

DATE: January 24, 2007

In Re:

SSN: -----

Applicant for Security Clearance

CR Case No. 06-00749

DECISION OF ADMINISTRATIVE JUDGE

JOAN CATON ANTHONY

APPEARANCES

FOR GOVERNMENT

Fahryn E. Hoffman, Esq., Department Counsel

FOR APPLICANT

Richard Murray, Esq.

SYNOPSIS

Applicant has a history of unresolved financial delinquencies, some which date to 2000 and 2001, and others which are of recent occurrence. At her hearing, while she was sometimes vague or imprecise about the current status of her financial obligations, she demonstrated that she had made progress in paying or arranging to pay some of her debts. While Applicant's recent efforts to satisfy her creditors are laudable, they are not a substitute for a consistent record of timely remedial action. Applicant failed to mitigate security concerns under Guideline F, Financial Considerations, of the Directive. Clearance is denied.

STATEMENT OF THE CASE

The Defense Office of Hearings and Appeals (DOHA) declined to grant or continue a security clearance for Applicant. On July 24, 2006, under the applicable Executive Order⁽¹⁾ and Department of Defense Directive,⁽²⁾ DOHA issued a Statement of Reasons (SOR), detailing the basis for its decision-security concerns raised under Guideline F (Financial Considerations) of the Directive. Applicant answered the SOR in writing on August 11, 2006, and elected to have a hearing before an administrative judge. The case was assigned to me September 28, 2006. On November 20, 2006, I convened a hearing to consider whether it is clearly consistent with the national interest to grant or continue a security clearance for Applicant. The Government called no witnesses and submitted five exhibits (Ex.) for admission to the record (Ex. 1 through 5.) The Government's exhibits were admitted to the record without objection. Applicant testified on her own behalf and called four additional witnesses. She submitted six exhibits, which were identified as Applicant's Ex. A through F and admitted to the record without objection. On December 8, 2006, DOHA received the transcript (Tr.) of the proceeding.

FINDINGS OF FACT

The SOR contains fourteen allegations of disqualifying conduct under Guideline F, Financial Considerations. In her answer to the SOR, Applicant admitted thirteen allegations and denied one. She offered mitigating circumstances. Applicant's admissions are incorporated as findings of fact.

Applicant is 51 years old. She is a high school graduate and has completed approximately one year of college. She was married in 1975 and divorced in 1981. She has no children. Since January 2005, Applicant has been employed as a receptionist by a government contractor. She has not previously held a security clearance. She receives an hourly salary of \$18.99 and is paid once a month. She estimates her monthly net income is between \$2,200 and \$2,400. (Ex. 1; Tr.27-29, 55, 104-106.)

Since about 1995, Applicant has been residing with a woman she considers to be her very close friend. The two women shared rent, utilities, and other household expenses. In about May or June of 2001, Applicant's friend was diagnosed with and treated for lung cancer. The friend has not worked since June 2001, and, beginning in about December 2001 or January 2002, she has received approximately \$1,000 per month in disability pay. (Tr. 116, 130-131.)

For the six-month period between June 2001 and January 2002, Applicant paid all rent, utilities, and household expenses for herself and her friend. (Tr. 131.) Since she began receiving monthly disability payments in about January 2002, the friend pays one half of the rent and groceries and Applicant pays the utilities. (Tr. 137-140.)

In April 2004, Applicant was laid off from her job as a sales consultant with an automotive dealer. She collected unemployment compensation and began her present job in January 2005. (Ex. 1; Tr. 46-47.)

Applicant dates her financial problems to her friend's illness in May or June of 2001 and to her loss of her job in April 2004. (Tr. 31-32.) In January 2005, Applicant executed and signed a security clearance application (SF-86). In the General Remarks section of her SF-86, Applicant stated: "Currently I have a negative credit history that I am looking forward to correcting as soon as possible." (Ex. 1 at 8.)

In her answer to the SOR, Applicant admitted indebtedness to creditors for two judgments (SOR ¶¶ 1.a. and 1.b.), five accounts placed for collection (SOR ¶¶ 1.d., 1.h., 1.j., 1.k., and 1.n. , five charged off accounts (SOR ¶ 1.e., 1.f., 1.g., 1.l., and 1.m.), and a returned check (SOR ¶ 1.i.). She acknowledged a judgment entered against her in February 2000 for \$1,309 (SOR ¶ 1.c.), but she denied responsibility for the debt and said she was contesting it. She presented no evidence to support her claim she was contesting the debt. (Tr. 67.)

