

DATE: January 31, 2007

In Re:

SSN: -----

Applicant for Security Clearance

ISCR Case No. 06-17921

DECISION OF ADMINISTRATIVE JUDGE

PAUL J. MASON

APPEARANCES

FOR GOVERNMENT

Ray T. Blank, Jr. Esq.,

FOR APPLICANT

Pro Se

SYNOPSIS

Applicant's persistent difficulties involving her former husband's failure to live up to his financial agreements furnish appreciable extenuation for her debts. In addition, 10 of the 13 financial obligations are no longer actionable under the state statute of limitations. Applicant has satisfied one of the three judgments, and has demonstrated her commitment to settle the other two judgments totaling about \$6,600.00. The omission of certain material debt information from her security form has also been mitigated as there is insufficient evidence to conclude Applicant deliberately omitted the information. Eligibility for assignment to a public trust position is granted.

STATEMENT OF THE CASE

On August 22, 2006, the Defense Office of Hearings and Appeals (DOHA), pursuant to Department of Defense Directive 5220.6, dated January 2, 1992, as reissued through Change 4 thereto, dated April 20, 1999, issued a Statement of Reasons (SOR) to the Applicant which detailed reasons 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. DOHA recommended referral to an Administrative Judge to conduct proceedings and determine whether clearance should be granted, continued, denied or revoked. On September 10, 2006, Applicant responded to the SOR and indicated she did not desire a hearing.

The case was assigned to me on October 26, 2006. On October 27, 2006, this case was set for hearing on November 15, 2006. The Government submitted three exhibits (GE 1-3), and Applicant submitted five exhibits (AE A-E) Testimony was taken from Applicant. After the hearing, Applicant furnished one additional exhibit (AE F) that has been admitted in evidence. AE F contains carbon copies of three checks written to a collection agency, and bank statements showing corresponding withdrawals from her account. Though the documentation in AE F does not identify the specific creditor, I conclude the checks relate to the unpaid medical accounts addressed in SOR 1.b., 1.e., and 1.n. The transcript was received on December 5, 2006.

RULINGS ON PROCEDURE

On September 10, 2006, Applicant indicated in her answer to the SOR that she did not want a hearing. On September 29, 2006, pursuant to E3.1.7. of Directive 5220.6, the government filed a written motion for a hearing. The motion was granted (Tr. 6).

FINDINGS OF FACT

The SOR alleges financial considerations under paragraph 1, personal conduct under paragraph 2, and criminal conduct under paragraph 3. Applicant admitted some financial debts and denied others. She denied deliberately omitted any information. Her denial of the personal conduct allegations shall also be considered a denial of criminal conduct. Applicant is 47 years old and has been employed as a security guard with a defense contractor since 2004.

Financial Considerations. GE 2 and GE 3 show Applicant began having financial problems after she separated from her husband in 1999 (Tr. 55). Her former husband never provided child support on a regular basis, although he occasionally purchased items for their two daughters (Tr. 74). Even though their divorce in 2003 was uncontested (Tr. 54), her former husband "did not keep his part of an agreement" to help pay the SOR debts identified in 1.c., 1.d., 1.j., 1.l., and the medical accounts identified in 1.b., 1.e., and 1.n. *See*, answer to SOR

An agent from a private investigative agency testified for the government about her two interviews with Applicant in February and April 2006. Applicant advised the agent that her financial problems surfaced after separating from her husband (Tr. 19-20; GE 4). Applicant talked about her troubles getting her mail from her husband (Tr. 33; GE4). She also mentioned being wrongfully accused of having delinquent debts that actually belonged to another individual with the same name. (GE 4) She told the agent she had not intentionally written the worthless checks (Tr. 27), and believed she had provided restitution for the checks (GE 4; Tr. 57). Applicant also told the agent the checks were written to buy groceries (Tr. 35). Applicant anticipated a raise in earnings (in 2006) which she intended to apply toward her creditors (GE 4).

Applicant acknowledged that she received a raise in earnings from her employer, but she reduced her hours to part-time and hired at a second job full-time as a dispatcher with a local police department so she and her daughter could obtain much better medical and retirement plan coverage (Tr. 73). In explaining her medical coverage dilemma, Applicant testified:

The insurance that the arsenal provides we are able to purchase is through a company called [health organization], which when I went from part-time to full-time, I did take the insurance and it was deducted from my check. They sent the paperwork or the booklet that shows who the PPOs (preferred professional providers) are in this area for that insurance company. There is no one in this area that accepts that insurance at it[']s fullface, like that 20/80 or 80/20 (Tr. 79-80).

