

KEYWORD: Financial; Personal Conduct

DIGEST: Applicant was divorced twice and in each divorce she entered into oral agreements with her divorcing spouse regarding marital debts. In both cases the husband was to pay these marital debts, which they did not, and the debts subsequently ended up on the Applicant's credit report. At the time she completed her security clearance application, she was not aware that the old marital debts were not paid. It was alleged that she answered questions 38 on her SF-86 form in the negative, and willfully attempted to deceive the Government. At the time she completed the SF-86 form she was unaware that the marital debts were not paid by her prior husbands. Clearance is granted.

CASENO: 01-01395.h1

DATE: 01/15/2002

DATE: January 15, 2002

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In Re:

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SSN: -----

Applicant for Security Clearance

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CR Case No. 01-01395

**DECISION OF ADMINISTRATIVE JUDGE**

**WILLIAM R. KEARNEY**

## APPEARANCES

### **FOR GOVERNMENT**

Michael H. Leonard, Department Counsel

### **FOR APPLICANT**

*Pro Se*

## SYNOPSIS

Applicant was divorced twice and in each divorce she entered into oral agreements with her divorcing spouse regarding marital debts. In both cases the husband was to pay these marital debts, which they did not, and the debts subsequently ended up on the Applicant's credit report. At the time she completed her security clearance application, she was not aware that the old marital debts were not paid. It was alleged that she answered questions 38 on her SF-86 form in the negative, and willfully attempted to deceive the Government. At the time she completed the SF-86 form she was unaware that the marital debts were not paid by her prior husbands. Clearance is granted.

## STATEMENT OF THE CASE

On, May 11, 2001, the Defense Office of Hearings and Appeals (DOHA) pursuant to Executive Order 10865, as amended, and Department of Defense Directive 5220.6, dated January 2, 1992 (Directive), issued a Statement of Reasons (SOR) to the Applicant which detailed reasons why DOHA could not make the preliminary affirmative finding that it is clearly consistent with the national interest to grant or continue a security clearance for the Applicant, and recommended referral to an Administrative Judge to determine whether a clearance should be granted, continued, denied, or revoked. In a sworn written statement, notarized on August 7, 2001, the Applicant responded to the allegations set forth in the SOR and requested a hearing.

The undersigned Administrative Judge received the case assignment on September 13, 2001, and a notice of hearing was issued on September 19, 2001. The undersigned held a hearing on October 23, 2001. The Department Counsel presented seven (7) exhibits. The Applicant's case consisted of the presentation of three (3) exhibits and her own testimony. The record in this case was held open to allow the Applicant to file one additional exhibit, which was received into evidence. The record in this case was closed on November 10, 2001. The undersigned Administrative Judge received the Transcript ("Tr") of the hearing on October 31, 2001.

### **FINDINGS OF FACT**

The Statement of Reasons (SOR) consisted of allegations predicated on two guidelines: paragraph 1, Guideline F (financial considerations) and paragraph 2, Guideline E (personal conduct). The undersigned Administrative Judge completely and thoroughly reviewed the evidence in the record, and upon due consideration of the same, makes the following Findings of Fact:

The Applicant is a forty eight (48) year old married female and for the past three (3) years she has been an employee of a U.S. Government contractor as a senior Project Management and Operation Planning Representative. The Applicant seeks to retain her secret level personnel security clearance.

The Applicant has in the past been married three times. She married her first husband on November 2, 1974, and they were divorced in March 1987. Two children were born of this marriage and the Applicant has custody of them. Her second marriage to husband number two occurred in November 1993, and they were divorced in October 1995. Her third marriage occurred on December 30, 1995, and she is presently married to this husband.

