

DATE: December 17, 2002

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In Re:

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SSN: -----

Applicant for Security Clearance

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ISCR Case No. 01-19757

**DECISION OF ADMINISTRATIVE JUDGE**

**JAMES A. YOUNG**

**APPEARANCES**

**FOR GOVERNMENT**

Erin C. Hogan, Department Counsel

**FOR APPLICANT**

*Pro Se*

**SYNOPSIS**

Applicant with over \$56,000.00 in outstanding debt to IRS for delinquencies during tax years 1990-94 and debt of over \$160.00 owed the county for taxes on her mobile home during tax years 1989 and 1990, failed to demonstrate it is clearly consistent with the national interest to grant or continue her security clearance. Clearance is denied.

**STATEMENT OF THE CASE**

On August 19, 2002, pursuant to Executive Order No. 10,865, *Safeguarding Classified Information Within Industry*, dated February 20, 1960, as amended and modified, and Department of Defense Directive 5220.6, *Defense Industrial Personnel Security Clearance Review Program* (Directive), dated January 2, 1992, as amended and modified, the Defense Office of Hearings and Appeals (DOHA) issued a Statement of Reasons (SOR) to Applicant that 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. DOHA recommended referral to an administrative judge to determine whether clearance should be granted, continued, denied, or revoked.

Applicant answered the SOR in writing on September 1, 2002 and elected to have her case decided on the written record in lieu of a hearing. Department Counsel submitted the Government's written case on October 9, 2002. A complete copy of the file of relevant material (FORM) was provided to Applicant, and she was afforded the opportunity to file objections and submit material to refute, extenuate, or mitigate the Government's case. On November 3, 2002, Applicant submitted materials for the administrative judge to consider. On November 24, 2002, Department Counsel reviewed those materials and did not object to their consideration. The case was assigned to me on November 26, 2002.

**FINDINGS OF FACT**

The SOR alleged that Applicant's financial condition (Guideline F) raises security concerns based on tax liens filed against her property for failing to pay taxes, filing for bankruptcy, and failure to satisfy a federal income tax delinquency. In her answer, Applicant admitted, with explanation, each of the allegations set forth in the SOR. These

admissions are incorporated herein as findings of fact. After reviewing and considering the Applicant's admissions, explanations, and the evidence of record, I make the following additional findings of fact:

Applicant is a 59-year-old native-born U.S. citizen employed as a janitor for a defense contractor. Her financial problems began in 1982 when her husband purchased an over-the-road tractor and became an independent owner/operator trucker. The business did not succeed. The couple fell behind in paying their taxes, and subsequently, other debts. They filed for Chapter 13 bankruptcy on July 20, 1991, which required monthly payments of \$1,059.00 per month for 60 months and then a balloon payment of the remainder of the debt. They paid the monthly installments from December 1991 to July 1996, but were unable to make the balloon payment. This forced them to convert the bankruptcy to Chapter 7. The couple was discharged from approximately \$10,400.00 of their debts on October 16, 1996.

Meanwhile, the county treasurer, filed liens against all of Applicant's property for failing to pay mobile home taxes-in 1986 for \$107.92 for tax year 1985; in 1990 for \$92.50 for tax year 1989; and in 1991 for \$77.09 for tax year 1990. Applicant asserts in her answer that she and her husband were renting the mobile home with an option to buy, the owner was supposed to pay the taxes, and they had no idea that lien was filed against their property. She states that she resolved the liens, but the evidence she provided is a release granted for the lien associated only with the 1985 delinquency of \$107.92.

In June 1993, the state Department of Revenue filed a lien against the couple's property for failing to pay state income taxes in the amount of \$1,228.57. In her answer, Applicant provided a copy of a certificate from the state Department of Revenue, dated July 30, 2001, releasing the tax lien because the outstanding balance had been paid in full.

Applicant and her husband have been unable to satisfy a federal income tax delinquency with the IRS for tax years 1990-94. By October 2000, this delinquency, including penalties and interest, had grown to \$56,898.01. In her response to the FORM, Applicant included a copy of an offer she made to the IRS to compromise the outstanding tax debt for \$1,500.00. The IRS had not replied to this offer at the time of Applicant's response to the FORM.

Applicant asserts that her financial situation was exacerbated when her husband became disabled in approximately January 2000. There is no other evidence of record as to the existence, extent, or cause of the disability.

In her response to the FORM, Applicant asserts that her employment record demonstrates that she is trustworthy and her financial obligations are presently being met. She attached a certificate of appreciation from a U.S. Army Support Center, which praises her dedication to duty as "an inspiration to all who know her."

## POLICIES

"[N]o one has a 'right' to a security clearance." *Department of the Navy v. Egan*, 484 U.S. 518, 528 (1988). As Commander in Chief, the President has "the authority to . . . control access to information bearing on national security and to determine whether an individual is sufficiently trustworthy to occupy a position . . . that will give that person access to such information." *Id.* at 527. The President has restricted eligibility for access to classified information to "United States citizens . . . whose personal and professional history affirmatively indicates loyalty to the United States, strength of character, trustworthiness, honesty, reliability, discretion, and sound judgment, as well as freedom from conflicting allegiances and potential for coercion, and willingness and ability to abide by regulations governing the use, handling, and protection of classified information." Exec. Order No. 12,968, *Access to Classified Information* § 3.1(b) (Aug. 4, 1995). Eligibility for a security clearance is predicated upon the applicant meeting the security guidelines contained in the Directive.

