

DATE: January 31, 2007

In re:

SSN: -----

Applicant for Security Clearance

ISCR Case No. 06-09781

ECISION OF ADMINISTRATIVE JUDGE

CLAUDE R. HEINY

APPEARANCES

FOR GOVERNMENT

Richard A. Stevens, Esq., Department Counsel

FOR APPLICANT

Pro Se

SYNOPSIS

Applicant owed six delinquent debts totaling approximately \$16,000. She has paid three of them and disputes the remaining three. The record evidence is sufficient to mitigate or extenuate the negative security implications stemming from her past due debts. Clearance is granted.

STATEMENT OF THE CASE

On September 11, 2006, the Defense Office of Hearings and Appeals (DOHA) issued a Statement of Reasons (SOR) to Applicant stating that DOHA could not make the preliminary affirmative finding ⁽¹⁾ it is clearly consistent with the national interest to grant or continue a security clearance for Applicant. The SOR set forth reasons why a security clearance could not be granted or continued due to financial considerations security concerns.

On October 17, 2006, Applicant answered the SOR and requested a hearing. On November 14, 2006, I was assigned the case. On November 16, 2006, a Notice of Hearing was issued for the hearing held on November 30, 2006. On December 8, 2006, DOHA received the transcript (Tr.) The record was kept open to allow Applicant to submit additional documents. No additional documents were received.

FINDINGS OF FACT

The SOR alleges Financial Considerations security concerns. Applicant admits to the following: she once owed a \$3,126 hospital judgment (SOR 1.a), she owed money on a car that was repossessed (SOR 1.c), that she paid a \$409 hospital bill (SOR 1.d), paid another medical bill of \$255 (SOR 1.f), and a \$1,543 collection account (SOR 1.e) owed a department store was charged off. The admissions are incorporated herein as findings of fact. After a thorough review of the entire record, I make the following findings of fact.

Applicant is a 43-year-old security guard who has worked for a defense contractor for two and a half years, and is

seeking to obtain a security clearance. Applicant is regarded by those who know her as courteous, professional, possessing a wonderful disposition, is timely, an outstanding team member, and an asset to the staff. (App Ex A)

In 1993, Applicant and her husband divorced. (Gov Ex 5) Per the divorce agreement (Gov Ex 6), her husband was supposed to pay her sons' medical expenses not covered by insurance. Her son sprained his ankle playing football and both sons had emergency room visits due to playing sports. (Tr. 28) Her ex-husband failed to pay the expenses before he died in April 2000. Applicant worked for a hospital for 20 years. In September 2001, when her ex-husband failed to pay the medical expenses, the hospital began to garnish her weekly wages in the amount of \$146.19. As of June 2002, when Applicant retired from the hospital, \$2,743.87 had been taken from her pay for that year. (Gov ex 3) The amount garnished in 2001, is not provided. At the time she left the hospital, all obligations (SOR 1.a) owed the hospital were paid.

In 1997, Applicant purchased a used 1995 Ford Taurus for \$8,000. She made her \$147 monthly payments each month directly to the auto dealership where she purchased the car. In early 2000, after making payments for two and one-half years, the dealership went out of business. When Applicant arrived at the dealership to make her monthly payment a note on the door stated the dealership was out of business and indicated where to send money payments. She was contacted by a company owning the dealership's accounts receivable and informed she owed \$10,230. She believed only \$3,000 was yet owed on the car. The creditor then reduced the demand to \$5,000 if paid by September 2006. Applicant did not have \$5,000 to pay the debt and did not believe she owed that much. (Tr. 32) She told the company to come get the car, which they did. (Tr. 26) Applicant is disputing this debt.

In 2004, a collection agency opened an account to collect a \$113 past due cable bill (SOR 1.b). Applicant denies owing the debt because the cable company was in another state and she has not lived in that state since 2002. (Tr. 25)

Applicant had a \$1,543 department store account (SOR 1.e) which was written off. In June 2003, the account was turned over to a collection agency. The original creditor does not appear on Applicant's June 2006 credit report (Gov Ex 7).

