

DATE: February 25, 1997

In Re:

SSN: -----

Applicant for security clearance

DOHA CASE No. 96-0495

DECISION OF ADMINISTRATIVE JUDGE

PAUL J. MASON

Appearances

FOR THE GOVERNMENT

Claude R. Heiny III Esq.

Department Counsel

FOR THE APPLICANT

Pro se

STATEMENT OF CASE

On July 10, 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 a Statement of Reasons (SOR) to 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 and recommended referral to an Administrative Judge to determine whether clearance should be denied or revoked. The SOR is attached. Applicant filed her Answer to the SOR on September 4, 1996.

The case was received by the undersigned on December 2, 1996. A notice of hearing was issued on December 4, 1996, and the case was heard on December 12, 1996. The Government and Applicant submitted documentary evidence. (1) Testimony was taken from Applicant. The transcript was received on December 23, 1996.

FINDINGS OF FACT

The following Findings of Fact are based on Applicant's Answer to the SOR, the documents and the live testimony (Tr.). The SOR alleges financial considerations (Criterion F). Applicant admitted all the factual allegations but disputed the amount of the debt in subparagraph 1c. She also answered she is a loyal citizen, voter and juror. The loss of her job will cause her to return to unemployment.

Applicant is 44 years old and employed as a ----- by a defense contractor. She seeks a secret level clearance.

Applicant owes approximately \$4,400 to an automobile manufacturer credit company. The account was charged off in (2)

December 1989. She voluntarily returned the vehicle in 1988 when the manufacturer changed the terms of the lease. Applicant believes the second debt is for a phone bill she generated after she moved in May 1991. (Tr. 29).

Subparagraph 1c is for the second car that belonged to her present husband.⁽³⁾ Applicant owes the debts identified in 1e, 1f and 1g and was paying the finance company (subparagraphs 1c and 1f became one company) approximately \$30 a week from January 1994 (when she returned to the local area) to April or May 1994 when her continued unemployment required her to stop. (Tr. 31-33). Applicant's income is not sufficient to meet her debts. (GE #2).

In explanation of her financial problems, Applicant indicated her present husband was going through a long period of unemployment and she has been the sole means of support for the family. (GE #2; Tr. 26). Her debts have resulted from inadequate earnings to extend to all creditors, and she has to pick the most important debts to pay.⁽⁴⁾

Applicant blamed the entire financial dilemma on moving to another state in May 1991 to take on a job, which would also have allowed her husband to be closer to ----- opportunities. (Tr. 19).⁽⁵⁾ Before the move, she had no problem keeping current on her bills. (Tr. 30). She did not discover until she arrived at the new job (in the other state) the prospective employer had just laid off 90 employees and was not going to put her on the payroll. Seven months passed before she could find a job which paid about half of what she had been making as ----- prior to her move in May 1991. (Tr. 20-22; Exhibit A). She surmised she was laid off from the job she finally found in the other state because she was going to file a sexual harassment lawsuit.

Applicant contacted the creditor in subparagraph 1d by letter and by phone and said she would pay when she could. (Tr. 21).

Applicant has constantly thought about filing bankruptcy but has not had the money to pay for the filing requirements. (Tr. 43). In addition, she heard bankruptcy can cause problems. (Tr. 50). She never thought about consulting financial counselors or a consumer counseling service. (Tr. 44). Applicant has constantly talked to her present husband about their financial difficulty and they both have tried unsuccessfully to get different positions to earn more money. (Tr. 49-50).

POLICIES

Enclosure 2 of the Directive sets forth policy factors which must be given binding consideration in making security clearance determinations. These factors must be considered in every case according to the pertinent criterion; however, the factors are in no way automatically determinative of the decision in any case nor can they supersede the Administrative Judge's reliance on his own common sense. Because each security case presents its own unique facts and circumstances, it should not be assumed that the factors exhaust the entire realm of human experience or that the factors apply equally in every case. In addition, the Judge, as the trier of fact, must make critical judgments as to the credibility of witnesses. Factors most pertinent to evaluation of the facts in this case are:

Financial Problems (Criterion F)

Factors Against Clearance:

1. a history of not meeting financial obligations.
3. inability or unwillingness to satisfy debts.

Factors for Clearance:

None.

