

DATE: December 27, 2006

In Re:

SSN: -----

Applicant for Security Clearance

ISCR Case No. 05-15956

DECISION OF ADMINISTRATIVE JUDGE

KATHRYN MOEN BRAEMAN

APPEARANCES

FOR GOVERNMENT

Edward W. Loughran, Department Counsel

FOR APPLICANT

Pro Se

SYNOPSIS

Applicant's financial problems raise security concerns because of her failure to resolve all her debts to several remaining creditors. While in 2005 she promised to begin a good-faith effort to resolve her debts, she resolved only some of her smaller debts. She failed to develop a plan to resolve all the debts even though she has had a stable job since 2004. Applicant failed to seek financial counseling or again to file for bankruptcy as she did in 1997 to resolve her persistent debts. While the government established security concerns about her criminal conduct and personal conduct over her failure to file tax returns from 2001 to 2004, Applicant mitigated these concerns as she attested she has filed tax returns for those years. Clearance is denied.

STATEMENT OF THE CASE

The Defense Office of Hearings and Appeals (DOHA) issued a Statement of Reasons (SOR) to the Applicant on March 17, 2006. The SOR detailed reasons why the Government could not make the preliminary positive finding that it is clearly consistent with the national interest to grant or continue a security clearance for the Applicant. ⁽¹⁾ The SOR alleges specific concerns over finances (Guideline F), criminal conduct (Guideline J), and personal conduct (Guideline E). Applicant responded to these SOR allegations in an Answer notarized on May 7, 2006, and requested a decision be made as an administrative determination. Subsequently the Department Counsel prepared a File of Relevant Material (FORM) on May 25, 2006, which was forwarded to her on May 30, 2006, with instructions to supply information within 30 days of receipt. She received the FORM on June 4, 2006, but did not submit any information by July 5, 2006. The case was assigned to me on July 14, 2006. Subsequently, Applicant submitted her response dated July 7, 2006, to which Department Counsel posed no objection. It was forwarded on July 18, 2006, and admitted as her Exhibit A.

FINDINGS OF FACT

After a complete and thorough review of the evidence in the record, and upon due consideration of that evidence, I make the following findings of fact:

Applicant, 42 years old, has been employed by a defense contractor in State #1 as a computer graphic artist since July 2004. She completed a Security Clearance Application (SF 86) on July 7, 2004. She was self-employed from March 2001 to July 2004. (Item 4)

Applicant studied at a state university from 1982 to 1983, but received no degree. Applicant married in 1986 and divorced in May 2001; she remarried in December 2001 and divorced in November 2003. She has two children born in 1986 and 1987. (Item 4) Applicant is now a single mother. (Exhibit A)

Finances, Criminal Conduct, Personal Conduct

Applicant provided an Affidavit where she stated she started working with an attorney in February 2005 to settle her accounts with her creditors, so she could make payment arrangements. She also admitted a tax lien from September 2001. She acknowledged she had not paid her taxes from 2001 to 2004, but planned to file them in order to have the lien removed. (Item 5) Applicant explained that she did not understand that failing to file income taxes was a criminal act. She believed that she would not owe taxes as she had minimal income. She subsequently filed ⁽²⁾ all of her back taxes in 2005. (Exhibit A) She denied criminal conduct in not filing federal income tax returns from 2001 to 2004 (2.a.), and also denied the personal conduct (3.a.) allegations. (Answer)

SOR 1.a. Applicant denied a debt to Creditor #1, a utility, for \$88 which was turned over for collection. The 2006 credit report showed a zero balance. (Answer; Item 8 at 1; Item 9)

SOR 1.b. Applicant denied a debt to Creditor #2 for \$338 for a debt turned over for collection; however her Personal Financial Statement in February 2005 showed payments to that creditor. (Answer; Items 5, 8, 9) She resolved this debt in May 2006. (Exhibit A)

SOR 1.c. Applicant denied a debt to Creditor #3 for \$690 for a debt turned over for collection which is reflected on credit reports from 2006. (Answer; Items 8, 9)

