

DATE: April 28, 1997

In Re:

SSN: -----

Applicant for Security Clearance

ISCR Case No. 96-0697

DECISION OF ADMINISTRATIVE JUDGE

JOHN G. METZ, JR.

APPEARANCES

FOR THE GOVERNMENT

Matthew E. Malone, Esquire

Department Counsel

FOR THE APPLICANT

Pro Se

STATEMENT OF THE CASE

On 23 September 1996, the Defense Office of Hearings and Appeals (DOHA) issued a Statement of Reasons (SOR) to Applicant, stating that DOHA could not make the preliminary affirmative finding⁽¹⁾ that it is clearly consistent with the national interest to grant or continue a security clearance for Applicant. On 24 October 1996, Applicant answered the SOR and requested an administrative decision on the record. Applicant did not respond to the Government's File of Relevant Material (FORM)--issued 5 December 1996; the record in this case closed 14 February 1997, the day the response was due at DOHA. The case was originally assigned to a different administrative judge, but was reassigned to me because of workload considerations on 18 April 1997. I received the case on 18 April 1997 to determine whether clearance should be granted, continued, denied or revoked.

The SOR is attached to this Decision and incorporated by reference.

FINDINGS OF FACT

Applicant admitted all the allegations of the SOR; accordingly, I incorporate those admissions as findings of fact.

Applicant--a 33-year old employee of a defense contractor--seeks a secret clearance.

Applicant has a history of financial irresponsibility. The SOR alleges 23 debts--totaling over \$15,000.00--falling past due between January 1989 and August 1995. Creditors obtained judgments on ten of the debts (subparagraphs 1.b., c., g., i., j., k., l., q., r., s.); Applicant intends to file bankruptcy on 12 debts (subparagraphs 1.a.-g., i., k., l., q., v.), but has not yet done so. Applicant has made no payment on any of the bad debts, except for subparagraph 1.s.--when the

judgment creditor obtained a garnishment for approximately half the outstanding balance. Eight of the debts are less than \$100.00 each--not including statutory interest (subparagraph 1.g., h., k., l., v., w., x., y.); four others are less than \$200.00 each (subparagraph 1.b., c., m., u.); one is less than \$250.00 (subparagraph 1. d).

Applicant married her husband in August 1988. Her financial difficulties began in January 1989, when her automobile was repossessed, leaving a deficiency of \$6,000.00.⁽²⁾ Applicant and her husband separated in November 1989. He is serving a prison sentence which precludes his providing any child support for Applicant's two children. After the separation, Applicant began to write bad checks to pay for bills and groceries, hoping to cover the checks before the creditor submitted the checks a second time;⁽³⁾ she was unsuccessful, and incurred additional debt (returned check fees) on top of the original debts. She switched banks several times.

On three occasions between late 1989 and May 1990, Applicant falsified time cards at her employer--a Federal government agency.⁽⁴⁾ Applicant was allowed to resign her position. Applicant obtained employment as a time and attendance record keeper with another Federal agency. Between October and December 1992, Applicant falsified her time records to reflect fewer hours of leave taken. Her proposed removal was held in abeyance when Applicant accepted a last chance offer--involving repayment for hours not worked--from the agency. Applicant later resigned on her own.

A Personal Financial Statement (PFS)(DIS Form 154) prepared 29 March 1996 shows Applicant with a net monthly income of \$69.00--after making payments to a credit counseling firm of \$120.00.⁽⁵⁾ At the time she prepared this PFS, Applicant had not met with the credit counseling firm; when she did, the firm drew up a payment schedule which would include payments to all creditors, but which required a monthly payment of \$325.00. Applicant claimed to be unable to afford that payment. In April 1996, Applicant first stated an intent to file bankruptcy on some of the debts, but could not afford the filing/attorney fees. In August 1996, she repeated this intent, but still lacked the funds to file (Item 7). As of her answer--October 1996--she had still not filed for bankruptcy protection.

POLICIES

Enclosure 2 of the Directive sets forth adjudicative guidelines to be considered in evaluating an individual's security eligibility. The Administrative Judge must take into account the conditions raising or mitigating security concerns in each area applicable to the facts and circumstances presented. Each adjudicative decision must also assess the factors listed in Section F.3. and in Enclosure (2) of the Directive. 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, as the guidelines reflect consideration of those factors of seriousness, recency, motivation, *etc.*

Considering the evidence as a whole, the following adjudication policy factors are most pertinent to this case:

FINANCIAL CONSIDERATIONS (CRITERION F)

An individual who is financially overextended is at risk of having to engage in illegal acts to generate funds. Unexplained affluence is often linked to proceeds from financially profitable criminal acts.

Conditions that could raise a security concern and may be disqualifying include:

- (1) a history of not meeting financial obligations;
- (2) deceptive or illegal financial practices such as . . . check fraud. . . other intentional breaches of trust;
- (3) inability or unwillingness to satisfy debts;

Conditions that could mitigate security concerns include:

- (3) the conditions that resulted in the behavior were largely beyond the person's control (e.g, loss of employment. . . divorce).

PERSONAL CONDUCT (CRITERION E)

Conduct involving questionable judgment, untrustworthiness, unreliability, or unwillingness to comply with rules and regulations could indicate that the person may not properly safeguard classified information.

Conditions that could raise a security concern and may be disqualifying include:

(5) a pattern of dishonesty or rule violations;

Conditions that could mitigate security concerns include:

None.

