

DATE: March 15, 2007

In Re:

SSN: -----

Applicant for Security Clearance

CR Case No. 06-11172

DECISION OF ADMINISTRATIVE JUDGE

ROBERT J. TUIDER

APPEARANCES

FOR GOVERNMENT

Eric H. Borgstrom, Esq., Department Counsel

FOR APPLICANT

Pro Se

SYNOPSIS

Applicant has a history of failing to meet her financial obligations preceding the submission of her September 2004 security clearance application. As of the date she answered the SOR in July 2006, she had seven delinquent accounts exceeding \$68,900.00, raising financial considerations concerns. Although she was able to mitigate four of the debts alleged, she was unable to mitigate the remaining three debts exceeding \$56,600.00. Clearance is denied.

STATEMENT OF THE CASE

On June 29, 2006, the Defense Office of Hearings and Appeals (DOHA), under Executive Order 10865, *Safeguarding Classified Information Within Industry*, dated February 20, 1960, as amended and modified, and Department of Defense Directive 5220.6, *Defense Industrial Personnel Security Clearance Review Program* (Directive), dated January 2, 1992, as amended and modified, issued a Statement of Reasons (SOR) to Applicant. The SOR detailed reasons under Guideline F (Financial Considerations) why DOHA could not make the preliminary affirmative finding under the Directive that it is clearly consistent with the national interest to grant or continue a security clearance for Applicant, and recommended referral to an Administrative Judge to conduct proceedings and determine whether clearance should be granted, continued, denied, or revoked.

In a signed and sworn statement, dated July 10, 2006, Applicant responded to the SOR allegations. She requested her case be decided on the written record in lieu of a hearing. On November 11, 2006, Department Counsel submitted the government's case through a file of relevant material (FORM), [\(1\)](#) a copy of which was provided to the Applicant.

Applicant was given the opportunity to file objections and submit material in refutation, extenuation, or mitigation. Applicant submitted a response with attachments dated November 27, 2006, without objection from Department Counsel. The case was assigned to me on February 2, 2007.

FINDINGS OF FACT

Applicant admitted all the SOR allegations, namely ¶¶ 1.a. through 1.g. These admissions are incorporated as findings of fact. After a complete and thorough review of the evidence in the record, I make the following additional findings of fact:

Applicant is a 43-year-old woman employed by a defense contractor as a computer technician. She has been employed with that employer since August 2004 and seeks a secret clearance, which is an employment requirement. Applicant has been married to her husband since April 1983, and they have two adult children. ⁽²⁾

In September 2004, Applicant submitted a security clearance application (SF-86).⁽³⁾ The ensuing investigation revealed Applicant had seven bad debts exceeding \$68,900.00, reflected in ¶¶ 1.a. through 1.g.

Applicant attributes her financial problems to the difficulties she encountered when trying to sell her home in a deteriorating neighborhood. In 1991, Applicant purchased a home in a city that experienced a substantial spike in crime. The crime rate rose to such an extent that her city was listed as one of the 25 most dangerous cities in the U.S. and the most dangerous city in her state.⁽⁴⁾ Applicant attempted to sell her home in approximately 1997 and was unable to do so for a price equal to or greater than the approximate \$48,000.00 mortgage she then owed. For the welfare of her family, Applicant moved to another community, and with the financial assistance of her spouse's family purchased another home in 1999.⁽⁵⁾

Applicant asserts in 1999, she attempted to work a settlement with the bank holding her first home's mortgage. The bank holding her mortgage "refused to allow her to rent or sublease (sic) the property."⁽⁶⁾ Applicant provided no documentation to substantiate this assertion. Unable to reach an agreement with the bank, Applicant abandoned her home and relocated. Before leaving, she turned off and paid all utilities.⁽⁷⁾ In June 2001, the bank obtained a judgment against Applicant in the amount of \$56,144.00 (SOR ¶ 1.b.). This debt is listed on Applicant's October 2005 credit bureau report and also on her September 2006 credit bureau report.⁽⁸⁾ In January 2006, Applicant was queried by an Office of Personnel Management (OPM) investigator regarding this foreclosure during her security clearance background investigation. There is no written evidence in the FORM reflecting that Applicant has disputed, resolved or attempted to resolve this debt.

