

DATE: April 24, 2002

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In Re:

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SSN: -----

Applicant for Security Clearance

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ISCR Case No. 01-09423

## **DECISION OF ADMINISTRATIVE JUDGE**

**CLAUDE R. HEINY**

### **APPEARANCES**

#### **FOR GOVERNMENT**

Matthew Malone, Department Counsel

#### **FOR APPLICANT**

*Pro Se*

### **SYNOPSIS**

In February 1997, the Applicant was found guilty of welfare fraud and sentenced to 18 months incarceration, which was suspended. 10 U.S.C. § 986 directed a clearance must be denied. She owes approximately \$9,500.00 on six accounts. The debts have not been paid, nor has a repayment arrangement been made concerning these debts. Clearance is denied.

### **STATEMENT OF THE CASE**

On October 22, 2001, the Defense Office of Hearings and Appeals (DOHA) issued a Statement of Reasons (SOR) to Applicant, stating that DOHA could not make the preliminary affirmative finding <sup>(1)</sup> it is clearly consistent with the national interest to grant or continue a security clearance for Applicant. On December 1, 2001, the Applicant answered the SOR and requested a hearing. The case was assigned to me on January 30, 2002. A Notice of Hearing was issued on February 14, 2002, scheduling the hearing which was held on March 18, 2002. The Government's case consisted of five exhibits (Gov Ex). The Applicant relied on her own testimony. The record was held open to allow the addition of material from the Applicant. On April 1, 2002, material was received and Department Counsel having no objection to it, it was admitted as Applicant exhibit (App Ex) A. A transcript (tr.) of the hearing was received on March 26, 2002.

### **FINDINGS OF FACT**

The SOR alleges welfare fraud (Guideline J) and financial debts (Guideline F). The Applicant admits the fraud and some of the debts but denies the rest.

The Applicant is 54 years old, has worked for a federal contractor since March 1998, and is seeking a security clearance. She is currently making \$12.00 per hour. (tr. 34) Her current income before taxes and deductions is approximately \$2,000.00 per month (tr. 36) and her rent is approximately \$500.00 monthly. (tr. 38)

In 1995, the Applicant lost her job due to a company downsizing. She had been unemployed from December 1995

through September 1996. In 1996, she was on the verge of being homeless. She sought welfare assistance and received \$290.00 per month in cash in addition to food stamps. She went to the Consumers Credit Counseling Service (CCCS) seeking advice and assistance with her debts. From September 1996 until January 1997, the Applicant worked as a grocery store cashier. From January 1997 through June 1997, she had a job with a hotel paying \$7.50 per hour. Because the hotel job failed to pay enough to cover her rent, she failed to inform the welfare department about the hotel job. From June 1997 until October 1997, she was again unemployed. In December 1997, the Applicant was charged (Gov Ex 2) with fraudulently obtaining public assistance monies and food stamps, between February 1, 1997 and June 30, 1997, in violation of state law.

In March 1998, the Applicant went to court and allowed her public defender to enter a guilty plea to fraudulently obtaining welfare benefits she was not entitled. She states she was not trying to steal the money but simply trying to survive. She was sentenced (Gov Ex 2) to 18 months incarceration (suspended), 36 months of unsupervised probation, and ordered to pay \$2,246.00 in restitution at \$63.00 per month. Her unsupervised probation ended in March 2001. In August 2000, she finished making restitution. An August 2000 hand written note from the Department of Social Service states the Applicant's public assistance and food stamp case had been paid in full and the court case was dismissed. (App Ex A)

In December 1993, the Applicant signed a contract (SOR subparagraph 2.a) so her son could purchase a vehicle. She signed the contract because her son lacked credit. In 1995, the same year she lost her job due to downsizing, her son was unemployed for three months the car was returned to the lender who sold it. Approximately \$4,744.00 is yet owing on the loan.