Applicant explained that under the arsenal's medical insurance, she would still have to pay 75 to 80% of a medical consultation. She concluded the medical insurance was not cost-effective (Tr. 80-81).

The delinquent accounts or judgments of the SOR will be discussed in chronological order:

1.a. Applicant is unaware of this account and there is no information in the government exhibits identifying the exhibit. With no corroborating evidence connecting the debt to Applicant, I find 1.a. in Applicant's favor.

1.b., 1.e. and 1.n. are medical debts Applicant acknowledges she owes. In October 2006, she made three payments of \$50.00 each to satisfy the three medical debts (SOR 1.b., 1.e., and 1.n.) she admits. According to GE 2, SOR 1.b. became delinquent in January 2000; SOR 1.e. was converted to a delinquency status in April 2001; SOR 1.n. became delinquent in August 2003.

1.c. and 1.d. are two credit card accounts of \$681.00 and \$930.00. Both accounts became delinquent in April 2000 (GE 2). On November 6, 2006, Applicant sent a letter to the creditor seeking to negotiate a settlement through payment arrangements (AE C).

1.f. is another debt from a collection agency representing a hospital. This account went into default in August 2001 (GE 2). Having been confused with another person with the same name, and thinking this account may belong to the other person, Applicant contacted both the agency and the original creditor. They could not provide information to establish the debt was her responsibility. Without additional evidence who created the debt, I find for Applicant under 1.f.

1.g., 1.h., and 1.m. are bad check charges that were dismissed when Applicant paid restitution for the face amounts of the checks. The last listed bad check was in June 2003. *See*, AE F

1.i. is a medical debt that is not included with the other medical debts. The creditor is identified as a hospital emergency room. Applicant admitted the debt. Medical services were rendered in October 2001. The debt became delinquent in July 2002.

1.j. is a judgment resulting from a heating oil account that was in Applicant's name when she separated from her former husband in 1999. After she left him, he ordered additional heating oil he refused to pay for. Applicant informed the creditor that her husband ordered the oil, but their reply was that she was still solely responsible as the account was in her name. Applicant sent \$20.00 to the 1.j. creditor (Tr. 68), but provided no documentation.

1.k. is a car loan that was converted to a judgment in January 2003 (GE 2). The account was settled in August 2003 (AE B). Applicant's wage had been garnished for an unknown period to pay off this debt (GE 1).

1.l. is a collection agency for a cable company. Applicant called about the debt (Tr. 71), but provided no documentation.

1.o. (original creditor) and 1.p. (the collection agency) cite the same account. Applicant purchased a car in 2000 that was repossessed in 2001. A judgment was entered against Applicant in April 2004 (AE 4).

In review, SOR 1.a. is found for Applicant based on the lack of evidence in support the allegation. SOR 1.f. is found for Applicant based on the lack of evidence, and Applicant's position she is not responsible. A finding in Applicant's favor is found under SOR 1k. as the debt has been settled. Though the following overdue debts listed in SOR 1.b., 1.c., 1.d., 1.e., 1.i., and 1.l., 1.n.) remain either completely or partially unresolved, the debts are no longer actionable under the state statute of limitations that is discussed in CONCLUSIONS. Applicant notified both judgment creditors that she wants to work out a settlement if possible (AE C, D).

Applicant has had no formal financial counseling but has talked with a few debt counselors (Tr. 75-76). She has tried a budget in the past several years but does not have a lot of money to work with (Tr. 72).

Personal Conduct. On June 6, 2005, Applicant executed a security clearance application (SF-86). In response to question 26 (**Your Police Record - Other Offenses . . .** In the last 7 years, have you been arrested for, charged with, or convicted of any offense(s) not listed in modules 21, 22, 23, 24, or 25? (Leave out traffic fines of less than \$150.00 unless the violation was alcohol or drug related), Applicant answered "no." In the same security clearance application (SCA), Applicant also responded "no" to question 39 (**Your Financial Delinquencies - 90 Days** Are you currently over 90 days delinquent on any debt(s)?) I do not find she deliberately omitted the financial information from the SCA. My finding is based on her favorable credibility during her testimonial explanations that she misunderstood both questions and/or was not thinking as she should have been (Tr. 42, 43-45, 61). Applicant's belief she did not have to include the bad check charges because they had been dismissed (Tr. 57) was a reasonable though incorrect interpretation of question 26. Less reasonable is her second explanation that she omitted the charges because she thought both questions were referring to current charges or current debts. However, all the debts, including the medical accounts, are at least three years old. Finally, the stated amount of information Applicant provided reinforces my finding she did not deliberately falsify the SCA.

