

DATE: June 2, 2003

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In re:

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SSN: -----

Applicant for Security Clearance

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CR Case No. 01-16571

## **DECISION OF ADMINISTRATIVE JUDGE**

**ROGER C. WESLEY**

### **APPEARANCES**

#### **FOR GOVERNMENT**

Marc Curry, Department Counsel

#### **FOR APPLICANT**

*Pro Se*

### **SYNOPSIS**

Applicant and her husband accumulated several debts prior to their divorce in 1997. Because of a significant drop in their disposable income after Applicant's husband went on disability status in late 1994 following a work-related accident, they experienced considerable difficulty in keeping up with their debts. Repossession of their recently purchased boat ensued in 1995, and two of the other debts accumulated by Applicant and her husband during their marriage became delinquent as well. Applicant's repossession and sale resulted in excess sales proceeds being remitted to her, and she credibly demonstrates to be working to resolve the other two listed debts satisfactorily. Applicant is credited with both extenuation and mitigation. Clearance is granted.

### **STATEMENT OF THE CASE**

On October 23, 2002, 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, 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 granted, continued, denied or revoked.

Applicant responded to the SOR on December 21, 2002, and requested a hearing. The case was assigned to this Administrative Judge on February 14, 2003, and was scheduled for hearing on March 18, 2003. A hearing was convened on March 18, 2003, for the purpose of considering whether it would be clearly consistent with the national interest to grant, continue, deny or revoke Applicant's security clearance. At the hearing, the Government's case consisted of four exhibits; Applicant relied on two witnesses (including herself) and six exhibits. The transcript (R.T.) of the proceedings was received on March 26, 2003.

### **STATEMENT OF FACTS**

Applicant is a 32-year old logistics analyst for a defense contractor who seeks a security clearance.

### **Summary of Allegations and Responses**

Applicant is alleged to be indebted to several creditors: creditor 1 for \$7,496.00, which was charged off in April 2002; creditor 2 for \$694.00, which is more than 120 days past due; and creditor 3 for \$351.00, which has been submitted for collection.

For her response to the SOR, Applicant admitted her debts to creditors 2 and 3, but denied any debt to creditor 1. She explained that the creditor 1 debt involved the financing of a boat, which preceded an unfortunate injury to her ex-husband. She claimed the boat was repossessed by the bank and sold at auction for more than the amount owing. She claimed the bank forwarded a check of \$2,000.00 to her and the debt should not be reported to credit agencies.

### **Relevant and Material Factual Findings**

The allegations covered in the SOR and admitted to by Applicant are incorporated herein by reference adopted as relevant and material findings. Additional findings follow.

While they were still married (married in 1989), Applicant's husband (H) purchased an 18-foot inboard motor sea ray ski boat. He made his purchase (jointly with Applicant) in March 1993 for \$11,212.00, financing it through creditor 1. When H purchased this boat, he and Applicant were current in all of their accounts.

Sometime in 1994, H was injured on the job and went on disability status. With their income severely curtailed as the result of H's accident, they could no longer keep up their payments on the boat, but did manage to pay the monthly interest and work with the lender in making payment arrangements (*see* R.T., at 26-27, 33-34). Not satisfied with their interest only payments and future proposals, however, creditor 1 repossessed the boat in November 1995 and sold it at auction for more than the amount of the outstanding balance: then around \$7,496.00. Within a month of the sale, creditor 1 sent a check to Applicant for about \$2,100.00: This represented the excess proceeds received by creditor 1 over the loan balance (*see* ex. A; R.T., at 26-27, 35-36).

In May 1996 (before her divorce from H in 1997), Applicant and H went to buy a new boat from creditor 1 but were denied financing. After explaining the circumstances of the first bank loan with creditor 1, a new lender (Bank A) financed the second boat purchase (*see* exs. D and E). Applicant paid off this second boat purchase several years ago (*see* R.T., at 41). Besides this second boat, which she still owns, Applicant has since purchased three cars, each financed with Bank A. Each time the creditor 1 repossession would show up in her credit report, the lender would accept her explanation and grant her the car loans. Equifax has since removed the repossession from her credit report. Applicant currently has eight accounts with Bank A (*see* R.T., at 41-42).

The creditor 2 debt involved a furniture purchase, which Applicant's ex-husband took with him and agreed to pay, but did not. While the creditor 3 debt is legally Applicant's, it represents a gift from H, on which he stopped paying after making a few payments. Applicant is currently negotiating with this creditor 3 over her proposal to satisfy the debt with a lump sum payment of \$200.00 in return for the creditor's removing the debt from her credit report (*see* R.T., at 51). She assures of her intentions to seek a negotiated pay-off with creditor 2 as well.

Applicant currently lives within her means on a \$30,000.00 salary, which is supplemented by child support payments she receives from H for her second child. She receives no child support payments from her first husband on her first child, who is now 19 years of age.

Applicant is highly regarded by the branch manager of a Government switching operator, who Applicant reports to. He finds her to be very trustworthy.

