

DATE: August 31, 2001

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In Re:

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SSN: -----

Applicant for Security Clearance

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ISCR Case No. 00-0676

## **DECISION OF ADMINISTRATIVE JUDGE**

**KATHRYN MOEN BRAEMAN**

### **APPEARANCES**

#### **FOR GOVERNMENT**

Michael H. Leonard, Esquire, Department Counsel

#### **FOR APPLICANT**

*Pro Se*

### **SYNOPSIS**

Applicant failed to mitigate the security concerns raised by her finances and personal conduct. While she has now initiated payments for a state sales tax obligation, she did not do so until the state issued a Writ of Garnishment. She resolved over \$300,000 in liabilities through a Chapter 7 bankruptcy discharge proceeding, in part for debts from a failed business; but she has not demonstrated that she now has control of her finances, nor has she sought any financial counseling. While she is well regarded at her place of employment, her personal conduct raises concerns as she failed to respond fully with required information in response to two material questions on the Personnel Security Questionnaire. Clearance is denied.

### **STATEMENT OF THE CASE**

The Defense Office of Hearings and Appeals (DOHA) issued a Statement of Reasons (SOR) to the Applicant on February 12, 2001. The SOR detailed reasons why the Government could not make the preliminary positive finding that it is clearly consistent with the national interest to grant or continue a security clearance for the Applicant. [\(1\)](#) (Item 1) The SOR alleges specific concerns in paragraph 1 over financial issues (Guideline F) and in paragraph 2 over personal conduct (Guideline E). Applicant responded to these SOR allegations in an Answer notarized on March 9, 2001, where she admitted paragraphs 1.a. through 1.d.; but denied 1.e., 2a., and 2.b. She requested a decision based on the information she supplied.

The case was assigned to Department Counsel. On May 9, 2001, he prepared the File of Relevant Material (FORM) for the Applicant's review and advised Applicant that she had 30 days to submit objections and/or information before the FORM was submitted to an administrative judge and that she had the right to be represented by counsel. A Personnel Security Specialist (PSS) sent the FORM to Applicant on May 10, 2001, and again notified the Applicant that she had 30 days from receipt of the letter to submit objections and/or information before the FORM was submitted to an administrative judge. Applicant received the FORM on May 14, 2001. Although the response was due on June 13, 2001, the Government accepted her response of June 25, 2001, with ten attachments (Exhibit A). Department Counsel

indicated on July 4, 2001 that he had no objection to those exhibits being admitted into evidence. On July 9, 2001, the case was assigned to me.

### **FINDINGS OF FACT**

After a complete and thorough review of the evidence in the record, and upon due consideration of that evidence, I make the following additional Findings of Fact:

Applicant is a 47 year old employee of a defense contractor (Employer #1 in State #1), where she has worked since July 1999. From March to July 1999 she was unemployed<sup>(2)</sup> and from 1994-99 she was self-employed in State #2. Previously, she worked for a defense contractor from 1984-94 where she had a Top Secret security clearance. (Items 1, 4)

Applicant has been married three times, but divorced in 1975, 1983, and 1988. She has two children born in 1973 and 1987. (Item 5) From November 1992 until 2000 she lived with a man whom she did not marry; in May 2000 they continued to share expenses until she was able to move into her own house which she was building. (Item 6)

In addition to working full time, Applicant is now attending college part time. She is the sole provider for her son. (Exhibit A)

### **Financial Considerations and Personal Conduct**

In April 1997 Applicant filed Chapter 7 bankruptcy in State #1 for secured and unsecured liabilities of over \$500,000, but reaffirmed her first and second home mortgages. Debts of over \$300,000 were discharged in August 1997.<sup>(3)</sup> After she sold her home, she no longer had the mortgages. (Items 6, 16)

In August 1999 Applicant completed a Security Clearance Application (SF 86). In the SF 86 she did reveal that she had filed for bankruptcy in August 1997 under Chapter 7 due to a failed business. She explained on the SF 86 that during that time she did have items that were 180 days past due, but she claimed they were all included in the bankruptcy. She also indicated that she had "some sales tax" that has not been paid but stated that she know of no "lein" that been filed against her property. (Item 5)

