

DATE: October 31, 2007

In Re:	)	
	)	
	)	
-----	)	ISCR Case No. 06-19193
SSN: -----	)	
	)	
Applicant for Security Clearance	)	

**DECISION OF ADMINISTRATIVE JUDGE  
JOHN GRATTAN METZ, JR**

**APPEARANCES**

**FOR GOVERNMENT**

Ray T. Blank, Jr., Esquire, Department Counsel

**FOR APPLICANT**

*Pro Se*

**SYNOPSIS**

\_\_\_\_\_Applicant’s falsification of her clearance application and financial irresponsibility render her an unsuitable candidate for a security clearance. Clearance denied.

**STATEMENT OF THE CASE**

\_\_\_\_\_Applicant challenges the 15 February 2007 Defense Office of Hearings and Appeals (DOHA) Statement of Reasons (SOR) recommending denial or revocation of her clearance because of financial considerations and personal conduct.<sup>1</sup> Applicant answered the SOR 10 March 2007, and

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<sup>1</sup>Required by Executive Order 10865 and Department of Defense Directive 5220.6, as amended and modified—most recently in August 2006 (Directive).

requested a hearing. The case was assigned to me 12 July 2007, and I convened a hearing 14 August 2007. DOHA received the transcript (Tr.) 22 August 2007.

### **PROCEDURAL RULINGS**

Applicant arrived nearly an hour late for her hearing because she lacked the necessary mass transit fare to depart from her home in time to make her scheduled hearing. Although I had already terminated her case because of her failure to appear, I reopened the case in the interest of judicial economy.

At hearing, I granted Department Counsel's motion to amend typographical errors in the SOR (Tr. 29-31). I also left the record open to allow Applicant to provide any proof of the payments she claimed to have made during her testimony. Applicant responded in a timely fashion, but the documents she submitted were unresponsive to the reason the record was left open, being either irrelevant or duplicative of evidence already in the record. Accordingly, I have not considered her post-hearing submission (A.E. B).

Applicant testified that she had been terminated from her employment requiring the clearance in January 2007, but was subject to recall if she obtained her clearance. Consequently, DOHA retains jurisdiction over this case.

### **FINDINGS OF FACT**

Applicant denied the financial allegations of the SOR, except for ¶¶ 1.1.-1.s., in which she admitted failure to file her state and federal income tax returns, and her January 2000 bankruptcy petition. Accordingly, I incorporate her admissions as findings of fact. She denied falsifying her clearance application. She is a 50-year-old senior help desk analyst for a defense contractor since July 2004. She has previously held a clearance, but her current status is unclear.

When Applicant submitted her clearance application in October 2004 (G.E. 1), she answered "no" to question 38 asking if she had been 180 days delinquent on any accounts within the last seven years. In fact, she had been 180 days delinquent on 10 accounts totaling over \$16,000. She had disclosed her 2000 bankruptcy petition, and averred that all her delinquent debts had been discharged. Applicant has offered no credible explanation for her failure to disclose her financial difficulties. She has claimed that she did not know the details of her credit report when she completed the clearance application. Nevertheless, she had been unemployed for the six months prior to July 2004 and had to have known she had delinquent accounts, because she was not paying her creditors and had been receiving collection letters from them.

The SOR alleges 13 delinquent debts totaling nearly \$18,000. Each of these debts is documented in Applicant's credit reports. Applicant admits three delinquent state tax debts for 2002, 2003, and 2005, totaling over \$2,300. She also admits failing to file her federal income tax returns from 2002-2006, liability as yet undetermined.

Applicant has a history of financial problems dating back to January 2000. She ascribes her financial difficulties to several periods of unemployment, her willingness to help extended family members to her financial detriment, and her own financial irresponsibility. According to her clearance application, she has been employed in a variety of positions since September 1993. She was unemployed the last six months of 1996. Between January 1999 and July 2000, she was unemployed except for four months in the middle of 1999.<sup>2</sup> In January 2000, she filed for chapter 13 bankruptcy protection, but she defaulted on plan payments. The chapter 13 petition was converted to chapter 7 in May 2002, and she was discharged from her dischargeable debts in August 2002. Of the 11 debts Applicant denied, she claims that some were discharged in her 2002 discharge, some were paid, some settled, and some covered by insurance. However, she has been unable to corroborate any of these claims. After her bankruptcy discharge, she continued to experience financial problems, with new debts arising in 2002. She was employed continuously from at least July 2000 to January 2004, when she was unemployed for six months before obtaining the job that requires her clearance. She has since been laid off from that job, but is subject to recall if she obtains her clearance.

Applicant's finances—and her financial records—are in disarray, and are likely to remain so. Her ongoing financial distress is best exemplified by the fact that she came to the hearing unprepared to address the debts alleged in the SOR, because she was in “survival mode,” trying to keep her utilities from being disconnected (Tr. 64-65). In addition, she had to file a second chapter 13 bankruptcy petition in May 2007 to forestall foreclosure on her mortgage, seriously past due (A.E. A). Her personal financial statements (G.E. 2, 3) show negative monthly cash flow.

### **POLICIES AND BURDEN OF PROOF**

The Directive, Enclosure 2 lists adjudicative guidelines to be considered in evaluating an Applicant's suitability for access to classified information. Administrative Judges must assess both disqualifying and mitigating conditions under each adjudicative issue fairly raised by the facts and circumstances presented. Each decision must also reflect a fair and impartial common sense consideration of the factors listed in Section 6.3. of the Directive. The presence or absence of a disqualifying or mitigating condition is not determinative for or against Applicant. However, specific adjudicative guidelines should be followed whenever a case can be measured against them, as they represent policy guidance governing the grant or denial of access to classified information. Considering the SOR allegations and the evidence as a whole, the relevant, applicable, adjudicative guidelines are Guideline F (Financial Considerations) and Guideline E (Personal Conduct).

