

DATE: May 22, 2007

In re:

SSN: -----

Applicant for Security Clearance

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) ISCR Case No. 06-18581
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**DECISION OF ADMINISTRATIVE JUDGE
MARC E. CURRY**

APPEARANCES

FOR GOVERNMENT

Richard A. Stevens, Esq., Department Counsel

FOR APPLICANT

Pro Se

SYNOPSIS

Between approximately 2002 and 2005, Applicant accrued two debts totaling approximately \$25,000, which generates a security concern. Although circumstances beyond her control contributed in part to these delinquencies, she failed to demonstrate that she has taken any concrete steps to resolve them. Clearance is denied.

STATEMENT OF THE CASE

On August 25, 2006, the Defense Office of Hearings and Appeals (DOHA) issued to Applicant a Statement of Reasons (SOR) stating it was unable to find it clearly consistent with the national interest to grant or continue a security clearance.¹ Applicant answered it on September 15, 2006, admitting all of the allegations and electing to have the case decided on the written record.

Department Counsel mailed the government's file of relevant material (FORM) to Applicant on February 28, 2007. She received it on March 9, 2007, and neither objected to its contents nor submitted any materials in response to it. The case was assigned to me on April 30, 2007.

FINDINGS OF FACT

I have incorporated Applicants admissions into the findings of fact. In addition, I make the following additional findings of fact.

Applicant is a 35-year-old married woman with two children and two stepchildren, all of whom are teenagers. She is a U.S. Army veteran who served from 1994 to 1996. She was honorably discharged.² She has worked for her employer in the production support field since 2005, and has been working toward a college degree since 2004.³

Applicant's current spouse is her second husband. At or about the time they married in January 2001, they lived in a mobile home. Upon moving to a larger home, they were unable to sell the mobile home, and were compelled to rent it in order to pay the mortgage.⁴ Two years later, the renters moved, Applicant fell behind on mortgage payments, and it was voluntarily repossessed.⁵ Currently, she owes approximately \$22,099 on the delinquent mortgage.

In June 2005, Applicant was laid off from her job.⁶ Although she obtained a new job without experiencing an employment gap, it paid substantially less than the prior job. Consequently, she grew delinquent on payments owed to a credit card company, as referenced in SOR subparagraph 1.b. Currently, she owes \$3,181.

Applicant recently earned a promotion to a higher paying job, and intends to repay her debts "as soon as possible."⁷ She provided no evidence that she has made any payments or organized a payment plan.

¹This action was taken under Executive Order 10865, dated February 20, 1960, as amended, and DoD Directive 5220.6, dated January 2, 1992, as amended. (Directive).

²Item 5, Electronic Questionnaires for Investigations Processing (e-QIP), dated September 28, 2005, at 24.

³*Id.* at 9, 11.

⁴Item 4, Answer, dated September 11, 2006, at 1.

⁵*Id.*

⁶*Id.*

⁷*Id.* at 2.

POLICIES

Enclosure 2 of the Directive sets forth adjudicative guidelines to be considered in evaluating a person's eligibility to hold a security clearance. In addition to brief introductory explanations for each guideline, the adjudicative guidelines are divided into those that may be considered in deciding whether to deny or revoke an individual's eligibility for access to classified information (disqualifying conditions) and those that may be considered in deciding whether to grant an individual's eligibility for access to classified information (mitigating conditions).

An administrative judge need not view the adjudicative guidelines as inflexible, rules of law. Instead, acknowledging the complexities of human behavior, these guidelines, when applied in conjunction with the factors set forth in the Adjudicative Process provision in Section E2.2., Enclosure 2, of the Directive, are intended to assist the administrative judge in reaching fair, common sense decisions.

