

DATE: May 21, 2003

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In Re:

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SSN: -----

Applicant for Security Clearance

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ISCR Case No. 01-20985

## **DECISION OF ADMINISTRATIVE JUDGE**

**ROBERT ROBINSON GALES**

### **APPEARANCES**

#### **FOR GOVERNMENT**

Robert J. Tuider, Esquire, Department Counsel

#### **FOR APPLICANT**

*Pro Se*

### **SYNOPSIS**

Forty-six-year-old Applicant with a lengthy history of ignoring her financial obligations, made no effort whatsoever since 1987 to address those obligations, even after the security clearance review process commenced. She continuously furnished DSS differing stories regarding the specifics of the outstanding financial obligations, provided constantly changing misinformation pertaining to her intentions relative thereto, and falsely denied on her SF 86 any repossessions or delinquent debts, raising grave questions and doubts as to her security eligibility and suitability. Clearance is denied.

### **STATEMENT OF THE CASE**

On September 6, 2002, the Defense Office of Hearings and Appeals (DOHA), pursuant to Executive Order 10865, *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, 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 a clearance should be granted, continued, denied, or revoked.

In a sworn written statement, dated November 22, 2002, but notarized November 23, 2002, Applicant responded to the allegations set forth in the SOR, and requested a hearing. The case was initially assigned to Administrative Judge Darlene Lokey Anderson on January 13, 2003, but due to caseload considerations, was reassigned, first to Administrative Judge Joseph Testan on January 16, 2003, and then to this Administrative Judge on March 11, 2003, both due to caseload considerations. A notice of hearing was issued on March 14, 2003, and the hearing was held before me on March 25, 2003. During the course of the hearing, 11 government exhibits, and two Applicant exhibits, and the testimony of one Applicant witness (the Applicant), were received. The transcript (Tr.) was received on April 4, 2003.

### **FINDINGS OF FACT**

Applicant has admitted most of the factual allegations pertaining to financial matters under Guideline F (subparagraphs 1.a. through 1.c., and 1.f.). Those admissions are incorporated herein as findings of fact. She denied the allegations in subparagraphs 1.d. and 1.e., and failed to indicate her position regarding subparagraph 1.g. She also denied the factual allegations pertaining to personal conduct under Guideline E (subparagraphs 2.a. and 2.b.).

After a complete and thorough review of the evidence in the record, and upon due consideration of same, I make the following additional findings of fact:

Applicant is a 46-year-old employee of a defense contractor seeking to obtain a security clearance.

Applicant has seemingly been financially overextended since about 1987 when her then-husband lost his job after being injured in an accident.<sup>(1)</sup> With the exception of some periods of occasional employment, he was generally unemployed for the next two years.<sup>(2)</sup> Applicant attributed his inability to return to full-time employment to a bad job market in the location in which they resided and "a run of bad luck."<sup>(3)</sup> The resulting financial situation was that they were unable to meet all of their financial obligations with only her income. Applicant attempted to work things out by juggling the bills and attempting to make reduced payment arrangements with creditors, but nothing worked and they got progressively behind. In early 1989, their residence was foreclosed upon because Applicant was behind in her payments and could not obtain relief.<sup>(4)</sup> They moved into temporary quarters, including shelter offered by her brother as well as weekly apartment rentals, and eventually they both obtained positions with companies out-of-state, and in January 1990, they relocated.

In July 1990, Applicant was interviewed by a Special Agent with the Defense Security Service (DSS), then known as the Defense Investigative Service, and 10 different overdue accounts were discussed. One of those accounts is of current security significance as it is referenced in subparagraph 1.d. of the SOR. At that time, Applicant stated she did not intend to pay any of the listed accounts, including the one of current security significance, but, instead, planned to file a Chapter 7 bankruptcy in six months to get the accounts discharged.<sup>(5)</sup> Applicant contended she was financially stable at that point, in 1990, and could meet all current living expenses, but was unable to pay off delinquent debts.<sup>(6)</sup>

