

DATE: December 31, 2002

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In Re:

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SSN: -----

Applicant for Security Clearance

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ISCR Case No. 01-20295

## **DECISION OF ADMINISTRATIVE JUDGE**

**KATHRYN MOEN BRAEMAN**

### **APPEARANCES**

#### **FOR GOVERNMENT**

Kathryn D. MacKinnon, Esquire, Department Counsel

#### **FOR APPLICANT**

*Pro Se*

### **SYNOPSIS**

Applicant's personal conduct and finances continue to raise security concerns over her misuse of a credit card that belonged to an elderly client on which she charged over \$5,000 in 1998. Aggravating this personal misconduct was her forging a letter of reference for herself from her supervisor for which she was criminally charged and convicted of a misdemeanor. While Applicant has mitigated security concerns over this misdemeanor criminal conduct, she still has not made full restitution and did not begin to make monthly payments to redress this debt until 2000. While she resolved an outstanding debt to one creditor, she has not demonstrated a plan to resolve all her debts nor has she sought counseling to demonstrate that she is gaining control of her finances overall. Despite her remorse, security concerns remain. Clearance is denied.

### **STATEMENT OF THE CASE**

The Defense Office of Hearings and Appeals (DOHA) issued a Statement of Reasons (SOR) to Applicant on July 30, 2002. The SOR detailed reasons why the Government could not make the preliminary positive finding that it is clearly consistent with the national interest to grant or continue a security clearance for Applicant.<sup>(1)</sup> The SOR alleges specific concerns over criminal conduct (Guideline J) in paragraph 1; over personal conduct (Guideline E) in paragraph 2; and over financial issues (Guideline F) in paragraph 3. Applicant responded to these SOR allegations in an Answer notarized on August 16, 2002, and requested a hearing.

The case was assigned to Department Counsel on September 25, 2002. After she stated it was ready to proceed, on October 3, 2002, the case was assigned to another administrative judge. On October 4, 2002, the matter was re-assigned to me. Subsequently, a mutually convenient date for hearing was agreed to and a Notice of Hearing issued on October 7, 2002, set the matter for October 22, 2002. At the hearing the Government introduced 8 exhibits which were admitted into evidence. (Exhibits 1-8) Applicant testified and offered two exhibits (Exhibits A through B) which were admitted into evidence. The Government's request that Applicant be given additional time to submit other information was granted; she had seven additional days until October 29, 2002. The Government was granted two additional days until

October 31, 2002, to review her submission. (TR 48-49, 51-52, 73) The transcript (TR) was received on October 30, 2002.

Applicant submitted additional records on October 29, 2002 (Exhibits C & D) and requested an additional extension of 14 days to November 12, 2002; as the Government did not object, I granted the extension. On November 13, 2002, she submitted more information by e-mail (Exhibit E). On November 18, 2002, the Government indicated no objection to these documents; and Exhibits C, D and E were admitted into evidence. On November 25, 2002, Applicant made an additional e-mail submission (Exhibit F). On November 27, 2002, the Government indicated no objection to the record being re-opened to receive the information and made no objection to the information, but requested it be confirmed by a faxed copy and that the record then be closed. On November 27, 2002, Applicant faxed the confirmation. (Exhibit G) Subsequently, the Government on December 4, 2002, indicated no objection; and Exhibits F and G were admitted and the record closed.

### **FINDINGS OF FACT**

After a complete and thorough review of the evidence in the record, and upon due consideration of that evidence, I make the following Findings of Fact:

Applicant, a 30-year-old employee, works for a defense contractor (Employer #1); from December 1998 to March 1999 she was assigned there by a temporary agency and became a permanent employee in March 1999. In July 1999 she completed a Security Clearance Application (Standard Form 86) and requested a security clearance. She also has worked for Employer #2 as a certified home health aide on the weekends from December 1998 to January 2000. Previously she worked for Employer #3 from July 1997 to October 1998. (Answer; Exhibits 1, 2, 3)

Applicant is single and the mother of children born in September 1989 and January 1992. She receives no child support. (Exhibit 1; TR 21)

