

DATE: December 29, 2006

In Re:

SSN: -----

Applicant for Security Clearance

ISCR Case No. 06-13600

DECISION OF ADMINISTRATIVE JUDGE

JOAN CATON ANTHONY

APPEARANCES

FOR GOVERNMENT

Gina Marine, Esq., Department Counsel

Richard Stevens, Esq., Department Counsel

FOR APPLICANT

Pro Se

SYNOPSIS

Applicant is responsible for three financial delinquencies: a collection account, a judgment, and a tax lien, which total approximately \$11,400. These debts are several years old. Applicant has not paid these debts, and she has no plans in place to pay them. Applicant failed to mitigate Guideline F security concerns. 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. On June 30, 2006, under the applicable Executive Order⁽¹⁾ and Department of Defense Directive,⁽²⁾ DOHA issued a Statement of Reasons (SOR), detailing the basis for its decision-security concerns raised under Guideline F (Financial Considerations) of the Directive. Applicant answered the SOR in writing on July 20, 2006, and elected to have a hearing before an administrative judge. The case was assigned to me October 11, 2006. On December 4, 2006, I convened a hearing to consider whether it is clearly consistent with the national interest to grant or continue a security clearance for Applicant. The Government offered two exhibits for admission to the record. The Government's exhibits were identified as Exhibits (Ex.) 1 and 2 and were admitted into evidence without objection. Applicant testified on her own behalf and called no other witnesses. She offered two exhibits for admission to the record. Applicant's exhibits were identified as Ex. A and Ex. B and were admitted into evidence without objection. On December 12, 2006, DOHA received the transcript (Tr.) of the proceeding.

FINDINGS OF FACT

The SOR contains three allegations of disqualifying conduct under Guideline F, Financial Considerations. In her answer to the SOR, Applicant admitted the three allegations. Her admissions are incorporated as findings of fact.

Applicant is 49 years old and never married. She is currently living with her mother. She has not previously held a security clearance. She is a high school graduate and has completed two years of study at the college level. (Ex. 1; Tr. 61.)

Applicant was employed as a lead laborer at construction sites by a government contractor until she suffered a stroke on the job in June 2005. She has not worked since her stroke and has been under a physician's care for high blood pressure and peripheral artery disease in her left leg. Her physician has advised her to restrict her activity and to rest. (Tr. 32-33, 38-39, 52-56; 58-59, 64-65.)

Applicant receives \$185 per month from social services, \$135 per month in federal food stamps, and Medicaid. She pays her mother \$100 per month in rent. Her co-pay for her medications is approximately \$3.00 per prescription. (Tr. 48-50, 61.)

Applicant's employer has certified her work requires a security clearance and, provided Applicant received a security clearance, she would be subject to rehire. Applicant has not communicated with her employer regarding her job and her security clearance application since October 2005. (Tr.67, 71.)

Applicant had financial delinquencies dating back several years before she suffered the stroke and was unable to work. She owes a credit card company approximately \$987 on a debt placed for collection. (SOR ¶ 1.a.) Applicant acknowledged the debt and stated she had not made any payments on the account for about five or six years. She also acknowledged she had not made any arrangements with the creditor to pay or settle the debt. (Tr. 42-44.)

Applicant acknowledged a judgment in the approximate amount of \$8,248 that was entered against her in January 2002. (SOR ¶ 1.b.) She stated the judgment resulted from a repossessed automobile, and she estimated her last payment on the judgment occurred before 2001. She also stated she had taken no recent action to pay the judgment. (Tr. 43.)

Applicant also acknowledged a lien filed against her in July 2002 for approximately \$2,194. She stated the lien was placed against her for failure to pay her state taxes. (SOR ¶ 1.c.) In 2000 and 2001, Applicant's wages were garnished for a period to pay the lien, and she presented evidence showing a line item on certain pay stubs which she identified as garnished payments on the lien totaling \$128.94. She stated she had made no other payments on the lien independent of the garnishments in 2000 and 2001. (Ex. B; Tr. 46-48.)

Nothing in the record indicated Applicant had pursued credit counseling in an effort to resolve her current financial difficulties and to prevent them from recurring in the future.

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 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." Exec. Or. 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.

Enclosure 2 of the Directive sets forth personal security guidelines, as well as the 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 that the applicant has not met the strict guidelines the President and the Secretary of Defense have established for issuing a clearance.

Initially, the Government must establish, by substantial evidence, conditions in the personal or professional history of the applicant that disqualify, or may disqualify, the applicant from being eligible for access to classified information. *See Egan*, 484 U.S. at 531. The Directive presumes a nexus or rational connection between proven conduct under any of the disqualifying conditions listed in the guidelines and an applicant's security suitability. *See* ISCR Case No. 95-0611 at 2 (App. Bd. May 2, 1996).