When she was again interviewed by a DSS Special Agent in December 1990, Applicant altered her position pertaining to her bankruptcy intentions. "I have no plans to file for bankruptcy."<sup>(7)</sup> She also stated she did intend to satisfy her debts but did not know when she would be able to do so, and denied she had any delinquent accounts other than the ones previously discussed, including that debt referenced in subparagraph 1.d. of the SOR.<sup>(8)</sup> In April 1991, she again declared an intention to satisfy all of her debts, but had no idea when she would be able to do so.<sup>(9)</sup>

In October 1999, Applicant completed a Security Clearance Application (SF 86),<sup>(10)</sup> and in response to three different finance-related inquiries, responded "no." Those inquiries were: Number 35 ("*In the last 7 years, have you had any property repossessed for any reason?*");<sup>(11)</sup> Number 38 ("*In the last 7 years, have you been over 180 days delinquent on any debt(s)?*");<sup>(12)</sup> and Number 39 ("*Are you currently over 90 days delinquent on any debt(s)?*").<sup>(13)</sup> She certified her responses were true, complete, and accurate. They were obviously false.

In October 2000, Applicant addressed her delinquent accounts during an interview with DSS, and this time she discussed, for the very first time, additional accounts, including those referred to in the SOR.<sup>(14)</sup> She reiterated her July 1990 position by stating she was considering filing for bankruptcy "within the next couple of weeks."<sup>(15)</sup> Although she believed herself to have more control over her finances, and had looked into consumer debt counseling, she felt a prolonged payment schedule ranging up to 10 years was not a "viable option" for her.<sup>(16)</sup> Once again, Applicant attributed her financial difficulties to when her ex-husband became unemployed and their eventual divorce.<sup>(17)</sup>

Nine months later, in July 2001, Applicant again revisited her financial problems during still another interview with DSS,<sup>(18)</sup> and once again she repeated her position *vis-a-vis* satisfying her debts or filing for bankruptcy. While acknowledging it was "not feasible to attempt to pay back [her] bad debts,"<sup>(19)</sup> she still did not have sufficient money

for attorney fees to file bankruptcy, but indicated an intent to do so as soon as she received her \$500.00 check from "President Bush." (20)

In November 2002, Applicant's position changed: "I have no intention of paying off the items listed [in the SOR]." (21) She continued by stating her "current and future financial responsibilities are more important than attempting to satisfy very old creditors who are neither a threat nor a priority to [Applicant]." (22)

Applicant reversed her position once again during the hearing conducted in March 2003. She contended her attorney had, over the years, advised her that if no creditor was bothering her she should simply wait them out. (23) Furthermore, since so many years had passed without having had to file for bankruptcy, she believed she was no longer legally responsible for some of her debts as the statute of limitations, thought to be five or six years, had passed and she could get those obligations removed from her credit history. (24)

As of the closing of the record, Applicant has the following outstanding financial obligations, further identified in their respective subparagraphs in the SOR:

(1.a.) She is indebted to a nationwide communications company, in the approximate amount of \$52.00, for cable service which commenced in May 1997. (25) Because of the non-payment, the creditor considered it a "bad debt" and referred it to a collection agency. (26) Applicant has offered a variety of comments regarding this debt. In October 2000, she denied owing the creditor any money as she did not have a current account with them and could not recall ever owing them anything in the past. (27) In July 2001, she could not recall if she "still" owed the debt, but stated an inability to pay it "right now." (28) In November 2002, she contended the bill had been disputed at the time it was first sent to her, and since she intended to terminate service, she decided at that time to cease attempts at entering a repayment agreement. (29) She also noted she had listed the debt on her bankruptcy creditor statement. (30) During the hearing, Applicant offered still more explanations. Initially, she denied ever receiving a bill from the creditor and attributed everything to a "mistake." (31) She also acknowledged there was a dispute about the amount owed. (32) She originally intended to list the debt when she declared bankruptcy, but changed her mind. (33) She now intends to contact the creditor and contest the bill, and if it is accurate, she would be more than happy to pay it. (34) She also acknowledged she never got around to disputing the bill. (35)