### **POLICIES**

The Adjudicative Guidelines of the Directive (Change 4) list "binding" policy considerations to be made by Judges in the decision making process covering DOHA cases. The term "binding," as interpreted by the DOHA Appeal Board,

requires the Judge to consider all of the "Conditions that could raise a security concern and may be disqualifying" (Disqualifying Conditions), if any, and all of the "Mitigating Conditions," if any, before deciding whether or not a security clearance should be granted, continued or denied. The Guidelines do not require the Judge to assess these factors exclusively in arriving at a decision. In addition to the relevant Adjudicative Guidelines, judges must take into account the pertinent considerations for assessing extenuation and mitigation set forth in E.2.2 of the Adjudicative Process of Enclosure 2 of the Directive, which are intended to assist the judges in reaching a fair and impartial common sense decision.

Viewing the issues raised and evidence as a whole, the following adjudication policy factors are pertinent herein:

### **Financial Considerations**

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

### **Disqualifying Conditions**

DC 1. A history of not meeting financial obligations.

DC 3. Inability or unwillingness to satisfy debts.

### **Mitigating Conditions**

MC 1: The behavior was not recent.

MC 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).

MC 6. The individual initiated a good-faith effort to repay overdue creditors or otherwise resolve debts.

### **Burden of Proof**

By reason of the precepts framed by the Directive, a decision to grant or continue an Applicant's request for security clearance may be made only upon a threshold finding that to do so is clearly consistent with the national interest. Because the Directive requires Administrative Judges to make a common sense appraisal of the evidence accumulated in the record, the ultimate determination of an applicant's eligibility for a security clearance depends, in large part, on the relevance and materiality of that evidence. As with all adversary proceedings, the Judge may draw only those inferences which have a reasonable and logical basis from the evidence of record. Conversely, the Judge cannot draw factual inferences that are grounded on speculation or conjecture.

The Government's initial burden is twofold: (1) It must prove any controverted fact[s] alleged in the Statement of Reasons and (2) it must demonstrate that the facts proven have a nexus to the applicant's eligibility to obtain or maintain a security clearance. The required showing of nexus, however, does not require the Government to affirmatively demonstrate that the applicant has actually mishandled or abused classified information before it can deny or revoke a security clearance. Rather, consideration must take account of accessible risks that an applicant may deliberately or inadvertently fail to safeguard classified information.

Once the Government meets its initial burden of proof of establishing admitted or controverted facts, the burden of proof shifts to the applicant for the purpose of establishing his or her security worthiness through evidence of refutation, extenuation or mitigation of the Government's case.

### **CONCLUSION**

Applicant accrued several debts during her marriage that became delinquent following her ex-husband's accident and ensuing work loss. Disabled as the result of a work-related accident in 1994, Applicant's husband could no longer work

and make the full payments on their boat purchase. With their available income they made interest only payments on the boat for a number of months but to no avail in satisfying the boat lender. Ultimately, the lender repossessed the boat and credited Applicant and her husband back with the surplus sale proceeds. For reasons unexplained, the repossession continued to show up on their credit report. The other two delinquent debts are relatively small in amounts delinquent (\$694.00 and \$351.00, respectively) and are the subject of either ongoing or intended Applicant repayment negotiations.

Because of her husband's medical problems associated with a work-related accident and ensuing disability status, Applicant and her husband were unable to take care of several of their debts during a period prior to their divorce in 1997. Two of the listed debts (though small) are still unresolved; their accumulation is security significant: enough to enable the Government to invoke two of the Disqualifying Conditions (DC) of the Adjudicative Guidelines for financial considerations: DC 1 (history of not meeting financial obligations) and DC 3 (inability or unwillingness to satisfy debts).

Of these three debts covered in the SOR, one (creditor 1.a) is credited to Applicant as fully discharged by repossession and resulting return of excess sale proceeds. Both of the remaining debts (creditors 1.b and 1.c) are being worked on by Applicant. On these facts, Applicant is able to demonstrate not only extenuating circumstances accompanying her covered debts, but earnest good faith attempts to pay off the remaining two debts (creditors 1.b and 1.c) with the monthly surplus she has available. Following the repossession, Applicant and her husband were able to reestablish their credit with another boat lender, with whom Applicant currently has eight accounts in good standing. Applicant has continued to exhibit responsible credit and money management since her divorce and is well regarded in her work as a reliable and trustworthy performer.

Based on her testimony and admitted documents, Applicant's covered debts are both extenuated and mitigated by circumstances and time and earnest repayment efforts. Applicant may take advantage of several mitigating conditions of the Adjudicative Guidelines to extenuate and mitigate her actions: MC 1 (behavior not recent), MC 3 (conditions largely beyond the person's control) and MC 6 (initiated good-faith effort to repay overdue creditors). Favorable conclusions warrant, accordingly, with respect to sub-paragraphs 1.a through 1.c of the Adjudicative Guidelines governing financial considerations.

In reaching my recommended decision, I have considered the evidence as a whole, including each of the E 2.2 factors enumerated in the Adjudicative Guidelines of the Directive.

### **FORMAL FINDINGS**

In reviewing the allegations of the SOR and ensuing conclusions reached in the context of the FINDINGS OF FACT, CONCLUSIONS, CONDITIONS, and the factors listed above, this Administrative Judge makes the following FORMAL FINDINGS:

**GUIDELINE F (FINANCIAL): FOR APPLICANT**

Sub-para. 1.a: FOR APPLICANT

Sub-para. 1.b: FOR APPLICANT

Sub-para. 1.c: FOR APPLICANT

### **DECISION**

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

Roger C. Wesley

Administrative Judge