General Policy Factors (Whole Person Concept)

Every security clearance case must also be evaluated under additional policy factors that make up the whole person concept. Those factors (found at page 2-1 of Enclosure 2 of the Directive) include: (1) the nature, extent, and seriousness of the conduct; (2) the circumstances surrounding the conduct; (3) the frequency and recency of the conduct;

(4) the individual's age and maturity at the time of the conduct; (5) the voluntariness of participation; (6) the presence or absence of rehabilitation and other behavioral changes; (7) the motivation for the conduct; and, (8) the likelihood of continuation or recurrence.

Burden of Proof

As set forth in the Directive, every personnel security determination must be a fair and impartial overall commonsense decision based upon all available information, both favorable and unfavorable, and must be arrived at by applying the standard that the granting (or continuance) of a security clearance under this Directive may only be done upon a finding that to do so is clearly consistent with the national interest. In reaching determinations under the Directive, careful consideration must be directed to the actual as well as the potential risk involved that an applicant may fail to properly safeguard classified information in the future. The Administrative Judge can only draw those inferences or conclusions that have a reasonable and logical basis in the evidence of record. The Judge cannot draw inferences or conclusions based on evidence which is speculative or conjectural in nature.

The Government must establish all the factual allegations under Criterion F (financial problems) which establishes doubt about a person's judgment, reliability and trustworthiness. While a rational connection, or nexus, must be shown between an applicant's adverse conduct and his ability to effectively safeguard classified information, with respect to the sufficiency of proof of a rational connection, objective or direct evidence is not required.

Then, the applicant must remove that doubt with substantial evidence in refutation, explanation, mitigation or extenuation which demonstrates that the past adverse conduct is unlikely to repeat itself and Applicant presently qualifies for a security clearance.

CONCLUSIONS

Applicant's history of financial problems began in December 1989 when the automobile credit company charged off the deficiency balance of \$4,400 due on her car. Other than expressing her discontent over the terms of the modified lease in 1988, Applicant has offered no evidence demonstrating any efforts to resolve the debt.

Applicant's other six debts are related to her job move in May 1991. However, just because she did not get the job she moved for, and had to take a job paying less than half of the job left, she has offered no evidence of resolving any one of the other debts. For example, she testified she paid the finance company (subparagraphs 1c and 1f) \$30 a week from approximately January 1994 to April 1994. However, she presented no evidence in support of her claim. In addition, she testified she wrote letters and called the creditor identified in subparagraph 1d. Yet, she has offered no evidence to support her assertions.

Although there is no evidence of the generation of any additional debts after November 1993, the existing debts are not small nor were they created over a short period of time. At the present time, she owes approximately \$21,000 and has taken no documented steps to address the debts since she moved in May 1991.

Mitigating factor #3 (financial problems) applies when the evidence reveals the debts were caused by conditions beyond the debtor's control. The fact the job offer was withdrawn just prior to Applicant's arrival in May 1991 was truly unfortunate and clearly exacerbated Applicant's financial problems. The passage of seven months before she could find another job which paid only half the salary of her ----- job, coupled with the major mechanical difficulties of the second car, definitely compounded Applicant's financial woes. In addition, it is reasonable to infer the seasonal employment of Applicant's husband has frustrated Applicant's efforts over the years to improve her financial condition. However, Applicant has taken no steps or even formulated a plan to handle the debts. Without any documentation indicating or even suggesting efforts to repay or otherwise resolve her debts through counseling assistance or bankruptcy, the chances are Applicant's present financial problems will persist in the future.

FORMAL FINDINGS

Formal Findings required by Paragraph 25 of Enclosure 3 of the Directive are:

Paragraph 1 (financial problems): AGAINST THE APPLICANT.

- a. Against the Applicant.
- b. Against the Applicant.
- c. Against the Applicant.
- d. Against the Applicant.
- e. Against the Applicant.
- f. Against the Applicant.
- g. Against the Applicant.
- h. Against the Applicant.

Factual support for the foregoing findings are set forth in FINDINGS OF FACT and CONCLUSIONS above.

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 Applicant.

Paul J. Mason

Administrative Judge

1. Applicant furnished post-hearing documentation within the time allowed. The documents shall be marked and admitted in evidence as Applicant's Exhibit A.
2. She has had no contact with the creditor since 1988.
3. The car kept breaking down and she used the credit card (identified in subparagraph 1d) to pay for maintenance. She had to buy a new engine and transmission. (Tr. 41).
4. In GE #2, Applicant reiterated her intention to repay her debts when she was financially able.
5. Her financial problems have been essentially the same since May 1991. (Tr. 22).