(1.b.) Applicant is indebted to her former landlord, in the approximate amount of \$900.00, for past due rent. She has offered a variety of comments regarding this debt. It is undisputed that Applicant failed to pay her rent for two months because her children needed emergency dental work. (36) Applicant and her landlord had previously verbally agreed that she would pay him the back-rent and relocate. (37) There was no dispute regarding the amount owed. Until July 2001, there were no other issues regarding this debt. Applicant drafted a promissary note herself and had it notarized. (38) Under the note, she agreed to pay the landlord \$100.00 per month. (39) In July 2001, she stated she attempted to make the initial payment under the promissary note but was unable to locate him. She also acknowledged she made no further attempts to contact the landlord or the duplex manager. (40) Applicant justified her actions by noting the landlord knew her location and if he wanted to find her he knew how to do so. (41) In November 2002, the story took on additional features. Applicant introduced a dispute over the amount due. (42) She also added some comments about the "voluntariness" of the promissary note she drafted and signed. She stated she was concerned regarding the landlord's mental state and was afraid he would return to her residence if the note was not signed. (43) She also noted she had listed the debt on her bankruptcy creditor statement. (44) During the hearing she added she signed the note knowing she could not pay the amount and move. (45) She also agreed she owed the money. (46)

(1.c.) Applicant is indebted to a grocery store, in the approximate amount of \$45.00, for returned check fees. Because of the non-payment, the creditor considered them both "bad debts" and referred them to collection. (47) She has offered a variety of comments regarding this debt. Applicant initially disputed the debt and denied owing the creditor any amount. (48) In July 2001, she modified her position and acknowledged having owed the creditor money but claimed she paid off

the bills, which she stated was for \$116.67 and \$40.07, respectively, but indicated she had lost her financial records and could not offer proof of payment.<sup>(49)</sup> In November 2002, she contended there was sufficient evidence to suggest the \$45.00 had already been paid, but once again, she could produce no evidence to support her contention. Despite her feeling the amount in question was a fee which was never properly recorded a discharged, Applicant claimed to have made some attempts to find the source of the charges, and added the debts were listed on her bankruptcy creditor statement.<sup>(50)</sup> During the hearing, Applicant added that since she has continued to cash checks at the same creditor, if she had had debts her check-cashing privileges would have been cancelled.<sup>(51)</sup>

(1.d.) Applicant is indebted to a nationwide department store, in the approximate amount of \$50.00, for unspecified reasons. Because of the non-payment, the creditor considered it a "bad debt" and referred it to collection.<sup>(52)</sup> Applicant initially denied owing the creditor any money, claiming she had paid off the account balance at some time prior to January 1990.<sup>(53)</sup> Reports of Credit pertaining to Applicant seemingly identify two separate accounts with the same creditor. One account was apparently opened in 1980 and closed some time prior to November 1986 when it was sent to collection and eventually paid.<sup>(54)</sup> Other Reports of Credit refer to a different account apparently opened in June 1996 and closed in September 2000 when it was referred to as a bad debt and sent to collection.<sup>(55)</sup> The outstanding balance on this account was \$50.00-the amount alleged in the subparagraph of the SOR. In October 2000, she again stated she had paid off the account.<sup>(56)</sup> By July 2001, she recalled going directly to the creditor in approximately 1999 and paying them \$50.00, but has nothing to support her contention as she had lost all of her financial records when she moved.<sup>(57)</sup> In November 2002, she claimed the collection agency continued to bill her for the debt despite having paid it off, and said she had no intention of paying it again.<sup>(58)</sup> She also noted she had listed the debt on her bankruptcy creditor statement.<sup>(59)</sup> During the hearing, Applicant offered still more explanations. Applicant did not dispute the debt with the credit reporting agency because "it wasn't important to bother with."<sup>(60)</sup> Furthermore, as she again noted, this debt was beyond the statute of limitations, and she intended to have it removed from her credit history.<sup>(61)</sup>