### **Criminal Conduct, Personal Conduct, and Financial Considerations**

When Applicant worked for Employer #3 in 1998, she admitted to a private investigator that she fraudulently used a credit card of Creditor #4 that belonged to one of the clients and was to be used only to purchase items for that elderly client. Between July and August 1998 she used the card to purchase items for this client; and she also used the credit card to purchase \$50 worth of groceries for herself. Subsequently, she paid the client for the groceries she had purchased. Then her supervisor, Ms. V, cut her hours from 90 to 60 hours every two weeks; and she had unexpected car repairs. In August 1998 Applicant fraudulently used the card to purchase school clothes and necessities for her children in the amount of \$200-300 on several occasions. She also purchased clothes for herself, a VCR and a stereo. The amount totaled over \$5,000 over two months. Applicant stated her intent was to repay the client when she had another job. When her sister and boyfriend questioned her about the purchases, she stopped using the card in mid-September 1998 when the client moved out of the area. In October 1998 after getting the credit card bill with unusually high amounts, the client's son contacted the Employer #3 supervisor. The supervisor hired a private investigator to interview everyone who had access to the card. In late October 1998 Applicant was interviewed about the charges and admitted to making these charges; and she then left the office and employment of Employer #3. She states she went to the police department voluntarily and also admitted to a police officer that she made the fraudulent charges. She states that the police officer advised her that she did not have to list this incident on her employment documents as she was never charged or convicted of any offense. Applicant admits she was wrong to misuse the credit card. She offered to make restitution for the charges. Creditor #4 held her liable for all of the charges made on the charge card which totaled over \$8,000. (Answer; Exhibits 2, 6, 7; TR 20-21, 26-27; 38-45, 47-48)

While Creditor #4 stated Applicant was arrested in 1998 for theft and usage of the credit card, the local police report in their files shows that the case was closed with no prosecution of Applicant. In December 1999 a balance of over \$8,000 remained, but no restitution had been made. (Exhibits 6, 7) In 2000 Applicant began making monthly payments of \$114. (Discussed below.) (TR 48)

After leaving her job with Employer #3, Applicant had difficulty getting another job as she could not use Ms. V as a reference. To help her get employment, she wrote her own reference letter which listed her job duties with Employer #3;

and she forged Ms. V's signature. She obtained their letterhead from papers that she had at home during her employment there. In November 1998 she gave this letter to a doctor who called Ms. V in reference to the letter. He sent Ms. V the letter, and Ms. V pressed charges against the Applicant, who had listed her pager number on the forged reference letter. Applicant went to the police station and was charged with forgery; however in December 1998 the municipal court charged her with a lesser offense, disorderly person misconduct to which she pled guilty in January 1999. She paid a \$200 fine plus court costs and fees of \$80 in April 1999. She listed this disorderly person misdemeanor charge in her SF 86 in response to Question 26 asking about her police record. She did not list the arrest for forgery as she thought she only needed to list the final conviction. Applicant claimed to have had no malicious intent by actions as she was seeking a job to support her children. Further, she voluntarily discussed her entire background with the Defense Security Service agent when she was interviewed. (Answer; Exhibits 1, 2, 4, 5; TR 26-38, 46-47)

Applicant also disclosed some financial difficulties in the SF 86. In December 1999 she provided a financial statement to the Defense Security Service (DSS) which showed monthly net income of approximately \$2,900, monthly expenses of approximately \$1,500 and debt payments of approximately \$500 (including a monthly car payment of \$357 on a \$18,500 auto debt). She has paid off debts to several other creditors which she has been paying off one by one. (Exhibit A; TR 21-23, 49-51)

She now works at Company #1 as a full-time employee and also has a part-time job on Saturday and Sunday with another company. (TR 52-54) She no longer works as a home health aid. (TR 54) She sought financial counseling once, but could not afford the charges for the debt counseling service. (TR 54-55) She submitted a list of her income and monthly expenses. In October 2002 her monthly net income was approximately \$2,700; she is enrolled in school and has tuition payments as well as her regular monthly payments. She is enrolled in a program called "clear credit" to monitor her credit and pays \$40 monthly for their service. (Exhibit C)

The SOR alleged four debts:

- Applicant has a debt of \$425 to Creditor #1 (SOR 3.a.), which was charged off as a bad debt in June 2002. Applicant reached a settlement with them and agreed to pay them \$106 in November and again in December 2002 to settle this debt. (Answer; Exhibit 8; Exhibits F, G)
- Applicant has a debt of \$1,304 to Creditor #2 (SOR 3.b.), which was delinquent and submitted for collection in June 2002. Applicant admits she is delinquent as she has been paying off other accounts. (Answer; Exhibit 8)
- Applicant has a debt of \$610 to Creditor #3 (SOR 3.c.), which was charged off as a bad debt in June 2002. Applicant admits she is delinquent as she has been paying off other accounts. (Answer; Exhibit 8)
- Applicant has a debt of over \$8,000 to Creditor #4 (SOR 3.d). By December 1999 she had not made any payment arrangements. Applicant owed this amount from the 1998 fraudulent use of the client's credit card. She contacted them in January 2000 and has made payments of \$114 monthly for the past two years. In October 2002 Applicant had a current balance of \$5,400 with Creditor #4. (Answer; Exhibits 2, 6, 7, 8; TR 21, 47-48; Exhibits C, E)