An evaluation of whether the applicant meets the security guidelines includes consideration of the following factors: (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; (8) the potential for pressure, coercion, exploitation, or duress; and (9) the likelihood of continuation or recurrence. Directive, ¶ E2.2.1. Security clearances are granted only when "it is clearly consistent with the national interest to do so." Exec. Order No. 10,865 § 2. *See* Exec. Order No. 12,968 § 3.1(b).

Initially, the Government must establish, by something less than a preponderance of the evidence, that conditions exist in the personal or professional history of the applicant which disqualify, or may disqualify, the applicant from being eligible for access to classified information. *See Egan*, 484 U.S. at 531. All that is required is proof of facts and circumstances that indicate an applicant is at risk for mishandling classified information, or that an applicant does not demonstrate the high degree of judgment, reliability, or trustworthiness required of persons handling classified information. ISCR Case No. 00-0277, 2001 DOHA LEXIS 335 at \*6-8 (App. Bd. May 9, 2001). The applicant then bears the burden of demonstrating that it is clearly consistent with the national interest to grant or continue the applicant's clearance. "Any doubt as to whether access to classified information is clearly consistent with national security will be resolved in favor of the national security." Directive, ¶ E2.2.2. "[S]ecurity clearance determinations should err, if they must, on the side of denials." *Egan*, 484 U.S. at 531. *See Exec. Order No. 12,968 § 3.1(b)*.

"An individual who is financially overextended is at risk of having to engage in illegal acts to generate funds." Directive, Guideline F, ¶ E2.A6.1.1. Applicable financial conditions that could raise a security concern and may be disqualifying include the following:

- (1) A history of not meeting financial obligations. Directive, ¶ E2.A6.1.2.1.
- (2) Inability or unwillingness to satisfy debts. Directive, ¶ E2.A6.1.2.3.

Applicable conditions that could mitigate such financial security concerns include the following:

- (1) The behavior was not recent. Directive, ¶ E2.A6.1.3.1.
- (2) 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). Directive, ¶ E2.A6.1.3.3.
- (3) The individual initiated a good-faith effort to repay overdue creditors or otherwise resolve debts. Directive, ¶ E2.A6.1.3.6.

### CONCLUSIONS

Based on the evidence of record, including Applicant's admissions, the Government has established reason to deny her a security clearance because of financial considerations (Guideline F). Applicant has a history, since 1985, of not meeting her financial obligations and has been unwilling or unable to satisfy some of her creditors. These financial considerations clearly fall within those conditions that may be disqualifying under the Directive. ¶¶ E2.A6.1.2.1, E2A6.1.2.3. By establishing these disqualifying conditions under Guideline F, the Government is entitled to a presumption that there is a rational connection between the proven conduct and Applicant's eligibility for a security clearance. *See ISCR Case No. 95-0611 at 2 (App. Bd. May 2, 1996)*.

Applicant admits that the county treasurer filed three liens against her property for failing to pay tax on her mobile home in tax years 1985, 1989, and 1990. But, she asserts she was not responsible for paying the taxes and she was not aware that liens had been levied against her property. It is difficult to believe the county would file a lien without first trying to collect the taxes. Furthermore, it appears that Applicant was not delinquent in her mobile home taxes from 1986-88. That certainly suggests she knew she was responsible for the mobile home tax and the county properly notified her of the tax.

Applicant has adequately demonstrated that she made good-faith efforts to repay the first county tax lien as well as the state tax lien. Although she apparently believes she also resolved the two other tax liens levied against her property by the county, the evidence of record does not support a finding that she did.

The bankruptcy allegation requires a more complex evaluation. The appropriateness of filing for bankruptcy or of having one's debts discharged in bankruptcy is not an issue. Bankruptcy is a legal and legitimate way for an applicant to handle financial problems. The issues are the security implications of Applicant's history of financial problems that led to the filing of bankruptcy and whether Applicant has changed her habits to avoid recurrence of the financial difficulties. *See DISCR Case No. 87-1800 at 3 n.2 (App. Bd. Feb. 14, 1989)*.

In this case, the evidence demonstrates Applicant made a good-faith effort to complete the payments required by her Chapter 13 debt consolidation plan, although she ultimately failed. She made payments each month for almost five years before she was forced to convert the bankruptcy to a Chapter 7 liquidation proceeding. She was released from all dischargeable debts in 1996, over six years ago, and there is no evidence Applicant has been unable to keep pace with her financial obligations, other than taxes.

Although Applicant has made some efforts to resolve some of the other debts, she still owes the IRS over \$56,000.00, and the county mobile home taxes for tax years 1989 and 1991 remain unresolved. She offered to settle her tax liability with the IRS for \$1,500.00, but there is no evidence the IRS has accepted this offer.

Applicant failed to adequately rebut, explain, or mitigate the doubts raised by the Government's case so as to clearly demonstrate that it is consistent with the national interest to grant the clearance.

### **FORMAL FINDINGS**

Formal Findings as required by the Executive Order No. 10,865 § 3, ¶ 7 (*See Directive, ¶ E3.1.25*), are as follows:

Paragraph 1. Guideline F: AGAINST APPLICANT

Subparagraph 1.a.: For Applicant

Subparagraph 1.b.: Against Applicant

Subparagraph 1.c.: Against Applicant

Subparagraph 1.d.: For Applicant

Subparagraph 1.e.: For Applicant

Subparagraph 1.f.: Against Applicant

### **DECISION**

In light of all of 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 Applicant.

**James A. Young**

**Administrative Judge**