

November 19, 1996

In Re:

SSN:

Applicant for Security Clearance

ISCR OSD Case No. 96-0454

DECISION OF ADMINISTRATIVE JUDGE

MICHAEL KIRKPATRICK

Appearances

FOR THE GOVERNMENT

Melvin A. Howry, Esq.

Department Counsel

FOR THE APPLICANT

Pro Se

STATEMENT OF THE CASE

On June 19, 1996, the Defense Office of Hearings and Appeals (DOHA), pursuant to Executive Order 10865 and Department of Defense Directive 5220.6 (Directive), dated January 2, 1992, issued the attached Statement of Reasons (SOR) to (now)⁽¹⁾ (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 the Applicant, and which recommended referral to an Administrative Judge to determine whether clearance should be denied or revoked.

The Applicant responded to the SOR in writing on July 8, 1996, and in her Answer she elected to have the case determined on a written record in lieu of a hearing. Department Counsel submitted the Government's File of Relevant Material (FORM) to the Applicant on September 17, 1996. The Government submitted six exhibits in support of its contentions. Applicant was instructed to submit information in rebuttal, extenuation or mitigation within 30 days of receipt. Applicant received the FORM on September 19, 1996. Her Response to the FORM was due by October 21, 1996, but she submitted no additional material for consideration.

The case was assigned to the undersigned for resolution on October 28, 1996.

FINDINGS OF FACT

In her Answer to the SOR, Applicant admitted the material facts alleged in SOR Subparagraphs 1.a through 1.o., inclusive, and those admissions are hereby incorporated herein as findings of fact. The following additional findings of fact are entered as to each paragraph and subparagraph in the SOR:

Applicant is 26 years old, and she is employed by a defense contractor. On August 23, 1996, the Defense Industrial

Security Clearance Office was notified by Applicant's employer that Applicant's name was changed from to . Applicant seeks a DoD security clearance in connection with her employment in the defense industry.

Paragraph 1 (Criterion F - Financial Considerations). The Government alleges that Applicant is ineligible for clearance because she has a history of not meeting financial obligations.

With respect to SOR Subparagraph 1.a., Applicant is indebted to Creditor A (credit card company), in the amount of approximately \$1,675.00, for a credit card account opened in December of 1988 and closed in May of 1989 for non-payment. (Exhibits 3, 4, 5, and 6.)

With respect to SOR Subparagraphs 1.b. and 1.c., Applicant is indebted to Creditor B (credit card bank), in the amount of approximately \$1,105.00, for a ---- credit card account opened in January of 1989 and closed due to non-payment in January of 1990, and further indebted to Creditor B, in the sum of approximately \$2,046.00, for a ----- credit card account opened in March of 1990 and closed due to non-payment in November of 1990. (Exhibits 3, 4, 5, and 6.)

With respect to SOR Subparagraph 1.d., Applicant is indebted to Creditor C (collection agency), in the amount of approximately \$437.82, for a ---- credit card account opened with a credit card bank in October of 1994, and assigned to Creditor C for collection by that credit card bank in December of 1995. (Exhibits 3, 4, 5, and 6.)

With respect to SOR Subparagraph 1.e., Applicant is indebted to Creditor D (department store), in the amount of approximately \$105.00, for a credit card account opened in May of 1990 and closed due to non-payment in March of 1991. (Exhibits 3, 4, 5, and 6.)

With respect to SOR Subparagraph 1.f., Applicant is indebted to Creditor E (department store), in the amount of approximately \$163.00, for a credit account opened in May of 1990 and closed due to non-payment in May of 1991. (Exhibits 3, 4, 5, and 6.)

With respect to SOR Subparagraphs 1.g. and 1.h., Applicant is indebted to Creditor F (a government agency which is guarantor of student loans) in the approximate amounts of \$1,226.00 and \$2,736.00, for student loans obtained from a credit union in November of 1988 and assigned to the government agency for collection in May of 1993 due to non-payment. (Exhibits 3, 4, 5, and 6.)

With respect to SOR Subparagraphs 1.i. and 1.j., Applicant is indebted to Creditor G (collection agency), in the amounts of approximately \$52.00 and \$75.00, for non-sufficient funds checks written in June of 1990 and March of 1992. (Exhibits 3, 5, and 6.)

With respect to SOR Subparagraph 1.k., Applicant is indebted to Creditor H (collection agency), in the approximate amount of \$27.13, for a non-sufficient funds check written in December of 1990. (Exhibits 3 and 6.)

With respect to SOR Subparagraph 1.l., Applicant is indebted to Creditor I (collection agency), in the approximate amount of \$56.34, for a non-sufficient funds check written to a discount store as payee in September of 1989, and assigned to the collection agency for collection in October of 1991. (Exhibits 3 and 6.)

With respect to SOR Subparagraphs 1.m. and 1.n., Applicant is indebted to Creditor J (collection agency), in the approximate amounts of \$28.86 and \$544.00, for debts owed to a telephone company and assigned to the collection agency for collection in February and April of 1990. (Exhibits 3 and 6.)

