

DATE: December 22, 2003

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In Re:

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SSN: -----

Applicant for Security Clearance

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ISCR Case No. 01-20407

**DECISION OF ADMINISTRATIVE JUDGE**

**ROGER E. WILLMETH**

**APPEARANCES**

**FOR GOVERNMENT**

Catherine Engstrom, Department Counsel

**FOR APPLICANT**

*Pro Se*

**SYNOPSIS**

Although Applicant has made some progress in paying off her delinquent indebtedness, she has not satisfied or made arrangements to resolve all of it. oreover, Applicant has acquired new credit card accounts but she has not demonstrated what she has done or is doing to ensure that her financial difficulties will not recur. Therefore, I find against Applicant. Clearance is denied.

**STATEMENT OF THE CASE**

On August 19, 2002, the Defense Office of Hearings and Appeals (DOHA), pursuant to the applicable Executive Order [\(1\)](#) and Department of Defense Directive, [\(2\)](#) issued a Statement Reasons (SOR) to Applicant. The SOR details security concerns under Guideline F (Financial Considerations). The SOR states that DOHA was unable to find that it is clearly consistent with the national interest to grant her access to classified information and recommends that his case be submitted to an Administrative Judge.

On January 17, 2003, DOHA received a second and more complete response from Applicant in which she requested a hearing. The case was assigned to me on arch 20, 2003. A notice of hearing was issued on April 29, 2003 and the hearing was held on May 16, 2003. During the hearing, eight Government exhibits (Govt Ex), eight Applicant exhibits (Ap Ex) and the testimony of two Applicant witnesses, including Applicant, were received. The transcript (Tr) was received on May 21, 2003.

**FINDINGS OF FACT**

Having thoroughly considered the evidence in the record, I make the following findings of fact:

Applicant is a 27-year-old general clerk employed by a defense contractor. She is seeking a security clearance.

In 1995, Applicant opened a credit card account with a clothing store in and obtained merchandise (SOR ¶ 1.a) . In

1998, the creditor cancelled her account for nonpayment and charged off the \$120.00 balance as a bad debt. Applicant has not paid the debt. [\(3\)](#)

In 1998, Applicant established an account with a club and incurred charges (SOR ¶ 1.b). Later that same year, the club charged off the \$63.00 balance as a bad debt. Applicant has not paid the debt. [\(4\)](#)

In 1999, Applicant incurred a \$78.00 debt to a radiologist in connection with an injury she sustained to her arm (SOR ¶ 1.c). In 2000, the radiologist assigned the debt to a collection agency. Applicant has not paid the debt. [\(5\)](#)

In 2000, applicant incurred a \$191.00 debt to a telephone company (SOR ¶ 1.d). In September of that year, the telephone company assigned the debt, with a balance of \$91.00, to a collection agency. Applicant has not paid the debt. [\(6\)](#)

On June 13, 2001, provided a sworn statement to a special agent for the Defense Security Service (DSS). In her statement, Applicant acknowledged the above debts and said that she would pay them when she obtained a part-time job. [\(7\)](#)

Applicant obtained a \$2,500.00 loan from a finance company in 1997 (SOR ¶ 1.e). She defaulted on the loan in 1999. [\(8\)](#) The creditor obtained a judgment against Applicant, which she satisfied on or about October 3, 2002. [\(9\)](#)

In September 2001, Applicant had a \$159.70 balance on a delinquent account with a department store that was charged off as a bad debt and assigned to a debt collector (SOR ¶ 1.f). On April 22, 2003, she paid the debt collector \$53.24 and agreed to pay the balance within two months. Under the agreement, upon payment of the balance owed, Applicant will receive a new account with the department store with a credit limit of \$159.70. [\(10\)](#)

In May 2002, a bank charged off Applicant's \$715.00 balance on her delinquent credit card account as a bad debt (SOR ¶ 1.g). Applicant made three payments of \$119.21 each to a corporate name, other than the name of the bank, on November 8, 2002, December 11, 2002, and January 8, 2003. [\(11\)](#) Applicant testified these were payments to the bank. She further testified the bank agreed to accept those payments in full satisfaction, dropping its late fees and finance charges. [\(12\)](#)

In February 1998, Applicant entered into an agreement with a consumer credit counseling service to payoff \$7,548.97 in delinquent debts to eight creditors, including the finance company referred to in SOR ¶ 1.e, the department store addressed by SOR ¶ 1.f, another finance company, a women's clothing store, a hospital, a law firm, and two additional creditors. Pursuant to the agreement, Applicant made monthly payments of \$243.00 until 2001. She was dropped from the program on March 31, 2001 for failure to make payments. By that point, Applicant had made payments totaling \$7,350.00 and only owed \$370.55 to the finance company referred to in SOR ¶ 1.e and \$75.47 to the department store addressed by SOR ¶ 1.f. [\(13\)](#) At this time, her mother stopped paying her share of the payments for the indebtedness, approximately \$145.00 - \$155.00 a month. Applicant's mother incurred part of the indebtedness through her use of Applicant's name and social security number. At this time, Applicant's income was also reduced, having gone from a full-time job to a part-time job. [\(14\)](#)