The Applicant had a consolidation loan, (SOR subparagraph 2.b) which was renegotiated a number of times. She made timely payment on his loan until May 1996, then made sporadic payments. In June 1997, she last made a payment on this loan and had her last contact with this lender. Approximately \$2,000.00 is owed on this loan. In 1996, the Applicant incurred a \$103.00 shoe store debt. The debt was sold to a collection agency. (SOR subparagraph 2.c) The Applicant incurred a department store debt (SOR subparagraph 2.d), which resulted in a \$1,854.00 judgment against the Applicant in April 1999. (Gov Ex4) In July 1999, the Applicant paid \$1,234.81 on this judgement by cashier's check. (App Ex A) The Applicant has paid the judgment in full.

The Applicant incurred a telephone bill of \$349.00, (SOR subparagraph 2.e) on which she last made payment in July 1999. The Applicant owes a doctor (SOR subparagraph 2.f) approximately \$107.00. The Applicant believes this should have been covered by insurance. When she was notified of the debt, she had left the company with which she had the insurance. She has not contacted the company or the insurance carrier about the debt. The debt has not been paid. When the Applicant moved from an apartment, she owed approximately \$2,198.00 (SOR subparagraph 2.g) for two months back rent. This debt has been owing since July 1999 and is in default.

The Applicant got her current job in March 1998, which paid \$10.00 per hour, which has increased to \$12.00. Since getting her current job, the Applicant has not paid on the previously listed debts because she is trying to get back on her feet, catching up on her debts. (tr. 34) Since being currently employed, she has been able to pay approximately \$1,000.00 in restitution to the county recoupment and recovery unit and \$1,200.00 to pay off a department store judgement. Her youngest child resides with her, but he is not financially dependent on her. She has two credit cards on which she owes approximately \$1,800.00, on which she is "paying as agreed" by making minimum payments. The Applicant tries to pay her debts with the amount of resources she has available. (tr. 22) When she cannot pay her debts, she tries to talk to the creditors. She supplied no independent evidence supportive of this claim.

## POLICIES

The Adjudicative Guidelines in 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 determinations that are clearly consistent with the interests of national security. In making 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 in the context of factors set forth in section E 2.2.1. of the Directive as well. 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 an Applicant's lack of security worthiness.

The adjudication process is based on the whole person concept. All available, reliable information about the person, past and present, is to be taken into account in reaching a decision as to whether a person is an acceptable security risk. Although the presence or absence of a particular condition for or against clearance is not determinative, the specific adjudicative guidelines should be followed whenever a case can be measured against this policy guidance.

Considering the evidence as a whole, this Administrative Judge finds the following adjudicative guidelines to be most pertinent to this case:

**Criminal Conduct (Guideline J)** The concern: A history or pattern of criminal activity creates doubt about a person's judgment, reliability and trustworthiness.

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

- a. Allegations or admission of criminal conduct, regardless of whether the person was formally charged.
- b. A single serious crime or multiple lesser offenses.
- c. Conviction in a Federal or State court, including a court-martial of a crime and sentenced to imprisonment for a term exceeding one year. [\(2\)](#)

Conditions that could mitigate security concerns include:

- a. The criminal behavior was not recent.
- g. Potentially disqualifying conditions c. and d., above, may not be mitigated unless, where meritorious circumstances exist, the Secretary of Defense or the Secretary of the Military Department concerned has granted a waiver.

**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:

1. A history of not meeting financial obligations.
2. Deceptive or illegal financial practices such as embezzlement, employee theft, check fraud, income tax evasion, expense account fraud, filing deceptive loan statements, and other intentional financial breaches of trust.
3. Inability or unwillingness to satisfy debts.

Conditions that could mitigate security concerns include:

None apply.

### **BURDEN OF PROOF**

Initially, the Government has the burden of proving any controverted fact(s) alleged in the Statement of Reasons. If the Government meets that burden, the burden of persuasion then shifts to the Applicant who must remove that doubt and establish her security suitability with substantial evidence in explanation, mitigation, extenuation, or refutation, sufficient to demonstrate that despite the existence of guideline conduct, it is clearly consistent with the national interest to grant or continue his security clearance.