At the time of her first divorce there was an oral agreement between the Applicant and her first husband that he would be responsible for the medical bills of their children. At the time of the divorce of the second husband, it was also agreed between the parties that the second husband would be responsible for all the marital bills of the parties. The Applicant assumed that the respective bills would be paid by the respective husband. In fact, a review of the SOR and the outstanding bills or obligations as set forth under Paragraph 1, Guideline F, and the evidence of record, reveals that Applicant's first husband is responsible for the bills (totaling \$200.00) indicated by subparagraphs 1.c and 1.e of the SOR, as they are medical bills for their children. Debts set forth in 1.a, 1.b, and 1.d. of the SOR, are bills (totaling \$7,500.00) accrued during her marriage to her second husband, who took responsibility for the payment of these obligations. Both Applicant's first and second husbands failed to satisfy these outstanding debts, and as a result caused the Applicant serious inconvenience and possible harm to her financial reputation, including her security clearance.

The SOR paragraph 2. Guideline E personal conduct, alleges the Applicant falsified material facts when she completed her Security Clearance Application ( Standard Form 86) by failing to list financial accounts more than 180 days delinquent.

The Applicant has provided a statement, subject to the penalty of perjury, where she stated that she was not aware of the debts when she filled out her Security Clearance Application form (SF-86). The Applicant does not intend to satisfy these marital debts, as she truly believes that these debts are legally the debts of her former husbands and not her legal debts. At the time she separated from each of her two ex-husbands, she had oral agreements with them that she would take care of her debts and that they would be responsible for all other marital financial obligations of the parties.

Since the Applicant's marriage to her third in December 1995, the Applicant has kept her own checking account, credit cards and other financial matters separate from her present husband's financial obligations. She pays all of her own debts in a timely manner when due. Applicant's exhibit B, which is her credit report dated October 22, 2001, revealed nothing delinquent or derogatory has been reported in her credit bureau report, and she has a good credit score based upon the method that the credit bureau uses to score members of the public. She has never missed a payment, and no negative public records are listed on her credit report. The conditions that resulted in the marital debts not being paid were largely beyond the Applicant's control as she was divorced from her prior husbands.

## **POLICIES**

Enclosure 2 of the Directive (32 C.F.R. part 154 appendix H) sets forth adjudicative guidelines which must be considered in evaluating an individual's security eligibility. The guidelines are divided into those that may be considered in determining whether to deny or revoke a clearance (Disqualifying Conditions or DC) and those that may be considered in determining whether to grant or continue an individual's access to classified information (Mitigating Conditions or MC). In evaluating this case, relevant adjudicative guidelines as set forth below have been carefully considered as the most pertinent to the facts of this particular case.

The guidelines, disqualifying conditions, and mitigating conditions most pertinent to an evaluation of the facts of this case are:

## **GUIDELINE F - FINANCIAL CONSIDERATIONS**

**An individual who is financially overextended is a 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:

[1] The behavior was not recent;

[3] The conditions that resulted in the behavior were largely beyond the person's control (e.g., divorce or separation);

## **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:**

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

None apply.

The Directive also states that each clearance decision must be a fair and impartial common sense determination based upon consideration of all the relevant and material information and the pertinent criteria and adjudication policy in enclosure 2, including as appropriate:

- a. Nature and seriousness of the conduct and surrounding circumstances.
- b. Frequency and recency of the conduct.
- c. Age of the applicant.
- d. Motivation of the applicant, and the extent to which the conduct was negligent, willful, voluntary, or undertaken with knowledge of the consequences involved.
- e. Absence or presence of rehabilitation.
- f. Probability that the circumstances or conduct will continue or recur in the future.

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 upon an affirmative finding that to do so is clearly consistent with the national interest. In reaching the fair and impartial overall common sense determination required, the Administrative Judge may draw only those inferences and conclusions that have a reasonable and logical basis in the evidence of record. Determinations under the Directive include consideration of the risk that an applicant may deliberately or inadvertently fail to safeguard properly classified information as that term is defined and established under Executive Order 12958, effective on October 14, 1995.