SOR 1.d., 1.1. Applicant denied a debt to Creditor #4 for \$1,329 for a debt turned over for collection. (Answer) However, she admitted a debt of \$922 to Creditor #4 for a medical service charge for emergency services provided to her daughter. The debt is reflected in credit reports. (Items 5, 7, 8, 9)

SOR 1.e. Applicant denied a debt to Creditor #5 for \$40 for a check returned for insufficient funds. She claimed to have no knowledge of this debt in February 2005. The debt is listed in a January 2006 credit report, but not in May 2006. She resolved this debt in April 2006. (Answer; Items 5, 8, 9; Exhibit A)

SOR 1.f. Applicant admitted a debt to Creditor #6, for \$1,382 for credit card purchases. (Answer; Items 5, 7, 8, 9) She resolved this debt in May 2006 with a payment of \$731.05. (Exhibit A)

SOR 1.g. Applicant admitted a debt to Creditor #6, for \$2,388 for credit card purchases. (Answer; Items 5, 7, 8, 9)

SOR 1.h. Applicant denied a debt to Creditor #7 for \$515; however, the debt is reported on 2006 credit reports. (Answer; Items 8, 9)

SOR 1.i. Applicant admitted a debt to Creditor #8 for \$18,344 for a debt charged off which is listed on credit reports. (Answer; Items 7,8, 9)

SOR 1.j. Applicant admitted a debt to Creditor #9 for \$11,924 for a debt charged off for a vehicle which she voluntarily returned when she knew she could not afford the \$600 monthly payments; she returned the car in October 1998. The debt remains on her credit report. (Answer; Items 5, 7)

SOR 1.k. Applicant denied a debt to Creditor #3 for \$178 for a debt turned over for collection; however, the debt was reported on a 2004 credit report. (Answer; Item 7)

SOR 1.m. Applicant began having financial troubles in 1997 after she was separated from her husband and her family

income fell from \$100,000 annually to \$40,000 annually. She filed for Chapter 7 bankruptcy in February 1997 and had approximately \$30,000 in debt discharged in April or May 1997. (Answer; Items 5, 6; Exhibit A)

Applicant in 2005 had a net monthly remainder of only \$156 to resolve her debts: she had a monthly take-home pay of \$3,168, monthly household expenses of \$2,560, and household debt payments of \$456. (Item 5) She conceded she had limited income to resolve her debts. (Exhibit A)

However, Applicant is helping finance her daughter's attendance at college, so she has several student loans where payment is deferred. (Exhibit A; Item 9)

Applicant failed to provide sufficient information on why she denied the debts listed in the SOR or explain what progress or plan she has made since February 2005 when she started working with an attorney to settle her accounts with her creditors. Further, she failed to say what her future plans were for making payment arrangements or seeking discharge of her dated debts in bankruptcy. Instead, she conceded she set priorities according to what is in the best interest of her family and has lived paycheck-to-paycheck for twenty years. (Exhibit A) She provided no evidence that she sought financial counseling to help her manage her finances more effectively.

POLICIES

Enclosure 2 of the Directive sets forth adjudicative guidelines to consider in evaluating an individual's security eligibility. They are divided into conditions that could raise a security concern and may be disqualifying and conditions that could mitigate security concerns in deciding whether to grant or continue an individual's access to classified information. But the mere presence or absence of any given adjudication policy condition is not decisive. Based on a consideration of the evidence as a whole in evaluating this case, I weighed relevant Adjudication Guidelines as set forth below:

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.**

Guideline J - Criminal Conduct

***The Concern:* A history or pattern of criminal activity creates doubt about a person's judgment, reliability and trustworthiness.**

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.**

The responsibility for producing evidence initially falls on the Government to demonstrate that it is not clearly consistent with the national interest to grant or continue Applicant's access to classified information. Then the Applicant presents evidence to refute, explain, extenuate, or mitigate in order to overcome the doubts raised by the Government, and to demonstrate persuasively that it is clearly consistent with the national interest to grant or continue the clearance. Under the provisions of Executive Order 10865, as amended, and the Directive, a decision to grant or continue an applicant's security clearance may be made only after an affirmative finding that to do so is clearly consistent with the national interest. In reaching the fair and impartial overall common sense determination, the Administrative Judge may draw only those inferences and conclusions that have a reasonable and logical basis in the evidence of record.

