

DATE: March 29, 2007

In re:

SSN: -----

Applicant for Security Clearance

ISCR Case No. 06-10435

ECISION OF ADMINISTRATIVE JUDGE

ELIZABETH M. MATCHINSKI

APPEARANCES

FOR GOVERNMENT

Emilio Jaksetic, Esq., Department Counsel

FOR APPLICANT

Pro Se

SYNOPSIS

Applicant owes several medical debts in collection, two charged off credit card debts, a vehicle loan debt for a car repossessed in June 2005, and a past due cable service debt. She has not adequately explained the delinquencies nor taken steps to resolve her indebtedness. 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. As required by Department of Defense Directive 5220.6 ¶ E3.1.2 (Jan. 2, 1992), as amended, DOHA issued a Statement of Reasons (SOR) on August 30, 2006, detailing the basis for its decision-security concerns raised under Guideline F (financial considerations) of the adjudicative guidelines. [\(1\)](#) Applicant submitted an answer to the SOR dated September 26, 2006, that was not considered responsive, in part because she failed to indicate whether or not she wanted a hearing. In an undated response, Applicant annotated her original answer and she elected to have a determination on the written record without a hearing.

On December 15, 2006, the government submitted a File of Relevant Material (FORM) consisting of fourteen exhibits (Items 1-14). DOHA forwarded a copy of the FORM to Applicant and instructed her to respond within 30 days of receipt. No response had been received by the February 3, 2007, due date, and on February 28, 2007, the case was assigned to me to consider whether it is clearly consistent with the national interest to grant or continue a security clearance for Applicant.

FINDINGS OF FACT

DOHA alleged under Guideline F that Applicant owed unpaid judgment debts of \$947 (¶ 1.a) and \$209 (¶ 1.b), 13 debts in collection owed to a hospital or its assignee totaling \$980 (¶¶ 1.c, 1.d, 1.e, 1.f, 1.g, 1.h, 1.i, 1.l, 1.m, 1.n, 1.o, 1.p, and 1.q), a \$746 medical debt in collection (¶ 1.k), a \$194 cable television debt in collection (¶ 1.r), a collection debt of \$637

(¶ 1.t), charged off balances of \$834 (¶ 1.s) and \$30 (¶ 1.v), and a delinquent car loan balance of \$7,517 in collection (¶ 1.u). In her amended Answer, Applicant indicated the judgments (¶¶ 1.a and 1.b), the cable debt (¶ 1.r), and the \$30 charged off debt (¶ 1.v) had been paid, and that the \$746 medical debt in ¶ 1.k was the responsibility of her daughter's father. Applicant admitted the remaining allegations (¶¶ 1.c, 1.d, 1.e, 1.f, 1.g, 1.h, 1.i, 1.l, 1.m, 1.n, 1.o, 1.p, 1.q, 1.s, 1.t, and 1.u).

In the FORM, Department Counsel submitted Applicant's denials to ¶¶ 1.a, 1.b, 1.r, and 1.v, which are based on payment, "are for all practical purposes admissions that she owed the debts." While it is reasonable to infer from payment that Applicant accepted responsibility, an assertion of payment, without more, is not tantamount to an admission of charge off or delinquency.

Applicant's admissions are incorporated herein as facts. After a thorough review of the evidence before me for consideration, I make the following findings of fact.

Applicant is a 50-year-old outside machinist who has been employed by a defense contractor since October 1979. She seeks to retain a secret-level security clearance granted to her in May 1980.

In conjunction with a periodic reinvestigation for her clearance, Applicant executed a security clearance application (SF 86) on August 4, 2004. Applicant answered "Yes" to question 34, which asked about any wage garnishments in the last seven years. She listed garnishments for \$950 in March 2002 and \$175 in ay 2003, and indicated both had been satisfied. She also answered "Yes" to any financial delinquencies over 180 days in the past seven years (question 38) and disclosed credit card debts of \$475 incurred in March 2001 and \$350 incurred in September 2003. Applicant indicated that she would probably pay off the credit card debts before the end of 2004. She responded negatively to questions 37 ["In the last 7 years, have you had any judgements against you that have not been paid?"] and 39 ["Are you currently over 90 days delinquent on any debt(s)?"].

Applicant's credit was checked on September 22, 2004. Listed on her credit report were five judgments filed in November 1998 for \$141, November 2000 for \$209 (SOR ¶ 1.b), May 2001 for \$170, April 2002 for \$947 (¶ 1.a), and July 2002 for \$73. The May 2001 and July 2002 judgment debts were reported as satisfied while the status of the others was reported as unknown. Several bad debts were listed as in collection: a \$30 past due balance on a secured personal loan opened in September 2001 (¶ 1.v), an \$834 past due balance owed since December 2001 on a revolving charge (¶ 1.s), the \$475 credit card debt listed on her SF 86 (¶ 1.t), a \$686 balance on a medical debt originally placed for \$415 in November 2000 (¶ 1.k), 10 other medical debts placed between August 1998 and July 2005 totaling \$695 (including those in ¶¶ 1.n, 1.o, 1.p, and 1.q), and a \$194 cable television debt (¶ 1.r) owed since June 2001. An automobile loan of \$13,654, taken out in August 2001, was rated "pays as agreed." Also listed were two new vehicle loans taken out by Applicant in June 2004, \$22,509 in her name (¶ 1.u), and \$22,606 as a cosigner (not alleged).

