

DATE: January 31, 2007

In Re:

SSN: -----

Applicant for Security Clearance

ISCR Case No. 06-10662

ECISION OF ADMINISTRATIVE JUDGE

CLAUDE R. HEINY

APPEARANCES

FOR GOVERNMENT

Richard A. Stevens, Esq., Department Counsel

FOR APPLICANT

Pro Se

SYNOPSIS

Applicant accumulated delinquent debts between about 1997 and 2004. Circumstances beyond her control contributed to her delinquency, including her divorce, an automobile accident injury, lost wages, and being unable to find full time work. Applicant has paid off the majority of her debts. Applicant mitigated the security concerns arising from her financial difficulties and personal conduct. Clearance is granted.

STATEMENT OF THE CASE

On August 18, 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 [\(U\)](#) 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 and personal conduct security concerns.

On September 6, 2006, Applicant answered the SOR and requested a hearing. On November 1, 2006, I was assigned the case. On November 11, 2006, a Notice of Hearing was issued for the hearing held on November 28, 2006. On December 8, 2006, DOHA received a copy of the transcript (Tr.). The record was kept open to allow Applicant to submit additional documents, which were received on December 15, 2006. Department Counsel having no objections, the documents were admitted into evidence as App Ex G.

FINDINGS OF FACT

The SOR alleges financial considerations and personal conduct security concerns. The SOR lists 18 debts as charged off or in collection. Applicant admits having paid nine of the debts totaling \$1,914. (See Answer to SOR, App Exs B, C, D, and E) She admits owing four additional debts totaling \$1,585, of which she was unaware. She admits another was included in her bankruptcy (\$2,455), acknowledges another (\$531) that she will start paying, denies one (\$272), and admits two additional bills (\$5,166 and \$2,886) are the same bill related to a repossession, which she does not intend to

pay. These admissions are incorporated herein as findings of fact. After a thorough review of the entire record, I make the following additional findings of fact:

Applicant is a 46-year-old data manager who has worked for a defense contractor for two years and is seeking to obtain a security clearance. Applicant is regarded by those who know her as supportive, helpful, extremely reliable, trustworthy, honest, hard working, meticulous, and a total team player. (App Exs A, G) She is an excellent worker who learns quickly, is flexible, adaptable, and extremely reliable. (Tr.37)

Applicant married at age 15 and her husband joined the military at age 17. Applicant did not finish high school. (Tr. 23) Her husband served 21 years in the service. They were married 22 years, when, in February 1997, they divorced. She receives \$680 per month as a division of the military retirement. Following the divorce, Applicant obtained two full time jobs, working 40 hours per week. One was a stocker at a discount store and the other embroidering name tags. (Tr. 43) As of July 2006, Applicant monthly income was \$2,300, her monthly expenses were \$1,300, and she was paying \$300 monthly on her debts. She had a \$700 net monthly remainder. (Gov Ex 2) Applicant has been taking computer classes to improve herself. (Tr. 25)

In September 1997, Applicant commenced a Chapter 13, Wager Earner's Plan that was confirmed in July 1998 and concluded in January 1999. The plan listed \$4,200 in secured claims and \$13,000 in general claims. In compliance with the plan she paid the bankruptcy trustee \$2,600, for payment to her creditors. (Gov Ex 2) Applicant received notice her bankruptcy case was dismissed, which she mistakenly believed ended the matter and that she owed no additional funds. (Tr. 48) Dismissed means the bankruptcy was stopped. Discharged means the debts listed in the bankruptcy are no longer owing. (Tr. 75)

One credit card account for \$2,455 (SOR 1.f) had been included in the bankruptcy, which occurred nine years before the hearing. Applicant contacted a discount store (SOR1.g) which she owes \$531. When the original creditor was contacted, Applicant was informed the account had been sold to a collection agency. (Tr. 86) Applicant is attempting to locate this collection agency.

In May 2000, Applicant was injured in an auto accident. She was stopped at a stop sign. Her car was hit when another car attempted to avoid a third car as the third car came across the road. Her vehicle was a total loss. Applicant was out of work three or four months due to her injuries. (Tr. 80) In June 2001, to replace her destroyed vehicle, Applicant purchased a used, \$13,600 Dodge Neon with \$290 monthly payments. Applicant made payments on the vehicle for approximately three years. Applicant got behind on her payments when her employment was reduced from full time to a part-time, minimum wage job. She contacted the creditor in an attempt to get the creditor to work with her to allow her to keep the car. The creditor was unwilling to work with her and the vehicle was repossessed. Following the repossession, Applicant was informed she owed \$2,886 (SOR 1.j). She was last contacted by the creditor in 2004. (Tr. 83)

In February 2005, Applicant completed a Security Clearance Application, Standard Form (SF) 86. In response to question 35, she listed an October 2004 \$12,000 repossession. In response to question 39 she indicated she was 90 days delinquent on a credit card. Applicant did not have access to her financial records. She did not see her credit report until after she had completed the SF 86. (Tr. 49) Applicant had been in another state for nine months. She had put her goods in storage. (Tr. 56)

Applicant's father died 12 years ago. Since then she has been sending her mother \$200 per monthly and helping her with her bills. (Tr. 58) Once Applicant's child moved from the home, Applicant got a roommate to help with expenses. Her first roommate fraudulently opened credit card accounts (SOR 1.p, \$289) and fraudulently wrote checks on Applicant's account. (Tr. 60)

In 2001, Applicant was renting a trailer with a different roommate. She left to go to another state as part of her job and her roommate, being in the military, left for Korea. Her roommate failed to pay the \$81 gas utility bill (SOR 1. k) before moving. Applicant has paid the bill.