Applicant provided a personal financial statement on June 7, 2002. She claimed a monthly net remainder of \$59.00, but made no allowance for paying the outstanding delinquent debts addressed by SOR. [\(15\)](#)

## **POLICIES**

Department Counsel is responsible for presenting witnesses and other evidence to establish facts alleged in the SOR that have been controverted. Directive E3.1.14. The applicant is responsible for presenting witnesses and other evidence to rebut, explain, extenuate, or mitigate facts admitted by the applicant or proven by Department Counsel, and has the ultimate burden of persuasion as to obtaining a favorable clearance decision. Directive E3.1.15.

Eligibility for access to classified information is predicated upon an individual meeting adjudicative guidelines discussed in Enclosure 2 of the Directive. An evaluation of whether an applicant meets these guidelines includes the consideration of a number of variables known as the "whole person concept." Available, reliable information about the person, past and present, favorable and unfavorable, should be considered in reaching a decision. This assessment should include the following factors: (1) the nature, extent, and seriousness of the conduct; (2) the circumstances surrounding the conduct, to include knowledgeable participation; (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 pertinent 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. Any doubt as to whether access to classified information is clearly consistent with national security will be resolved in favor of national security. Directive E2.2.2.

Enclosure 2 provides conditions for each guideline that could raise a concern and may be disqualifying, as well as further conditions that could mitigate a concern and support granting a clearance. The following guidelines are applicable to this case.

#### Guideline F: Financial Considerations

The concern is that an individual who is financially overextended is at risk of having to engage in illegal acts to generate funds. Conditions that could raise a security concern and may be disqualifying include E2.A6.1.2.1, a history of not meeting financial obligations (Disqualifying Condition 1). They also include E2.A6.1.2.3, inability or unwillingness to satisfy debts (Disqualifying Condition 3).

Conditions that could mitigate security concerns include E2.A6.1.3.6, the individual initiated a good-faith effort to repay overdue creditors or otherwise resolve debts (Mitigating Condition 6).

### CONCLUSIONS

#### Guideline F

Applicant's delinquent indebtedness listed in SOR ¶ 1.a through SOR ¶ 1.g demonstrate a history of not meeting financial obligations on the part of Applicant, as well as inability or unwillingness to satisfy debts on her part. This establishes both Disqualifying Condition 1 and Disqualifying Condition 3.

Based on the copy of the satisfaction of judgment provided by Applicant, she has resolved her obligation to a finance company in accordance with Mitigating Condition 6 (SOR ¶ 1.e). Therefore, I find in favor of Applicant with regard to SOR ¶ 1.e.

Applicant also provided a copy of the offer from a department store to pay off her delinquent account in three consecutive monthly payments and a copy of her check for first payment. This is sufficient to establish Mitigating Condition 6 with respect to this obligation as well. Therefore, I find in favor of Applicant as to SOR ¶ 1.f.

With regard to a \$715.00 balance on her delinquent credit card account with a bank (SOR ¶ 1.g), Applicant testified she received a letter from the creditor, agreeing to accept three payments of \$119.21 in full satisfaction, thereby dropping late fees and other charges.<sup>(16)</sup> Although she did not provide the letter, I find Applicant to be a credible witness and she did provide copies of three checks she wrote in that amount payable to a debt collector. Therefore, Applicant has resolved this debt in accordance with Mitigating condition 6. I find in her favor with regard to SOR ¶ 1.g.

Although the consumer credit counseling service dropped Applicant from the program in March 2001 for failing to continue payments, by that point, Applicant had paid \$7,350.00 and only owed a balance of \$446.02 to two creditors. Applicant could no longer make the payments was because her mother stopped paying her share of the indebtedness, approximately \$145.00 - \$155.00 a month. Applicant's mother incurred part of the indebtedness through her use of Applicant's name and social security number. Applicant's ability to make payments at that point was also adversely affected by her reduction in income, having gone from a full-time job to a part-time job.

Despite being dropped from the program by the consumer credit counseling service, Applicant has since satisfied one of the two remaining creditors under that payment program (SOR ¶ 1.e) and has made arrangements to pay off the other creditor with two additional payments of \$53.24 (SOR ¶ 1.f). Under these circumstances, Applicant has mitigated this security concern. Therefore, I find in favor of Applicant with regard to SOR ¶ 1.h.