A person who seeks access to classified information enters into a fiduciary relationship with the Government predicated upon trust and confidence. Where the facts proven by the Government raise doubts about an applicant's judgment,

reliability or trustworthiness, the applicant has a heavy burden of persuasion to demonstrate that 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 that 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 the applicant.

### CONCLUSIONS

The Government has satisfied its initial burden of proof under Guideline J, (Criminal Conduct). Under Guideline J, the security eligibility of an applicant is placed into question when that applicant is shown to have a history or pattern of criminal activity creating doubt about his judgment, reliability, and trustworthiness. In December 1997, the Applicant was arrested for welfare fraud. Disqualifying Conditions (DC) a.(3) and b.(4) apply. In March 1998, she was convicted and sentenced to 18 months incarceration, which was suspended. DC c.(5)

applies.

The fraud occurred approximately five years ago, which is not recent. Mitigating Condition (MC) a.(6) applies. None of the other mitigating conditions apply. Although the fraud was isolated to a single period in the Applicant's life, it cannot be considered isolated, because it occurred over a six-month period. Therefore, MC b.(7) does not apply. The Applicant believed she was not stealing but merely trying to survive. This belief is insufficient to show the Applicant was pressured into the action. MC c.(8) does not apply. For the same reasons, there is no showing the Applicant's actions were involuntary. MC d.(9) does not apply. There was no acquittal, so MC e.(10) does not apply. The Applicant has shown some evidence of rehabilitation, but this evidence has failed to rise to the level demonstrating "clear evidence" of successful rehabilitation. MC f.(11)

does not apply. Because MC a.(12) applies, I find for the Applicant as to SOR subparagraph 1.a.

In March 1998, the Applicant was sentenced to 18 months of incarceration which was suspended. Even though the handwritten note from the Department of Social Services (App Ex A) indicates the court case was dismissed, there is no other evidence supporting this contention. Since the Applicant was sentenced to 18 months incarceration (Gov Ex 2) 10 U.S.C. § 986, which applies to any person convicted of a crime and sentenced to imprisonment for a term exceeding one year, controls. Because of the incarceration, even though suspended, Section 986 of Title 10 U.S.C. disqualifies the Applicant from having a clearance. I find against the Applicant as to SOR subparagraph 1.b.

I do not recommend further consideration of this case for a waiver of 10 U.S.C. 986.

The Government has satisfied its initial burden of proof under Guideline F (Financial Considerations). Under Guideline F, the security eligibility of an applicant is placed into question when the applicant is shown to have a history of excessive indebtedness, recurring financial difficulties, or a history of not meeting financial obligations. The United States must consider whether individuals granted access to classified information are, through financial irresponsibility, in a position where they may be more susceptible to mishandling or compromising classified information or material for financial gain.

A person's relationship with her creditors is a private matter until evidence is uncovered demonstrating an inability or unwillingness to repay debts under agreed upon terms. Absent evidence of strong extenuating or mitigating circumstances, an applicant with a history of serious or recurring financial difficulties is in a situation of risk that is inconsistent with the holding of a security clearance. Here, Applicant's overall history of financial difficulties, which started in 1995 when she lost her job due to company downsizing and continues to the present, provides concern.

The Applicant's financial difficulties started through no fault of her own when she became a victim of downsizing. Since her current employment, which started four years ago, she has been able to pay approximately \$1,000.00 in restitution and \$1,200.00 to pay off a second debt. In 1993, she co-signed on a car loan with her son. After her son was out of work for three months and unable to make the monthly payments, she attempted to renegotiate the note. Being unable to do

so, the car was returned to the lender and sold; a deficiency balance of \$4,744.00 is owing on the note. She owes approximately \$2,200.00 for two months back rent, approximately \$2,000.00 on a loan consolidation debt, approximately \$350.00 on a telephone bill, approximately \$100.00 to a collection agency, and approximately \$100.00 to a doctor, which she says should have been covered by her insurance. Even if the doctor's debt is not considered, she owes approximately \$9,400.00 on five overdue accounts.

