

DATE: January 31, 2007

In Re:

SSN: -----

Applicant for Security Clearance

ISCR Case No. 05-12967

DECISION OF ADMINISTRATIVE JUDGE

CHARLES D. ABLARD

APPEARANCES

FOR GOVERNMENT

Nicole Noel, Esq., Department Counsel

FOR APPLICANT

Peggy L. Moore, Esq.

SYNOPSIS

Applicant mitigated financial security concerns arising from delinquent debts incurred during periods of family illnesses and marital problems with her former husband. She has disputed successfully three of the debts, resolved all but one of the remaining debts, and begun a payment plans on the last one. Clearance is granted.

STATEMENT OF CASE

On June 8, 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 July 21, 2006, Applicant responded to the SOR allegations, and requested a hearing. The matter was assigned to another judge on September 25, 2006, who scheduled a hearing for October 17, 2006, but at the request of Applicant and without objection from the government granted a continuance. The matter was assigned to me on November 1, 2006. A notice of hearing was issued on November 17, 2006, for a hearing on December 5, 2006, and held that day. The government offered four exhibits and Applicant offered eleven. All were accepted into evidence. Applicant and two witnesses testified on her behalf. The transcript was received on December 28, 2006.

FINDINGS OF FACT

Applicant admitted in full or in part all of the SOR allegations except three which she denied. All allegations related to delinquent debts. After a complete review of the record, I make the following additional findings of fact:

Applicant is a 33-year-old employee of a defense contractor who works as a technical support specialist. During her marriage which was ended by separation in 2003 and divorce in 2005, she and her husband incurred substantial debts. These were as a result of health problems in 2002 and 2003 of Applicant, her husband, and one child causing medical expenses and an inability of Applicant to work. The financial strains during this period caused the debts to become delinquent. She is now a single parent of two children ages 11 and 8. She has not received child support from her former husband in the past, but filed legal action in October 2006 to recover support from him as was required by their divorce decree. She has been working with her lawyer to counsel her in the effort to resolve the delinquent debts and secure child support payments.

The SOR alleges a total of 14 delinquent debts. Two are for automobile repossessions. One is for approximately \$10,000 and the second is for \$12,000 (SOR 1.b. and d.). Six are credit card debts totaling approximately \$7,000 (SOR 1.f.-j. and m.). The other six are for miscellaneous matters totaling approximately \$2,000 (SOR 1.a.,c., e., k., and l.). The current status of these accounts is as follows keyed to the SOR numbers:

1. 1a.-\$590 was paid in full (Exh. B).
2. 1.b.-Auto repossession for \$9,943. This auto was her husband's. He took possession upon their divorce and made some payments before repossession. Applicant has not been solicited as responsible to pay the debt (Exhs. C-1,2, and 3).
3. 1.c. Store credit of \$673 was paid in full (Exh. A-1).
4. 1.d. Auto Repossession of \$12,000 was Applicant's. She owed only \$7,000 and has reached a settlement for half of that amount with the creditor. She will pay \$153 per month until the matter is resolved. Payments are being made (Exh. D 1-3).
5. 1.e. Store debt of \$55 was disputed successfully by Applicant (Exh. A 4).
6. 1.f.-j. Credit card debts to the same card company totaling \$5,500. All accounts were settled in full (Exhs. E, F, G, H, and J).
7. 1.k. Department store debt of \$459 was disputed successfully by Applicant (Exh. A-1).
8. 1.l. Department store debt of \$324 was paid and account settled (Exhs. I -1-5).
9. 1.m. Bank debt of \$2,497 was disputed successfully by Applicant (Exh. A-2).

Thus, Applicant has fully settled all of the delinquent debts listed on the SOR except for the two auto repossessions. One, the automobile of her former husband, is not the subject of any claim against her. The other debt has been settled and she is making regular payments. In addition she has borrowed \$2,000 from her mother to pay some other debts and she is re-paying her mother at regular intervals (Exh. K).

Applicant is highly regarded by her supervisor who testified for her skills, work ethic, and trustworthiness (Tr. 27-30). A second witness who has known her for over ten years testified as to her good character, reputation for family responsibility, and honesty (Tr. 24-26). She has an annual income of approximately \$30,000. She does not now have a credit card and is on the road to financial recovery.

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 prompted allegations 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) include the fact that the conditions that resulted in the behavior were largely beyond the person's control (E2.A6.1.3.3.), 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.) All of those mitigating conditions are applicable to Applicant.

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 the importance of viewing 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 and responsible person who had taken charge of family financial problems that were largely beyond her control and would continue to do so to insure that there would be no recurrence.

A combination of events led to the financial difficulties causing the debts to become delinquent. There is little likelihood of a recurrence of the events that gave rise to Applicant's problems that led 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

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

Subparagraph 1.k.: For Applicant

Subparagraph 1.l.: For Applicant

Subparagraph 1.m.: 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