With respect to SOR Subparagraph 1.o., Applicant is indebted to Creditor K (credit card bank), in the approximate amount of \$787.00, for an unpaid credit card account opened in May of 1989 and closed in June of 1989. (Exhibits 3, 4, 5, and 6.)

Applicant also had her car repossessed in approximately May of 1989. The lender then obtained a deficiency judgment against Applicant, and garnished her wages in order to satisfy the judgment. (Exhibits 4 and 5.)

In her National Agency Questionnaire of November 2, 1995, Applicant explained that she had become delinquent in the

payment of her debts because she experienced "financial difficulties," and because when she was a freshman in college she "didn't know the value of maintaining good credit." (Exhibit 4.)

In her signed, sworn statement dated March 4, 1996 (Exhibit 5), Applicant gives the following explanation for her financial problems:

"In the past I was attending school, working part-time, and sometimes I had not (sic) job. I was sent credit cards, and used them irresponsibly (sic). When I was unable to make the payments, I just let them go."

Applicant's only asset is her car. Her gross monthly salary is \$1,820.00, and her net monthly income is \$1,323.00. Deducting her \$440.00 in monthly expenses and her \$595.00 in monthly debt payments from her net monthly income leaves her with a net remainder of \$288.00, part of which she could apply to her debts. (Exhibit 5.)

In Exhibit 3, Applicant's Response to the SOR, dated July 8, 1996, she explains the reasons for her financial problems as follows:

"I fell into debt my freshman year of college, and was ignorant to the value of maintaining good credit, and being totally irresponsible for my actions. I was employed part time during my freshman year and shortly after, I was no longer employed (due to my school schedule). My busy schedule permitted me to get further into debt considering that, it was impossible for me to avail myself for work. I have held previous part time jobs since then, but the income wasn't sufficient to cover what was owed to these creditors. I did make agreements with the creditors to pay what I owed. However, I did so until I was no longer financial (sic) able to continue making these promised payments. May 6, 1996 I decided to file a Chapter 7 in the Bankruptcy Court of (a city). My hearing is set for July 9, 1996 at 8:00 am. At this hearing a Bankruptcy Judge will decide whether to bar me from the debts that I owe. I chose this option considering that, I was getting deeper and deeper into debt."

Attached to Applicant's Response to the SOR is a photocopy of a legal form titled "Notice of Commencement of Case Under Chapter 7 of the Bankruptcy Code, Meeting of Creditors & Fixing of Dates," and that form recites that Applicant filed a Bankruptcy Petition on May 6, 1996, representing herself *pro se*. Applicant has provided no other documents pertaining to that case. She has not provided copies of the Chapter 7 petition's schedules of assets or debts, and she has not provided a copy of a notice of discharge. Of course, the mere filing of a petition in a U.S. Bankruptcy Court does not automatically mean that all of the debtor's debts will be discharged. For example, quite often petitions are dismissed prior to discharge, on the motion of the Chapter 7 Trustee or a creditor, and quite often creditors successfully move to obtain exception to discharge. In this case, it is noted, for example, that the debts owed to Creditor F are federally guaranteed student loans, a category of debts which normally are not dischargeable in a Chapter 7 Bankruptcy proceeding. Indeed, based upon the documentation provided by Applicant, it cannot even be determined whether the creditors enumerated in the SOR were included as creditors in the Chapter 7 petition's schedule of creditors. Unfortunately, even later, after Applicant received the FORM and had another opportunity to provide further documentation from her Bankruptcy Court proceeding, as part of her response to the FORM, she did not do so. Applicant submitted no additional material in response to the FORM. Based upon the documentation provided by Applicant, it cannot be determined whether, and I cannot find that, the debts listed in the SOR have been discharged in a United States Bankruptcy Court proceeding.

Mitigation. In Exhibit 3, Applicant's Answer to the SOR, she states, "I'm now a more responsible individual, who has learned a valuable lesson in maintaining good credit, and paying what I owe." She has recently tried to address her adverse financial condition by filing a Chapter 7 Petition in the U.S. Bankruptcy Court. In Exhibit 5, Applicant's written statement, she states that she realizes the importance of being financially responsible, that she is now more mature, and that she has a steady job.

POLICIES

Enclosure 2 of the Directive sets forth adjudicative guidelines and policies for determining eligibility for access to classified information, and these guidelines must be given consideration in making security clearance determinations. The following adjudicative guidelines and policies are found to be applicable in this case:

Criterion F (Financial Considerations)

Conditions that could raise a security concern:

1. A history of not meeting financial obligations;
3. Inability or unwillingness to satisfy debts.

Conditions that could mitigate security concerns:

(None of the Directive's Enclosure 2 mitigating conditions apply to the facts of this case.)

In addition, the general adjudication policies expressed at Paragraph F.3. of the Directive and in Enclosure 2 of the Directive have been considered as to each criterion in this case. Enclosure 2 provides, in pertinent part, as follows: "The adjudication process is the careful weighing of a number of variables known as the whole person concept. All available information about the person, past and present, favorable and unfavorable, should be considered in reaching a determination. In evaluating the relevance of an individual's conduct, the adjudicator should consider the following factors:

"The nature, extent, and seriousness of the conduct.