(1.e./1.f.) Applicant was initially indebted to a used car dealer, in the approximate amount of \$7,738.00,<sup>(62)</sup> for the financing on the purchase of a used automobile in October 1993. Regular monthly payments of about \$280.00 were purportedly made until December 1994 when Applicant was unable to continue doing so.<sup>(63)</sup> Applicant attributed her financial problems with the creditor to several causes including: (a) an earthquake which shut down her employer and denied her a salary for about three weeks to several months;<sup>(64)</sup> (b) her relocation to another city in a different state to escape earthquakes; (c) the denial of unemployment compensation; and (d) the failure of negotiations which would have led to long-term reduced payments.<sup>(65)</sup> Because of her continued non-payment, and the additional cost for insurance, Applicant claimed she executed a voluntary repossession by advising the creditor where they could find the vehicle,<sup>(66)</sup> and it was taken from her.<sup>(67)</sup> Applicant received several bills after the repossession resale of the vehicle, but she was unable to pay even the adjusted amount (\$5,565.00) as it would have brought her to duress financially.<sup>(68)</sup> Some time later, the used car dealer was purchased by another larger, nationwide, used car dealer, and it attempted to collect the remaining balance. The creditor considered it a "bad debt" and referred it to collection.<sup>(69)</sup> Applicant continued to ignore collection efforts because she initially intended to avoid the debt, now ballooned up to about \$6,353.81, by declaring bankruptcy,<sup>(70)</sup> but in July 2001, acknowledged: "It really does not matter how much I owe them because I don't have any money to repay them. I have no intention to repay."<sup>(71)</sup> During the hearing, Applicant contended she had requested documents to support the disputed amount, but they were never provided so no follow-up was ever made by her.<sup>(72)</sup> She also claimed she offered to make payments "if they could come up with an equitable price."<sup>(73)</sup>

(1.g.) Applicant is indebted to a nationwide lending institution, in the approximate amount of \$6,299.00, for the financing of another automobile, purchased for about \$11,950.00, in December 1997.<sup>(74)</sup> Applicant had purchased the vehicle during a time when she purportedly was experiencing marital discord, and just about to enter a period of reduced income.<sup>(75)</sup> Applicant contended she was experiencing mechanical problems with the vehicle's transmission and spark plugs, and couldn't get it to pass the emissions test.<sup>(76)</sup> She fell 120 days behind in her payments.<sup>(77)</sup> Finally, with the realization she could not afford the car and its related expenses, she called the dealership and told them where to find the

vehicle as she was ready to have it repossessed.<sup>(78)</sup> Because of her non-payment, the creditor considered it a "bad debt" and charged it off.<sup>(79)</sup> Applicant claims she never received any collection correspondence from the creditor,<sup>(80)</sup> and considers the matter closed as there is nothing to dispute. It appears, however, there is more to the story. The creditor apparently ceased all collection efforts upon receipt of information that Applicant had included the debt in her Chapter 7 bankruptcy-a bankruptcy which was promised but never actually filed.<sup>(81)</sup>

Applicant currently owns a 1990 Cadillac which she purchased for about \$6,000.00.<sup>(82)</sup> She uses two credit cards and tries to stay current with her new bills, although, on occasion, she has had to reallocate funds necessary to address unexpected charges.<sup>(83)</sup> Her explanation and philosophy regarding financial considerations, is as follows:<sup>(84)</sup>

I think that my ability to or inability to manage money is not necessarily relevant to whether or not I'm a trustworthy person. The fact of the matter is I stay true to my own family. I paid the bills that were important, that I deemed were important and didn't try and jeopardize my family by trying to pay bills that would have crippled us.

With regard to the alleged falsifications, Applicant has denied intending to deceive anyone with her responses on her SF 86, and explained she had responded in the manner indicated because there was a problem with the "application" method which offered her no options to provide the partial information she had and wanted to voluntarily furnish.<sup>(85)</sup> She added that the "application" or program required additional information when she attempted to validate her responses, but she was unable to furnish it.<sup>(86)</sup> Applicant also claimed she was aware she had provided consent to DSS to obtain her financial records and credit report, and was confident the correct and complete information could be accessed.<sup>(87)</sup> During the hearing she testified substantially the same and explained she tried to provide generic answers but the system would not permit her to do so.<sup>(88)</sup> As a result, she claims she left certain items "blank."<sup>(89)</sup>

Applicant was married in 1981 and divorced in June 1999.<sup>(90)</sup> She has two children: a 20-year old daughter on scholarship in college and a 21-year old son, working part-time, residing with her.