Burden of Proof

Initially, the Government must prove controverted facts alleged in the Statement of Reasons. If the Government meets that burden, the burden of persuasion then shifts to the applicant to establish his security suitability through evidence of refutation, extenuation or mitigation sufficient to demonstrate that, despite the existence of disqualifying conduct, it is nevertheless clearly consistent with the national interest to grant or continue the security clearance.

A person who seeks access to classified information enters into a fiduciary relationship with the Government predicated upon trust and confidence. Where facts proven by the Government raise doubts about an applicant's judgment, reliability or trustworthiness, the applicant has a heavy burden of persuasion to demonstrate that he or she is nonetheless security worthy. As noted by the United States Supreme Court in *Department of the Navy v. Egan*, 484 U.S. 518, 531 (1988), "the clearly consistent standard indicates that security-clearance determinations should err, if they must, on the side of denials."

CONCLUSIONS

The Government has established its case under criterion F. The record evidence clearly establishes Applicant's indebtedness and her irresponsible handling of that indebtedness. While the Applicant's separation from her husband in 1989 provides some explanation for many of the debts, those explanations do not justify her deliberate conduct in writing bad checks to cover household expenses. Further the separation may serve to explain why many of Applicant's accounts became delinquent in 1990 (1.e.-j.)--in the year after the separation--but it does not explain why accounts became delinquent in 1989 before the separation (1. a.-d.), or continued to fall into delinquency after 1990. Applicant had debts become delinquent in 1991 (1.k.), 1992 (1.l., m.), 1993 (1.p.-r.), 1994 (s.-v.), and 1995 (w.-y.). The last seven debts in the SOR all involve bad checks, and with the exception of 1. s. (involving checks written in 1992) all occurred in 1994 and 1995. Applicant's explanations do not explain why Applicant has not made any efforts to satisfy any of these debts after obtaining better employment in August 1995. Nearly a year has elapsed since Applicant's PFS suggested she had \$120.00 a month--\$1,440.00 a year--available for debt reduction; that amount could have satisfied the principal amount due on all thirteen debts of less than \$250.00. Yet, the record contains no evidence of any attempt by Applicant to satisfy these debts or communicate with the creditors in any way. Further, if Applicant intended to file for bankruptcy on these debts, the \$1,440.00 she had available over the past year was more than enough to pay the filing fees. I conclude from Applicant's inaction that she has no real intent to deal with her indebtedness, either by paying the debts or by discharging them in bankruptcy. ⁽⁶⁾ I find criterion F. against Applicant.

The Government has established its case under criterion E. Applicant clearly breached her fiduciary duty to the Government by falsifying her pay records--to her financial benefit--on several occasions during two distinct periods of her recent past. Her personal problems during those periods do not mitigate the fact that Applicant engaged in illegal acts to generate funds for her family. The financial pressures that lead to that behavior have not abated, and the record contains no evidence to suggest that Applicant would not engage in similar behavior if she perceived that her personal circumstances warranted. I find criterion E. against Applicant.

FORMAL FINDINGS

Paragraph 1. Criterion F: Against THE APPLICANT

Subparagraph a: Against the Applicant

Subparagraph b: Against the Applicant

Subparagraph c: Against the Applicant

Subparagraph d: Against the Applicant

Subparagraph e: Against the Applicant

Subparagraph f: Against the Applicant

Subparagraph g: Against the Applicant

Subparagraph h: Against the Applicant

Subparagraph i: Against the Applicant

Subparagraph j: Against the Applicant

Subparagraph k: Against the Applicant

Subparagraph l: Against the Applicant

Subparagraph m: Against the Applicant

Subparagraph n: Against the Applicant

Subparagraph o: Against the Applicant

Subparagraph p: Against the Applicant

Subparagraph q: Against the Applicant

Subparagraph r: Against the Applicant

Subparagraph s: Against the Applicant

Subparagraph t: Against the Applicant

Subparagraph u: Against the Applicant

Subparagraph v: Against the Applicant

Subparagraph w: Against the Applicant

Subparagraph x: Against the Applicant

Subparagraph y: Against the Applicant

Paragraph 2. Criterion E: Against THE APPLICANT

Subparagraph a: Against the Applicant

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.

John G. Metz, Jr.

Administrative Judge

1. Required by Executive Order 10865, as amended and Department of Defense Directive 5220.6, dated January 2, 1992--and amended by Change 3 dated 16 February 1996 (Directive).
2. Applicant asserts that her husband was abusive and forced her to have this car repossessed. That circumstance, standing alone, does not explain her failure to resolve the remaining indebtedness. The husband's unemployment certainly affected Applicant's ability to pay on her accounts; the record is silent on the length of his unemployment prior to their separation in November 1989.
3. The methodology described by Applicant suggests that she knew the checks were worthless when she wrote them and would be returned to the creditor as NSF (non-sufficient funds); Applicant hoped to make the checks good by the time the creditor presented them for payment the second time.
4. Applicant had a variety of personal problems which caused her to use up her leave balances. In order to avoid using up any more leave, Applicant's supervisors permitted her to make up hours lost during the regular work week by coming to work on Saturday. Applicant came to work, took credit for working eight hours, but only worked two hours or so. She did this to avoid having to pay a babysitter for the extra hours.
5. The PFS also reports that Applicant spends \$450.00 on groceries per month.
6. I am also concerned that while essentially ignoring her indebtedness, Applicant's budget includes \$450.00 a month for groceries for a family of three plus \$100.00 a month for meals out and \$48.00 for school lunches; the budget also includes \$20.00 for lotto/bingo. Under Applicant's present financial situation, the magnitude of the grocery expenses seems unreasonable; the lotto expenditure alone could have satisfied several of the smaller debts over the course of a year.