Applicant is enrolled in a college program and has received grades of A and B+ for her Summer 2002 courses. (TR 56-57; Exhibit D)

Applicant has not been involved in any subsequent criminal conduct since the incidents in 1998. She has a support network and now would turn to them for help. She states she would never repeat her past questionable conduct. (TR 56-57)

### **Reference**

Applicant's supervisor stated that she has worked for Company #1 since March 1999 and has been "an outstanding employee, performing her duties diligently and in a professional fashion that meets or exceeds her job requirements." She is viewed as a "valued employee."

### **POLICIES**

Enclosure 2 of the Directive sets forth adjudicative guidelines to consider in evaluating an individual's security eligibility. They are divided into conditions that could raise a security concern and may be disqualifying and

conditions that could mitigate security concerns in deciding whether to grant or continue an individual's access to classified information. But the mere presence or absence of any given adjudication policy condition is not decisive. Based on a consideration of the evidence as a whole in evaluating this case, I weighed relevant Adjudication Guidelines as set forth below :

### **Guideline J - Criminal Conduct**

**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 admissions of criminal conduct, regardless of whether the person was formally charged;
- b. A single serious crime or multiple lesser offenses.

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

- a. The criminal behavior was not recent;
- f. There is clear evidence of successful rehabilitation.

### **Criterion E: Personal Conduct**

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

- (1) reliable, unfavorable information provided by associates, employers, coworkers, neighbors, and other acquaintances;
- (5) a pattern of dishonesty or rule violations

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

None

### **Guideline F - Financial Considerations**

**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;
3. Inability or unwillingness to satisfy debts;

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

1. The behavior was not recent;
6. The individual initiated a good-faith effort to repay overdue creditors or otherwise resolve debts.

The responsibility for producing evidence initially falls on the Government to demonstrate that it is not clearly consistent with the national interest to grant or continue Applicant's access to classified information. Then the Applicant presents evidence to refute, explain, extenuate, or mitigate in order to overcome the doubts raised by the Government, and to demonstrate persuasively that it is clearly consistent with the national interest to grant or

continue the clearance. Under the provisions of Executive Order 10865, as amended, and the Directive, a decision to grant or continue an applicant's security clearance may be made only after an affirmative finding that to do so is clearly consistent with the national interest. In reaching the fair and impartial overall common sense determination, the Administrative Judge may draw only those inferences and conclusions that have a reasonable and logical basis in the evidence of record.

## CONCLUSIONS

### **Criminal Conduct**

Applicant's 1998 conduct where she forged a letter of reference led to a criminal charge and a misdemeanor conviction that raises security concerns. Applicant claimed to have had no malicious intent by actions as she was seeking a job to support her children. Despite the seriousness of this criminal conduct, she has mitigated<sup>(2)</sup> those concerns because of the passage of time and by her subsequent good conduct which demonstrates clear evidence of successful rehabilitation. This qualitative change for the better is established by the positive character reference of excellent performance on the job and by her sincere remorse and resolve never to repeat this criminal conduct.

Applicant's supervisor stated that she was worked for Company #1 since March 1999 and has been "an outstanding employee, performing her duties diligently and in a professional fashion that meets or exceeds her job requirements." She is viewed as a "valued employee." Thus, after considering the Appendix I Adjudicative Process factors and the Adjudicative Guidelines, I rule for Applicant on subparagraph 1.a. under SOR Paragraph 1.

### **Personal Conduct**

In August 1998 Applicant used a client's credit card fraudulently to purchase not only school clothes and necessities for her children but also clothes for herself, a VCR, and a stereo. The amount totaled over \$5,000 over two months. While she claimed her intent was to repay the client when she had another job, she did not do so. In October 1998 the client's son contacted her supervisor after getting the credit card bill with high amounts. The supervisor hired a private investigator to interview everyone who had access to the card. In late October 1998 Applicant was interviewed about the charges and admitted misusing the client's credit card with which she had been entrusted.

Aggravating this personal misconduct was her subsequent decision to forge a letter of reference for herself from this supervisor. She was criminally charged with forgery and convicted of a misdemeanor. This personal conduct is of concern as such conduct could indicate that the person may not properly safeguard classified information as she has put her own interest ahead of a duty to be trustworthy. Conditions pertinent to this case that could raise a security concern and may be disqualifying include: (1) reliable, unfavorable information provided by associates, employers, coworkers, neighbors, and other acquaintances and (5), a pattern of dishonesty or rule violations.