Applicant admitted her wages were garnished beginning in July 2002 on a judgment entered against her in June 2002 (SOR ¶ 1.b.) and the judgment remained unsatisfied. (Tr. 96-97.)

In July 2005, Applicant sought assistance from a consumer credit counseling service. She agreed to pay the consumer credit counseling service \$157 per month to pay off debts identified at ¶¶ 1.f., 1.l., 1.j., 1.m., and 1.n. of the SOR. (Ex. 2 at pages numbered 57 through 61.) Applicant presented evidence she had participated in consumer credit counseling provided to her by the credit counseling service. (Ex. D.)

In April 2006, Applicant filed a revised budget with DOHA showing the judgment alleged at ¶ 1.a. of the SOR had also been turned over to the credit counseling service for payment. (Ex. 3.) At her hearing, Applicant stated several payments had been made to the judgment creditor but she did not know what the balance due on the debt was. (Tr. 64.) She stated the judgment alleged at ¶1.b. of the SOR was less than \$4,000 and remained unsatisfied. (Tr. 66.)

Applicant presented a letter from a creditor stating that the debt alleged at ¶ 1.d. had been paid in full as of November 4, 2006, provided her payment check was not returned by the bank. She had no proof her payment had cleared the creditor's bank. (Ex. C; Tr. 67-69.)

Applicant asserted she was unable to pay the debt alleged at ¶ 1.e. because the creditor no longer existed. (Tr. 71-73.) She also acknowledged that approximately \$147 was the current balance due on the debt of \$197 alleged at ¶ 1.f. (Ex. 5; Tr. 73-74.) Applicant acknowledged owing two separate debts to the same creditor, one of which was being paid and the other which was not. She was unable to determine whether the debt alleged at ¶ 1.g. was the debt being paid by the consumer credit counseling service on her behalf. (Tr. 75-76.)

Applicant's testimony regarding the debt alleged at ¶ 1.h. was confusing. She asserted the debt was the same as the debt alleged at 1.l. of the SOR and the creditor was no longer in existence. She also stated she was in negotiation with the

creditor to determine a settlement amount. (Tr. 45, 76-78.)

Applicant acknowledged the debts alleged at ¶¶ 1.i., 1.j., and 1.k., 1.m., and 1.n. had not been satisfied. (Tr. 78-87; Ex. F.) She also acknowledged opening at least two new credit accounts and owing several hundred dollars in payments. (Tr. 87-90.)

In preparation for her hearing, Applicant consulted a financial advisor recommended by her counsel. The financial advisor testified as an expert witness at the hearing. He said he customarily charged an hourly fee of \$150 for his services. He said he had consulted with and advised Applicant for approximately four hours, and he would likely charge her his customary fee for his services. (Tr. 147-150.)

Applicant presented two letters on her behalf submitted by her supervisors. Both supervisors praised Applicant's professionalism and job skills. (Ex. A, Ex. B.) Additionally, Applicant's current supervisor appeared as a witness and testified positively about Applicant's skills and abilities. (Tr. 172-174.)

POLICIES

"[No 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 restricted eligibility for access to classified information to United States citizens "whose personal and professional history affirmatively indicates loyalty to the United States, strength of character, trustworthiness, honesty, reliability, discretion, and sound judgment, as well as freedom from conflicting allegiances and potential for coercion, and willingness and ability to abide by regulations governing the use, handling, and protection of classified information." Exec. Or. 12968, *Access to Classified Information* § 3.1(b) (Aug. 4, 1995). Eligibility for a security clearance is predicated upon the applicant meeting the security guidelines contained in the Directive.

Enclosure 2 of the Directive sets forth personal 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.

Initially, the Government must establish, by substantial evidence, conditions in the personal or professional history of the applicant that disqualify, or may disqualify, the applicant from being eligible for access to classified information. *See Egan*, 484 U.S. at 531. The Directive presumes a nexus or rational connection between proven conduct under any of the disqualifying conditions listed in the guidelines and an applicant's security suitability. *See* ISCR Case No. 95-0611 at 2 (App. Bd. May 2, 1996).