Applicants are not required to be debt free, but are required to properly manage their finances. Financial obligations must be paid or a good faith repayment arrangement must be made with creditors to repay obligations. Since the Applicant has paid off the department store debt, I find for her as to SOR subparagraph 2.d. The Applicant has not paid her other debts; nor has she contacted the creditors, or arranged repayment of these debts. Without such evidence, it is not possible to find the Applicant has initiated a good faith effort to repay her creditors. MC 6<sup>(13)</sup> does not apply.

None of the other mitigating factors apply in the Applicant's favor. The conduct is recent (MC 1)<sup>(14)</sup> in that the debts are still owed. It is not an isolated incident (MC 2)<sup>(15)</sup> because there are six unpaid debts. The Applicant has not received any financial counseling, and there is no indication her financial problems are under control. (MC 4)<sup>(16)</sup>

Because the Applicant has failed to present sufficient mitigation to overcome her financial irresponsibility, I find against the Applicant as to SOR subparagraphs 2. a., 2.b., 2.c., 2.e, 2.f. and 2.g.

The awarding of a security clearance is not a once in a life time occurrence, but is based on applying the factors, both disqualifying and mitigating, as set forth in the directive, to the evidence present. Under the Applicant's current circumstances, a clearance is not recommended, but should the Applicant continue to pay off her overdue accounts, she may well demonstrate persuasive evidence of her security worthiness at some point in the future. However, a clearance at this time is not warranted.

In reaching my conclusions I have also considered: the nature, extent, and seriousness of the conduct; the Applicant's age and maturity at the time of the conduct; the circumstances surrounding the conduct; the Applicant's voluntary and knowledgeable participation; the motivation for the conduct; the frequency and recency of the conduct; presence or absence of rehabilitation; potential for pressure, coercion, exploitation, or duress; and the probability that the circumstance or conduct will continue or recur in the future.

### **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 J (Criminal Conduct) AGAINST THE APPLICANT

Subparagraph 1.a.: For the Applicant

Subparagraph 1.b.: Against the Applicant

Paragraph 2 (Guideline F (Financial Considerations) AGAINST THE APPLICANT

Subparagraph 2.a.: Against the Applicant

Subparagraph 2.b.: Against the Applicant

Subparagraph 2.c.: Against the Applicant

Subparagraph 2.d.: For the Applicant

Subparagraph 2.e.: Against the Applicant

Subparagraph 2.f.: Against the Applicant

Subparagraph 2.g.: 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 or continue a security clearance for the Applicant.

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**Claude R. Heiny**

**Administrative Judge**

1. Required by Executive Order 10865, as amended and Department of Defense Directive 5220.6 (Directive), dated January 2, 1992 as amended.
2. Under the provisions of 10 U.S.C. 986 (P.L. 106-398) a person who has been convicted in a Federal or State court, including courts martial, and sentenced to imprisonment for a term exceeding one year, may not be granted or have renewed access to classified information. In a meritorious case, the Secretary of Defense or the Secretary of the Military Department concerned, may authorize a waiver of this prohibition.
3. DC a. Allegations or admission of criminal conduct, regardless of whether the person was formally charged.
4. DC b. A single serious crime or multiple lesser offenses.
5. DC c. Conviction in a Federal or State court, including a court-martial of a crime and sentenced to imprisonment for a term exceeding one year.
6. MC a. The criminal behavior was not recent.
7. MC b. The crime was an isolated incident.
8. MC c. The person was pressured or coerced into committing the act and those pressures are no longer present in that person's life.
9. MC d. The person did not voluntarily commit the act and/or the factors leading to the violation are not likely to recur.
10. MC e. Acquittal.
11. MC f. There is clear evidence of successful rehabilitation.
12. MC a. The criminal behavior was not recent.
13. MC 6. The individual initiated a good-faith effort to repay overdue creditors or otherwise resolve debts. E2.A6.1.3.6.
14. MC 1. The behavior was not recent.
15. MC 2. It was an isolated incident.
16. 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.