

DATE: October 17, 1997

---

In Re:

-----

SSN: -----

Applicant for security clearance

---

ISCR Case No. 97-0270

**DECISION OF ADMINISTRATIVE JUDGE**

**PAUL J. MASON**

**Appearances**

**FOR THE GOVERNMENT**

Matthew E. Malone, Esq.

Department Counsel

**FOR THE APPLICANT**

*Pro se*

**STATEMENT OF CASE**

On April 11, 1997, 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, amended by Change 3, February 13, 1996, 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 his Answer to the SOR on May 12, 1997. The case was received by the undersigned on June 30, 1997. A notice of hearing was issued on June 27, 1997, and the case was heard on July 23, 1997. The Government and Applicant submitted documentary evidence. Testimony was taken from Applicant and one witness. The transcript was received on August 8, 1997.

**FINDINGS OF FACT**

The Following Findings of Fact are based on the documentation and testimony. The SOR alleges financial considerations (Criterion F). Applicant admitted all allegations of the SOR except for subparagraph 1m, and explained her net remainder was miscalculated when she provided her sworn statement (GE #2) on March 13, 1997.<sup>(1)</sup>

Applicant is 61 years old and has been employed as a security guard by a defense contractor since October 1995. (TR. 34) She seeks a secret level clearance.

Applicant owes 12 creditors \$62,006.00 for a business failure in 1992. In 1968, Applicant's husband opened a lawn and garden business, specializing in snow equipment. Applicant did not become a part of the business until 1982.<sup>(2)</sup> In 1989,

the banks refused to lend the business any more money because of a dramatic downturn in the economy. (TR. 21) After repeated attempts to get money from the banks in the worsening recession, Applicant and her husband started using personal credit cards 1990 (TR. 41), in a failed effort to save the business. In addition, the winter seasons in the early 1990s were bringing less and less snow. The sparse snowfall, coupled with her husband's inability to carefully evaluate the disastrous impact of national discount chain stores on his small volume/small sale store, (Tr. 49) created circumstances that made it impossible for the business to survive. Applicant's husband recalled how he recklessly used the credit cards to pay off other credit cards, in essence borrowing from one creditor to pay another. (TR. 43)

Before losing the business and their home in 1993, Applicant's husband tried to file bankruptcy but could not because the lawyers wanted \$25,000.00, with \$5000.00 earnest money. After moving to the local area in 1993, Applicant and her husband called no bankruptcy attorneys because they believed the cost would continue to be more than they could pay. Applicant and her husband intend to file bankruptcy because they do not feel there is a reasonable way to pay off the outstanding debt, given their present ages and their remaining life span. (TR. 47)

Two former supervisors from March to December 1993, have found Applicant to be conscientious, dependable and trustworthy. One creditor reports that Applicant is current in payments on one auto and has paid the other off on time. Applicant's perfect record of rental payments is

documented. Three additional creditors report that Applicant's credit history contains no deficiencies or late payments.

Applicant also presented additional documentation showing regular payments to three additional creditors. Finally, Applicant furnished documentation indicating consistent payments to a credit agency for a debt owing since business failed in 1993. (TR. 50)

Having weighed the demeanor of both Applicant and her husband very carefully, Applicant's testimony is credible. I believe she and her husband were not prepared for the problems caused by the economy or the problems caused by mother nature. In addition, they lacked the business acumen and should have sought the appropriate business expertise or counseling to increase their chances of outlasting the recession or cutting their financial losses as much as possible through a bankruptcy discharge. Considering all the circumstances leading to the failed business, I find the poor judgment exhibited by Applicant (and her husband) in creating more debt rather than taking positive action to address the debt already generated is outweighed by the poor state of the economy and lack of more snow to increase business.

### **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 Considerations (Criterion F)**

##### Factors Against Clearance:

1. a history of not meeting financial obligations;
2. inability to satisfy debts.

##### Factors for Clearance:

1. the behavior was not recent;
2. it was an isolated event;

3. the conditions that resulted in the behavior were largely beyond the person's control;
4. there are clear indications the problem is under control;
6. the individual has made good-faith efforts to resolve debts.

### **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 financial considerations (Criterion F) 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**

The Government has established a strong case of financial considerations under Criterion F. Applicant has a history of financial obligations totaling \$62,006.00 since 1992 which she has failed to resolve. On the other hand, the record shows no illegal financial practices or other habits which caused or contributed to the debt or raise other security concerns. Applicant's favorable credibility persuades me to confidently believe she is willing but unable to pay the debts. This inability to pay all or part of the debt is primarily and realistically based on Applicant's age. The recency of the indebtedness may be a factor that mitigates the security concerns generated by the indebtedness. The record reflects all listed debts were charged off by March 1993 with no indication of new debts or other issues raising security concerns.

Although the evidence of Applicant's business failure is uncontradicted, there is no evidence Applicant has attempted to start a similar business in the present geographical area or make the same mistakes since March 1993.

The conditions that led to Applicant's debts were the recession, lack of snowfall, and Applicant's inexperience in the business. Recessions cannot be anticipated with any great precision, and affect different parts of the economy in different ways. For the small business entrepreneur, a depressed economy usually means loans are more difficult to obtain, simply because there are fewer loans being granted. Because Applicant sold different kinds of snow-related equipment, a lack of snow over a number of successive years, coupled with a depressed economy, had a devastating impact on Applicant's business. Additionally, Applicant's inexperience in business principles is aptly demonstrated by

the lack of any real understanding of how to keep the size of the inventory related to the sales flow of the business. Furthermore, Applicant's husband learned very late that he could not provide the same competitive prices because he could not purchase the same amount of inventory as the national discount chains.

While the record contains no evidence of counseling or efforts to repay all but one of the business creditors, Applicant has provided persuasive evidence that she has her personal financial house in order. She has provided documentation from five creditors showing no deficiencies or late payments. Given the current evidence of consistent payment of bills as they come due, Applicant's favorable credibility at the hearing, her age and the fact that the financial problems were caused by a business downturn coupled with circumstances largely beyond Applicant's control, Applicant has satisfactorily met her burden of persuasion under the mitigating factors of Criterion F.

### **FORMAL FINDINGS**

Having weighed the specific policy factors under Criterion F with the general policy factors (whole-person concept), Formal Findings required by Paragraph 25 of Enclosure 3 of the Directive are:

Paragraph 1 (Financial Considerations-Criterion F): FOR THE APPLICANT.

- a. For the Applicant.
- b. For the Applicant.
- c. For the Applicant.
- d. For the Applicant.
- e. For the Applicant.
- f. For the Applicant.
- g. For the Applicant.
- h. For the Applicant.
- i. For the Applicant.
- j. For the Applicant.
- k. For the Applicant.
- l. For the Applicant.
- m. 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.

Paul J. Mason

Administrative Judge

1. Attached to her Answer is a revised personal profile statement indicating her monthly expenses \$1849.00 are almost seven hundred dollars more than what she indicated in GE #2 (1155.00).

2. Prior to the time she entered the business, she spent all her time raising four children and taking care of her parents, in addition to being a lunch aide. (TR. 32)