In July 2005, Applicant was involved in a car accident when another vehicle ran a red light and struck her car with sufficient force to totally destroy her car. Applicant and her son required medical treatment. Applicant hired an attorney. In her answer to the SOR, Applicant included copies to a \$408.98 check to one hospital paying in full the debt (SOR 1.d) and a \$255 check paying in full another hospital debt (SOR 1.f) The checks are written on her attorney's account. Payment was not made on the accounts until settlement was received. A \$6,000 settlement was received, but after attorney fees and bills pay, Applicant received only \$1,000. (Tr. 41) Following the accident, Applicant was out of work for one month. The \$1,000 she received did not cover the cost of her being out of work. (Tr. 49)

Following the repossession, Applicant purchased a 2003 Suzuki and has been making \$350 monthly payments. She is current on her car payments, her rent payments, and other payments. She is not being contacted by creditors. Applicant maintains no credit card accounts. Her only loan is her car note. Applicant took a three hour finance class where she learned about consolidating her bills, making a budget, learned the importance of doing without, and balancing her income and debts. (Tr. 43)

POLICIES

The Directive sets forth adjudicative guidelines to be considered when evaluating a person's eligibility to hold a security clearance. Disqualifying Conditions (DC) and Mitigating Conditions (MC) are set forth for each applicable guideline. Additionally, each 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 Section 6.3 of the Directive. The adjudicative guidelines are to be applied by administrative judges on a case-by-case basis with an eye toward making determinations that are clearly consistent with the interests of national security. The presence or absence of a particular condition or factor for or against clearance is not determinative of a conclusion for or against an applicant. However, the adjudicative guidelines should be followed whenever a case can be measured against this policy guidance. Considering the evidence as a whole, I conclude the relevant guidelines to be applied here is Guideline F, financial considerations.

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. Initially, the Government must establish, by substantial evidence, that conditions exist in the personal or professional history of the applicant which disqualify, or may disqualify, an applicant from being eligible for access to classified information. The burden of proof in a security clearance case is something less than a preponderance of evidence, although the government is required to present substantial evidence to meet its burden of proof. Substantial evidence is more than a scintilla, but less than a preponderance of the evidence. All that is required is proof of facts and circumstances which indicate an applicant is at risk for mishandling classified information, or that an applicant does not demonstrate the high degree of judgment, reliability, or trustworthiness required of persons handling classified information. Additionally, the government must prove controverted facts alleged in the SOR. Once the government has met its burden, the burden shifts to an applicant to present evidence to refute, extenuate or mitigate the government's case. Additionally, an applicant has the ultimate burden of persuasion to obtain a favorable clearance decision. (2)

As noted by the United States Supreme Court in *Department of Navy v. Egan*, 484 U.S. 518, 528 (1988), "no one has a 'right' to a security clearance." A person who has access to classified information enters into a fiduciary relationship with the government based on trust and confidence. The government, therefore, has a compelling interest in ensuring each applicant possesses the requisite judgment, reliability and trustworthiness of one who will protect the national interests. The "clearly consistent with the national interest" standard compels resolution of any reasonable doubt about an applicant's suitability for access to classified information in favor of protecting national security. Security clearance determinations should err, if they must, on the side of denials.

CONCLUSIONS

The Government has satisfied its initial burden of proof under Guideline F, financial considerations. A person's relationship with her creditors is a private matter until evidence is uncovered demonstrating an inability or unwillingness to repay debts under agreed upon terms. Absent evidence of strong extenuating or mitigating circumstances, an applicant with a history of serious or recurring financial difficulties is in a position of risk that is inconsistent with the holding of a security clearance. An applicant is not required to be debt free, but is required to manage her finances so as to meet her financial obligations.

Financial considerations become a security concern when a person has significant delinquent 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. Additionally, an individual who is financially irresponsible may also be irresponsible, unconcerned, or careless in their obligations to protect classified information. Behaving responsibly or irresponsibly in one aspect of life provides an indication of how a person may behave in other aspects of life.