Applicant served as an Opticalman on active duty with the United States Navy from January 1979 until February 1983.

Applicant has been employed as a supporting engineer with the same government contractor since November 2000. The quality of her performance, is not known.

## POLICIES

Enclosure 2 of the Directive sets forth adjudicative guidelines which must be considered in the evaluation of security suitability. In addition to brief introductory explanations for each guideline, the adjudicative guidelines are divided into those that may be considered in deciding whether to deny or revoke an individual's eligibility for access to classified information (Disqualifying Conditions) and those that may be considered in deciding whether to grant an individual's eligibility for access to classified information (Mitigating Conditions).

An Administrative Judge need not view the adjudicative guidelines as inflexible ironclad rules of law. Instead, acknowledging the complexities of human behavior, these guidelines, when applied in conjunction with the factors set forth in the Adjudicative Process provision in Section E2.2., Enclosure 2, of the Directive, are intended to assist the Administrative Judge in reaching fair and impartial common sense decisions.

Because the entire process is a conscientious scrutiny of a number of variables known as the "whole person concept," all available, reliable information about the person, past and present, favorable and unfavorable, should be considered in making a meaningful decision. The Adjudicative Process factors which an Administrative Judge should consider are: (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.

Based upon a consideration of the evidence as a whole, I find the following adjudicative guidelines most pertinent to an evaluation of the facts of this case:

**[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:**

(E2.A6.1.2.1.) history of not meeting financial obligations;

(E2.A6.1.2.3.) inability or unwillingness to satisfy debts.

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

(E2.A6.1.3.3.) the conditions that resulted in the behavior were largely beyond the person's control (e.g., loss of employment, a business turndown, unexpected medical emergency, or a death, divorce or separation).

**[Personal Conduct - Guideline E]: Conduct involving questionable judgment, untrustworthiness, unreliability, lack of candor, dishonesty, or unwillingness to comply with rules and regulations could indicate that the person may not properly safeguard classified information.**

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

(E2.A5.1.2.2.) the deliberate omission, concealment, or falsification of relevant and material facts from any personnel security questionnaire, personal history statement, or similar form used to conduct investigations, determine employment qualifications, award benefits or status, determine security clearance eligibility or trustworthiness, or award fiduciary responsibilities;

(E2.A5.1.2.3.) Deliberately providing false or misleading information concerning relevant and material matters to an investigator, security official, competent medical authority, or other official representative in connection with a personnel security or trustworthiness determination.

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

None apply.

Since the protection of the national security is the paramount consideration, the final decision in each case must be arrived at by applying the standard the issuance of the clearance is "clearly consistent with the interests of national security,"<sup>(91)</sup> or "clearly consistent with the national interest." For the purposes herein, despite the different language in each, I have concluded both standards are one and the same. In reaching this Decision, I have drawn only those conclusions that are reasonable, logical and based on the evidence contained in the record. Likewise, I have avoided drawing inferences grounded on mere speculation or conjecture.

In the decision-making process, the burden of producing evidence initially falls on the Government to establish a case which demonstrates, in accordance with the Directive, it is not clearly consistent with the national interest to grant or continue an applicant's access to classified information. If the Government meets its burden, the heavy burden of persuasion then falls upon the applicant to present evidence in refutation, explanation, extenuation or mitigation sufficient to overcome the doubts raised by the Government's case, and to ultimately demonstrate it is clearly consistent with the national interest to grant or continue the applicant's clearance.

A person who seeks access to classified information enters into a fiduciary relationship with the Government predicated upon trust and confidence. It is a relationship that transcends normal duty hours and endures throughout off-duty hours as well. It is because of this special relationship the Government must be able to repose a high degree of trust and confidence in those individuals to whom it grants access to classified information. Decisions under this Directive include, by necessity, consideration of the possible risk an applicant may deliberately or inadvertently fail to protect or safeguard classified information. Such decisions entail a certain degree of legally permissible extrapolation as to potential, rather than actual, risk of compromise of classified information.