The SOR lists 18 debts as charged off or in collection. Debts are frequently transferred from one creditor to another, which occurred. SOR 1.b and 1.m (\$71) are the same debt. SOR 1.q (\$352) and SOR 1.r (\$311) are the same obligation.

SOR 1.k and SOR 1.n, both \$81, are the same debt. SOR 1.e (\$341) and SOR 1.i (\$272) are the same obligation. SOR 1.d (\$5,166) and SOR 1.j, (\$2,886) are both automotive financing accounts related to the same vehicle repossession.

Applicant owes \$1,500 on her 1999 Oldsmobile on which she makes \$200 monthly payments. She is current on her car payments, car insurance, rent, and utilities. Creditors are not calling her. She is not living beyond her means. Applicant does not make a major purchase unless she has the cash to pay for it. (Tr. 97) She has no credit cards.

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 are Guideline F, financial considerations and Guideline E, personal conduct.

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 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. Directive E.2.A.6.1.1.

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 Government has satisfied its initial burden of proof under Guideline F (Financial Considerations). The Applicant owed 18 debts totaling approximately \$15,000. 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.

The SOR lists 18 debts as charged off or in collection. However, a number of the debts are for the same debt listed more than once. There are ten accounts listed which represent only five obligations. Applicant has paid SOR 1.b, 1.c, 1.e, 1.I, 1.k, 1.m, 1.n, 1.q and 1.r. 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 suffered a financial set back when her full time employment was reduced to a part-time, minimum wage job. She tried to work with the holder of her car note, but the creditor was unwilling to work with her. Following the repossession, \$2,886 was owed. Applicant appears to have a legitimate dispute over this debt.

Applicant has a credit card bill (SOR 1.f) of \$2,455 which was included in her 1997 bankruptcy. The state statute of limitation has passed on the debt. Since 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.

Applicant was the victim of identity theft by an ex-roommate. The \$289 debt (SOR 1.p) resulted from that action. Applicant has no knowledge of the \$598 (SOR 1.l) and \$387 (SOR 1.q) debts which may also have resulted from the identity theft. There are two additional accounts, a \$74 magazine bill (SOR 1.a) and a \$531 debt (SOR 1.g) which Applicant intends to pay as soon as she verifies who currently holds the account.

Even if the last six debts are owed, they collectively total less than \$5,000. It is unlikely Applicant is at risk of having to engage in illegal or unethical acts to pay a \$5,000 debt. Additionally, it is important to look at the whole person. Her coworkers believe her to be honest, trustworthy, hard working, meticulous, and extremely reliable. She has approached her finances in the same way. She encountered factors beyond her control with her divorce and the auto accident. She was out of work three or four months following the accident. Additionally, her income was reduced when she was no longer able to find full time employment. MC3 (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 2004, after her car was repossessed, she did not go out and purchase a brand new car, but purchased a used 1999 Oldsmobile. She is current on her car payments, rent, and utilities. She is not being contacted by creditors. She has no credit cards and makes a major purchase only when she has sufficient funds to pay for her purchase. At times in her past, she has held two full time jobs at the same time to help pay her obligations. Her conduct shows a mature and stable attitude toward her finances. She is also taking computer and other classes to help advance her career.

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.

The allegations under Guideline E, (Personal Conduct) are unfounded. The Government has shown Applicant's answer to questions 38 and 39 were incorrect, but this does not prove the Applicant deliberately failed to disclose information about her finances. The Applicant has denied intentional falsification. Deliberate omission, concealment, or falsification of a material fact in any written document or oral statement to the Government when applying for a security clearance is a security concern. But every inaccurate statement is not a falsification. A falsification must be deliberate and material. It is deliberate if it is done knowingly and willfully. An omission concerning unpaid judgments and delinquencies is not deliberate if the person did not know of their existence. Prior to completing her SF 86, she did not have a copy of her credit report. Since completing the form, she has obtained a copy. The Applicant did not know the extent to which her

obligations were delinquent when she completed the form. I find she did not intentionally falsify her SF 86 and find for her as to Personal Conduct, SOR subparagraph 2.

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

Subparagraph 1.g: For Applicant

Subparagraph 1.h: For Applicant

Subparagraph 1.i: For Applicant

Subparagraph 1.j: For Applicant

Subparagraph 1.k: For Applicant

Subparagraph 1.l: For Applicant

Subparagraph 1.m: For Applicant

Subparagraph 1.n: For Applicant

Subparagraph 1.o: For Applicant

Subparagraph 1.p: For Applicant

Subparagraph 1.q: For Applicant

Subparagraph 1.r: For Applicant

Paragraph 2 Personal Conduct: FOR APPLICANT

Subparagraph 2.a: For Applicant

Subparagraph 2.b: 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

1. Required by Executive Order 10865, as amended, and Department of Defense Directive 5220.6 (Directive), dated January 2, 1992, as amended.
2. ISCR Case No. 93-1390 (January 27, 1995) at pp. 7-8; Directive, Enclosure 3, Item E3.1.15