In response to question 34 of the SCA, Applicant disclosed her wages were garnished by the SOR 1.j. creditor, even though the module is inaccurate as to when the garnishment was settled. In response to question 35, she disclosed a repossession in November 2001. In response to question 37, she revealed there was an unpaid judgment against her filed in January 2003. Under question 38, she disclosed details of the SOR 1.k. account, though some of the information is incorrect. Finally, Applicant disclosed under question 40 that as a defendant, she settled a civil action over rent in May

2002.⁽¹⁾ After a thorough review of the record evidence surrounding Applicant's credible testimony regarding the missing SCA information, I find Applicant did not deliberately falsify the form as she provided substantial adverse information regarding her finances.

Character Evidence. Applicant's supervisor has known Applicant professionally since June 2004. He has found her to be trustworthy and ready to work at any time. The supervisor noted that she reduced her workload to part-time in June 2006 so that she could work full-time as a dispatcher with the local police department (AE A). A former coworker who was her supervisor for 18 months in 2003 and 2004, considers Applicant an honest and trustworthy person.

POLICIES

Enclosure 2 of the Directive sets forth guidelines containing disqualifying conditions (DC) and mitigating conditions (MC) that should be given binding consideration in making security clearance determinations. These conditions must be considered in every case along with the general factors of the whole person concept. However, the conditions are not automatically determinative of the decision in any case nor can they supersede the Administrative Judge's reliance on his own common sense.

Burden of Proof

Initially, the government must establish, by substantial evidence, that conditions exist in the personal or professional history of the applicant which disqualifies, or may disqualify, the applicant from being eligible for access to classified information. *See Department of the Navy v. Egan*, 484 U.S. 518, 531 (1988) "[T]he Directive presumes there is a nexus or rational connection between proven conduct under any of the Criteria listed therein and an applicant's security suitability." ISCR Case No. 95-0611 at 2 (App. Bd. May 2, 1996) (quoting DISCR Case No. 92-1106 (App. Bd. Oct. 7, 1993)).

Once the government establishes a disqualifying condition by substantial evidence, the burden shifts to the applicant to rebut, explain, extenuate, or mitigate the facts. "[S]ecurity clearance determinations should err, if they must, on the side of denials." *See Egan*, 481 U.S. at 531; *see* Directive E2.2.2.

Financial Considerations (Guideline F)

Security concerns are raised when a person is financially overextended or living beyond their means.

Personal conduct (Guideline E)

Security concerns are raised when a person deliberately provides false information during the course of the security investigation.

Criminal Conduct

A pattern of criminal behavior or activity constitutes poor judgment.

CONCLUSIONS

Financial Considerations (FC). Applicant's overdue debts and judgments establish a case of financial problems within FC disqualifying condition (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*). There are currently 10 debts and 2 judgments.

FC mitigating condition (MC) E2.A6.1.3.1. (*the behavior was not recent*) applies on a limited basis because all the SOR debts and judgments are more than three years old. The debts cannot be considered isolated within the scope of FC MC E2.A6.1.3.2. (*it was an isolated incident*) because there are 10 debts and two judgments still delinquent.

FC MC E2.A6.1.3.3. (*the conditions that resulted in the behavior were largely beyond the individual's control*).

Considering Applicant's answer to the SOR, together with her credible testimony explaining how her former husband

would not even transfer her mail to her, or honor his agreement to repay some of the creditors, I am convinced Applicant has had an extremely difficult time with her finances since her separation from him in 1999. Though her bad check behavior demonstrates poor judgment, it probably suggests the extent to which Applicant was struggling financially in 2001 and 2003. Applicant's poor judgment in authoring the worthless checks is relieved by her prompt payment of full restitution on each occasion, and the absence of similar behavior since June 2003. Given the lack of cooperation she has received from her husband, and the action she has had to take to obtain sufficient medical coverage, Applicant receives significant extenuation under FC C E2.A6.1.3.3.

Even though the record has no documented evidence of formal financial counseling, Applicant has recently sought counseling but has not found the appropriate program. She is trying to utilize a budget as a part of her overall financial practices. (GE 4) Accordingly, FC MC E2.A6.1.3.4. (*the person has received or is receiving counseling for the problem and there are clear indications the problem is being resolved or is under control*) has limited application.

Though the record shows little action by Applicant to pay off her debts between her settlement of SOR 1.k. in 2003 and her \$150.00 payment to the medical providers in SOR 1.b., 1.e., and 1.n. in October 2006, I am convinced she has contacted her creditors over the years, and/or paid what she could to settle the debts. I am confident she will negotiate an equitable resolution of the two remaining judgments. Considering the evidence as whole, Applicant is entitled to limited credit under FC MC E2.A6.1.3.6. (*the individual has initiated a good-faith effort to repay overdue creditors or otherwise resolve debts*).