Applicant asserts she turned off the utilities and paid any balance owed before abandoning the house. She further asserts the utilities were restarted by the bank and city and charged to her to prevent the pipes from freezing and to avoid the appearance of a vacant home.⁽⁹⁾ Utility charges incurred total \$219.00 and were charged off in December 1999. As of January 2006, this debt was still outstanding (SOR ¶ 1.a.). There is no written evidence in the FORM reflecting that Applicant has disputed, resolved or has attempted to resolve this debt.

The SOR alleged Applicant has a debt for \$303.00 which went to collections in March 2003 (SOR ¶ 1.c.). Although Applicant admitted this debt in her answer to the SOR, she asserted in her response to the FORM she was unable to "find anything on this debt" and is disputing "with agency."⁽¹⁰⁾ There is no written evidence in the FORM reflecting that Applicant has disputed, resolved or has attempted to resolve this debt.

The last four debts appear to be student loans in the amounts of \$1,807.36, \$3,205.00, \$4,518.38, and \$2,768.71 (SOR ¶¶ 1.d. - 1.g.), respectively. Applicant "believes this loan (SOR ¶ 1.d.) and the loans listed with [SOR ¶¶ 1.e. - 1.g.] are currently being paid as an automatic withdrawal from Applicant's (sic) paycheck."⁽¹¹⁾ Applicant submitted documentation reflecting \$199.39 is being deducted every two weeks from her pay check to pay down these loans.⁽¹²⁾ Apparently, this action was taken after the SOR was issued.

Applicant was made aware of these debts as early as January 2006 when she was interviewed by the OPM investigator. She was again put on notice of the government's concerns regarding these matters when issued her SOR in June 2006.

Applicant stated she has never been involved in any illegal activity and that her past financial difficulties cannot be used against her because her family and friends are aware of her difficulties. To show she is financially responsible, she submitted copies of bills from other creditors reflecting her accounts are current. She also stated she and her family are financially stable and would not "do anything negative or detrimental to her family or country."⁽¹³⁾

POLICIES

The Adjudicative Guidelines in the Directive are not a set of inflexible rules of procedure. Instead they 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. In making overall common sense determinations, administrative judges must consider, assess, and analyze the evidence of record, both favorable and unfavorable, not only with respect to the relevant Adjudicative Guidelines, but in the context of factors set forth in section E 2.2.1. of the Directive. The government has the burden of proving any controverted fact(s) alleged in the SOR, and the facts must have a nexus to an Applicant's lack of security worthiness.

The adjudication process is based on the whole person concept. All available, reliable information about the person, past and present, is to be taken into account in reaching a decision as to whether a person is an acceptable security risk. Although the presence or absence of a particular condition

for or against clearance is not determinative, the specific adjudicative guidelines should be followed whenever a case can be measured against this policy guidance.

BURDEN OF PROOF

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." 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 has restricted eligibility for access to classified information to "United States citizens . . . whose personal and professional history affirmatively indicates loyalty to the United States, strength of character, trustworthiness, honesty, reliability, discretion, and sound judgment, as well as freedom from conflicting allegiances and potential for coercion, and willingness and ability to abide by regulations governing the use, handling, and protection of classified information." Executive Order 12968, *Access to Classified Information* § 3.1(b) (Aug. 4, 1995). Eligibility for a security clearance is predicated upon the applicant meeting the security guidelines contained in the Directive.

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, the applicant from being eligible for access to classified information. *See Egan*, 484 U.S. at 531. 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. Where the facts proven by the Government raise doubts about an applicant's judgment, reliability or trustworthiness, then the applicant has the ultimate burden of establishing his security suitability with substantial evidence in explanation, mitigation, extenuation, or refutation, sufficient to demonstrate that despite the existence of guideline conduct, it is clearly consistent with the national interest to grant or continue his security clearance.