The Government has the burden of proving all controverted facts in the Statement of Reasons. Thereafter, the burden of going forward with the evidence then shifts to the Applicant for the purpose of establishing his or her security eligibility through evidence of refutation, extenuation or mitigation of the Government's case or through evidence of affirmative defenses. Assuming the Government's case is not refuted, and further assuming it can reasonably be inferred from the facts proven that an applicant might deliberately or inadvertently fail to safeguard properly classified information, the

applicant has a heavy burden of persuasion to demonstrate he or she is nonetheless eligible to hold a security clearance. (1) In this particular case the Applicant has amply supplied testimony and evidence to overcome her burden and the Government's case.

## CONCLUSIONS

Initially, the government has the burden of proving all controverted facts alleged in the Statement of Reasons. Once that has been accomplished, the burden of going forward with the evidence then shifts to the Applicant for the purpose of establishing her security eligibility through evidence of refutation, extenuation or mitigation of the case or through evidence of an affirmative defense. Assuming, the government's case is not refuted, and further assuming it can reasonably be inferred from the facts proven that an Applicant might deliberately or inadvertently fail to safeguard properly classified information, the Applicant has a heavy burden of persuasion to demonstrate she is nonetheless eligible to hold a security clearance. In this particular case, the Applicant has adequately demonstrated that she is security worthy, as she has demonstrated that all the debts set forth in paragraph 1, Guideline F, of the SOR, were not her debts, as they were the debts of her two ex-husbands, which they failed to pay or satisfy. She has further demonstrated that since October 1995, she has steadfastly paid in a timely manner all of her legitimate bills and outstanding debts. Her current financial status is sound and that she is not financially overextended nor is she at risk of having to engage in illegal acts to generate funds.

Having considered the evidence of record in light of the appropriate legal precepts and factors, and having assessed the credibility and demeanor of the Appellant who testified, the undersigned concludes that the Applicant successfully rebutted and overcame the Government's case with regard to the allegations alleged in Paragraph 1, Guideline F. of the SOR.

With respect to Paragraph 2 of the SOR, Guideline E, Personal Conduct, I also find in favor of the Applicant. The gravamen of a falsification case is whether an Applicant has been less than truthful and candid with the Government, not whether the Government was ultimately misled or deceived. In response to question 38 on Applicant's Security Clearance Application, (SF-86) she stated "No" to the question ". . . have you been over 180 days delinquent on any debts(s)?" At the time she answered the said question, she did not know that the old marital debts were not paid and over due, as they were not her responsibility, but the responsibility of her two ex-husbands. Following her divorces, the Applicant was unaware that debts her ex-husbands were to pay had become delinquent. Since she was unaware of the delinquent accounts when she completed the Standard Form 86, I find her answer was not a deliberate omission, concealment, or falsification. Since there was no deliberate omission, none of the disqualifying conditions under personal conduct apply. I find for the Applicant as to the allegations contained in SOR paragraph 2 and subparagraph 2.a. Therefore, I conclude that her negative answer to question 38, was proper and correct.

I conclude that the Applicant has, through evidence of extenuation, and explanation, successfully mitigated and overcome the Government's case with respect to her personal conduct, under Guideline E, and, therefore, make a

favorable finding for the Applicant.

In each clearance decision I am required to take into consideration pertinent factors set forth in Section 6.3 of the Directive and in the adjudicative process discussion at enclosure 2 to the Directive. These factors are identified on pages 4 and 5 *supra*.

### **FORMAL FINDINGS**

Paragraph 1. Guideline F FOR APPLICANT

Subparagraph 1.a.: For Applicant

Subparagraph 1.b.: For Applicant

Subparagraph 1.c.: For Applicant

Subparagraph 1.d.: For Applicant

Subparagraph 1.e.: For Applicant

Paragraph 2. Guideline E: FOR APPLICANT

Subparagraph 2.a.: For Applicant



## DECISION

In light of all the circumstances presented by the record in this case, it is the determination of the undersigned that it is clearly consistent with the national interest to grant or continue a security clearance for the Applicant.

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William R. Kearney

Administrative Judge

1. While the Government has the burden of proving controverted facts, the Applicant has the ultimate burden of persuasion as to obtaining a favorable clearance decision. Items 14 and 15 of the Additional Procedural Guidance (Enclosure 3 to the Directive).