

DATE: October 23, 2006

In Re:

SSN: -----

Applicant for Trustworthiness Determination

P Case No. 06-01815

DECISION OF ADMINISTRATIVE JUDGE

CHARLES D. ABLARD

APPEARANCES

FOR GOVERNMENT

Rita C. O'Brien, Esq. , Department Counsel

FOR APPLICANT

Pro Se

SYNOPSIS

Applicant is a 56-year-old computer programmer for a defense contractor working with medical information for military hospitals. She has worked for her present employer for 38 years

She and her husband filed for bankruptcy under Chapter 13 in 2004 for delinquent debts totaling over \$25,000.00 but it was dismissed in 2005. Most of the debts were incurred by her husband. They have a dispute pending with counsel in the bankruptcy but very little has been done since then to resolve them. Since the hearing they have enrolled in a credit counseling program. She failed to acknowledge the debts at Question 20 and a federal tax lien at Question 19 of her SF 85P. Clearance is denied.

STATEMENT OF CASE

On March 16, 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 trustworthiness determination for an ADP clearance for Applicant. DOHA recommended the case be referred to an administrative judge to determine whether such a clearance should be granted, continued, denied, or revoked.

On May 19, 2006, Applicant responded to the SOR allegations, and requested a hearing. The matter was assigned to me on June 6, 2006. A notice of hearing was issued on June 12, 2006, for a hearing on June 27, 2006, and held that day. The government offered seven exhibits and Applicant offered twelve into evidence and all were accepted. The Applicant and her husband both testified. The record was left open for 60 days for submission by the Applicant of additional material and two submissions were made. The first submission was made three days before it was due and the

government objected to one document as not properly authenticated. Applicant provided authentication in her second submission which was one week after the closing date and the government objected to it as beyond the date for submission. Since the government objected to the authentication of the first submission, the Applicant should have a reasonable time to cure the defect. The objection is overruled and all documents are admitted. The transcript was received on July 14, 2006.

FINDINGS OF FACT

Applicant admitted some of the allegations relating to delinquent debts with explanation for some and denied falsifying her answers regarding them on her SF 85P application for trustworthiness determination. After a complete review of the record, I make the following additional findings of fact:

Applicant is a 56-year-old computer programmer working as a certified procedure coder for a defense contractor health provider. She has a responsible position working with medical information for military personnel (Exhs. G, H, and I). She has worked for her present employer for 38 years. She has been married for 36 years. They have three grown children for whom they are not financially responsible and several grandchildren. She has a high school education but has taken several college courses.

Applicant and her husband filed for bankruptcy under Chapter 13 on March 30, 2004, for debts exceeding \$25,000.00 plus arrearage on an auto loan of \$20,000.00 (Exh. 6). They were scheduled to be resolved over a 57-month period. Most of the delinquent debts were incurred by her husband who takes full responsibility for them (Exh. C). However, the debts are their joint responsibility and are reflected on Applicant's credit reports (Exh. A). Three payments totaling \$1,970.00 were made to the bankruptcy trustee but the bankruptcy was dismissed on May 23, 2005.

Since the dismissal, Applicant and her husband have been in dispute with their attorney regarding the dismissal, have filed a complaint against him with state disciplinary authorities regarding the circumstances of the dismissal, and are seeking to recoup the fees paid to him in the amount of \$1,900.00.

They intend to re-file the Chapter 13 bankruptcy but have not done so intending to wait until resolution of the disciplinary matter. At the time of the 2004 bankruptcy filing, the debts also included an unpaid federal tax lien for \$4,764.00 which was satisfied in May 2005.

Applicant did not list the federal tax lien at Question 19 and the numerous delinquent debts at Question 20 in her answers on the SF 85P submitted on January 16, 2004, which she was required to do.

At the time of the June 26, 2006, hearing Applicant and her husband had not been in a consumer counseling program, but in a post-hearing submission she established that they had started a program, paid an enrollment fee, but had not yet established a debt repayment plan.

Applicant did not understand the reason why she now needs a trustworthiness determination for the work she has performed for many years.

Some of Applicant's debts have been satisfied in full or in part but most of those scheduled for bankruptcy have not. At least one debt is her younger son's (SOR 1.c) but her husband co-signed for the debt and thus it is also her responsibility.

Applicant's annual gross salary is approximately \$60,000.00 and her husband is now making approximately \$26,000.00 per annum. He is a Viet Nam veteran with a disability rating of 40% (post traumatic stress syndrome) and receives \$545.00 per month from the government. After leaving the military he worked for the Postal Service between 1983 and 1996 after which time he worked in a pool servicing company until he was hurt in a fall and fractured his neck. He had an extensive recovery period during which time he was unemployed. He has now begun this work again and has his own pool service company. He has a college degree in finance and business.

As a result of the financial difficulties they have encountered, Applicant and her husband sold their home and are now renters with a good record of rent payments (Exh. F). Applicant has a 401K account with her employer that had accumulated \$173,000.00 but she has borrowed against it for \$35,000.00 as a result of the financial problems. She is

reluctant to borrow further since penalties attach to such withdrawals before age 59 and a half. She has no credit cards and pays most of her bills with cash. The family practice had been that husband and wife each paid their own bills.