Security clearances are granted only when "it is clearly consistent with the national interest to do so." *See* Executive Orders 10865 § 2 and 12968 § 3.1(b). "Any doubt as to whether access to classified information is clearly consistent with national security will be resolved in favor of the national security." Directive ¶ E2.2.2 "The clearly consistent standard indicates that security clearance determinations should err, if they must, on the side of denials." *See Egan*, 484 U.S. at 531. Doubts are to be resolved against the applicant.

CONCLUSIONS

Guideline F - Financial Considerations

Under Guideline F (Financial Considerations), a security concern exists when a person has significant unpaid debts. An individual who is financially overextended is at risk to engage in illegal or unethical acts to generate funds to meet financial obligations.⁽¹⁴⁾ Similarly, an individual who is financially irresponsible may also be irresponsible, unconcerned, or careless in his obligation to protect classified information. Behaving responsibly or irresponsibly in one aspect of life can often indicate how a person may behave in other aspects of life.

Applicant has a history of failing to meet her financial obligations that preceded the submission of her security clearance application in September 2004. In January 2006, she was confronted by a government investigator regarding her indebtedness, and was made aware of the government's concerns in this regard. There is little record evidence suggesting Applicant addressed debts alleged in SOR ¶¶ 1.a. through 1.c. since she abandoned her home Applicant is paying the student loans alleged in SOR ¶¶ 1.d. through 1.g.

Applicant's financial problems are not recent or isolated, but are ongoing. Applicant's unwillingness or inability to honor her financial obligations is evidenced by the delinquent debts she has been carrying for years, and her failure to show documented meaningful efforts to repay creditors or otherwise resolve her financial situation. Financial Considerations Disqualifying Condition (FC DC) E2.A6.1.2.1: *A history of not meeting financial obligations*; and FC DC E2.A6.1.2.3: *Inability or unwillingness to satisfy debts*, apply.

Applicant raised one potential mitigating factor that may be considered as a circumstance beyond her control contributing to her inability to pay her debts -- i.e., the deterioration of her neighborhood to the point she was unable to sell her home at or equal to the amount of mortgage owed to the bank. Financial Considerations Mitigating Condition (FC MC) E2.A6.1.3.3: *The conditions that resulted in the behavior were largely beyond the person's control (e.g., . . . , a business downturn, . . .)*, applies.

Notwithstanding, Applicant's evidence is not sufficient to show she has dealt responsibly with her financial obligations. Other than the recent payment towards her students loans, Applicant presented little evidence of paid debts, settlements, negotiations, payment plans, budgets, financial assistance/counseling, or other efforts to resolve her financial situation. Based on Applicant's information, I find she is financially overextended and cannot pay her financial obligations.

Although Applicant appears current on her recent financial obligations, her debts associated with the home she abandoned remain. Applicant's financial history and lack of favorable evidence preclude a finding that she has a track record of financial responsibility. Applicant's evidence shows she is not in control of her financial situation and it is likely she will continue to have financial problems for some time to come.

I have carefully weighed all evidence, and I applied the disqualifying and mitigating conditions as listed under the applicable adjudicative guidelines. I specifically considered Applicant's age, the circumstances contributing to her financial problems, Applicant's statements, her assertions she would never do anything to harm the U.S., her limited efforts to rectify her financial situation, and the fact that there is no evidence that she ever mishandled or caused the compromise of classified information. Considering all available information, and the "whole person" concept, I find Applicant has not mitigated the Guideline F security concern.

FORMAL FINDINGS

Formal Findings as required by Section E3.1.25 of Enclosure 3 of the Directive are hereby rendered as follows:

Paragraph 1. Guideline F: Against Applicant

Subparagraphs 1.a. - 1.c.: Against Applicant

Subparagraphs 1.d. - 1.g.: For the Applicant

DECISION

In light of all the circumstances and facts 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.

Robert J. Tuider

Administrative Judge

1. The Government submitted six items or exhibits in support of its contention.
2. Item 3.
3. *Id.*
4. Applicant's response to FORM.
5. *Id.*
6. *Id.*
7. *Id.*
8. Items 5 and 6.
9. Applicant's response to FORM.
10. *Id.*
11. *Id.* and Item 4.
12. *Id.*

13. *Id.*

14. Directive, ¶ E2.A6.1.1.