In May 2000 Applicant was interviewed by the Defense Security Service (DSS) and explained her finances further. She stated she had sold a property in State #2 in July 1999 and was building a house in State #1, where she expected to move in June 2000. In 1994 she created her own business with a work colleague where they each invested \$40,000; and in 1995 she started her own branch of the business, but in January 1996 "things started falling apart. . . ." She then closed both business in August 1996, but opened another business in March 1997 with the same equipment. Several of her creditors sued her and things "continued to go downhill." (Item 6) Her bankruptcy filing shows zero income for 1996; \$3,500 income for 1995; and \$27,000 income for 1994. (Item 16) She had leased her equipment to another proprietor who is making the payments on the equipment debt, so she did not list that \$40,000 balance on her Personal Financial Statement. She remains responsible for that debt. In May 2000 she reported to DSS her monthly net income was close to \$4,000 and her monthly expenses were only \$855, as she paid no rent; she showed debts of \$125,000 for a mortgage where she paid \$875 monthly and a credit card where she owed \$1,300 and made \$100 monthly payments. (Items 6, 16)

Applicant failed to reveal a history of Tax Liens from the last 7 years in answer to SF 86 Question 36. [SOR 2.a.] In her Answer to the SOR she denied that she had omitted any Federal<sup>(4)</sup> tax liens from her SF, but she admitted that she had sales tax liens that she thought had been included in her bankruptcy filing. They were not included. She admitted she was indebted to State #2 for over \$6,000 for city sales tax obligations from 1993-1995 and that a lien was filed on this debt in 1996 and 1997. Also, she was indebted to State #2 for county sales tax obligations of over \$6,000 from the 1993-1995 period and a lien was filed in 1996 and in 1997. Further, she was indebted to State #2 for state sales tax obligations of over \$6,000 from the 1993-1995 period for which a lien had been filed in 1996 and again in 1997. As of May 2000 none of these debts had been satisfied. At a second DSS interview in May 2000, she acknowledged that the tax liens were still in effect; she pledged to try to resolve them, but there is no evidence that she did so. (Her back surgery in May 2000 month she had explained would delay her efforts to contact state officials.) (Items 7, 8, 9)

Applicant claimed to be unaware that the liens had been re-filed in October 1997 until interviewed by DSS in May 2000. She declared she did contact the state revenue department in May or June 2000 to set up a payment plan and again in March 2001 had contacted an attorney to negotiate a "settlement" for these taxes, but claimed she had not been in a position to pay these back taxes. (Answer) (There is no evidence provided that a settlement was ever negotiated.) While Applicant claimed in June 2001 to have a "payment plan" in place, the records she provided document that the state department of revenue issued a Writ of Garnishment to her employer in April 2001 for \$12,000 due. Thus, only through the writ has she made bi-weekly payments of \$503.85 to the state department of revenue through payroll deduction. While she claims to have paid over \$2,000 as of June 2001, Applicant expects the debt will not be resolved for two years. (Exhibit A)

Applicant failed [\(5\)](#)

to reveal a history of Public Record Civil Court Actions from the last 7 years in answer to SF Question 40. In her Answer to the SOR she denied that she had purposely omitted these actions as she thought they had been included and resolved in her bankruptcy filing. [SOR 2.b.(1)-(6)] (Items 4, 10-15) The bankruptcy filings noted three of the following creditors (Businesses #1, #2, and #6 under a listing of all suits), but does not list the other three law suits.

In 1987 Business #1 noted a judgement of over \$80,000. (Item 10)

After Applicant defaulted on an open-ended credit agreement of over \$10,000, in 1987 Business #2 filed a complaint which was dismissed because of Appellant's bankruptcy filing. (Item 11)

In 1994 Business #3 filed against Appellant and demanded judgement of over \$800 because of services purchased on credit; it was dismissed in 1995. (Item 15)

In 1996 Business #4 filed against her to recover possession of a tract of land and for damages of \$650 per month from December 1996; a Writ of Possession issued in June 1997. (Item 13)

In 1997 Business #5 obtained a judgment of over \$11,000 against Applicant for a loan for equipment on a promissory note; a default judgment was granted in January 1997. (Item 14)

In 1997 Business #6 obtained a judgment of over \$80,000 against Applicant for a loan for equipment on a promissory note of \$130,000 signed in 1994; judgment of over \$80,000 was granted in January 1998. (Item 12)

Recently, Applicant and her son have moved into a new home and purchased a car; however she did not provide details of the financing. (Exhibit A, Item 10) In March 2001 Applicant's income was approximately \$3,000 per month; however, she provided no updated budget. (Item 4)

### References

A government project manager provided a favorable reference for Applicant as a "valuable member" of the team. (Exhibit A, Item 4)

Her company project manager who has known her for two years and supervised her daily work activities rates her work performance as good. He provided a favorable reference for her. (Exhibit A, Item 5)

Her company first line manger who has known her for nine years and supervised her work activities rates her work performance as good. He provided a favorable reference for her. (Exhibit A, Item 6)

A company professional who has known her for ten years assesses her as an honest and trustworthy individual. He provided a favorable reference for her. (Exhibit A, Item 7)