One additional comment is worthy of note. Applicant's allegiance, loyalty, and patriotism are not at issue in these proceedings. Section 7 of Executive Order 10865 specifically provides industrial security clearance decisions shall be "in terms of the national interest and shall in no sense be a determination as to the loyalty of the applicant concerned." Security clearance decisions cover many characteristics of an applicant other than allegiance, loyalty, and patriotism. Nothing in this Decision should be construed to suggest I have based this decision, in whole or in part, on any express or implied decision as to Applicant's allegiance, loyalty, or patriotism.

### CONCLUSIONS

Upon consideration of all the facts in evidence, an assessment of the witness credibility, and after application of all appropriate legal precepts, factors, and conditions, including those described briefly above, I conclude the following with respect to each allegation set forth in the SOR:

With respect to Guideline F, the Government has established its case. Applicant's long-standing financial difficulties, since about 1987, have been attributed to a variety of reasons, including: her husband's injury and lengthy periods of unemployment and occasional employment; a bad job market; "a run of bad luck;" earthquakes; temporary closing of her employer due to earthquakes; relocation to another state due to earthquakes; the loss of financial records; the denial of unemployment compensation; marital discord and eventual divorce; the refusal of creditors to reduce payments; unwise spending; responsibilities as a single parent; and her decisions on whether or not to pay certain bills which she considered relatively unimportant.

In addition, her deteriorating financial position was further exacerbated by ignoring correspondence from creditors, a steadfast refusal to attend to her older finances, and her vacillating position on bankruptcy. As a result, Applicant incurred too many consumer debts and fell behind in her monthly payments. Eventually she stopped making payments altogether, and various creditors either charged off their losses, transferred or sold the accounts, repossessed a residence, repossessed two motor vehicles, or referred the overdue accounts to collection. And, she issued bad checks for which she was obligated to pay fees.

Despite being aware of her debts, as well as there being seemingly perpetual official DSS interest in them, Applicant took no action whatsoever to resolve any of them. Instead, over the period of more than 12 years, commencing in 1990 and continuing until this day, Applicant simply ignored those older "unimportant" debts and kept stringing along the authorities by telling DSS, under oath, different positions regarding her outstanding financial obligations or her intentions for resolving them. Her stories are reminiscent of the comment, "the check is in the mail."

Applicant's varying positions on almost every aspect of her debts-whether it was a valid or invalid debt in her eyes, whether she still owed the debt or if it had been paid, the correct amount of the debt, whether or not she intended to pay the debt, or whether or not she intended to declare bankruptcy-furnish me with little if any confidence in her credibility or candor. Aside from those varying renditions, one intention shines through, despite her denial: Applicant intends not to pay any of those debts with the expected hope that the statute of limitations will absolve her of legal responsibility. Applicant has not even made superficial efforts to resolve her outstanding financial obligations, and her varying statements seem to be nothing more than perpetual promises made and broken, followed by additional promises made and broken. Not even the security clearance review process could motivate her to take *some* positive action with regard to her debts. Thus, her conduct pertaining to her financial obligations falls within Financial Considerations Disqualifying Condition (DC) E2.A6.1.2.1. (*history of not meeting financial obligations*), and DC E2.A6.1.2.3. (*inability or unwillingness to satisfy debts*).

Applicant's marital discord and divorce, as well as periods of unemployment or limited employment due to an earthquake, etc.-some of the conditions attributed by her to be the causes of her financial problems-fall within Financial Considerations Mitigating Condition (MC) E2.A6.1.3.3. (*the conditions that resulted in the behavior were largely beyond the person's control (e.g., loss of employment, a business turndown, unexpected medical emergency, or a death, divorce or separation)*). However, the overall impact of those conditions is minimized because of when they occurred and the rather lengthy period since then when she should have recovered from them. Applicant was largely unmotivated by the security clearance review process to take meaningful corrective action, and preferred to ignore her older unimportant outstanding debts as long as she could. Under these circumstances, I can find no evidence of positive action on her part to resolve her outstanding debts.