Security clearance decisions resolve whether it is clearly consistent with the national interest to grant or continue an Applicant's security clearance. The government must prove, by something less than a preponderance of the evidence, controverted facts alleged in the SOR. If it does so, it establishes a *prima facie* case against access to classified information. Applicant must then refute, extenuate, or mitigate the government's case. Because no one has a right to a security clearance, the Applicant bears a heavy burden of persuasion.

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<sup>2</sup>The record here is unclear. She reports being unemployed from October 1999 to July 2000, at the same time she reports being employed from December 1999 to July 2000.

Persons with access to classified information enter into a fiduciary relationship with the government based on trust and confidence. Therefore, the government has a compelling interest in ensuring each Applicant possesses the requisite judgement, reliability, and trustworthiness of those who must protect national interests as their own. The “clearly consistent with the national interest” standard compels resolution of any reasonable doubt about an Applicant’s suitability for access in favor of the government.<sup>3</sup>

## CONCLUSIONS

The Government established a case for disqualification under Guideline F, and Applicant did not mitigate the security concerns. Government records reflect nearly \$18,000 of delinquent debt acquired after Applicant’s bankruptcy discharge in August 2002.<sup>4</sup> While her periods of unemployment undoubtedly contributed to her financial difficulties, she has compounded them by providing financial assistance to extended family members and spending on non-essentials when her finances are extremely tight.

Applicant meets none of the mitigating factors for financial considerations. Her financial difficulties are both recent and multiple;<sup>5</sup> indeed they appear to be ongoing. Applicant has established that her debts were only partially due to circumstances beyond her control, and she has not acted responsibly in addressing her debts.<sup>6</sup> There is no evidence that she has sought credit counseling, beyond what is required for her most recent chapter 13 bankruptcy filing, or otherwise brought the problem under control.<sup>7</sup> Applicant has taken no verifiable steps to address her debts.<sup>8</sup> Her chapter 13 bankruptcy plan primarily addresses her mortgage arrears, and it is not clear that she will be able to remain current with plan payments or address any of her past and newly acquired debts. The record contains little to suggest that Applicant would be able to become or remain financially stable in the future. I conclude Guideline F against Applicant.

The government established a case for disqualification under Guideline E, and Applicant did not mitigate the security concerns. She deliberately concealed the nature and extent of her financial

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<sup>3</sup>See, *Department of the Navy v. Egan*, 484 U.S. 518 (1988).

<sup>4</sup>¶19.(a) inability or unwillingness to satisfy debts; (b) indebtedness caused by frivolous or irresponsible spending and the absence of any evidence of willingness or intent to pay the debt or establish a realistic plan to pay the debt; (c) a history of not meeting financial obligations;

<sup>5</sup>¶20 (a) the behavior happened so long ago, was so infrequent, or occurred under such circumstances that it is unlikely to recur . . .

<sup>6</sup>¶20.(b) the conditions that resulted in the financial problem were largely beyond the person’s control . . . and the individual acted responsibly under the circumstances;

<sup>7</sup>¶20.(c) the person has received or is receiving counseling for the problem and there are clear indications that the problem is being resolved or is under control;

<sup>8</sup>¶20.(d) the individual initiated a good-faith effort to repay overdue creditors or otherwise resolve debts.

problems.<sup>9</sup> Further, none of the Guideline E mitigating conditions apply. There is no evidence demonstrating that she corrected the falsification before being asked about it.<sup>10</sup> There is no evidence to suggest that Applicant receive bad advice about what she was required to disclose on her clearance application.<sup>11</sup> I conclude Guideline E against Applicant.

### **FORMAL FINDINGS**

Paragraph 1. Guideline F:      **AGAINST APPLICANT**

Subparagraph a:      Against Applicant  
Subparagraph b:      Against Applicant  
Subparagraph c:      Against Applicant  
Subparagraph d:      Against Applicant  
Subparagraph e:      Against Applicant  
Subparagraph f:      Against Applicant  
Subparagraph g:      Against Applicant  
Subparagraph h:      For Applicant<sup>12</sup>  
Subparagraph i:      Against Applicant  
Subparagraph j:      Against Applicant  
Subparagraph k:      Against Applicant  
Subparagraph l:      Against Applicant  
Subparagraph m:      Against Applicant  
Subparagraph n:      Against Applicant  
Subparagraph o:      Against Applicant  
Subparagraph p:      Against Applicant  
Subparagraph q:      Against Applicant  
Subparagraph r:      Against Applicant  
Subparagraph s:      Against Applicant

Paragraph 2. Guideline E:      **AGAINST APPLICANT**

Subparagraph a:      Against Applicant

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<sup>9</sup>¶16.(a) The deliberate omission, concealment, or falsification of relevant and material facts from any personnel security questionnaire, personal history statement, or similar form used to conduct investigations, . . . [or] determine security clearance eligibility or trustworthiness. . . ;

<sup>10</sup>¶17.(a) The individual made prompt, good-faith efforts to correct the omission, concealment, or falsification before being confronted with the facts;

<sup>11</sup>¶17.(b) the refusal or failure to cooperate, omission or concealment was caused or significantly contributed to by improper or inadequate advice of authorized personnel or legal counsel advising or instructing the individual specifically concerning the security clearance process . . . [later] the individual cooperated fully and truthfully.

<sup>12</sup>Department Counsel acknowledged that this allegation duplicated the allegation at SOR 1.f.

**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 denied.

**John G. Metz, Jr.  
Administrative Judge**