Because the SOR debts are over three years old and are classified as "open accounts," Applicant also receives equitable relief under the whole person model of the Directive. All the SOR debts, except for the two judgments (SOR 1.j. and 1.p.), ⁽²⁾ are time-barred and no longer enforceable under the state, three-year statute of limitations identified in the Code of [state] (1950) Section 8.01 - 249(8.). Though the equitable relief removes almost 80% of Applicant's creditors, remaining in the whole person evaluation is the poor judgment Applicant demonstrated in letting the post-marital discord damage her financial condition.

Personal Judgment (PC)/Criminal Conduct (CC). The PC guideline addresses poor judgment or dishonesty that is demonstrated during the security investigation. Though Applicant should have furnished the omitted information from questions 26 and 39, the omissions were not deliberate, and therefore, fall outside of PC DC E2.A5.1.2.2. (*the deliberate omission of relevant and material facts from a questionnaire to determine security clearance qualifications or trustworthiness*). The omissions were the result of misinterpretations of the questions or not thinking about the pertinent information. I find for Applicant under SOR 2.a. and 2.b.

Criminal Conduct (CC). I make the same finding under the CC guideline that I made under the PC guideline. SOR 3.a. alleges felonious criminal behavior under 18 United States Code (U.S.C.) § 1001 that is based on similar elements in the PC guideline. The statute requires the conduct to be intentional. There is no criminal conduct under the CC guideline because the element of intent (required by the statute) has not been met. I find SOR 3.a. in Applicant's favor.

My findings under the FC guideline, the PC guideline, and CC guideline must be examined in the context of the whole person model of the Directive at E2.2.1.1. through E2.2.3. Applicant's continuing problems with her husband extenuate her current financial dilemma. Moreover, her credible testimony describing her efforts to address the creditors since her separation and divorce convinces me she has tried to deal with her debts as best she could, even though there is no documentation for the bulk of her efforts. *See*, E2.2.1.6. (*the presence or absence of rehabilitation and other behavioral changes*) ⁽³⁾ Adding to her difficulties until June 2006 was the lack of adequate medical coverage for Applicant and her daughter. Taking on a second job full-time has cost her earnings but has meant a corresponding gain in sufficient medical coverage and benefits for her family. (E2.2.1.6.) The removal of 10 financial obligations means that Applicant has reduced the chances of becoming a target for coercion and influence to a negligible level, and allows her to devote her full attention to the two remaining judgments. *See*, E2.2.1.8. (*the potential for pressure, coercion, exploitation, or duress*) Having weighed the entire record, the adjudicative guidelines, and the whole person model from a commonsense viewpoint, I find Applicant qualifies for a position of public trust.

FORMAL FINDINGS

Formal Findings required by Paragraph 25 of Enclosure 3 are:

Paragraph 1 (Financial Considerations, Guideline F): FOR THE APPLICANT.

Subparagraph 1.a. For the Applicant.

Subparagraph 1.b. For the Applicant.

Subparagraph 1.c. For the Applicant.

Subparagraph 1.d. For the Applicant.

Subparagraph 1.e. For the Applicant.

Subparagraph 1.f. For the Applicant.

Subparagraph 1.g. For the Applicant.

Subparagraph 1.h. For the Applicant.

Subparagraph 1.i. For the Applicant.

Subparagraph 1.j. For the Applicant.

Subparagraph 1.k. For the Applicant.

Subparagraph 1.l. For the Applicant.

Subparagraph 1.m. For the Applicant.

Subparagraph 1.n. For the Applicant.

Subparagraph 1.o. For the Applicant.

Subparagraph 1.p. For the Applicant.

Paragraph 2 (Personal Conduct, Guideline E): FOR THE APPLICANT.

Subparagraph 2.a. For the Applicant.

Subparagraph 2.b. For the Applicant.

Paragraph 3 (Criminal Conduct, Guideline J): FOR THE APPLICANT.

Subparagraph 3.a. For the 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. Eligibility for assignment to a public trust position granted.

Paul J. Mason

Administrative Judge

1. While unrelated to her financial obligations but related to her credibility, Applicant disclosed under question 20 she had been fired from a previous job for "two write-ups" within an 18 month period (GE 1).

2. The statute of limitations for judgments (under the cited provision) is 10 years. *See*, Code 8.01 - 246 *et.al.*

3. Only three of the SOR debts/judgements were for discretionary items.