

DATE: January 14, 2002

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In Re:

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SSN: -----

Applicant for Security Clearance

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ISCR Case No. 00-0678

## **DECISION OF ADMINISTRATIVE JUDGE**

**PAUL J. MASON**

### **APPEARANCES**

#### **FOR GOVERNMENT**

Mathew E. Malone, Esq., Department Counsel

#### **FOR APPLICANT**

*Pro se*

### **SYNOPSIS**

Applicant's financial difficulties began in 1992 when she wrote three checks with insufficient funds to support them. The check cashing creditor obtained two separate judgments against Applicant in 1993. Applicant incurred eight additional debts between 1993 and October 1998, which eventually were assigned to collection agencies. Although her former husband's accident in 1994 and lack of child support until September 1999 constitute some extenuating reasons why Applicant did not take more action earlier to repay the nine creditors, the evidence of unanticipated events is insufficient to overcome the adverse evidence under the financial considerations guideline. Further, without evidence of financial counseling or positive changes in financial habits, Applicant has failed to satisfy her burden of persuasion under the financial considerations guideline. Given Applicant's current belief she did not falsify the security form, she also has not met her burden of persuasion under the personal conduct guideline. Clearance is denied.

### **STATEMENT OF CASE**

On February 17, 2001 the Defense Office of Hearings and Appeals (DOHA), pursuant to Executive Order 10865 and Department of Defense Directive 5220.6 (Directive), dated January 2, 1992, amended by Change 3, February 13, 1996, and Change 4, April 20, 1999, issued a Statement of Reasons (SOR) to Applicant, which detailed reasons why 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, and recommended referral to an Administrative Judge to determine whether clearance should be denied or revoked. In her undated answer, which was received at DOHA on ay 24, 2001, Applicant requested a hearing.

The case was assigned to the undersigned on July 27, 2001. A notice of hearing was issued on August 8, 2000, and the case was heard on August 30, 2001. The Government and Applicant submitted documentary evidence. Testimony was taken from Applicant. The transcript (Tr.) was received on September 27, 2001.

### **RULINGS ON PROCEDURE**

On August 3, 2001, the Government filed a Motion to Amend the SOR to conform the SOR to the evidence. The Motion seeks to change the creditors identified in subparagraph 1.h. and 1.i. of the SOR. The Motion was granted. (Tr. 38, 73)

### FINDINGS OF FACT

The SOR alleges financial considerations and personal conduct. Applicant essentially admitted all the financial allegations. She disagreed with some debts because the wrong amounts or wrong creditors were alleged. Applicant also denied the personal conduct allegation, indicating she did not intend to conceal information for the Government. Applicant's admissions shall be incorporated in the factual findings below. Applicant is 41 years old and is employed as an administrative coordinator by a defense contractor. She seeks a secret clearance.

The SOR (February 17, 2001) alleges Applicant owes \$2910.00 to nine creditors. Several of the debts became bad debts more than six years ago in March 1995 while others reached delinquency status as recently as October 1998. On March 8, 2000, Applicant indicated she would repay all her creditors. In her answer, she noted she planned to pay creditors in 1.d. and 1.f. by July 2001; however, they have not been paid.

A telecommunications company debt (1.a.) of \$120.00 became delinquent in March 1995. The debt has not been satisfied as of March 2000. While Applicant claims she contacted the

company and all the other listed creditors (Tr. 42, 44, 65) in June or July 2001 by telephone, she has offered no documentary evidence to support her claims.

Applicant owes a second telecommunications company \$441.00 for a debt (1.b.) that has been delinquent since March 1998. The debt was turned over to a collections agency and has not been paid as of March 2000.

Applicant owes a bank \$94.00 (1.c.) for a bad debt since June 1998. The bank transferred the debt to a collection agency. Applicant still owed the debt on March 8, 2000. On April 12, 2000, Applicant satisfied the debt with the collection agency.

Applicant owes a loan company \$275.00 for a debt (1.d.) that became delinquent and turned over to a collection agency in May 1998. Applicant still owes the debt although she indicated in her answer to the SOR she hopefully would have the debt paid in July 2001. However, Applicant was financially unable to pay the debt in July 2001. (Tr. 45)

Applicant owes an animal hospital \$100.00 (1.e.). The debt became delinquent in October 1998, and was turned over to a collection agency. A credit bureau report (CBR) reflects no action taken on the debt as of March 2000. Applicant satisfied the debt on May 24, 2001. (AE C)

Applicant still owes the health company \$177.00 for a debt (1.f.) that became delinquent in June 1998. A CBR reflects Applicant still owed the debt as of March 2000.