Because the entire process involves an evaluation of a number of variables known as the "whole person concept," all available, reliable information about the person, past and present, favorable and unfavorable, should be considered in making a meaningful decision. The Adjudicative Process factors which an administrative judge should consider are: (1) the nature and seriousness of the conduct and surrounding circumstances; (2) the frequency and recency of the conduct; (3) the age of the applicant; (4) the motivation of the applicant, and the extent to which the conduct was negligent, willful, voluntary, or undertaken with knowledge of the consequences; (5) the absence or presence of rehabilitation; and (6) the probability that the circumstances or conduct will continue or recur in the future.

I find the following adjudicative guideline most pertinent to an evaluation of the facts of this case:

Guideline F - Financial Considerations: An individual who is financially overextended is at risk of having to engage in illegal acts to generate funds.

Conditions that could raise a security concern and may be disqualifying, as well as those which could mitigate security concerns, pertaining to these adjudicative guidelines are set forth and discussed in the conclusions below.

Since the protection of national security is the paramount consideration, the final decision in each case must be reached by applying the standard that the issuance of the clearance is "clearly consistent with the national interest"⁸ In reaching this decision, I have drawn only those conclusions that are reasonable, logical, and based on the evidence contained in the record. Likewise, I have avoided drawing inferences grounded on mere speculation.

The government is responsible for presenting evidence to establish facts in the SOR that have been controverted. The applicant is responsible for presenting evidence to rebut, explain, extenuate,

⁸See Directive, Sec. 2.3, Sec. 2.5.3, Sec. 3.2, and Sec. 4.2.

or mitigate facts admitted by the applicant or proven by the government, and has the ultimate burden of persuasion as to obtaining a favorable security decision.

CONCLUSIONS

Financial Considerations

Applicant's delinquencies, accrued between 2003 and 2005 trigger the applicability of Financial Considerations Disqualifying Conditions (FC DC) E2.A6.1.2.1 (*A history of not meeting financial obligations*), and FC DC E2.A6.1.2.3 (*Inability or unwillingness to satisfy debts*). Applicant's inability to sell her mobile home after she relocated in 2001, and her reduced income after a downsizing in 2005 were the principal cause of her delinquencies. Financial Considerations Mitigating Condition (FC MC) E2.A6.1.3.3 (*The conditions that resulted in the behavior were largely beyond the person's control (e.g., loss of employment, a business downturn, unexpected medical emergency, or a death, divorce or separation)*) applies.

Although Applicant asserted that her finances were improving, she provided no evidence. Moreover, because she has yet to make any debt repayments, her contention that she intends to repay them in the future has little probative value. I have considered the other mitigating conditions and conclude none apply.

Whole Person Concept

Applicant deserves credit for her service to the country in the Army, and has demonstrated good character by returning to college, later in life, to obtain a degree. Her financial problems were exacerbated by her inability to sell her mobile home upon relocating in 2001 and an employment downsizing in 2005. Nevertheless, she had a responsibility to provide concrete evidence supporting her contention that these delinquencies will be satisfied in the future. She failed to do so. Absent such evidence, the issue of rehabilitation⁹ remains in doubt, and the likelihood of continuation or recurrence¹⁰ remains unacceptably high. Clearance is denied.

This decision should not be construed as a determination that Applicant cannot or will not rehabilitate her finances in a manner necessary to justify the award of a DoD security clearance. Should she be afforded an opportunity to reapply for a security clearance in the future, and were to arrange a satisfactory repayment plan with her creditors to repay the delinquent accounts, she may well demonstrate persuasive evidence of security worthiness. That time has not yet arrived, however.

FORMAL FINDINGS

Formal findings for or against Applicant on the allegations set forth in the SOR, as required by Section E3.1.25 of Enclosure 3 of the Directive, are:

⁹Directive ¶E2.2.1.6.

¹⁰Directive ¶E2.2.1.9.

Paragraph 1 – Guideline F:

AGAINST APPLICANT

Subparagraph 1.a:

Against Applicant

Subparagraph 1.b:

Against 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. Clearance is denied.

Marc E. Curry
Administrative Judge