

DATE: November 13, 2007

In re:)
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 SSN: -----)
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 Applicant for Security Clearance)
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ISCR Case No. 07-00413

**DECISION OF ADMINISTRATIVE JUDGE
PAUL J. MASON**

APPEARANCES

FOR GOVERNMENT

John B. Glendon, Esq., Department Counsel

FOR APPLICANT

Pro Se

SYNOPSIS

By launching her Chapter 13 bankruptcy plan in February 2007 before she officially received notice her security clearance application was in jeopardy, and by substantiating seven regular payments under the plan, Applicant has exercised good judgment in demonstrating she is serious about eradicating her financial troubles. Her persuasive character evidence tells me she will successfully complete the plan while taking the appropriate steps to ensure the financial setbacks do not recur. Clearance is granted.

STATEMENT OF CASE

On March 30, 2007, the Defense Office of Hearings and Appeals (DOHA), pursuant to Department of Defense Directive 5220.6, dated January 2, 1992, as revised by Adjudicative Guidelines (AG) made effective on September 1, 2006, issued a Statement of Reasons (SOR) to the Applicant. The SOR indicated that based on financial considerations (Guideline F), 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. DOHA recommended referral to an Administrative Judge to conduct proceedings and determine whether clearance should be granted, continued, denied or revoked. On April 24, 2007, Applicant provided her response to the SOR and requested a hearing before an Administrative Judge.

The case was assigned to me on July 16, 2007. On August 6, 2007, this case was set for hearing on September 12, 2007. The Government submitted six exhibits. Applicant submitted two exhibits. In addition to her testimony, four witnesses testified in her behalf. The transcript (Tr.) was received on September 26, 2007.

FINDINGS OF FACT

There are 11 creditors listed in the SOR. Seven of the creditors are medical facilities or collection agencies representing the facilities. Four are credit cards or jewelry stores. The debts total \$10,658.00. Applicant admitted all debts, and considered her son's medical difficulties, her medical problems, and the trouble she encountered during her first marriage to be the primary reasons for her debts becoming delinquent. The listed debts became delinquent between October 2001 and August 2003.

Applicant is 37 years old and employed has been an administrative assistant with a defense contractor since November 2006. Before her current employment, she was an acquisition specialist with another defense contractor for approximately two and ½ years. She has been married since March 2005. She has one child, 11 years old.

- 1.a. Applicant opened the credit card account in February 2002. The account was charged off in November 2004. In February 2007, the account was delinquent in the amount of \$2,006.00.

- 1.b. Applicant opened a second credit card (same company) in May 2002. That account was charged off in November 2004. The current, delinquent amount owed is \$1,735.00. Both accounts 1.a. and 1.b. are included in Applicant's Chapter 13 plan (GE 5; AE A). The only accounts not included are the two described in subparagraphs 1.j. and 1.k.

- 1.c. Applicant opened the mail-order catalog account in October 2001. The account (\$1,224.00, currently held by a collection agency) was charged off in December 2003, and is listed in the Chapter 13 plan (GE 5; AE A)

- 1.d. This delinquent bill represents the cost of medical treatment for Applicant's son who was hospitalized in November 2004 for five days because of a sinus infection. The past due amount is \$1,963.00.

- 1.e. Dental surgery for Applicant's son occurred in April 2002 and cost \$1055.00.
- 1.f. Applicant owes \$901.00 for the anesthesia her son received in advance of dental surgery in April 2002.
- 1.g. Applicant received medical surgery June 2002, costing \$804.00 for a hysterectomy.
- 1.h. This debt (\$666.00) is the physician's fee for conducting the hysterectomy.
- 1.i. Applicant's son caught a common virus that most children get. The listed bill (\$134.00) represents the cost of her son's hospitalization for one night.
- 1.j. Though Applicant could not identify this bill at the hearing, she admitted the bill in her answer to the SOR. GE 4 (credit bureau report, CBR) reflects the bill is for medical services rendered in July 2002.
- 1.k. Although Applicant admitted the debt in her answer to the SOR, she did not know what the debt was for. She told the investigator that the \$45.00 may have been for a cable service she had while she lived in a neighboring state. The debt does not appear in her Chapter 13 petition because she did not know about the debt until she received the package from DOHA in April 2007. She talked to her former husband about the bill, but he did not know anything about the bill. She can certainly pay the debt.

Applicant married in September 1996 and gave birth to a son in July 1997. In April 1998, her husband took a temporary work assignment in another state, and Applicant moved with him. The job was only supposed to last only six months but did not end until two years later. Instead of selling their marital home, they rented it. Apparently, the rental payments and unreliable renters contributed to a mortgage shortfall they could not recover from.

After they returned to their permanent duty location in the summer of 2000, they fell further behind on the mortgage and other debts. Adding to increasing financial problems was a deteriorating marriage and Applicant's unanticipated health issues requiring surgery. In early 2002, Applicant's husband moved out and her father died in October 2002. Applicant's divorce from her first husband in January 2003 required her to pay all marital debt that included her own medical bills and most of her son's medical bills and insurance. Even though she was not ignoring the listed debt, her primary concern was covering the rent, utilities and expenses related to raising a child.

In early 2004, she began working for a defense contractor that provided her with earning and promotion potential. She also started dating her present husband at a later point in 2004, and they were married in March 2005. In November 2006, Applicant came to work for her current employer and received a substantial increase in earnings. In the same month, she received documentation from

DOHA advising her that her security clearance application was being questioned due to overdue debts.

She contacted a bankruptcy attorney and a Chapter 13 bankruptcy petition was filed in February 2007. The terms of the petition require Applicant to pay \$1,732.10 every month for 24

months. All creditors except subparagraph 1.j. and 1.k. are included in the plan. Applicant has made seven payments under the plan. Before she was able to file the Chapter 13 petition, she was required to attend financial counseling which she successfully completed in January 2007. The counseling, required under the bankruptcy laws, consisted of understanding, establishing and maintaining a budget.