The SOR alleges six debts totaling approximately \$16,000 that were either reduced to judgment or accounts in collection. Disqualifying Conditions (DC) 1 (E2.A6.1.2.1 *A history of not meeting financial obligations*) and DC 3 (E2.A6.1.2.3 *Inability or unwillingness to satisfy debts*) apply.

Applicant has paid three of the debts. The hospital judgment (SOR 1.a) was paid by garnishment during 2001 and 2002. Two other debts (SOR 1.d and 1.f) were paid by her attorney following her vehicle accident. Mitigating Conditions (MC) 6 (E2.A6.1.3.6 *The individual initiated a good-faith effort to repay overdue creditors or otherwise resolve debts*) applies to these debts.

Applicant disputes three of the debts. She purchased a vehicle, made her \$147 monthly payments for two and a half years before the dealership went out of business. The successor in interest demanded more than \$10,000 when she believed she owed \$3,000. The creditor then offered to settle the matter for \$5,000. Applicant did not have money to accept the offer nor the desire to pay \$5,000 on a vehicle she believed she only owed \$3,000. Applicant disputes a \$113 cable bill because it was opened in a state where she had not lived for two years. As disputed debts, under these unique circumstances, I will not hold these debts against her.

Other debt (SOR 1.e) is sufficiently old that the original creditor no longer appears on her credit report. Knowing how long creditors routinely stay on a credit report following the last payment by a consumer and after considering the state

statute of limitation, I believe this debt is no longer an enforceable obligation. Applicant is not at risk of having to engage in illegal or unethical acts to pay this debt.

Even if the three debts are owed, they collectively total less than \$7,000, if the \$5,000 vehicle offer is considered. It is unlikely Applicant is at risk of having to engage in illegal or unethical acts to pay a \$7,000 debt. Additionally, she encountered factors beyond her control with her ex-husband falling to honor the divorce decree related to their sons' medical expenses and her auto accident. C3 (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)*) applies.

In reaching my conclusions I have also considered: the nature, extent, and seriousness of the conduct; Applicant's age and maturity at the time of the conduct; the circumstances surrounding the conduct; Applicant's voluntary and knowledgeable participation; the motivation for the conduct; the frequency and recency of the conduct; presence or absence of rehabilitation; potential for pressure, coercion, exploitation, or duress; and the probability that the circumstance or conduct will continue or recur in the future. I find for Applicant as to financial considerations.

FORMAL FINDINGS

Formal Findings as required by Section 3, Paragraph 7, of Enclosure 1 of the Directive are hereby rendered as follows:

Paragraph 1 Financial Considerations: 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

DECISION

In light of all the circumstances presented by the record in this case, it is clearly consistent with the national interest to grant or continue a security clearance for Applicant. Clearance is granted.

Claude R. Heiny

Administrative Judge

Peer Review Checklist for Administrative Judge's Decisions

CASE NO: 06-09781 AUTHOR:

Claude Heiny

DATE: January 31, 2007 PEER REVIEWER:

| ITEMS FOR REVIEW DURING PEER REVIEW PROCESS: | Author | Peer Reviewer |
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| 1. Is the case caption correct and complete? Name of applicant/appellant (Identical to the SOR)? SSN? Case number and prefix (ISCR, ADP, or proper CAF)? AJ's name and identities of the parties? | | |
| 2. Is the format (font style and size, line spacing, section names, margins, macros, etc.) correct? | | |
| 3. Does the SYNOPSIS serve its function as a <u>brief</u> one paragraph head note highlighting only significant facts providing the reader a quick idea of what the case stands for? | | |
| 4. Does the last sentence of the SYNOPSIS clearly state the final action (in an ISCR/ADP case does it say "Clearance is granted" or "Clearance is denied," and in a PA is a meaningful recommended decision clearly indicated and made to the proper PSAB - with or without a conditional basis or warning)? | | |
| 5. Are the regulatory authorities (directive, executive orders, various regulations, 10 U.S.C. § 986, DCID 6/4) correctly and completely identified, to include the latest changes, modifications, and revisions? | | |
| 6. Is the chronology in the STATEMENT OF THE CASE or CASE HISTORY correct? SOR date? Answer date? If a PA, are the LOI/LON/LOD actions adequately described? If a PA, are the mitigated issues adequately described? Are the appropriate Adjudicative Guidelines indicated? Are the applicant's/appellant's admission identified? | | |
| 7. Are the FINDINGS OF FACT logically organized by chronology, subject, or another logical method? | | |
| 8. Are the FINDINGS OF FACT statements of fact as opposed to a mere summary of SOR allegations or events or summary of witness testimony? | | |
| 9. Does the policy section of an ISCR/ADP decision contain references to, and text from, the appropriate pertinent Adjudicative Guidelines and or other policy matters such as the oney Memo or 10 U.S.C. § 986 (Smith Amendment) | | |
| 10. In the CONCLUSIONS section, are the relevant disqualifying and mitigating conditions identified, quoted, and discussed, with relation to the facts, as opposed to a mere repetition of the facts, without a meaningful synergism? | | |

