

DATE: February 07, 2007

In Re:

SSN: -----

Applicant for Security Clearance

ISCR Case No. 06-11074

DECISION OF ADMINISTRATIVE JUDGE

KATHRYN MOEN BRAEMAN

APPEARANCES

FOR GOVERNMENT

Braden M. Murphy, Esquire, Department Counsel

FOR APPLICANT

Pro Se

SYNOPSIS

Applicant's financial problems raise security concerns because of her persistent unresolved financial issues with delinquent debts totaling over \$30,000, including uncontested debts of almost \$25,000. While she filed twice for protection under Chapter 13 of the bankruptcy laws in 2001 and again in 2002, each time she failed to make payments in accordance with the plan; and the bankruptcy was dismissed. While she claims to have resolved her student loan delinquencies, she has numerous other debts and a judgment which remain unresolved. Also, she failed to show how the many unfortunate events between 1997 and 2004 were conditions largely beyond her control linked to specific delinquent debts. She failed to establish sufficiently a good-faith effort to reform her financial practices and an ability to live within her means. Clearance is denied.

STATEMENT OF THE CASE

The Defense Office of Hearings and Appeals (DOHA) issued a Statement of Reasons (SOR) to the Applicant on June 30, 2006. The SOR detailed reasons why the Government could not make the preliminary positive finding that it is clearly consistent with the national interest to grant or continue a security clearance for the Applicant.⁽¹⁾ The SOR alleges specific concerns over finances (Guideline F). Applicant responded to these SOR allegations in a notarized Answer dated August 11, 2006, where she admitted, in part, and denied in part, the allegations and requested a decision be made without a hearing.

After Department Counsel prepared a File of Relevant Material (FORM) on October 10, 2006. The FORM was forwarded to Applicant on October 12, 2006; she was advised she had 30 days from the date of receipt to respond to the FORM. She received the documents on October 17, 2006, but submitted no timely response. The case was assigned to me on January 11, 2007.

FINDINGS OF FACT

After a complete and thorough review of the evidence in the record, and upon due consideration of that evidence, I make the following findings of fact:

Applicant, 40 years old, has been employed by Defense Contractor #1 in State #1 since September 2003. She initially completed a Security Clearance Application (SF 86) in June 2004; she submitted another SF 86 with changes signed in February 2005. (Exhibits 4, 5)

Applicant was married in 1997, divorced in April 1999, and has one child born in 1991. She attended a state university in 2004. (Exhibits 4, 5)

Finances

In her SF 86 Applicant disclosed a bankruptcy, repossession, unpaid judgment, and debts to creditors. (Exhibits 4, 5) The SOR alleges 24 delinquent debts that total over \$30,000. (Exhibit 1) She declared that she is a single mother who has struggled financially for over nine years. Her difficulties have included a bad marriage and costly divorce (1997-98), major surgery (1999), a lawsuit (2000), loss of employment (2001), a move for a new job with a pay cut (2003), and a major car accident where she had no comprehensive insurance (2004). (Exhibit 3)

- She admitted to Chapter 13 bankruptcy filings in 2001 and again in 2002 that were dismissed as she was unable to make payments. (SOR 1.a., 1.b.) (Exhibits 3, 4, 5, 6, 7, 8)
- She admitted numerous debts and admitted "ownership" of eleven accounts listed in the SOR. While she stated an intent to satisfy these debts, she provided no plan to do so and has not sought financial counseling to help her resolve these persistent financial issues. (SOR 1.c., 1.d., 1.k., 1.t., 1.w., 1.x., 1.z.) (Exhibits 3, 4, 5, 9, 10)
- Applicant admitted a judgment entered against her for \$16,648. She stated an intent to satisfy, but provided no plan to do so. (SOR 1.s.) (Exhibits 3, 4, 5, 9, 10)

While Applicant denied numerous debts in her Answer, she provided no basis for her denial, nor did she document how she disputed the debts she denied. (Exhibit 3) Even giving her credit for her statements that she paid several debts to Sallie Mae and other creditors, I note she provided no documentation of when these debts were paid. (Exhibit 3)

While she claimed that she could not obtain "documented proof of paying in time to meet the twenty (20) day response requirement" to the SOR, she was provided an opportunity to respond to the FORM and failed to do so.

POLICIES

Enclosure 2 of the Directive sets forth adjudicative guidelines to consider in evaluating an individual's security eligibility. They are divided into conditions that could raise a security concern and may be disqualifying and conditions that could mitigate security concerns in deciding whether to grant or continue an individual's access to classified information. But the mere presence or absence of any given adjudication policy condition is not decisive. Based on a consideration of the evidence as a whole in evaluating this case, I weighed relevant Adjudication Guidelines as set forth below:

Guideline F - Financial Considerations

The Concern: An individual who is financially overextended is at risk of having to engage in illegal acts to generate funds. Unexplained affluence is often linked to proceeds from financially profitable criminal acts.