Applicant's current supervisor explained that Applicant's job includes tracking funds so that the command can know how much money is being spent on the various programs. Based on his knowledge of Applicant's work product, her supervisor strongly recommends her for a position of trust.

Applicant's program manager advised that her performance evaluation (November 2007) will contain outstanding ratings. Applicant told the program manager about her financial problems when she was hired. He believes she is on the right track to resolve those problems and get on with her life.

Applicant's past supervisor from 2004 until her hire in November 2006 was impressed with how she managed her time on assignments. Her trustworthiness, reliability, and self-starter attitude are three reasons the past supervisor recommends her for a position of trust.

Applicant's former coworker believes Applicant is one of the most honest individuals. The former coworker is confident Applicant will correct her financial problems.

In a character statement dated April 26, 2007, Applicant's security officers have found her to be open about her financial problems. On April 27, 2007, the Commander (in a character statement) of a project that employs Applicant has found her to be dependable. On April 24, 2007, the task leader found Applicant to be a delight to work with. Her desire to broaden her education and promotion potential, according to the task leader, is unsurpassed.

The electrical engineer provided impressive compliments about Applicant on April 20, 2007. The engineer has an understanding of her past due debts, but believes she has executed the proper steps to get those debts paid. The procurement officer hired to take Applicant's place at her former job in November 2006 recounted the thoroughness in which Applicant trained her. The officer now understands why Applicant was promoted.

POLICIES

The AG contains disqualifying conditions (DC) and mitigating conditions (MC) that should be given binding consideration in making security clearance determinations. These conditions must be considered in every case along with the general factors of the whole person concept. However,

the conditions are not automatically determinative of the decision in any case nor can they supersede the Administrative Judge's reliance on his own common sense.

Burden of Proof

Initially, the government must establish, by substantial evidence, that conditions exist in the

personal or professional history of the applicant which disqualifies, or may disqualify, the applicant from being eligible for access to classified information. *See Department of the Navy v. Egan*, 484 U.S. 518, 531 (1988) “[T]he Directive presumes there is a nexus or rational connection between proven conduct under any of the Criteria listed therein and an applicant’s security suitability.” ISCR Case No. 95-0611 at 2 (App. Bd. May 2, 1996) (quoting DISCR Case No. 92-1106 (App. Bd. Oct. 7, 1993)).

Once the government establishes a disqualifying condition by substantial evidence, the burden shifts to the applicant to rebut, explain, extenuate, or mitigate the facts. “[S]ecurity clearance determinations should err, if they must, on the side of denials.” *See Egan*, 481 U.S. at 531; *see* Directive E2.2.2.

Financial Considerations (FC)

The failure to pay debts in a timely manner places an individual at risk of committing acts of poor judgment to generate funds.

CONCLUSIONS

The records disclose that Applicant has 11 overdue debts that have not been paid. The debts, which total more than \$10,600.00, became delinquent between October 2001 and August 2003. FC disqualifying condition (DC) 19.a. (*inability or unwillingness to satisfy debts*) and FC DC 19c. (*a history of not meeting financial obligations*) apply based on Applicant’s inability to pay the debts that are up to five years old.

Although the government has established a case under the FC guideline, Applicant has successfully mitigated the adverse evidence. First, there were circumstances outside her control that exacerbated her financial problems. FC mitigating condition MC 20.b. (*the conditions that resulted in the financial problem were largely beyond the person’s control*) applies. The unexpected period of time she and her first husband had to stay at the temporary duty location (1998 to the summer of 2000) caused them to fall behind in their mortgage. Her unanticipated medical problem in September 2001, followed by her father’s sudden death in October 2002, were clearly two occurrences beyond her control, combined with the ongoing medical problems of her son. Aggravating her overall financial instability was her husband’s demand for a divorce, and the final terms of the divorce requiring her to pay all the marital debt and most of the medical obligations for herself and her son. Significantly, the listed debts all became delinquent during the periods between October 2001 and August 2003.

Applicant received some counseling in January 2007 in advance of her Chapter 13 petition becoming effective. Since her plan was accepted by the Bankruptcy court in February 2007, Applicant has been utilizing a budget in her financial affairs. FC MC 20.c. (*the person has received or is receiving counseling for the problem and/or there are clear indications that the problem is being resolved or is under control*) applies. In addition to some evidence of counseling, Applicant has made seven payments (almost \$13,000.00) under the plan. Even though Applicant’s repayment of her creditors is being made through a Chapter 13 petition, the mode of repayment still represents

favorable evidence under 20.d. (*the individual has initiated a good-faith effort to repay overdue creditors or otherwise resolve debts*) Applicant's strong character evidence, together with the favorable mitigating evidence under FC MC 20.b. and FC MC 20.d. warrant findings for Applicant under subparagraphs 1.a. through 1.i. I am firmly convinced Applicant will exercise the same good judgment to resolve the debts in subparagraphs 1.j. and 1.k. The FC guideline is resolved in Applicant's favor.

My findings for Applicant under the whole person concept are the same as they are under the FC guideline. The sterling character ratings Applicant has received from individuals who have observed her for up to three years convince me Applicant will (1) maintain payments under her Chapter 13 plan until successful completion of the plan, and (2) maintain her budget so that she can continue to stay on top of her finances at home exactly as she has at work.

FORMAL FINDINGS

Formal Findings required by Paragraph 25 of Enclosure 3 are:

Paragraph 1 (Financial Considerations, Guideline F): FOR THE APPLICANT.

Subparagraphs 1.a. through 1.k. 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. Clearance is granted.

Paul J. Mason
Administrative Judge