

DATE: November 15, 2006

In re:

SSN: -----

Applicant for Security Clearance

CR Case No. 06-03135

DECISION OF ADMINISTRATIVE JUDGE

HENRY LAZZARO

APPEARANCES

FOR GOVERNMENT

Candace Le'i, Esquire, Department Counsel

FOR APPLICANT

Pro Se

SYNOPSIS

Applicant's financial problems continue and are unlikely to be resolved in the foreseeable future. Clearance is denied.

STATEMENT OF THE CASE

On June 30, 2006, the Defense Office of Hearings and Appeals (DOHA) issued a Statement of Reasons (SOR) to Applicant stating it was unable to find it is clearly consistent with the national interest to grant or continue a security clearance for Applicant.⁽¹⁾ The SOR, which is in essence the administrative complaint, alleges a security concern under Guideline F (financial considerations). Applicant submitted an undated response to the SOR in which she admitted the allegations contained in subparagraphs 1.a, 1.e, and 1.k, denied all other allegations, and requested a hearing.

The case was assigned to another administrative judge on September 8, 2006, and reassigned to me on September 13, 2006, to be heard with other cases I had pending in the same locale. A notice of hearing was issued on October 11, 2006, scheduling the hearing for October 19, 2006.⁽²⁾ The hearing was conducted as scheduled. The government submitted five documentary exhibits that were marked as Government Exhibits (GE) 1-5, and admitted into the record without objection. Applicant testified and submitted thirteen documentary exhibits that were marked as Applicant's Exhibits (AE) 1-13, and admitted into the record without objection. The transcript was received by DOHA on October 31, 2006.

FINDINGS OF FACT

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

Applicant is 54 years old and has been employed by a defense contractor since September 1994. Applicant submitted numerous letters of recommendation from supervisors and co-workers vouching for her reputation as a trustworthy, honest, conscientious and dedicated employee. She has held a secret security clearance since 1994 without incident. One

of her collateral work assignments was as a company security coordinator, and several of the letters of recommendation attest to her flawless performance of duty in that position.

Applicant graduated from high school in 1969. She attended college from 1976-78, but did not earn a degree. Applicant was first married in April 1974 and divorced in August 1978. She remarried in January 1987 and that marriage ended in divorce in November 1998. She has now been married for a third time since July 2004. She and her husband separated in March 2005 and she anticipates their divorce will be final sometime in December 2006. Applicant has two sons, ages 24 and 15. The 15-year-old lives with her and the 24-year-old lives nearby.

SOR subparagraph 1.a alleges an account that was charged off in the amount of \$14,877.00. This account is based upon a deficiency owing following the repossession of Applicant's automobile. The auto was first repossessed in 2003, however, Applicant was able to pay the arrearage at that time and regained possession of the vehicle. The car was again repossessed in January 2005. A lawsuit was filed against Applicant on behalf of the creditor in April 2006 seeking \$10,531.56. Applicant testified she has spoken with the attorney representing the creditor and is attempting to work out a settlement whereby she will pay \$300.00 per month until the total amount claimed is satisfied. Her offer had not been accepted by the creditor as of the date of the hearing.

Subparagraph 1.b alleges a collection account owing in the amount of \$73.00. Applicant testified she does not know who the creditor is and has not been able to find a number at which she can contact the collection agency.

Subparagraph 1.c alleges a collection account owing in the amount of \$463.00. Applicant testified she paid this account in either 2002 or 2003. This account still appears in Applicant's August 2006 credit report and she failed to provide any proof of payment.

Subparagraph 1.d alleges a collection account owing in the amount of \$227.00. Applicant alleged in her answer to the SOR that she had paid the account. In a statement she provided in April 2005 and in her testimony, Applicant claimed the account is in error and is for a cable box that was properly returned. She does not have any documentation showing the cable box was returned and this account still appears in Applicant's August 2006 credit report.

Subparagraph 1.e alleges a collection account owing in the amount of \$4,314.00. Although Applicant placed this credit card account with a credit counseling service in June 2004, no payment has been made on the account.

Subparagraphs 1.f through 1.h allege collection accounts with a total amount owing of \$408.00. Applicant testified she does not know who the creditor(s) is/are on these accounts, although she acknowledges they may belong to her. No payment has been made on any of these accounts.

Subparagraphs 1.i and 1.j allege collection accounts totaling \$181.00. Applicant testified these accounts are medical bills owing to her current health care provided and she pays him a little extra whenever she sees him in an effort to satisfy these debts.

Subparagraph 1.k alleges a charged off credit card account in the amount of \$1,142.00. This account was placed with a credit counseling service in June 2004 and Applicant testified she thinks it has been paid. However, while Applicant's August 2006 credit report (GE 5) lists a zero balance for this account with entries reading "transferred to recovery" and "charged off account," the credit counseling service report, dated May 20, 2006 (GE 4), contains the entry "insufficient funds" under the settlement status column.

Subparagraphs 1.l and 1.m are collection accounts totaling \$398.00. Applicant testified these accounts resulted from checks cashed on a closed account that her oldest son stole from her and forged her signature on. No payment has been made on these accounts.

Applicant's financial problems began sometime around 2001 as a result of her oldest son developing a drug addiction problem and stealing from her to support his habit. They became more serious in or about 2004 when her then live-in companion and now husband was removed from the home for several months following an altercation with her son and stopped contributing to the support of the household. After returning to the household, Applicant's husband only sporadically provided any financial assistance to her.