Applicant showed questionable judgment in her dealings with her client and with Employer #3 as alleged in subparagraphs 2.a. and 2.b. I conclude these incidents with Employer #3 showed poor judgment as Applicant abused her position of trust with her client and with her employer. While Applicant states in justification that her supervisor, Ms. V, had cut her hours from 90 to 60 hours every two weeks and that she had unexpected car repairs, these financial pressures are not a basis to mitigate her personal misconduct. Her credit card charges included not just items to benefit her children, but also electronics and other items to benefit herself. These acts are so serious that they cannot be excused by Applicant's subsequent statements of remorse. While she stated in 1998 she would make restitution, she did not begin to do so until 2000 and still has a substantial debt of over \$5,000 to Creditor #4. This pattern of rules violations show her propensity to put her personal interest above her fiduciary interest to her client and her employer. Security clearance decisions are predictive judgments about an applicant's security eligibility in light of the applicant's past conduct and present circumstances. *Department of Navy v. Egan*, 484 U.S. 518, 528-29 (1988).

While I have balanced her misconduct in 1998 with her remorse and her current excellent job performance,

nevertheless I conclude this pattern of dishonesty remains of sufficient gravity to endure as a security concern. Consequently, after considering the Appendix I Adjudicative Process factors and the Adjudicative Guidelines, I rule against Applicant on subparagraph 2.a. and 2.b. under Paragraph 2.

### **Financial Considerations**

Applicant has (1) a history of financial problems which led to questionable personal and criminal misconduct (discussed above) and she has continued to show (3) an inability or unwillingness to satisfy debts. She provided no evidence of her efforts to resolving the debts to Creditors #2 and #3. (SOR 3.b and 3.c.) Security concerns persist over her failure to pay her debts.

While Applicant has a stable job where she is highly regarded, she has a mistaken belief that her limited income prevents her from having a budget. She provided updated information on her income and expenses which is fragmentary; thus it is not clear whether or not she is now able to live within her income. Neither has she demonstrated that she sought financial counseling for help with her financial issues. While Applicant has demonstrated she is now financially more responsible, her financial situation is still questionable; she is unable to meet mitigating condition 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.

On the other hand, Applicant has made some progress on some of her debts. Applicant demonstrated she met some of the mitigating conditions (MC <sup>(3)</sup>). By finally resolving the matter with Creditor #1, she was able to demonstrate she meets the "good faith" standard in repaying that overdue creditor. However, she provided no evidence on the status of Creditors #2 and #3. Further, while as a single mother she faced economic pressures, they are not sufficient to meet mitigating condition 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). Security concerns remain over the way the 1998 financial pressures led to her personal misconduct, discussed above. Also, while she promised in 1998 to make restitution to Creditor #4, she did not develop a payment plan with Creditor #4 until 2000 and still owes over \$5,000. Thus, after considering the Appendix I Adjudicative Process factors and the Adjudicative Guidelines, I rule for Applicant on subparagraph 3.a.. as I conclude that she has mitigated that concern, but against her under subparagraphs SOR 3.b., 3. c., and 3.d. under SOR Paragraph 3.

### **FORMAL FINDINGS**

After reviewing the allegations of the SOR in the context of the Adjudicative Guidelines in Enclosure 2 and the factors set forth under the Adjudicative Process section, I make the following formal findings:

Paragraph 1. Guideline J: FOR APPLICANT

Subparagraph 1.a.: For Applicant

Paragraph 2. Guideline E AGAINST APPLICANT

Subparagraph 2.a.: Against Applicant

Subparagraph 2.b.: Against Applicant

Paragraph 3. Guideline F AGAINST APPLICANT

Subparagraph 3.a.: For Applicant

Subparagraph 3.b.: Against Applicant

Subparagraph 3.c.: Against Applicant

Subparagraph 3.d.: Against 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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Kathryn Moen Braeman

Administrative Judge

1. This procedure is required by Executive Order 10865, as amended, and Department of Defense Directive 5220.6, dated January 2, 1992 (Directive), as amended by Change 4, April 20, 1999.

2. **Conditions that could mitigate security concerns include:** a. The criminal behavior was not recent;

f. There is clear evidence of successful rehabilitation.

3. **Conditions that could mitigate security concerns include:** 1. The behavior was not recent; 2. It was an isolated incident; 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); 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; 5. The affluence resulted from a legal source; and 6. The individual initiated a good-faith effort to repay overdue creditors or otherwise resolve debts.