"The circumstances surrounding the conduct, to include knowledgeable participation.

"The frequency and recency of the conduct.

"The individual's age and maturity at the time of the conduct.

"The voluntariness of participation.

"The presence or absence of rehabilitation and other pertinent behavioral changes.

"The motivation for the conduct.

"The potential for pressure, coercion, exploitation, or duress.

"The likelihood of continuation or recurrence."

In DOHA cases the Government has the initial burden to go forward with persuasive evidence in support of the factual and conclusionary allegations in the SOR. If the Government meets this initial obligation, the burden then shifts to the Applicant to go forward with evidence in rebuttal, explanation or mitigation which is sufficiently persuasive to overcome or outweigh the Government's case. The Applicant bears the ultimate burden of persuasion in proving that it is clearly consistent with the national interest to grant her a security clearance

CONCLUSIONS

In the defense industry, the security of classified industrial secrets is entrusted to civilian workers who must be counted upon to safeguard such sensitive information twenty-four hours a day. The Government is therefore appropriately concerned where available information indicates that an Applicant for a security clearance has a history of not meeting financial obligations, is unable or unwilling to satisfy debts, or may be financially overextended so that she is at risk of having to engage in illegal acts to generate funds.

In this case the Government has met its initial burden of proving under Criterion F that Applicant owes in excess of \$11,000.00, in the aggregate, to the 11 different creditors named in SOR Subparagraphs 1.a. through 1.o. Considering Applicant's meager assets and relatively small net monthly income, the evidence leads to the inescapable conclusion that Applicant is "financially overextended," as alleged in the SOR. Clearly, the aggregate amount of Applicant's debt became excessive and burdensome, and it therefore developed into a condition which has adverse security clearance

significance. As set forth in the findings of fact, above, based upon a careful consideration of all of the evidence in this case, I cannot conclude that Applicant's recent filing of a petition in the U.S. Bankruptcy Court has discharged any or all of the debts owed to the creditors named in the SOR. Applicant simply has not provided sufficient persuasive evidence in refutation, explanation, or mitigation to overcome the Government's evidence which establishes Applicant's long history of failing to meet her financial obligations, and her inability or unwillingness to satisfy debts.

Applicant has failed to pay debts which became due as long as seven years ago, and she has failed to pay debts which were incurred as recently as 1994. There is no evidence that she ever made a good-faith effort to repay her creditors, or to otherwise resolve her debts.

In this case, there is an element of adverse security clearance significance not only in Applicant's condition of being in debt, but also in her conduct which led to the debts. By her admittedly irresponsible conduct of spending beyond her means, which led to so many different debts, and by failing to timely pay her debts over such a long period of time, Applicant has demonstrated poor judgment and unreliability. A security clearance holder must exercise good judgment and reliability in the protection of classified information. Applicant's failure to act responsibly in such important matters of personal financial obligation suggests that she may not be counted upon to act responsibly in the protection of classified information.

On balance, it is concluded that Applicant has failed to overcome the Government's case opposing her request for a DoD security clearance. I recognize that Applicant's irresponsible behavior in financial matters began when Applicant was an immature college student. However, her irresponsible behavior in failing to address her debts lingered until recently, May of 1996, when she apparently began a proceeding in the Bankruptcy Court. Until that time, there is no evidence that she made any real effort to repay her debts. Her behavior was neither isolated nor ancient. Accordingly, the evidence supports a finding against Applicant as to the factual and conclusionary allegations expressed in Paragraph 1 of the Government's Statement of Reasons.

For the reasons stated, I conclude that Applicant is not suitable for access to classified information.

FORMAL FINDINGS

Formal findings For or Against the Applicant on the allegations in the SOR, as required by Paragraph 25 of Enclosure 3 of the Directive are:

Paragraph 1. Criterion F: Against the Applicant.

Subparagraph 1.a.: Against the Applicant.

Subparagraph 1.b.: Against the Applicant.

Subparagraph 1.c.: Against the Applicant.

Subparagraph 1.d.: Against the Applicant.

Subparagraph 1.e.: Against the Applicant.

Subparagraph 1.f.: Against the Applicant.

Subparagraph 1.g.: Against the Applicant.

Subparagraph 1.h.: Against the Applicant.

Subparagraph 1.i.: Against the Applicant.

Subparagraph 1.j.: Against the Applicant.

Subparagraph 1.k.: Against the Applicant.

Subparagraph 1.l.: Against the Applicant.

Subparagraph 1.m.: Against the Applicant.

Subparagraph 1.n.: Against the Applicant.

Subparagraph 1.o.: Against the Applicant.

DECISION

In light of all the evidence 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.

Michael Kirkpatrick

Administrative Judge

1. In a "Personnel Security Clearance Change Notification" (DISCO Form 562) dated August 22, 1996, Applicant's employer notified DISCO that Applicant's name has been changed to .