

DATE: October 18, 2007

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| In re:                           | ) |                        |
|                                  | ) |                        |
| -----                            | ) | ISCR Case No. 07-00159 |
| SSN: -----                       | ) |                        |
|                                  | ) |                        |
| Applicant for Security Clearance | ) |                        |

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**DECISION OF ADMINISTRATIVE JUDGE  
HENRY LAZZARO**

**APPEARANCES**

**FOR GOVERNMENT**

Emilio Jaksetic, Esq., Department Counsel

**FOR APPLICANT**

*Pro Se*

**SYNOPSIS**

Applicant has failed to take any meaningful action to satisfy or otherwise resolve the approximately \$20,000.00 in delinquent debt she has carried for about the past six years. Clearance is denied.

**STATEMENT OF THE CASE**

On May 8, 2007, the Defense Office of Hearings and Appeals (DOHA) issued a Statement of Reasons (SOR) to Applicant stating it was unable to find it is clearly consistent with the national

interest to grant or continue a security clearance for Applicant.<sup>1</sup> The SOR, which is in essence the administrative complaint, alleges a security concern under Guideline F (financial considerations). Applicant submitted an undated response to the SOR that was apparently notarized on July 5, 2007.<sup>2</sup> She admitted all SOR allegations, provided an explanation for her delinquent indebtedness, denied the SOR allegations created a security concern, and requested a clearance decision based on the written record without a hearing.

Department Counsel prepared a File of Relevant Material (FORM) on July 23, 2007, that was mailed to Applicant on July 26, 2007. Applicant acknowledged receipt of the FORM on July 31, 2007, and did not object to the contents of the FORM or submit additional information for consideration within the thirty-day time period allotted to her. The case was assigned to me on September 28, 2007.

### **FINDINGS OF FACT**

Applicant's admissions to the allegations in the SOR are incorporated herein. In addition, after a thorough review of the pleadings and exhibits, I make the following findings of fact:

Applicant submitted a security clearance application in or about February 2006, which discloses she is 46 years old and has never been married. She did not list any dependents in the application nor has she indicated in any other submission that anyone is dependent upon her for support.

Applicant was steadily employed from May 1984 until June 2000 as a senior accounting clerk in private industry. She left that position when her employer was sold to another company because she was concerned about the continued viability of her position with the employer. She thereafter went through a succession of employers and two periods of unemployment until she again began employment through a temporary agency in or about October 2003. While she is now steadily employed, the record does not provide sufficient information from which the commencement date of that employment can be determined. She was unemployed from April to November 2001, and again from June 2003 to February 2004.

The SOR lists four accounts, totaling \$9,076.75, that were charged off as bad debts between December 2001 and May 2002; four accounts, totaling \$11,820.46, that have been submitted for collection; and one account, in the amount of \$1,444.00, on which a judgment was entered against Applicant in August 2006. Although the two credit reports contained in the FORM do not

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<sup>1</sup> This action was taken under Executive Order 10865 and DoD Directive 5220.6, dated January 2, 1992, as amended and modified (Directive).

<sup>2</sup> The second page of the SOR Applicant returned contains her signature and that of another individual but does not contain a notary stamp of other conclusive indication the second individual was in fact a notary. The DOHA date stamp on Applicant's response is illegible.

completely coincide with the amounts alleged to be owing in the SOR, Applicant admitted each of the debts, including the amount owing, in her response to the SOR.<sup>3</sup>

There is no indication Applicant ever experienced any financial problems before she quit her long term employment in June 2000. She attributes the financial delinquencies listed in the SOR to her subsequent periods of unemployment and the events of September 11, 2001, which made it difficult for her to find suitable employment and necessitated a move to a different state.

Applicant eventually moved in with her sister and indicates she hoped to be able to pay on her debts at that time with unemployment compensation she received. However, Applicant claims that plan was unsuccessful because her sister insisted on being paid room and board. Further preventing her from making payments on the listed debts was approximately \$7,000.00 in past due taxes owed to the IRS. Applicant was able to satisfy the delinquent tax debt by mid-2004.

Applicant has sought advice from a debt counselor provided by her employer and two attorneys on how to get herself out of the financial hole she finds herself in. One attorney explained the effect of statutes of limitations as they applied to her debts but offered no other advice. The second apparently suggested she seek bankruptcy protection. She also contacted a consumer credit counseling service that was unable to assist her because at the time she did not have steady employment. There is no indication in the FORM she has contacted any creditor to attempt to set up payment plans on the debts or taken any other affirmative step to resolve any of the debts listed in the SOR.

### **POLICIES**

The Directive sets forth adjudicative guidelines to consider when evaluating a person's eligibility to hold a security clearance. Chief among them are the disqualifying conditions and mitigating conditions for each applicable guideline. Additionally, each clearance decision must be a fair and impartial commonsense decision based upon the relevant and material facts and circumstances, the whole person concept, and the factors listed in ¶ 6.3.1 through ¶ 6.3.6 of the Directive. Although the presence or absence of a particular condition or factor for or against clearance is not outcome determinative, the adjudicative guidelines should be followed whenever a case can be measured against this policy guidance. Considering the evidence as a whole, Guideline F, pertaining to financial considerations is most relevant in this case.

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<sup>3</sup> It is clear from the credit reports that substantial amounts are owing to at least the majority of the listed creditors. The decision in this case is not dependent upon the exact amount owing and/or the total number of delinquent creditors.