Once the Government establishes a disqualifying condition by substantial evidence, the burden shifts to the applicant to rebut, explain, extenuate, or mitigate the facts. ISCR Case No. 01-20700 at 3 (App. Bd. Dec. 19, 2002); *see* Directive ¶ E3.1.15. 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.

CONCLUSIONS

Guideline F-Financial Considerations

The Government's concern under Guideline F, Financial Considerations, is that individuals who are financially overextended and unable or unwilling to pay their just debts may try to generate funds by engaging in illegal acts. Applicant has a history of not meeting her financial obligations, and her financial history suggests an inability or unwillingness to satisfy her debts, conditions which raise security concerns under subparagraphs E2.A6.1.2.1. and E2.A6.1.2.3. of Guideline F. DOHA's Appeal Board has concluded that "[a] person who is unwilling to fulfill his legal obligations does not demonstrate the high degree of good judgment and reliability required of persons granted access to classified information." ISCR Case No. 98-0810 at 4 (App. Bd. June 8, 2000).

Applicant acknowledged approximately \$11,400 in unpaid long-standing debts, and she had no plan for paying her creditors. An applicant who is financially overextended is at risk of having to engage in illegal acts to generate funds. Directive ¶ E2.A6.1.1.

The Government has established, through Applicant's admissions and the record evidence, a *prima facie* case that Applicant is financially overextended. Applicant provided no persuasive evidence to rebut the financial concerns specified in the SOR and identified as disqualifying conditions under ¶¶ E2.A6.1.2.1. and E2.A6.1.2.3. of Guideline F. (3)

There are several conditions that could mitigate the security concerns raised by Applicant's financial delinquencies. Applicant acknowledged three debts that dated back to at least 2002, demonstrating that her financial delinquencies are not isolated incidents. These debts remain unsatisfied. Thus, neither mitigating condition E2.A6.1.3.1. nor mitigating condition E2.A6.1.3.2. applies. (4)

If the conditions that resulted in the financial delinquency were largely beyond the person's control—such as loss of employment, a business downturn, an unexpected medical emergency, or a death, divorce, or separation—then mitigating condition E2.A6.1.3.3. might apply. The record shows that Applicant suffered a debilitating stroke in July 2005 and has been unemployed and unable to pay her debts since that time. While Applicant's serious health situation is regrettable, the record evidence suggests her financial delinquencies occurred long before her stroke and were within her control to pay or settle before July 2005. Applicant's current disability does not explain her past financial difficulties and her inability or unwillingness to meet her financial obligations before July 2005. Thus, I conclude mitigating condition E2.A6.1.3.3. does not apply.

There was no evidence in the record that Applicant sought counseling for her financial problems. Nothing in the evidentiary record suggests she has developed and implemented a practical plan for resolving debts and avoiding further indebtedness. Thus, mitigating conditions E2.A6.1.3.4. and E2.A6.1.3.6. do not apply, (5) and the Guideline F allegations in the SOR are concluded against the Applicant.

In all adjudications, the protection of our national security is the paramount concern. Security clearance decisions are not intended to assign guilt or to impose further punishment for past transgressions. Rather, the objective of the security clearance process is the fair-minded, common sense assessment of a person's trustworthiness and fitness for access to

classified information. Indeed, the "whole person" concept recognizes we should view a person by the totality of his or her acts and omissions, including all disqualifying and mitigating conduct. Having done so, I conclude Applicant should not be entrusted with a security clearance. In reaching my decision, I have considered the evidence as a whole, including the appropriate factors and guidelines in Department of Defense Directive, 5220.6., as amended.

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

DECISION

In light of all of 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 Applicant. Clearance is denied.

Joan Caton Anthony

Administrative Judge

1. Exec. Or. 10865, *Safeguarding Classified Information within Industry* (Feb. 20, 1960), as amended and modified.
2. Department of Defense Directive 5220.6, *Defense Industrial Personnel Security Clearance Review Program* (Jan. 2, 1992), as amended and modified.
3. Guideline F Disqualifying Condition (DC) E2.A6.1.2.1 reads: "A history of not meeting financial obligations." DC E2.A6.1.2.3. reads: "Inability or unwillingness to satisfy debts."
4. Mitigating Condition (MC) E2.A6.1.3.1 reads: "The behavior was not recent." MC E2.A6.1.3.2. reads: "It was an isolated incident."
5. Mitigating Condition MC E2.A6.1.3.4. reads: "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." MC E2.A6.1.3.6. reads: "The individual initiated a good-faith effort to repay overdue creditors or otherwise resolve debts."