CONCLUSIONS

Financial Considerations

The Government established disqualifying conditions that could raise a security concern because of Applicant's (1) history of financial problems and her (3) inability or unwillingness to satisfy all of her debts. At the time of the investigation Applicant had over ten unresolved debts. Now several large debts remain unresolved. Applicant provided no explanation as to why she denied certain debts nor did she provide a plan as to how to resolve the remaining debts. While Applicant disputed several debts, the government provided supporting evidence confirming them in several credit reports as detailed in the findings. While in 2005 she promised to work with an attorney to make arrangements to pay these debts, she provided only limited evidence that she has done so. The security concern is that an individual who is financially overextended is at risk of having to engage in illegal acts to generate funds. Applicant asserts she puts her family's interests first.

While she filed for bankruptcy in 1997, that is a legal avenue to resolve debts; so I do not conclude that her decision to file for bankruptcy reflects adversely on her as Applicant also explained how her separation and reduced income contributed to her 1997 bankruptcy filing. She provided no similar explanation for circumstances beyond her control that led to her current financial difficulties.

To her credit Applicant provided proof of payment for several small debts, but failed to mitigate⁽³⁾ these financial concerns overall as she provided insufficient evidence of any plan to resolve these financial concerns. A majority of the large debts remain unpaid. Applicant failed to show how she followed through on her 2005 promise to resolve these debts. While Applicant stated she has limited income to handle her current financial obligations, she failed to demonstrate how she planned to live within her means and remain financially responsible. Overall, with respect to the subsequent debts, she provided insufficient evidence under mitigation condition 3, to show her financial problems were largely beyond her control except for her statement that the business downturn affected her in the 2001 to 2004 period. Indeed, she explained she has sufficient resources to help her daughter attend college. While it is commendable that she wants to help her child, Applicant failed to show a budget or overall plan to manage her finances.

Neither has she met mitigation condition 4 as she failed to document that has received or is receiving counseling to develop a plan to address her financial problems. Notably, she provided no plan either to contest or to resolve the largest debts: for example, Applicant admitted to owing Creditor #8 a debt of \$18,344 and Creditor #9 a debt of \$11,924. The fact that she returned a vehicle to Creditor #9 is insufficient basis to mitigate the debt. Thus, there are insufficient indications under mitigation condition 6 that her financial problems are being resolved or will be under control. Looking at her as a whole person, Applicant failed to provide sufficient evidence of her job stability or other evidence to support her stated future intent to resolve these debts.

After considering the Adjudicative Process factors and the Adjudicative Guidelines, I rule against Applicant under SOR Paragraph 1 as she failed to mitigate the allegations in SOR subparagraphs 1.c., 1.d., 1.g., 1.h., 1.i., 1.j, 1.k., 1.l; but I rule for her on subparagraphs 1.a., 1.b., 1.e., 1.f., and 1.m.

Criminal Conduct

The government provided evidence to support the charges of criminal misconduct under either 26 U.S.C. Section 6012 or section 7203 as Applicant conceded she failed to file her federal income taxes in the 2001 to 2004 period. However, she had no criminal intent as she did not believe she owed taxes and believed she was owed a refund. Subsequently, she took corrective action⁽⁴⁾ and filed those returns. Under mitigation condition 6, there is clear evidence of successful rehabilitation. After looking at the whole person and considering the Adjudicative Process factors and the Adjudicative Guidelines, I rule for Applicant on subparagraph 2.a. under SOR Paragraph 2.