Applicant's debt (1.g.) of \$125.00 to a dentist became delinquent and was turned over to a collection agency in August 1997. Applicant paid the debt on May 1, 2001. (AE C)

A judgment (1.h.) of \$842.00 was entered against Applicant on April 17, 1993 for two checks written in 1992 without sufficient funds. (GE 5) While Applicant claims she thought the debt was for her former husband's hospital bills, xeroxed copies of the two checks contained in the GE 5, show her as one of the drawers of the account. Also, she acknowledged her signature in the lower right hand corner of the check (Tr. 50). Applicant's acknowledged signature warrant a finding against Applicant under subparagraph 1.h. <sup>(1)</sup> In addition, Applicant recalled shopping regularly at the store identified on the checks. (Tr. 51) Finally, Applicant acknowledged the physical description of the house (which appears on the service papers of GE 6), and the address of the house (which appears on the face of both checks in GE 6). Considering all the evidence as a whole, I find against Applicant under 1.h. of the SOR.

A second judgment (which Applicant claims she knows nothing about) was entered against Applicant on April 29, 1993. Court documents included within GE 5 show Applicant was advised by phone on April 29, 1993 in Small Claims Court

of the \$736.00 judgment. Also, Applicant acknowledged her signature on the xeroxed check in GE 6. In sum, I find against Applicant under 1.i. of the SOR.

On October 6, 1998, Applicant intentionally falsified a Security Clearance Application (Standard Form 86) by answering "no" to question 39, which asks whether the applicant is over 90 days delinquent on any debt. Although Applicant declares she misunderstood the question, several items of evidence are sufficient to convince me she understood question 39 of the security form. Looking at the other entries she made in the financial section of the SF 86 (questions 33 to 41), Applicant correctly answered "yes" to question 34, and provided information about her wages being garnished in 1988 (referring to the third judgment of \$430.00, which she quickly paid off so the garnishment order would be removed). (AE C) Second, Applicant understood the meaning of repossession because she correctly answered "yes" to question 35, acknowledging her car had been repossessed in 1994. Third, in December 1998 when she filled out the security form, Applicant was 38 years old, seventeen years beyond her twenty-first birthday. Fourth, Applicant filed bankruptcy in 1993 because she and her former husband believed they could recover from debts they accumulated during the marriage. Fifth, from 1984 to 1986, between her 24th and 26th birthdays, Applicant attended two years of post-high school, vocational training in business management. Even though the record is silent as to what particular areas Applicant covered in the business management course, most business management curriculums devote some time to maintaining bill paying structures to prevent delinquencies and the court process. Having weighed the five factors and Applicant's demeanor during the hearing, I find against Applicant under subparagraph 2.a.

The debts of Applicant and her former husband were so serious in 1993, they filed for bankruptcy. The bankruptcy was dismissed later in 1993 when Applicant and her former husband mistakenly believed they could resolve their indebtedness without the assistance of the bankruptcy courts. Unfortunately, her former husband sustained an accident (of unknown type) in late 1994, which left her without his income for about two years. Applicant separated from her former husband in 1998 and moved to the local area at some later time in 1998.

In September 1999, a child support order required Applicant to pay approximately \$325.00 in child support. From May 2000 until May 2001, Applicant was required to pay child support even though her child was living with her. In May 2001, Applicant rescinded the child support order and the extra money became available for other obligations.

Even though Applicant claims her financial problems were primarily caused by the child support she had to pay between September 1999 and ay 2001, Applicant's mismanagement of her money must be considered also. An example of her financial mismanagement is writing checks without sufficient funds to cover those checks; this activity occurred in 1992. (Tr. 49-51) Again, Applicant apparently wrote at least one worthless check some time in 1998. (Tr. 45-49) Even though

the worthless check was not one of the allegations of the SOR, the act of writing funds with insufficient money in her bank account, reflects another example of poor judgment.

Applicant has never participated in financial counseling although. In May 2001, she received instructional documentation from credit bureaus and the Internet on how read a credit report and pay bills regularly. (Tr. 73; AD E)

Applicant's supervisor hired her in April 1998 for the position of administrative coordinator. The supervisor believes Applicant is conscientious and honest.

## **POLICIES**

Enclosure 2 of the Directive sets forth policy factors which must be given consideration in making security clearance determinations. These factors must be considered in every case according to the pertinent criterion; however, the factors are in no way automatically determinative of the decision in any case nor can they supersede the Administrative Judge's reliance on his own common sense. Because each security case presents its own unique facts and circumstances, it should not be assumed that the factors exhaust the entire realm of human experience or that the factors apply equally in every case. In addition, the Judge, as the trier of fact, must make critical judgments as to the credibility of witnesses. Factors most pertinent to evaluation of the facts in this case are:

### **Financial Considerations**

Disqualifying Conditions:

1. A history of not meeting financial obligations;
2. Deceptive or illegal financial practices such as check fraud;
3. Inability or unwillingness to satisfy debts.