## **BURDEN OF PROOF**

The sole purpose of a security clearance decision is to decide if it is clearly consistent with the national interest to grant or continue a security clearance for an applicant.<sup>4</sup> The government has the burden of proving controverted facts.<sup>5</sup> The burden of proof in a security clearance case is something less than a preponderance of evidence<sup>6</sup>, although the government is required to present substantial evidence to meet its burden of proof.<sup>7</sup> “Substantial evidence is more than a scintilla, but less than a preponderance of the evidence.”<sup>8</sup> Once the government has met its burden, the burden shifts to an applicant to present evidence of refutation, extenuation, or mitigation to overcome the case against him.<sup>9</sup> Additionally, an applicant has the ultimate burden of persuasion to obtain a favorable clearance decision.<sup>10</sup>

No one has a right to a security clearance<sup>11</sup> and “the clearly consistent standard indicates that security clearance determinations should err, if they must, on the side of denials.”<sup>12</sup> Any reasonable doubt about whether an applicant should be allowed access to classified information must be resolved in favor of protecting national security.<sup>13</sup>

## **CONCLUSIONS**

Under Guideline F, a security concern exists when a person has significant unpaid debts. Failure to live within one’s means, satisfy debts, and meet financial obligations may indicate poor self-control, lack of judgment, or unwillingness to abide by rules and regulations, all of which can raise questions about an individual’s reliability, trustworthiness and ability to protect classified information. An individual who is financially overextended is at risk of having to engage in illegal acts to generate funds.

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<sup>4</sup> ISCR Case No. 96-0277 (July 11, 1997) at p. 2.

<sup>5</sup> ISCR Case No. 97-0016 (December 31, 1997) at p. 3; Directive, Enclosure 3, Item E3.1.14.

<sup>6</sup> *Department of the Navy v. Egan* 484 U.S. 518, 531 (1988).

<sup>7</sup> ISCR Case No. 01-20700 (December 19, 2002) at p. 3 (citations omitted).

<sup>8</sup> ISCR Case No. 98-0761 (December 27, 1999) at p. 2.

<sup>9</sup> ISCR Case No. 94-1075 (August 10, 1995) at pp. 3-4; Directive, Enclosure 3, Item E3.1.15.

<sup>10</sup> ISCR Case No. 93-1390 (January 27, 1995) at pp. 7-8; Directive, Enclosure 3, Item E3.1.15.

<sup>11</sup> *Egan*, 484 U.S. at 528, 531.

<sup>12</sup> *Id* at 531.

<sup>13</sup> *Egan*, Executive Order 10865, and the Directive.

As alleged in the SOR, and evidenced by Applicant's admissions and credit reports, Applicant allowed numerous accounts, totaling approximately \$20,000.00, to be charged off as bad debts, submitted for collection, or result in a judgment entered against her. All of those accounts remain delinquent and Applicant has failed to take any affirmative step other than to make inquiries of attorneys and debt counselors to resolve any of the accounts. Disqualifying Conditions (DC) 19(a): *inability or unwillingness to satisfy debts*; and 19(b) *a history of not meeting financial obligations* apply.

The evidence clearly indicates Applicant's financial problems arose from her decision to seek new employment when the company where she had worked for many years was sold, the resulting periods of unemployment she experienced, the difficulty she had in finding suitable employment because of the events of September 11, 2001, and the unexpected tax delinquencies she incurred. When she then found herself unable to manage her finances she sought to mitigate the problem by moving in with her sister and to a state where she hoped to better be able to find suitable employment. Mitigating Condition 20(b): *the conditions that resulted in the financial problem were largely beyond the person's control (e.g., loss of employment, a business downturn, unexpected medical emergency, or a divorce, death, or separation), and the individual acted responsibly under the circumstances* applies.

However, her financial problems are ongoing. Applicant is nowhere near having her financial problems under control. She has not initiated any effort to repay any of the listed delinquent creditors, nor has she indicated she has any basis to dispute the legitimacy of any of the debts other than to possibly being able to rely on statutes of limitation. Accordingly, none of the remaining potentially mitigating conditions apply.

Most troubling about Applicant's assertion that her financial problems do not create a security concern is her complete lack of effort to resolve any of the debts since being informed of their potential security significance. Although she was gainfully employed for at least some period of time before issuance of the SOR, was able to resolve her tax delinquencies over three years ago, and has no one dependent on her for support, Applicant has failed to make a single payment on any of the listed debts or even asserted that she contacted any of the creditors to attempt to work out a repayment plan. While she claims to have contacted two attorneys and two debt counselors to seek advice, she has not followed through on whatever recommendations she may have received from them to take affirmative steps to resolve the debts. As a result, it is impossible to say that her financials problems are behind her or they are likely to be resolved in the foreseeable future.

The objective of the security-clearance process is the fair-minded, commonsense assessment of a person's trustworthiness and fitness for access to classified information. Indeed, the "whole person" concept recognizes we should view a person by the totality of their acts and omissions. Each case must be adjudged on its own merits, taking into consideration all relevant circumstances, and applying sound judgment, mature thinking, and careful analysis. Having done so, I conclude Applicant has failed to present sufficient evidence of refutation, extenuation, and mitigation to overcome the case against her. Accordingly, Guideline F is decided against Applicant.

## **FORMAL FINDINGS**

SOR ¶ 1-Guideline F: Against Applicant

Subparagraphs a-i: Against Applicant

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**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. Clearance is denied.

Henry Lazzaro  
Administrative Judge

