

DATE: May 12, 1997

In Re:

SSN: -----

Applicant for Security Clearance

ISCR Case No. 97-0086

DECISION OF ADMINISTRATIVE JUDGE

JOHN R. ERCK

APPEARANCES

FOR THE GOVERNMENT

Michael H. Leonard, Esquire

Department Counsel

FOR THE APPLICANT

*Pro Se*

STATEMENT OF THE CASE

On January 28, 1997, the Defense Office of Hearings and Appeals (DOHA), pursuant to Executive Order 10865, "Safeguarding Classified Information Within Industry," dated February 20, 1960, as amended and modified, and Department of Defense Directive 5220.6 "Defense Industrial Personnel Security Clearance Review Program" (Directive) dated January 2, 1992, as amended by Change 3, dated February 13, 1996, issued a Statement of Reasons (SOR) to Applicant which detailed reasons why DOHA could not make a preliminary determination that it was clearly consistent with the national interest to grant or continue a security clearance for her.

A copy of the SOR is attached to this Decision and included herein by reference.

Applicant responded to the SOR in writing on February 18, 1997, and requested a hearing before a DOHA Administrative Judge. The case was reassigned to this Administrative Judge on April 16, 1997 after having been previously assigned to another Administrative Judge on April 2, 1997. On April 17, 1997, a hearing was convened for the purpose of considering whether it was clearly consistent with the national security to grant, continue, deny, or revoke Applicant's security clearance. The Government's case consisted of six exhibits and no witnesses; Applicant relied on her own testimony, the testimony of one other witness, and five exhibits. Following the hearing, the record remained open for ten days to afford Applicant additional time to supplement the record regarding her current financial situation. She submitted nine additional exhibits within the allotted time period--none of which were objected to by Department Counsel. A transcript of the proceedings was received on April 28, 1997.

FINDINGS OF FACT

Applicant denied, without explanation, the factual allegations set forth in subparagraphs 1.a, 1.b., 1.c., 1.f., 1.g., 1.i. and

1.l. of the SOR, and admitted, without explanation the factual allegations set forth in subparagraph 1.d., 1.e., 1.h., 1.j., and 1.k. of the SOR. I have accepted Applicant's admissions and incorporate them as part of my findings of fact. After a complete and thorough review of the evidence in the record, and upon due consideration of the same, I make the following additional findings of fact:

Applicant is 35 years old and has been employed by her current employer since October 1995. She is seeking to obtain a secret clearance. A favorable preliminary determination could not be made on Applicant's suitability for a security clearance because of financial considerations.

The SOR charges Applicant with being delinquent on obligations totaling \$15,810.00. Of that amount, \$4,403.39 was owed to the Internal Revenue Service (IRS) for tax years 1989, 1990 and 1991; \$9,957.54 was owed to four different banks as a result of credit card debt Applicant had incurred financing her college education prior to 1992, (1) \$458.00 was owed to creditors with whom Applicant has a dispute over the services rendered or not rendered, (2) and \$991.00 was owed to creditors whom Applicant has already paid, or intended to pay in the very near future.

At the time of the hearing, Applicant provided evidence that her total obligation to the IRS has been reduced from \$4,403.39 to approximately \$500.00. (3) She provided evidence that she had paid off other delinquent obligations--alleged on the SOR--totaling \$562.53. (4)

Applicant has not made regular payments on the credit card debt alleged in subparagraphs 1.d., 1.e., 1.h. and 1.j. since 1992 because she changed jobs and experienced a substantial reduction in income. As an employee of a major newspaper in a large metropolitan area, Applicant had been earning \$30,000.00 a year when she quit that job in 1992. (5) Working in a free lance/consulting capacity from 1992 until November 1995, Applicant earned less than \$20,000.00 per year for 1993, 1994, and 1995. She began to earn the same salary she had been earning in 1992 when she started working for her current employer in November 1995. Because of substantial salary increases, Applicant estimates that she will earn approximately \$41,000.00 in 1997 (Tr. 74).

Although her income has increased substantially from two years ago, Applicant describes her current lifestyle as "simple" (Tr. 45). Eating lunch at her desk, living in a one-bedroom apartment, and driving an old used car are all notable attributes of this life style.

Applicant's immediate supervisor testified on Applicant's behalf. He described Applicant as a hard worker who gets along well with people and always completes assigned tasks on or ahead of time.

## POLICIES

The Adjudicative Guidelines of the Directive are not a set of inflexible rules of procedure. Instead, they are to be applied by Administrative Judges on a case-by-case basis with an eye toward making determinations with reasonable consistency that are clearly consistent with the interests of national security. In making those overall common sense determinations, Administrative Judges must consider, assess, and analyze the evidence of record, both favorable and unfavorable, not only with respect to the relevant Adjudicative Guidelines but in the context of the factors set forth in section F.3. of the Directive as well. In that vein, the government not only has the burden of proving any controverted fact(s) alleged in the SOR, it must also demonstrate that the facts proven have a nexus to an applicant's lack of security worthiness.

The following Adjudicative Guidelines are deemed applicable to the instant matter.

## FINANCIAL CONSIDERATIONS

(Criterion F)

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

(1) A history of not meeting financial obligations;

### **Conditions that could mitigate security concerns:**

- (1) The behavior was not recent;
- (6) The individual initiated a good-faith effort to repay overdue creditors or otherwise resolve debts.