Mitigating Conditions:

1. The behavior was not recent;
2. It was an isolated event;
3. The conditions that resulted in the behavior were largely beyond the person's control;
4. The person has received or is receiving counseling for the problem and there are clear signs the problem is being resolved or is under control;
6. The individual initiated a good-faith effort to repay overdue creditors or otherwise resolve debts.

**Personal Conduct**Disqualifying Conditions:

2. The deliberate omission, concealment, or falsification of relevant and material facts from any personnel security questionnaire to determine security eligibility.

Mitigating Conditions:

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.

**General Policy Factors (Whole Person Concept)**

Every security clearance case must also be evaluated under additional policy factors that make up the whole person concept. Those factors (found at page 2-1 of Enclosure 2 of the Directive) include: (1) the nature, extent, and seriousness of the conduct; (2) the circumstances surrounding the conduct; (3) the frequency and recency of the conduct; (4) the individual's age and maturity at the time of the conduct; (5) the voluntariness of participation; (6) the presence or absence of rehabilitation and other behavioral changes; (7) the motivation for the conduct; and, (8) the likelihood of continuation or recurrence.

**Burden of Proof**

As set forth in the Directive, every personnel security determination must be a fair and impartial overall commonsense decision based upon all available information, both favorable and unfavorable, and must be arrived at by applying the standard that the granting (or continuance) of a security clearance under this Directive may only be done upon a finding that to do so is clearly consistent with the national interest. In reaching determinations under the Directive, careful consideration must be directed to the actual as well as the potential risk involved that an applicant may fail to properly safeguard classified information in the future. The Administrative Judge can only draw those inferences or conclusions that have a reasonable and logical basis in the evidence of record. The Judge cannot draw inferences or conclusions based on evidence which is speculative or conjectural in nature.

The Government must establish all the factual allegations under financial considerations (Guideline F) and personal conduct (Guideline E), which establishes doubt about a person's judgment, reliability and trustworthiness. While a rational connection, or nexus, must be shown between an applicant's adverse conduct and her ability to effectively safeguard classified information, with respect to the sufficiency of proof of a rational connection, objective or direct evidence is not required.

Then, Applicant must remove that doubt with substantial evidence in refutation, explanation, mitigation or extenuation which demonstrates that the past adverse conduct is unlikely to repeat itself and Applicant presently qualifies for a security clearance.

### CONCLUSIONS

The financial considerations guideline refers to individuals who are unable to repay bills they voluntarily incur. History is replete with individuals who become financially overextended, and then resort to illegal acts to generate funds.

The first disqualifying condition (DC) 1 under the financial considerations guideline is a history of not meeting financial obligations. In March 2000, Applicant's total debt was \$2910.00. In March 2000, all debts (except 1.h. and 1.i.) were held by collection agencies. The debts in 1.h. and 1.i. were reduced to judgments in April 1993. The judgments in 1.h. and 1.i. warrant some consideration under DC 2 of the financial considerations guideline because Applicant wrote at least three checks without sufficient funds to cover those checks.

DC 3 under the financial considerations guideline addresses fact situations demonstrating an inability or unwillingness to satisfy debts. In GE 2, Applicant indicated she would pay 1.h. and 1.i. only if her security clearance depended on payment and only if the settlement terms were reasonable. Applicant's statement clearly shows an unwillingness to repay the creditors in 1.h., and 1.i. Applicant's failure to repay creditors 1.d. and 1.f. after declaring her intentions to repay them, must be characterized as an inability to repay within the scope of DC 3.

Five of the six mitigating conditions are germane to the ultimate finding for or against Applicant under the financial considerations guideline. MC 1 is inapplicable to this case because several of the listed debts became delinquent in 1998, less than five years ago, and there is very little evidence of repayment. In addition, the fact that nine debts are involved, with two debts almost nine years old, eliminates MC 2 from consideration.

MC 3 of the financial considerations guideline should be applied when the facts demonstrate unforeseen circumstances impaired Applicant's efforts to repay her creditors. Although the child support order in September 1999 entitles Applicant to limited mitigation under MC 3 for the delinquent debts in 1997 and 1998, the support order does little to extenuate the two debts (1.h. and 1.i.), which had become judgments in 1993, or six years before the child support order.

Even though Applicant receives some additional extenuation under MC 3 for being without her former husband's income from 1994 to 1996, Applicant has provided little detail of the extent of her former husband's injury and the definitive impact on her bill paying ability. Having weighed all the evidence in the record, I am unable to attribute Appellant's financial problems to unforeseen events.