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| <p>11. In the CONCLUSIONS section, is there reasoned decision-making leading to a rational connection between the findings and conclusions?</p> | | | | | | | |
| <p>12. Do the FORMAL FINDINGS address each of the SOR allegations and are they consistent with the SYNOPSIS, e.g. - "is not" versus "is"?</p> | | | | | | | |
| <p>13. If a Smith Amendment case, does the decision comply with DOHA Operating Instruction No. 64 as to a recommendation for a waiver?</p> | <p>NA</p> | <p>NA</p> | | | | | |
| <p>14. Is the decision or recommended decision, as appropriate, signed by the AJ?</p> | <p>Draft</p> | <p>Draft</p> | | | | | |
| <p>15. Except in allegiance, foreign influence, and foreign preference cases, have all references to locations been avoided, and in all cases, have the privacy concerns - identities of individuals, organizations, employers, creditors, court systems, police departments, etc. - been addressed and references made generic?</p> | | | | | | | |
| <p>16. Have the punctuation, spelling, and grammar been checked for accuracy?</p> | | | | | | | |
| <p>17. Have potential "land mines" - slams of a particular perceived practice or procedure; "pokes-in-the-eye" - messages regarding a perceived injustice or controversial practice; and gratuitous, inflammatory dicta, been eliminated?</p> | | <table border="1"> <tr> <td data-bbox="706 1050 1583 1102" style="text-align: center;"> <p>CASE INFORMATION</p> </td> </tr> <tr> <td data-bbox="706 1102 1583 1207"> <p>(* ISCR-H, ISCR-A, PA, ADP-H, ADP-A, TRICARE, Spec Ed, Remand)</p> </td> </tr> <tr> <td data-bbox="706 1207 1583 1312"> <p>ISCR/ADP - SOR Date: <u>September 11, 2006</u> Ready to Proceed Date:</p> <p>_____</p> </td> </tr> <tr> <td data-bbox="706 1312 1583 1417"> <p>PA/TRICARE/Spec Ed - Date Received DOHA:</p> </td> </tr> <tr> <td data-bbox="706 1417 1583 1659" style="background-color: #003366; color: white;"> <p>1. Required by Executive Order 10865, as amended, and Department of Defense Directive 5220.6 (Directive), dated January 2, 1992, as amended.</p> <p>2. ISCR Case No. 93-1390 (January 27, 1995) at pp. 7-8; Directive, Enclosure 3, Item E3.1.15</p> </td> </tr> </table> | <p>CASE INFORMATION</p> | <p>(* ISCR-H, ISCR-A, PA, ADP-H, ADP-A, TRICARE, Spec Ed, Remand)</p> | <p>ISCR/ADP - SOR Date: <u>September 11, 2006</u> Ready to Proceed Date:</p> <p>_____</p> | <p>PA/TRICARE/Spec Ed - Date Received DOHA:</p> | <p>1. Required by Executive Order 10865, as amended, and Department of Defense Directive 5220.6 (Directive), dated January 2, 1992, as amended.</p> <p>2. ISCR Case No. 93-1390 (January 27, 1995) at pp. 7-8; Directive, Enclosure 3, Item E3.1.15</p> |
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