

DATE: May 22, 2002

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In Re:

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SSN: -----

Applicant for Security Clearance

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CR Case No. 01-05945

## DECISION OF ADMINISTRATIVE JUDGE

**JOHN R. ERCK**

### APPEARANCES

#### FOR GOVERNMENT

Marc E. Curry, Department Counsel

#### FOR APPLICANT

*Pro Se*

### SYNOPSIS

After admitting she was delinquent in making payments on financial obligations totaling more than \$10,000.00, in her signed, sworn statement to DSS and in her *Security Clearance Application*, Applicant denied all SOR allegations of financial delinquency, except for an indebtedness of \$394.00. She provided documentation that debts totaling \$2,067.00 had been satisfied, but did not provide information or an explanation for the remaining debts. Clearance is denied.

### STATEMENT OF THE CASE

On October 5, 2001, the Defense Office of Hearings and Appeals (DOHA), pursuant to Executive Order 10865, "*Safeguarding Classified Information Within Industry*," dated February 20, 1960, as amended, and modified, and Department of Defense 5220.6, "*Defense Industrial Personnel Security Clearance Review Program*" (Directive), dated January 2, 1992, as amended and modified, issued a Statement of Reasons (SOR) to Applicant which detailed reasons why DOHA could not make the preliminary finding under the Directive that it is clearly consistent with the national interest to grant a security clearance for Applicant and recommended referral to an Administrative Judge to determine whether a security clearance should be granted, denied or continued.

Applicant answered the SOR on October 17, 2001, and stated she wanted her case decided without a hearing. Applicant received the file of relevant material (FORM) consisting of six items on December 26, 2001. She filed a response to the FORM on March 6, 2002. The case was assigned to this Administrative Judge on April 4, 2002.

### FINDINGS OF FACT

The Statement of Reasons (SOR) alleges Applicant is delinquent in making payments on financial obligations totaling more than \$12,950.00<sup>(1)</sup>. Applicant denied being delinquent on any financial obligations except for the \$394.00 obligation alleged in subparagraph 1.f. Along with her answer, Applicant provided a copy of an updated credit report and letters indicating delinquent debts totaling \$2,067.00 (obligations alleged in subparagraphs 1.a. 1.b. 1.c. 1.d. and 1.e.) have been satisfied. After a complete and thorough review of the evidence of record, and upon due consideration of

the same, I make the following additional findings of fact:

Applicant is 48 years old and an employee of the DoD contractor for whom she currently works since July 1995. There is no indication in the file she has previously applied for a security clearance.

Applicant attributes the delinquent financial obligations alleged in the SOR to her attempted career change in the early 1990s. In order to pursue a different career path, she attended school specifically designed to train her for this new career field for approximately one year (1992). She was then employed in that career field for approximately one year, at a very low rate of remuneration. After deciding she no longer wished to pursue this career, she was unemployed until July 1995 when she began working for her current employer. During the time she was attending school, working in her new career, or being unemployed, she lived off her spouse's salary.

A Credit Report Summary (CRS) compiled in 1999 disclosed Applicant was delinquent in making her payments on financial obligations totaling \$2,495.00 (Item 7). However, when she was interviewed by the Defense Security Service (DSS) in October 2000, she admitted (in a signed sworn statement) being delinquent on debts totaling \$7,350.00, and expressed her belief three specific accounts (subparagraphs 1.g., 1.i. and 1.j.) had been referred to a collection agency (Item 5). She indicated the account identified in subparagraph 1.k. had been delinquent earlier, but was current as of October 2000. Later, when she completed her *Security Clearance Application* (SF 86) in July 2001, she answered "yes" to question 38 (which asked if she had been over 180 delinquent on any debt in the last 7 years), and reported she was indebted to six creditors for a total amount of \$11,726.00 (Item 4). One of the delinquent debts she included was the \$3,140.00 indebtedness identified in subparagraph 1.k.

The SOR issued to Applicant by DOHA on October 5, 2001, alleged she was delinquent in making payments on financial obligations to 11 different creditors, to whom she was indebted a total of \$12,951.00. When Applicant answered the SOR on October 19, 2001, she denied being delinquent on any obligation, except the \$394.00 obligation alleged in subparagraph 1.f. (2) She proffered credible evidence she had satisfied the delinquent financial obligations identified in subparagraphs 1.a., 1.b., 1.c., 1.d., and 1.e., totaling \$2,067.00. She did not provide any explanation or information with respect to the remaining \$10,884.00 in delinquent debt--those obligations identified in subparagraph 1.g., 1.i., 1.j., and 1.k.

Applicant was afforded an opportunity to respond to the documents included in the File of Relevant Material. She stated:

I do not want to change anything in my application. Please notice that I have made every effort to correct any negative information on my credit report. I have disputed these alleged charges on my credit report. Since the credit report dated 2000, I have purchased a home and satisfied all requests from lending agencies in order to qualify for a home loan. Any debt that I have incurred over the years I have tried to satisfy to the best of my ability. Debts that do not belong to me I have disputed and to the best of my knowledge they should have been removed from my credit report. I do not feel that I should be held accountable for paying debts that do not belong to me. Furthermore, credit-reporting agencies have been known to make mistakes and errors.

Again, Applicant did not provide any explanation or information with respect to the four debts (subparagraph 1.g., 1.i., 1.j. and 1.k.) totaling \$10,493.00, she had identified as being delinquent and possibly referred to collection (3) in her July 2001 SF 86, (Item 4).