An applicant may be able to overcome her financial problems when she can demonstrate she has or is receiving counseling. (MC 4) Counseling under the Directive refers to formal/informal

sessions where the student learns financial concepts to maintain her financial responsibility with her creditors. The three insufficient funds checks written by Applicant in 1992 and 1998 provide convincing evidence Applicant was in need of counseling on how to keep her checkbook properly balanced.

Without counseling, the record lacks clear indications all the debts will be repaid. Of the nine debts listed in the SOR, Applicant has only satisfied three debts, totaling \$319.00. Two of these debts were not paid until after Applicant received the SOR in February 2001.

Applicant's letters to the various credit agencies to inform them of false information on her report, is considered to be probative of Applicant's increased awareness of keeping her financial house in order. However, the letters to the credit

agencies do not substitute for the lack of necessary counseling to prevent a recurrence of financial problems in the future.

MC 6 under the financial considerations guideline applies to good-faith efforts to repay creditors. The fact Applicant has paid three of the listed creditors weighs in Applicant's favor. However, the three creditors were not paid until the respective creditors had unsuccessfully sought payment from Applicant through voluntary means. In sum, there is insufficient evidence under MC 6 to find for Applicant under the financial considerations guideline. Applicant's failure to make payments voluntarily forced the creditors to resort to legal means in seeking full recovery.

Deliberately omitting relevant information from a security form represents questionable judgment under the personal conduct guideline. Demonstrating dishonesty during the security investigation indicates the person may not properly safeguard classified information.

Applicant's intentional falsification of question 39 of her security form in December 1998 represents disqualifying conduct under DC 2 of the personal conduct guideline. Applicant's claim of confusion in thinking the question only referred to current debts is not persuasive when attempting to understand why Applicant would supply the repossession information (which occurred in 1994) under question 35. In addition, Applicant was 38 years old when she filled out the security form and sufficiently demonstrated she understood the other questions of the financial section of the form. Finally, Applicant had been exposed to the legal process, having filed a bankruptcy action in 1993 and having received legal paperwork regarding her insufficient fund checks.

The first three mitigating conditions (MC) under the personal conduct guideline are material to these facts, however, Applicant's continuing claim she did not falsify the security form, removes the three mitigating conditions from consideration. MC 1 is inapplicable because the missing information was substantiated by Applicant an independent evidence. More importantly, the providing of false information by Applicant during a security investigation has an adverse impact on Applicant's judgment.

MC 2 and MC 3 cannot be given consideration either because MC 2 requires the individual to voluntarily disclose the information and MC 3 requires the individual to promptly correct the

falsehood before being confronted with the facts. Considering the evidence as a whole, Applicant has not met her heavy burden of persuasion under the personal conduct guideline.

Having weighed the circumstances of this case with the nine general factors of the whole person concept, I reach the same negative conclusions. While Applicant's financial difficulties do not appear overwhelming, Applicant has paid only three out of nine debts. Payment of the three creditors has come only after the debts reached a collection status. Applicant has provided no evidence of what changes she has made to prevent the present financial problems from becoming worse in the future. Without evidence of counseling or changes in her financial habits, I am unable to find for Applicant under the whole person concept.

The detailed and accurate entries made by Applicant elsewhere on her security form, together with Applicant's age when she filled out the form, and her present position she did not falsify form, provides ample evidence Applicant intentionally falsified the form in December 1998. Accordingly, the whole person concept is unavailable to overcome the negative evidence under the financial considerations and personal conduct guidelines.

### **FORMAL FINDINGS**

Formal Findings required by Paragraph 25 of Enclosure 3 of the Directive are:

Paragraph 1 (Financial Considerations): AGAINST THE APPLICANT.

a. Against the Applicant.

b. Against the Applicant.

- c. For the Applicant.
- d. Against the Applicant.
- e. For the Applicant.
- f. Against the Applicant.
- g. For the Applicant.
- h. Against the Applicant.
- i. Against the Applicant.
- j. Against the Applicant.

Paragraph 2 (Personal Conduct): AGAINST THE APPLICANT.

- a. Against the 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 a security clearance for Applicant.

Paul J. Mason

Administrative Judge

1. At the hearing, Applicant submitted documentation reflecting she paid the creditor \$430.00 in full satisfaction of the debt. However, a careful review of the documentation in the Government's and Applicant's exhibits show there are three judgments, two of which are listed as 1.h. and 1.i. of the SOR. Applicant acknowledged three judgments in her sworn statement. (GE 2) In sum, even though Applicant is commended for paying the August 1997 judgment for \$430.00 to the same creditor identified in 1.h. and 1.i., she still owes the judgments identified in 1.h. and 1.i.