Personal Conduct

The government provided evidence to support the charges of personal misconduct as Applicant conceded she failed to file her federal income taxes in the 2001 to 2004 period. However, she subsequently took corrective action⁽⁵⁾

and filed those returns. Thus, I conclude she meets mitigation condition 5 as she has taken positive steps to significantly reduce or eliminate vulnerability to coercion, exploitation, or duress. After looking at the whole person and considering the Adjudicative Process factors and the Adjudicative Guidelines, I rule for Applicant on subparagraph 3.a. under SOR

Paragraph 3.

FORMAL FINDINGS

After reviewing the allegations of the SOR in the context of the Adjudicative Guidelines in Enclosure 2 and the factors set forth under the Adjudicative Process section, I make the following formal findings:

Paragraph 1. Guideline F: AGAINST APPLICANT

Subparagraph 1.a.: For Applicant

Subparagraph 1.b.: For Applicant

Subparagraph 1.c.: Against Applicant

Subparagraph 1.d.: Against Applicant

Subparagraph 1.e.: For Applicant

Subparagraph 1.f.: For Applicant

Subparagraph 1.g.: Against Applicant

Subparagraph 1.h.: Against Applicant

Subparagraph 1.i.: Against Applicant

Subparagraph 1.j.: Against Applicant

Subparagraph 1.k.: Against Applicant

Subparagraph 1.l.: Against Applicant

Subparagraph 1.m.: For Applicant

Paragraph 2. Guideline J: FOR APPLICANT

Subparagraph 2.a.: For Applicant

Paragraph 3. Guideline E: FOR APPLICANT

Subparagraph 3.a.: For 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 the Applicant. Clearance is denied.

Kathryn Moen Braeman

Administrative Judge

1. This procedure is required by Executive Order 10865, as amended, and Department of Defense Directive 5220.6, dated January 2, 1992 (Directive), as amended by Change 4, April 20, 1999.
2. While Applicant did not provide copies of her income tax returns for those years, I find her statement in Exhibit A credible.

3. **E2.A6.1.3. Conditions that could mitigate security concerns include:** E2.A6.1.3.1. The behavior was not recent; E2.A6.1.3.2. It was an isolated incident; 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); 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; E2.A6.1.3.5. The affluence resulted from a legal source; and E2.A6.1.3.6. The individual initiated a good-faith effort to repay overdue creditors or otherwise resolve debts.

4. **E2.A10.1.3. Conditions that could mitigate security concerns include:** E2.A10.1.3. 1. The criminal behavior was not recent; E2.A10.1.3. 2. The crime was an isolated incident; E2.A10.1.3.3. The person was pressured or coerced into committing the act and those pressures are no longer present in that person's life;

E2.A10.1.3. 4. The person did not voluntarily commit the act and/or the factors leading to the violation are not likely to recur; E2.A10.1.3. 5. Acquittal; E2.A10.1.3. 6. There is clear evidence of successful rehabilitation.

5. **E2.A5.1.3. Conditions that could mitigate security concerns include:** E2.A5.1.3.1. The information was unsubstantiated or not pertinent to a determination of judgment, trustworthiness, or reliability; E2.A5.1.3.2. The falsification was an isolated incident, was not recent, and the individual has subsequently provided correct information voluntarily; E2.A5.1.3.3. The individual made prompt, good-faith efforts to correct the falsification before being confronted with the facts; E2.A5.1.3.4. Omission of material facts was caused or significantly contributed to by improper or inadequate advice of authorized personnel, and the previously omitted information was promptly and fully provided; E2.A5.1.3.5. The individual has taken positive steps to significantly reduce or eliminate vulnerability to coercion, exploitation, or duress; E2.A5.1.3.6. A refusal to cooperate was based on advice from legal counsel or other officials that the individual was not required to comply with security processing requirements and, upon being made aware of the requirement, fully and truthfully provided the requested information; E2.A5.1.3.7. Association with persons involved in criminal activities has ceased.