and continue with the course work).
4. Applicant's Response to the FORM, at 1 (Applicant's Cover letter), and 8 (Copy of Receipt of Return of Converter, dated July 10, 2006).
5. Applicant's Response to the FORM, at 1 (Applicant's Cover letter), 9-11 (Paperwork concerning account from 2004 to 2006).
6. Applicant's Response to the FORM, at 13 (Credit Corporation balance sheet, with annotations).
7. Applicant's Answer to the SOR, dated February 28, 2006.
8. Applicant's Answer to the SOR, *supra*, note 7, attachment 1 (Receipt of July 27, 2005). That attachment page is followed by copies of letters sent by Applicant to the major credit reporting bureaus requesting this entry be deleted.

9. Applicant's Answer to the SOR, *supra*, note 7.

10. *Id.*

11. *See Applicant's Response to the FORM, final addendum, (Credit Report of July 28, 2006).*

12. ISCR Case No. 96-0277 at 2 (App. Bd. Jul 11, 1997).

13. ISCR Case No. 97-0016 at 3 (App. Bd. Dec 31, 1997); Directive, Enclosure 3, ¶ E3.1.14.

14. *Department of the Navy v. Egan*, 484 U.S. 518, 531 (1988).

15. ISCR Case No. 94-1075 at 3-4 (App. Bd. Aug 10, 1995); Directive, Enclosure 3, ¶ E3.1.15.

16. ISCR Case No. 93-1390 at 7-8 (App. Bd. Jan 27, 1995); Directive, Enclosure 3, ¶ E3.1.15.

17. *Egan*, 484 U.S. 518, at 531.

18. *Id.*

19. *Id.*; Directive, Enclosure 2, ¶ E2.2.2.

20. Executive Order 10865 § 7.

21. Directive, Enclosure 2, ¶ E2.A6.1.1

22. Directive, Enclosure 2, ¶ E2.A5.1.1.

23. Moreover, even without subtracting out the medical bills which her health insurance company obviously failed to address or otherwise process, the negligible sum of unresolved debt remaining is not large enough to be of security concern.