### **Burden of Proof**

The Government has the burden of proving any controverted fact(s) alleged in the Statement of Reasons. If the Government establishes its case, the burden of persuasion shifts to the applicant to establish his security suitability through evidence which refutes, mitigates, or extenuates the disqualifying conduct and demonstrates that it is clearly consistent with the national interest to grant or continue his security clearance.

A person who seeks access to classified information enters into a fiduciary relationship with the Government predicated upon trust and confidence. Where the 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 is nonetheless security worthy. As noted by the United States Supreme Court in *Department of 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." As this Administrative Judge understands that Court's rationale, doubts are to be resolved against an applicant.

### **CONCLUSIONS**

Having considered the record evidence in accordance with the appropriate legal precepts and factors, this Administrative Judge concludes that the Government has established its case with regard to Criterion F. In reaching my decision, I have considered the evidence as a whole, including each of the factors enumerated in Section F.3, as well as those referred to in the section dealing with the Adjudicative Process, both in the Directive.

The Government has met its burden with respect to Criterion F. Applicant has been and continues to be delinquent in financial obligations totaling more than \$10,000.00. For the past five years, she has not made regular payments on nearly \$10,000.00 of credit card debt. For most of this time, she did not have sufficient income to meet her current living expenses, and to pay down the credit card debt she had incurred prior to 1992.

There is no mitigation in the circumstances under which Applicant left her more secure, higher paying employment in 1992 for the uncertainty of earning her livelihood as a free lance consultant. While she felt uncomfortable with the influence being exerted by the parent company over the newspaper where she had been employed for seven years, she has proffered no evidence that this influence required her to do what was illegal or immoral. She quit this job of her own free will, and it was this decision which undermined her financial well-being and caused her to become delinquent on the obligations set out in the SOR. [\(6\)](#)

The security concern raised by Applicant's indebtedness is mitigated by the fact that most of her delinquent obligations had been incurred prior to 1992 in her pursuit of a college education. There is no evidence that any of the indebtedness resulted from an irresponsible or profligate lifestyle--especially within the past five years. In hindsight, it is easy to criticize Applicant for financing her education with expensive credit card debt rather than exhausting all other possible funding sources. Her financial statement would now appear less ominous if she were indebted to a single lending institution for all of her educational expenses. However, if the choice she perceived--at that time--was paying her education bills by credit card, or giving up on getting an education, she made the right decision.

Applicant is credited with satisfying at least two delinquent obligations--totaling more than \$500.00--within the last six months. She is also credited with paying \$300.00 on her debt to the IRS. Because of these recent efforts to pay down her indebtedness, her promise to pay off her remaining obligations is credible, and well within reach of her 1997 anticipated income. The credibility of her promise is further enhanced by Applicant's convincing description of her "simple" lifestyle. She has been willing to get by with an old used car, rather than buying a new one. She does not have an extravagant home. She has been bringing her own lunch and eating it at her desk most of the time. She has not been

borrowing money and incurring additional debt to maintain a "flashy" lifestyle. This Administrative Judge found Applicant credible because her "simple" lifestyle was more than talk. She was informed of the steps she could take to reduce her weekly and monthly expenditures, and she has been taking these steps to improve her financial situation.

Favorable consideration has also been given to Applicant's tenacity in finally persuading the IRS to reverse themselves with respect to their tax assessment--on her--for her tax years 1989, 1990 and 1991. By resolving her indebtedness to the IRS, Applicant has been able to reduce her delinquent obligations by almost one-third. I found this effort to be part of her overall concern with putting her financial house in order. Criterion F is concluded for Applicant.

### **FORMAL FINDINGS**

Formal Findings as required by Section 3, Paragraph 7, of Enclosure 1 of the Directive are hereby rendered as follows:

#### Paragraph 1 (Criterion 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

### **DECISION**

In light of all the circumstances presented by the record in this case, it is clearly consistent with the national interest to grant Applicant's security clearance.

**John R. Erck**

**Administrative Judge**

1. Applicant testified that she had used credit cards to pay her tuition and other expenses because she was earning too much money to qualify for financial aid. (Tr. 80-82)
2. Applicant disputes the debt alleged in subparagraph 1.l. , claiming that the debt referenced in this subparagraph was for dental work which was actually performed by another dentist (See Tr. 34 and Applicant's Exh. D).
3. Applicant testified that her obligation to the IRS was a result of their not having a record of the tax returns filed for the years when she was married (Tr. 49-95). Applicant separated from her husband in 1991 and divorced in 1994. The IRS obligation had been reduced to \$804.00 in February 1997 (Applicant Exh. A), and Applicant had made payments totaling \$300.00 on this obligation by the date of the hearing (Tr. 51).

4. The record remained open to allow Applicant an opportunity to supplement the record with evidence that she had satisfied an obligation **prior** to the date of the hearing (Tr. 56). The copy of the check issued to satisfy the debt alleged in subparagraph 1.k. has not been considered because the check was not issued until April 24, 1997.
5. Applicant quit the job with the newspaper in 1992 because she was uncomfortable with the amount of influence the parent company was exerting over the operation of the paper. She worked in a free lance/consultant capacity from 1992 to November 1995, and earned an annual income which was roughly half what she had been earning previously (Tr. 64-67).
6. This does not include the indebtedness to the IRS alleged in subparagraph 1.a. through 1.c.