In January 2005, she lost her car in an involuntary repossession (¶ 1.u). Between May 2005 and May 2006 seven new medical debts totaling about \$633 were placed for collection (¶¶ 1.c, 1.d, 1.e, 1.f, 1.g, 1.h, 1.i). By August 2006, the \$475 credit card delinquency had been charged off and sold to an assignee, who reported a \$637 balance (¶ 1.t). The vehicle that she had cosigned for had been repossessed in June 2005 with a balance due of \$21,441, and she was reported to owe a past due balance of \$22,250 on the car in her name (¶ 1.u).

A December 12, 2006, credit check, reported no change in the delinquency status of the debts alleged in the SOR. The balance of the debt in ¶ 1.t had risen to \$711, and another medical debt of \$79 had been placed for collection in October 2006. The credit bureau continued to report balances of \$22,250 on the car loan taken out in her name (¶ 1.u) and \$21,441 on the car she had cosigned for. The evidentiary record does not support a balance of \$7,517 on the car loan taken out in her name (¶ 1.u), although it could well be a deficiency balance due after a resale of her repossessed vehicle. ⁽²⁾

POLICIES

"[N]o 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 authorized the Secretary of Defense or his designee to grant applicants eligibility for access to classified information "only upon a finding that it is clearly consistent with the national interest to do so." Exec. Or. 10865, *Safeguarding Classified Information within Industry* § 2 (Feb. 20, 1960). 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).

The adjudicative guidelines set forth potentially 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 the applicant has not met the strict guidelines the President and the Secretary of Defense have established for issuing a clearance.

CONCLUSIONS

Guideline F--Financial Considerations

An individual who is financially overextended is at risk of having to engage in illegal acts to generate funds. ¶ E2.A6.1.1 Applicant's September 2004 credit report listed judgment debt of \$1,540 (\$243 satisfied) entered against her between November 1998 and July 2002, delinquent credit card debt of \$1,309, medical debt in collection totaling about \$1,381, and a \$194 cable television debt in collection. Recent credit checks in 2006 revealed that Applicant had made little to no progress toward satisfying her delinquent debt, that additional medical debts had been placed for collection, and that she had not made her payments on the vehicle loan taken out in June 2004. Applicant presented no evidence to corroborate her claims that the judgment debts in ¶¶ 1.a and 1.b were satisfied by garnishment, that the debt in ¶ 1.k was not her responsibility, or that the cable television debt in ¶ 1.r had been paid. Civil court records do not show that the judgments have been paid (see Items 7 and 9), although garnishments were filed (see Items 8 and 10). Even if the two judgments have been satisfied, the fact that the creditors had to resort to civil action raises concerns about Applicant's handling of her financial obligations. Disqualifying conditions ¶ E2.A6.1.2.1. *A history of not meeting financial obligations*, and ¶ E2.A6.1.2.3. *Inability or unwillingness to satisfy debts*, apply.

Applicant bears a burden of demonstrating that her ongoing financial problems do not pose a security risk. While 15 of the 21 debts in the SOR were medical, Applicant presented no evidence from which I could conclude that her delinquent debt was due to unforeseen circumstances of the type contemplated in mitigating condition (MC) ¶ 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)*. Eleven of the debts are for amounts less than \$100; of these, seven are for less than \$35. An attitude of disregard, not only toward her legitimate financial obligations, but also toward what the government expects of her, may reasonably be inferred from her failure to take any action to address these debts so minor in amounts. The available record does not support favorable consideration of either MC ¶ 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*, or ¶ E2.A6.1.3.6. *The individual initiated a good-faith effort to repay overdue creditors or otherwise resolve debts*. Given her persistent financial difficulties, which have not been adequately explained, I am unable to conclude that it is clearly consistent with the national interest to continue her clearance.

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.k: Against Applicant

Subparagraph 1.l: Against Applicant

Subparagraph 1.m: Against Applicant

Subparagraph 1.n: Against Applicant

Subparagraph 1.o: Against Applicant

Subparagraph 1.p: Against Applicant

DECISION

In light of all of the circumstances in this case, it is not clearly consistent with the national interest to grant or continue a security clearance for Applicant. Clearance is denied.

Elizabeth M. Matchinski

Administrative Judge

1. As noted by Department Counsel in the FORM, there is no ¶ 1.j in the SOR, likely due to typographical error.
2. There is no evidence that the car has been sold.