There is no evidence in the record which reflects either favorably or adversely on her professional competence.

### **POLICIES**

The Adjudicative Guidelines of the Directive are not a set of inflexible rules of procedure. Instead, they are to be applied by Administrative Judges on a case by case basis with an eye toward making decisions with reasonable consistency that are clearly consistent with the interests of national security. In making these overall common sense determinations, Administrative Judges must consider, assess, and analyze the evidence of record, both favorable and unfavorable, not only with respect to the relevant Adjudicative Guidelines, but also in the context of the factors set forth

in Section 6.3 of the Directive. In that vein, the Government not only has the burden of proving any controverted fact(s) alleged in the SOR, it must also demonstrate the facts proven have a nexus to Applicant's lack of security worthiness.

The following Adjudicative Guidelines are deemed applicable to the instant matter:

### **FINANCIAL CONSIDERATIONS**

#### **(Guideline F)**

The Concern: 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:**

E2.A6.1.2.1. A history of not meeting financial obligations;

E2.A6.1.2.3. Inability or unwillingness to satisfy debts;

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

None Applicable

### **Burden of Proof**

The Government has the burden of proving any controverted facts alleged in the Statement of Reasons. If the Government establishes its case, the burden of persuasion shifts to Applicant to establish her security suitability through evidence which refutes, mitigates, or extenuates the disqualifying conduct and demonstrates it is clearly consistent with the national interest to grant or continue his security clearance.

A person who seeks access to classified information enters a fiduciary relationship with the Government predicated upon trust and confidence. When the facts proven by the Government raise doubt about Applicant's judgment, reliability, or trustworthiness, Applicant has a heavy burden of persuasion to demonstrate she is nonetheless security worthy. As noted by the United States Supreme Court in *Department of Navy v. Egan*, 484 U.S. 518, 531 (1988), "the clearly consistent standard indicates security clearance determinations should err, if they must, on the side of denials." As this Administrative Judge understands the Court's rationale, doubts are to be resolved against an Applicant.

### **CONCLUSION**

Having considered the record evidence in accordance with appropriate legal precepts and factors, this Administrative Judge concludes the Government has established its case with regard to Guideline F. In reaching my decision, I have considered the evidence as a whole, including each of the factors enumerated in Section 6.3, as well as those referred to in Section E2.2. dealing with adjudicative process, both in the Directive.

A security concern is raised by Applicant's failure to satisfy more than \$10,000.00 in financial obligations according to the terms originally agreed upon. An individual who is financially overextended is at risk of having to engage in illegal acts to generate funds.

Applicant has provided inconsistent and contradictory information about her financial well being during her background investigation--up to, and including her answer to the SOR and response to the FORM.. She admitted being delinquent on several financial obligations when she was questioned by DSS in October 2000. In a signed, sworn statement, she identified the creditors, the amounts of the indebtedness, and expressed her belief these debts had been referred for collection. She confirmed this information and added an additional \$3,000.00 debt--to the list of those delinquent--in an SF 86 she completed in July 2001. However, when Applicant was confronted with information about her indebtedness (in the SOR), she denied all indebtedness, except for a \$394.00 obligation--which she had earlier stated she did not know anything about (in her signed, sworn statement). She provided evidence of satisfying only \$2,067.00 in delinquent

obligations--leaving unpaid and unexplained, delinquent obligations totaling more than \$10,493.00.

Because Applicant had demonstrated (in answer to the SOR) she has the knowledge and ability to assemble and submit information to prove a debt has been satisfied, the statements in her response to the FORM are puzzling and misleading. There is no evidence debts incurred by someone else have appeared on Applicant's credit report and are the basis for any allegation in the SOR. Applicant, not a credit reporting agency, has been the principle source of adverse credit information and the information source for the most significant (in terms of total amount) allegations in the SOR.

If Applicant was mistaken about her indebtedness to the creditors identified in subparagraphs 1.g., 1.i. 1.j. and 1.k, and provided incorrect information about these debts in her signed, sworn statement (Item 5) and in her SF 86 (Item 4), she is now in the best position to access information about these accounts and provide current, correct information. She has not provided such information, and her failure to do so--after providing information of debt satisfaction in her answer to the SOR--suggests debts totaling more than \$10,000.00 remain in a delinquent status. Guideline F is concluded against Applicant.

**FORMAL FINDINGS**

Formal findings as required by Section 3, Paragraph 7, of enclosure 1 of the Directive are hereby rendered as follows:

**Paragraph 1 (Guideline F) AGAINST THE APPLICANT**

Subparagraph 1.a. For the Applicant

Subparagraph 1.b. For the Applicant

Subparagraph 1.c. For the Applicant

Subparagraph 1.d. For the Applicant

Subparagraph 1.e. For the Applicant

Subparagraph 1.f Against the Applicant

Subparagraph 1.g. Against the Applicant

Subparagraph 1.h. For the Applicant

Subparagraph 1.i. Against the Applicant

Subparagraph 1.j. Against the Applicant

Subparagraph 1.k. 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 Applicant's security clearance.

**John R. Erck**

**Administrative Judge**

1. Subparagraphs 1.g. and 1.h. allege an indebtedness to the same creditor. Since the amounts are almost identical (\$902.00 vs. \$923.00) and Applicant denies having more than one account with this creditor, only the amount alleged in subparagraph 1.g. is included in this total.
2. Earlier in her signed, sworn statement to the DSS, Applicant stated she had "no knowledge" of this debt (p. 2, Item 7).

3. See October 2000 signed, sworn statement (Item 5).