Once the Government establishes a disqualifying condition by substantial evidence, the burden shifts to the applicant to rebut, explain, extenuate, or mitigate the facts. ISCR Case No. 01-20700 at 3 (App. Bd. Dec. 19, 2002); *see* Directive ¶ E3.1.15. An applicant "has the ultimate burden of demonstrating that it is clearly consistent with the national interest to grant or continue his security clearance." ISCR Case No. 01-20700 at 3.

CONCLUSIONS

Guideline F-Financial Considerations

The Government's concern under Guideline F, Financial Considerations, is that individuals who are financially overextended and unable or unwilling to pay their just debts may try to generate funds by engaging in illegal acts. Applicant has a history of not meeting her financial obligations, and she has not demonstrated a willingness to take control of her financial situation and satisfy her debts in a consistent and organized manner. These conditions raise security concerns under subparagraphs E2.A6.1.2.1. and E2.A6.1.2.3. of Guideline F. DOHA's Appeal Board has

concluded that "[a] person who is unwilling to fulfill his legal obligations does not demonstrate the high degree of good judgment and reliability required of persons granted access to classified information." ISCR Case No. 98-0810 at 4 (App. Bd. June 8, 2000).

The Government has established, through Applicant's admissions and the record evidence, a *prima facie* case that Applicant is financially overextended. At her hearing, Applicant was vague and unclear about the status of several of her current financial responsibilities. While she presented evidence of financial counseling, she appeared to have no plans in place to timely satisfy her creditors and avoid financial delinquency in the future. She provided no persuasive evidence to rebut the financial concerns specified in the SOR and identified as disqualifying conditions under ¶¶ E2.A6.1.2.1. and E2.A6.1.2.3. of Guideline F. ⁽³⁾

Several conditions specified under Guideline F could mitigate the security concerns raised by Applicant's financial delinquencies. Applicant's acknowledged delinquencies date to at least 2000 and 2001. Her financial delinquencies involve long-standing debts, and her inability or unwillingness to pay them is recent. Thus, neither mitigating condition E2.A.6.1.3.1. nor mitigating condition E2.A6.1.3.2. applies. ⁽⁴⁾

When she filed her SF-86 nearly two years ago, Applicant expressed her desire to correct her negative credit history as soon as possible. At the time of her hearing, many of her debts remained unsatisfied, and Applicant had no comprehensive plan in place to timely resolve her financial delinquencies. In determining an individual's security worthiness, the Government cannot rely on the possibility that the applicant might resolve his or her outstanding debts at some future date.

The record shows that Applicant's friend, with whom she resides, fell ill in May or June 2001 and was unable to help with household expenses until her disability payments commenced in approximately January 2002. Applicant attributed her financial problems to her friend's illness and inability to work and to her own period of unemployment between April 2004 and January 2005, and she cited these as conditions that were largely beyond her control.

If a person's financial delinquencies were largely caused by conditions beyond his or her control, then mitigating condition E2.A6.1.3.3. ⁽⁵⁾ might apply. Assessing the applicability of this mitigating condition often requires a two-part analysis. First, an administrative judge must review and weigh the existing evidence to determine if the applicant's financial difficulties initially arose from circumstances outside of his or her control. Second, assuming that some or all of the circumstances were beyond the individual's control, the judge may consider whether the applicant acted in a reasonable manner when dealing with those financial difficulties. *See e.g.*, ISCR Case No. 99-0462 at 4 (App. Bd. May 25, 2000); ISCR Case No. 99-0012 at 4 (App. Bd. Dec. 1., 1999).

In assessing the applicability of mitigating condition E2.A6.1.3.3. in Applicant's case, I note Applicant's financial problems pre-dated her friend's illness and incapacity and her own eight-month period of unemployment. She has now been steadily employed for about two years and presented no credible evidence that once she was re-employed, she devised a consistent and workable plan to identify and satisfy her many long-term debts and financial delinquencies. While she turned some of her debts over to a credit counseling service for payment, she allowed others to remain unsatisfied.