Applicant contracted with a credit counseling service in June 2004 and has been paying the service \$55.38 a week through a payroll deduction. The report from the counseling service (GE 4) indicates the majority of the money the service is collecting is being applied to fees as opposed to satisfying debts. Applicant placed four accounts, totaling approximately \$10,000.00 in credit card debt, with the service in June 2004 and was assured the debt would be eliminated within two years. As of May 2006, only about \$4,200.00 of the debt had been satisfied, and that was done by the service negotiating reduced payments to two creditors, neither of which are alleged in the SOR.

POLICIES

The Directive sets forth adjudicative guidelines to consider when evaluating a person's eligibility to hold a security clearance. Chief among them are the Disqualifying Conditions (DC) and Mitigating Conditions (MC) for each applicable guideline. Additionally, each clearance decision must be a fair and impartial commonsense decision based upon the relevant and material facts and circumstances, the whole person concept, and the factors listed in ¶ 6.3.1 through ¶ 6.3.6 of the Directive. 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. Considering the evidence as a whole, Guideline F, pertaining to financial considerations, with its respective DC and MC, is most relevant in this case.

BURDEN OF PROOF

The sole purpose of a security clearance decision is to decide if it is clearly consistent with the national interest to grant or continue a security clearance for an applicant.⁽³⁾ The government has the burden of proving controverted facts.⁽⁴⁾ The burden of proof in a security clearance case is something less than a preponderance of evidence⁽⁵⁾, although the government is required to present substantial evidence to meet its burden of proof.⁽⁶⁾ "Substantial evidence is more than a scintilla, but less than a preponderance of the evidence."⁽⁷⁾ 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 him.⁽⁸⁾ Additionally, an applicant has the ultimate burden of persuasion to obtain a favorable clearance decision.⁽⁹⁾

No one has a right to a security clearance⁽¹⁰⁾ and "the clearly consistent standard indicates that security clearance determinations should err, if they must, on the side of denials."⁽¹¹⁾ Any reasonable doubt about whether an applicant should be allowed access to classified information must be resolved in favor of protecting national security.⁽¹²⁾

CONCLUSIONS

Under Guideline F, a security concern exists when a person has significant unpaid debts. An individual who is financially overextended is at risk of having to engage in illegal or unethical acts to generate funds to meet financial obligations.

Applicant presently has a law suit pending against her seeking more than \$10,000.00 in damages that she admits she is liable for and had not resolved as the date of the hearing. She has a collection account in the amount of \$4,314.00 that remains unpaid although it was placed with a credit counseling service more than two years ago. She claimed to have satisfied one account and returned a cable box that was the basis for a second account, but failed to present any proof in support of those assertions. Applicant claimed to not recognize some of the alleged creditors, but has failed to take meaningful action to resolve any of those debts. Disqualifying Conditions (DC) 1: *A history of not meeting financial obligations*; and DC 3: *Inability or unwillingness to satisfy debts* apply in this case.

Applicant's financial problems arose from her son's drug abuse and his related thefts from her. They were aggravated by the effect her son's conduct had on her relationship to her now husband and his unwillingness to continue to provide consistent financial support to the household. Mitigating Condition (MC) 3: *The conditions that resulted in the behavior were largely beyond the person's control . . .* applies. Applicant's well-intentioned attempt to resolve at least part of her debt problem by entering into a contract with the credit counseling service entitles her to application of MC 6: *The individual initiated a good-faith effort to repay overdue creditors or otherwise resolve debts*.

Although Applicant's financial problems are not of her own misdoing and she has made a good-faith effort to resolve them, it is clear she will remain in financial distress for the foreseeable future. Based upon past performance, it appears the credit counseling service will continue to apply most of the money it received from Applicant to fees and take several more years to satisfy the two debts that remain to be paid. Applicant's proposed settlement of the pending lawsuit, if accepted by the creditor, will take about three years to satisfy that debt. However, the full extent of Applicant's remaining financial distress is revealed by the following testimony:

ADMINISTRATIVE JUDGE: Most of these debts are pretty small. Why haven't they simply been paid by now?

(APPLICANT) Just not enough money to cover living expenses and the monthly payments. And you miss one and it increases and - -

Considering all relevant and material facts and circumstances present in this case, including the whole person concept, the factors listed in ¶ 6.3.1 through ¶ 6.3.6 of the Directive, and the applicable disqualifying and mitigating conditions, I find Applicant has failed to mitigate the security concern that exists in this case. She has not overcome the case against her nor satisfied her ultimate burden of persuasion. Guideline F is decided against Applicant.

FORMAL FINDINGS

SOR ¶ 1-Guideline F: Against Applicant

Subparagraphs a-m: Against 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 Applicant. Clearance is denied.

Henry Lazzaro

Administrative Judge

1. This action was taken under Executive Order 10865 and DoD Directive 5220.6, dated January 2, 1992, as amended and modified (Directive).
2. Applicant waived the 15-day notice requirement. (Tr. pp. 8-9)
3. ISCR Case No. 96-0277 (July 11, 1997) at p. 2.
4. ISCR Case No. 97-0016 (December 31, 1997) at p. 3; Directive, Enclosure 3, Item E3.1.14.
5. *Department of the Navy v. Egan* 484 U.S. 518, 531 (1988).
6. ISCR Case No. 01-20700 (December 19, 2002) at p. 3 (citations omitted).
7. ISCR Case No. 98-0761 (December 27, 1999) at p. 2.
8. ISCR Case No. 94-1075 (August 10, 1995) at pp. 3-4; Directive, Enclosure 3, Item E3.1.15.
9. ISCR Case No. 93-1390 (January 27, 1995) at pp. 7-8; Directive, Enclosure 3, Item E3.1.15.
10. *Egan*, 484 U.S. at 528, 531.
11. *Id* at 531.
12. *Egan*, Executive Order 10865, and the Directive.