The bills can be categorized as follows cited to the SOR:

1. Resolved by regular payments: SOR 1(m) truck purchase \$20,874.00 -current in payments of \$603.00 each month
2. Paid in full: SOR 1 (n and o) State Department of Revenue \$780.00, and (h) utility bill \$1,500.00
3. Disputed now but had been listed in bankruptcy: SOR 1 (e) \$783.00, (i) \$637.00, and (f) \$4,756.00
4. One debt listed at SOR 1(p) in the amount of \$10,442.00 for a credit card was not in the bankruptcy. Applicant intends to resolve it but no action has been taken to do so.
5. All other debts were scheduled for bankruptcy but no action taken since the dismissal.

POLICIES

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." *Department of the Navy v. Egan*, 484 U.S. 518, 527 (1988). In Executive Order 12968, *Access to Classified Information*, § 3.1(b) (August 4, 1995), the President provided that eligibility for access to classified information shall be granted only 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."

To be eligible for assignment to sensitive duties, an applicant must meet the security guidelines contained in DoD 5200.2-R. "The standard that must be met for . . . assignment to sensitive duties is that, based on all available information, the person's loyalty, reliability, and trustworthiness are such that . . . assigning the person to sensitive duties is clearly consistent with the interests of national security." DoD 5200.2-R, ¶ C6.1.1.1. Appendix 8 of the Regulation sets forth personnel security guidelines, as well as the disqualifying conditions and mitigating conditions under each guideline.

"The adjudicative process is an examination of a sufficient period of a person's life to make an affirmative determination that the person is eligible for a security clearance." DoD 5200.2-R, Appendix 8. An administrative judge must apply the "whole person concept," and consider and carefully weigh the available, reliable information about the person. *Id.* An administrative judge should consider the following factors: (1) the nature, extent, and seriousness of the conduct; (2) the circumstances surrounding the conduct, to include knowledgeable participation; (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 pertinent 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. *Id.*

DoD contractor personnel are afforded the right to the procedures contained in DoD Directive 5220.6 before any final unfavorable access determination may be made. DoD 5200.2-R, ¶ C8.2.1. Initially, the Government must present evidence to establish controverted facts in the SOR that disqualify or may disqualify the applicant from being eligible for access to classified information. Directive, ¶ E3.1.14. Thereafter, the applicant is responsible for presenting evidence to rebut, explain, extenuate, or mitigate the facts. 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 (App. Bd. Dec. 19, 2002). "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.

A person granted access to classified information enters into a special relationship with the government. The government must be able to repose a high degree of trust and confidence in those individuals to whom it grants access to classified information. The decision to deny an individual a security clearance is not a determination as to the loyalty of

the applicant. Exec. Ord. 10865, § 7. It is merely an indication that the applicant has not met the strict guidelines the President has established for issuing a clearance.

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 15 delinquent debts cited in the SOR prompted the allegation 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) might include the fact that the conditions that resulted in the behavior were largely beyond the person's control (E2.A6.1.3.3.) and the person has initiated a good faith effort to repay overdue creditors or otherwise resolve debts. (E2.A6.1.3.6.). Applicant did seek bankruptcy protection but when the matter was dismissed over a year ago, they did not re-file but only took action against the lawyer whom they blamed for the dismissal. There is no evidence the debts resulted from conditions beyond her control but were instead caused primarily because of lack of attention to the totality of the family obligations. Applicant and her husband are now enrolled in a financial counseling plan and intend to file again under Chapter 13 and repay the debts. However, their intentions do not provide proof sufficient to overcome the security concerns at this time.

Applicant's failure to report the IRS lien and the financial delinquencies at Questions 19 and 20 on her SF 85P raises issues under Guideline E that might indicate questionable judgment, unreliability, and unwillingness to comply with rules and regulations and could indicate that the person may not properly safeguard classified information (E2.A5.1.1.). Specifically, the deliberate omission, concealment, or falsification of relevant and material facts from a personnel security application could raise a security concern and be disqualifying. (E2.A5.1.2.2.) Applicant's failure to report any of the delinquent debts was at best negligent but in view of her work record and obvious intelligence, it is difficult to believe that she would not have known about many of the debts and the existence of the lien. I conclude that it was deliberate as required by the guideline.

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 we should view 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 hard-working person whose many delinquent debts had accumulated largely as a result of mismanagement by her husband to the point that they had lost control of them. She naively believed that if she took care of her own debts that would be sufficient to mitigate problems created by his debts. They intend to resolve the debts by re-instituting their bankruptcy proceeding. Unfortunately, none of this has been done except for settling the IRS lien with a tax refund and payment of three of the smaller debts in a total amount of \$2,300.00. Even if the disputed debts are deducted from the total delinquent debt, it still exceeds \$23,000.00. Applicant should be in a position to resolve all the matters sufficiently either through bankruptcy or a voluntary payment plan to comply with the security requirements necessary to obtain a security clearance. Unfortunately, not enough has been done at this point to rule in her favor.

While Applicant has entered a consumer counseling program since the hearing, no payment plan has been established so the action was neither timely nor effective to affect the outcome of 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 it is premature to grant a security clearance.

FORMAL FINDINGS

Formal findings as required by the Directive (Par. E3.1.25) are as follows:

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.: For 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

Subparagraph 1.n.: For Applicant

Subparagraph 1.o.: For Applicant

Subparagraph 1.p.: Against Applicant

Paragraph 2. Guideline E: AGAINST APPLICANT

Subparagraph 2.a.: Against Applicant

Subparagraph 2.b.(1).: For Applicant

Subparagraph 2.b.(2) 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 renew a security clearance for Applicant. Clearance is denied.

Charles D. Ablard

Administrative Judge