Applicant's devotion to and support of her friend during a difficult time was admirable and her own period of unemployment was unfortunate. However, these unexpected conditions do not entirely explain or mitigate her long-standing financial difficulties and her unwillingness to approach many of her creditors and arrange payment or settlement. Her present financial problems do not appear to be primarily the result of conditions beyond her control. Thus, mitigating condition E2.A6.1.3.3. applies only in part.

To her credit, Applicant presented evidence that she had received consumer financial credit counseling to help her manage her financial problems. However, she failed to demonstrate that the consumer credit counseling had an impact on her ability to timely resolve her financial problems or to bring them under control. Therefore, mitigating condition E2.A6.1.3.4. applies only in part. While she presented evidence she had a payment plan in place to satisfy some of her debts, her lack of precise knowledge of the status of her remaining obligations did not persuade me she had a concrete plan to resolve her financial delinquencies. Accordingly, mitigating condition E2.A6.1.3.6. is also inapplicable, and the

Guideline F allegations in the SOR are concluded against the Applicant.

Whole Person Analysis

Paragraph E2.2 of the Directive requires that the adjudicative process in a security clearance case not only assess conduct under the adjudicative guidelines, but it must also reflect a careful weighing of a number of variables known as the whole person concept. The factors to be considered in a whole person analysis include the nature, extent, and seriousness of the conduct (E2.2.1.1); the circumstances surrounding the conduct, to include knowledgeable participation (E2.2.1.2); the frequency and recency of the conduct (E2.2.1.3); the individual's age and maturity at the time of the conduct (E2.2.1.4.); the voluntariness of participation (E2.2.1.5.); the presence or absence of rehabilitation and other pertinent behavioral changes (E2.2.1.6); the motivation for the conduct (E2.2.1.7); the potential for pressure, coercion, exploitation, or duress (E2.2.1.8.); and, the likelihood for continuation or recurrence (E2.2.1.9).

Applicant's failure to pay her debts over a period of many years raises serious security concerns. Applicant, a high school graduate with approximately one year of college education, was a mature woman with many years of life experience when she allowed her debts to spiral out of control. In January 2005, she acknowledged on her SF-86 that she had a poor credit history which she intended to rectify as soon as she could. To her credit, she sought financial counseling; however, she failed to put her knowledge to good use by developing a plan to resolve all of her financial delinquencies. Applicant's unwillingness to acknowledge and carry out her legal duties to pay her just debts suggests she may not take her legal duty to protect classified information seriously. Her current situation suggests her financial difficulties are likely to continue.

In all adjudications, the protection of our national security is the paramount concern. Security clearance decisions are not intended to assign guilt or to impose further punishment for past transgressions. Rather, the objective of the security clearance process is the fair-minded, common sense assessment of a person's trustworthiness and fitness for access to classified information. Indeed, the "whole person" concept recognizes we should view a person by the totality of his or her acts and omissions, including all disqualifying and mitigating conduct. Having done so, I conclude Applicant should not be entrusted with a security clearance. In reaching my decision, I have considered the evidence as a whole, including the appropriate factors and guidelines in Department of Defense Directive, 5220.6., as amended.

FORMAL FINDINGS

The following are my conclusions as to each allegation in the SOR:

Paragraph 1.: Guideline F: AGAINST APPLICANT

Subparagraph 1.a.: Against Applicant

Subparagraph 1.b.: Against Applicant

Subparagraph 1.c.: Against Applicant

Subparagraph 1.d.: Against Applicant

Subparagraph 1.e.: Against Applicant

Subparagraph 1.f.: Against 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.: Against Applicant

Subparagraph 1.n.: Against Applicant

DECISION

In light of all of 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.

Joan Caton Anthony

Administrative Judge

1. Exec. Or. 10865, *Safeguarding Classified Information within Industry* (Feb. 20, 1960), as amended and modified.
2. Department of Defense Directive 5220.6, *Defense Industrial Personnel Security Clearance Review Program* (Jan. 2, 1992), as amended and modified.
3. Guideline F Disqualifying Condition (DC) E2.A6.1.2.1. reads: "A history of not meeting financial obligations." DC E2.A6.1.2.3. reads: "Inability or unwillingness to satisfy debts."
4. Guideline F Mitigating Condition (MC) E2.A6.1.3.1. reads: "The behavior was not recent." MC E2.A6.1.3.2. reads: "It was an isolated incident."
5. MC E2.A6.1.3.3. reads: "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.)"