Her mother's pastor provided a favorable reference for her. (Exhibit A, Item 8)

Her mother provided a favorable reference for her. (Exhibit A, Item 9)

## POLICIES

Enclosure 2 of the Directive sets forth adjudicative guidelines to consider in evaluating an individual's security eligibility. They are divided into conditions that could raise a security concern and may be disqualifying and conditions that could mitigate security concerns in deciding whether to grant or continue an individual's access to classified information. But the mere presence or absence of any given adjudication policy condition is not decisive. Based on a consideration of the evidence as a whole in evaluating this case, I weighed relevant Adjudication Guidelines as set forth below :

### **Guideline F - Financial Considerations**

**An individual who is financially overextended is at risk of having to engage in illegal acts to generate funds. Unexplained affluence is often linked to proceeds from financially profitable criminal acts.**

**Conditions that could raise a security concern and may be disqualifying include:**

- (1) a history of not meeting financial obligations;
- (3) inability or unwillingness to satisfy debts;

**Conditions that could mitigate security concerns include:**

None

### **Guideline E - Personal Conduct**

**Conduct involving questionable judgment, untrustworthiness, unreliability, lack of candor, dishonesty, or unwillingness to comply with rules and regulations could indicate that the person may not properly safeguard classified information.**

**The following will normally result in an unfavorable clearance action or administrative termination of further processing for clearance eligibility:**

[First] Refusal to undergo or cooperate with required security processing, including medical and psychological testing; or

[Second] Refusal to complete required security forms, releases, or provide full, frank and truthful answers to lawful questions of investigators, security officials or other official representatives in connection with a personnel security or trustworthiness determination.

**Conditions that could raise a security concern and may be disqualifying also include:**

- 2. 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, determine employment qualifications, award benefits or status, determine security clearance eligibility or trustworthiness, or award fiduciary responsibilities;

**Conditions that could mitigate security concerns include:**

None

The responsibility for producing evidence initially falls on the Government to demonstrate that it is not clearly consistent with the national interest to grant or continue Applicant's access to classified information. Then the Applicant presents evidence to refute, explain, extenuate, or mitigate in order to overcome the doubts raised by the Government, and to demonstrate persuasively that it is clearly consistent with the national interest to grant or continue the clearance.

Under the provisions of Executive Order 10865, as amended, and the Directive, a decision to grant or continue an applicant's security clearance may be made only after an affirmative finding that to do so is clearly consistent with the national interest. In reaching the fair and impartial overall common sense determination, the Administrative Judge may draw only those inferences and conclusions that have a reasonable and logical basis in the evidence of record.

## CONCLUSIONS

### **Financial Considerations**

Applicant has (1) a history of financial problems and has shown (3) an inability or unwillingness to satisfy debts (SOR 1.a-e.) Admittedly, Applicant had some difficult business problems that led her to file for bankruptcy under Chapter 7 in 1997; but she did not take that step until several of her creditors had sued her for the amounts she owed them and obtained judgments. Furthermore, she neglected for several years her responsibility to address and resolve the state sales tax liens.

While Applicant does assert that conditions largely beyond her control caused her financial problems, Applicant has not shown sufficient evidence to meet mitigating conditions (MC (6)). While security concerns may be mitigated if conditions were largely beyond the person's control (e.g., loss of employment, a business downturn, unexpected medical emergency, or a death, divorce or separation), she has failed to address subsequent financial issues even after her debts of over \$300,000 were discharged in 1997. In the succeeding four years she took only limited steps to address her state tax liens despite her promises since May 2000 to resolve this important financial issue. Finally, the state filed a Writ of Garnishment with her employer in April 2001 for the \$12,000 due since 1993. In short, she has not demonstrated that she initiated a good-faith effort to repay these overdue creditors or otherwise resolve these debts because she did not act until after the state filed the garnishment writ.

Further she failed to provide any updated budget or financial information beyond her current income and the information that she had sufficient financial resources to move into a new house and to purchase an automobile. With this sparse record, one can only surmise that she put her personal financial needs and comforts ahead of her legal obligations to the state to resolve the dated state tax liens. While she now has a stable job and income, she has been in that position for two years without acting on her promises to address her past financial debts. To her credit she is well regarded as competent at her place of employment, but she has failed to sufficiently demonstrate she is now financially responsible. Neither has she demonstrated that she has met MC 4: 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. With no budget provided, there is no way to assess if her current debt to earnings ratio is within the acceptable range or if she is financially over-extended. She provided no evidence she is currently meeting all of her obligations from the new home and automobile. After considering the Appendix I Adjudicative Process factors and the Adjudicative Guidelines, I rule against Applicant on subparagraphs 1.a. through 1.e. under SOR Paragraph 1.