In June 2001, when the DSS special agent confronted Applicant with her delinquent debts listed in SOR ¶ 1.a through SOR ¶ 1.d, Applicant was put on notice that her delinquent debts were a security concern to the government. At that time, she said she would pay the debts, including the debt to the club if it were determined that she owed the money. When Applicant executed a response to the SOR in September 2002, she said that she was making arrangements to pay the clothing store listed in SOR ¶ 1.a and was disputing the other three debts. At the hearing, Applicant testified that she had been unable to reach the clothing store or the radiologist (SOR ¶ 1.c) through phone numbers she obtained for them. She acknowledged that she made no effort to resolve the debt to the telephone company (SOR ¶ 1.d). Applicant appeared to perceive no problem with respect to that debt, since she has two current accounts with the same telephone company. She acknowledged that she made no effort to contact the club that has a claim against her, since she does not know what it is for (SOR ¶ 1.b).

In nearly two years after notification they are security concerns of the Government, Applicant has not resolved the delinquent debts listed in SOR ¶ 1.a through SOR ¶ 1.d. Although she has paid off other debts, Applicant has not even offered a plan for resolving these debts. Applicant may question the validity of some of these debts, but she has failed to provide evidence to support such a conclusion. Her inability to reach a creditor through a phone number listed in a credit report does not excuse her failure to pay a debt she acknowledges to be valid. Under these circumstances, Applicant has not mitigated the Government's security concerns. Therefore, I find against her with regard to SOR ¶ 1.a, SOR ¶ 1.b, SOR ¶ 1.c, and SOR ¶ 1.d.

Based on more current evidence of record, the Government's security concern under SOR ¶ 1.i is even more persuasive. Applicant's monthly net salary has increased by \$400.00 since she provided a personal financial statement in June 2002. Although her monthly rent has increased by \$316.00, her monthly utility cost for electricity has increased by \$30.00, and she pays \$20.00 per month for a cell phone, Applicant no longer provides \$20.00 a month to support her nephew and she paid off a creditor listed on the personal financial statement, which previously required a monthly payment of \$100.00. Although she has incurred balances in excess of \$200.00 each on two credit cards, her monthly payment for each is only \$10.00 to \$20.00 a month. Therefore, Applicant is not making allowance for paying the delinquent accounts referenced above, even though she has approximately \$100.00 more than the \$59.00 referenced in SOR ¶ 1.i in monthly net remaining income. Moreover, she is continuing to incur new credit card balances without having satisfied all of her delinquent accounts. Consequently, I find against Applicant with regard to SOR ¶ 1.i.

Although Applicant has made some progress in paying off her delinquent indebtedness, she has not satisfied or made arrangements to resolve all of it. Moreover, Applicant has acquired new credit card accounts but she has not demonstrated what she has done or is doing to ensure that her financial difficulties will not recur. Therefore, I find against Applicant.

### **FORMAL FINDINGS**

Formal findings, as required by section E3.1.25 of Enclosure 3 of the Directive, are as follows:

Paragraph 1. Guideline F: AGAINST APPLICANT

Subparagraph 1.a: Against Applicant

Subparagraph 1.b: Against Applicant

Subparagraph 1.c: Against Applicant

Subparagraph 1.d: Against Applicant

Subparagraph 1.e: For Applicant

Subparagraph 1.f: For Applicant

Subparagraph 1.g: For Applicant

Subparagraph 1.h: For Applicant

Subparagraph 1.i: Against Applicant

**DECISION**

In light of the evidence of record in this case, it is not clearly consistent with the national interest to grant or continue a security clearance for Applicant.

*Signed*

**Roger E. Willmeth**

**Administrative Judge**

1. Executive Order 10865, *Safeguarding Classified Information Within Industry*, dated February 20, 1960, as amended.
2. Department of Defense Directive 5220.6, *Defense Industrial Personnel Security Clearance Review Program* (Directive), dated January 2, 1992, as amended and modified.
3. Govt Ex 5 at 4; Tr 33-34.
4. Govt Ex 3 at 5; Tr 34-35.
5. Govt Ex 3 at 5; Govt Ex 6 at 1; Tr 35-36.
6. Govt Ex 5 at 6; Govt Ex 6 at 1; Tr 36.
7. Govt Ex 3.
8. Tr 37-38.
9. Ap Ex D.
10. Govt Ex 6 at 1; Ap Ex E; Ap Ex F; Tr 38-39.
11. Govt Ex 6 at 5
12. Tr 39-40.
13. Govt Ex 7.
14. Tr 41-44.
15. Govt Ex 4 at 3.
16. Tr 39-40.