The responsibility for producing evidence initially falls on the Government to demonstrate that it is not clearly consistent with the national interest to grant or continue Applicant's access to classified information. Then the Applicant presents evidence to refute, explain, extenuate, or mitigate in order to overcome the doubts raised by the Government, and to demonstrate persuasively that it is clearly consistent with the national interest to grant or continue the clearance. Under the provisions of Executive Order 10865, as amended, and the Directive, a decision to grant or continue an applicant's security clearance may be made only after an affirmative finding that to do so is clearly consistent with the

national interest. In reaching the fair and impartial overall common sense determination, the Administrative Judge may draw only those inferences and conclusions that have a reasonable and logical basis in the evidence of record.

CONCLUSIONS

Financial Considerations

The Government established disqualifying conditions that could raise a security concern and may be disqualifying including Applicant's (1) history of financial problems and her (3) inability or unwillingness to satisfy the majority of her delinquent debts and a judgment for over \$16,000 which led her twice to file for discharge under Chapter 13 of the bankruptcy laws. However, these bankruptcies were dismissed based on her inability or refusal to make the payments required under the plan.

Applicant's financial circumstances are difficult as she is a single mother who has struggled for the last nine years and states that her job is important to her. She concedes there "is no immediate fix" to her financial problems. However, she has not documented any effort to seek financial counseling to develop a plan to resolve these issues. Thus, she has failed to mitigate⁽²⁾ these financial concerns except for her statement that she has resolved certain of her debts. Applicant has failed to demonstrate that she is now financially responsible and living within her means. While bankruptcy is a legally permissible means for her to resolve these debts especially in the light of her special circumstances which worsened her financial situation, she failed to make payments in accordance with the bankruptcy plan and twice the courts dismissed her petition.

Also, the record evidence as a whole must be considered to determine whether Applicant's overall conduct can be mitigated. Thus, I have evaluated her conduct and considered the whole person⁽³⁾

factors: She provided no references to attest to her performance and reliability in her current position. She provided no budget or Personal Financial Statement to show she is now able to live within her means.

Thus, after considering the Adjudicative Process factors and the Adjudicative Guidelines, I rule against Applicant under SOR Paragraph 1 and subparagraphs 1.a., 1.b., 1.c., 1.d., 1.e., 1.f., 1.j., 1.k., 1.l., 1.s., 1.t., 1.u., 1.v., 1.w., 1.x., and 1.z., and find that she has mitigated the allegations in SOR subparagraphs 1.g., 1.h., 1. i. 1.m, 1.n., 1.o., 1.p., 1.q., 1.r., 1.y.

FORMAL FINDINGS

After reviewing the allegations of the SOR in the context of the Adjudicative Guidelines in Enclosure 2 and the factors set forth under the Adjudicative Process section, I make the following formal findings:

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.: For Applicant

Subparagraph 1.h.: For Applicant

Subparagraph 1.i.: For 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.: For Applicant

Subparagraph 1.q.: For Applicant

Subparagraph 1.r.: For Applicant

Subparagraph 1.s.: Against Applicant

Subparagraph 1.t.: Against Applicant

Subparagraph 1.u.: Against Applicant

Subparagraph 1.v.: Against Applicant

Subparagraph 1.w.: Against Applicant

Subparagraph 1.x.: Against Applicant

Subparagraph 1.y.: For Applicant

Subparagraph 1.z.: 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 the Applicant. Clearance is denied.

Kathryn Moen Braeman

Administrative Judge

1. This procedure is required by Executive Order 10865, as amended, and Department of Defense Directive 5220.6, dated January 2, 1992 (Directive), as amended by Change 4, April 20, 1999.
2. **Conditions that could mitigate security concerns include:** E2.A6.1.3. 4. . . . there are clear indications that the problem is being resolved or is under control; and E2.A6.1.3. 6. The individual initiated a good-faith effort to repay overdue creditors or otherwise resolve debts.
3. E.2.21.1. The nature, extent, and seriousness of the conduct; E2.2.1.2. The circumstances surrounding the conduct, to include knowledgeable participation; E2.2.1.3. The frequency and recency of the conduct; E2.2.1.4. The individual's age and maturity at the time of the conduct; E2.2.1.5. The voluntariness of the participation; E2.2.1.6. The presence or absence of rehabilitation and other pertinent behavioral changes; E.2.2.1.7. The motivation for the conduct; E.2.2.1.8.

The potential for pressure, coercion, exploitation, or duress; and E.2.2.1.9. The likelihood of continuation or recurrence.
(E.2.2. Adjudication Process)