### **Personal Conduct**

Applicant had a duty in completing her SF 86 to disclose all adverse information in response to the questions asked: she failed to do so with respect to questions 36 and 40. Thus conditions that could raise a security concern and may be disqualifying include her deliberate omission, concealment, or falsification of relevant and material facts from her personnel security questionnaire. While she argues that by listing her bankruptcy filing, she had no need to provide detailed answers to Questions 36 and 40, she is mistaken. There is no listing of the state tax liens in the filing though the state Department of Revenue is listed as a creditor; with respect to her public record of civil court actions, the bankruptcy filing does list three of the lawsuits, but not the other three. She had a duty to fully disclose all relevant and material information and failed to do so.

Applicant has failed to demonstrated she meets mitigating conditions. (7)

While she was cooperative in explaining some of her financial details to the DSS agent, her conduct is no sufficient to fall with MC 3. The individual made prompt, good-faith efforts to correct the falsification before being confronted with the facts as she did not volunteer the facts. Indeed there was a second interview to address the state sales tax liens before

she acknowledged that they were "most probably, still in effect." Further, she never argued that her failure to provide complete responses fell within C 4 (Omission of material facts was caused or significantly contributed to by improper or inadequate advice of authorized personnel, and the previously omitted information was promptly and fully provided.) While she has provided several favorable character references on her personal conduct, those in and of themselves are insufficient to mitigate her serious omissions on the government form.

After considering the Appendix I Adjudicative Process factors and the Adjudicative Guidelines, I rule against Applicant on subparagraphs 2.a. through 2.b.(1) through (6) under SOR Paragraph 2.

### **FORMAL FINDINGS**

After reviewing the allegations of the SOR in the context of the Adjudicative Guidelines in Enclosure 2 and the factors set forth under the Adjudicative Process section, I make the following formal findings:

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

Subparagraph 1.a.: Against Applicant

Subparagraph 1.b.: Against Applicant

Subparagraph 1.c.: Against Applicant

Subparagraph 1.d.: Against Applicant

Subparagraph 1.e.: Against Applicant

#### Paragraph 2. Guideline E AGAINST APPLICANT

Subparagraph 2.a.: Against Applicant

Subparagraph 2.b.: Against Applicant

Subparagraph 2.b.(1): Against Applicant

Subparagraph 2.b.(2): Against Applicant

Subparagraph 2.b.(3): Against Applicant

Subparagraph 2.b.(4): Against Applicant

Subparagraph 2.b.(5): Against Applicant

Subparagraph 2.b.(6): 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 the Applicant.

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Kathryn Moen Braeman

Administrative Judge

1. This procedure is required by Executive Order 10865, as amended, and Department of Defense Directive 5220.6,

dated January 2, 1992 (Directive), as amended by Change 4, April 20, 1999.

2. In her Answer she claimed she was unemployed from 1996-1999. (Answer)

3. The SOR mistakenly alleges the debts were discharged in March 1998; Item 16 shows August 1997 as the date the Discharge of the Debtor was signed by the U.S. bankruptcy judge.

4. The SOR mistakenly alleges the liens were federal. (See Items 7, 8, 9)

5. Her defense to the omission of this required information is not credible: she claimed that her "no" answers to Questions 36 and 40 were based on her belief that since these items were included in her Chapter 7 Bankruptcy Records that, therefore, by listing that filing she did not have to separately list these other adverse matters. (Exhibit A)

**6. Conditions that could mitigate security concerns include:** 1. The behavior was not recent; 2. It was an isolated incident; 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); 4. 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; 5. The affluence resulted from a legal source; and 6. The individual initiated a good-faith effort to repay overdue creditors or otherwise resolve debts.

**7. Conditions that could mitigate security concerns include:**

1. The information was unsubstantiated or not pertinent to a determination of judgment, trustworthiness, or reliability;

2. The falsification was an isolated incident, was not recent, and the individual has subsequently provided correct information voluntarily;

3. The individual made prompt, good-faith efforts to correct the falsification before being confronted with the facts;

4. Omission of material facts was caused or significantly contributed to by improper or inadequate advice of authorized personnel, and the previously omitted information was promptly and fully provided;

5. The individual has taken positive steps to significantly reduce or eliminate vulnerability to coercion, exploitation, or duress;

6. A refusal to cooperate was based on advice from legal counsel or other officials that the individual was not required to comply with security processing requirements and, upon being made aware of the requirement, fully and truthfully provided the requested information;

7. Association with persons involved in criminal activities has ceased.