Applicant's current finances are presently still not in the best of shape, especially in emergencies-although it is a marked improvement over the way it had been during her lengthy period of financial mismanagement. Her actions with regard to those older outstanding debts, her refusal to honor those financial commitments despite voluntarily entering into them, all support the conclusion a financial problem continues to exist. Moreover, her persistent problem is not, and has never been, primarily the result of conditions beyond her control. Under these circumstances, I believe Applicant has failed to mitigate or overcome the Government's case, for the evidence leaves me with grave questions and doubts as to Applicant's continued security eligibility and suitability with respect to her financial considerations. Accordingly, allegations 1.a. through 1.d., 1.f., and 1.g., of the SOR are concluded against Applicant.

On the other hand, with respect to the delinquency with the used car dealer identified in subparagraph 1.e. of the SOR, it appears that factual scenario is basically redundant to the allegation appearing in subparagraph 1.f. The allegations refer to the same debt, with the amount of one alleged debt merely increasing due to non-payment. Accordingly, allegation 1.e. of the SOR is concluded in favor of Applicant.

With respect to Guideline E, the Government has established its case. Examination of Applicant's actions reveals a pattern of conduct involving

questionable judgment, untrustworthiness, unreliability, and unwillingness to comply with rules and regulations. There is little dispute surrounding Applicant's pattern of deceptive actions. Applicant continuously furnished DSS differing stories regarding the specifics of the outstanding financial obligations and provided constantly changing misinformation pertaining to her intentions relative thereto. It mattered little to her that her comments were made under oath each time she was interviewed. Likewise, when she completed her SF 86, she again lied, willfully falsified, omitted, concealed, and minimized her history of financial difficulties. Applicant is steadfast in her position she did not intend to falsify or omit the correct information, but was forced into doing so because of problems with the "application" method which offered her no other options.

Notwithstanding her certifications, oaths, and affirmations that her responses and statements were true and accurate, Applicant repeatedly, willfully falsified, omitted, or concealed material facts pertaining to her history of financial difficulties, and intentionally tried to mislead DSS with half truths and lies in an effort to distort the truth and minimize any damage she might have done to herself. I cannot accept those deceptions, or the explanations as justification for same. In this instance, I have no credible evidence of inadvertent or accidental oversight, but rather calculated and deliberate omissions of information which Applicant chose not to reveal simply because she felt it necessary to protect her interests. Applicant's concerns for the national security during this period were seemingly non-existent.

Complete honesty and candor on the part of applicants for access to classified information is essential to make an accurate meaningful security clearance determination. Without all the relevant and material facts, a clearance decision is susceptible to error, thus jeopardizing the nation's security. Despite Applicant's contention that her financial matters are not relevant to whether or not she is trustworthy, the nature of Applicant's actions therefore pose a serious potential risk to the nation's security precautions which go to the very heart of the nation's security system.

A pattern of dishonesty, falsification, and deception commenced in July 1990 when Applicant was interviewed by DSS and she furnished certain statements which, it now appears, were untrue. Similar conduct occurred thereafter when dealing with the SF 86 and other DSS interviews, as well as part of the overall security clearance review process. **Applicant's overall questionable personal conduct in this regard clearly falls within Personal Conduct DC E2.A5.1.2.2. (the deliberate omission, concealment, or falsification of relevant and material facts from any personnel security questionnaire, personal history statement, or similar form used to conduct investigations, determine employment qualifications, award benefits or status, determine security clearance eligibility or trustworthiness, or award fiduciary responsibilities), and DC E2.A5.1.2.3. (deliberately providing false or misleading information concerning relevant and material matters to an investigator, security official, competent medical authority, or other official representative in connection with a personnel security or trustworthiness determination.).** None of the Mitigating Conditions apply.

I do not take this position lightly, but based on the law, as set forth in *Department of Navy v. Egan*, 484 U.S. 518 (1988), my evaluation of the evidence, and my application of the pertinent conditions and factors under the Adjudicative Process, Applicant has failed to mitigate or overcome the Government's case. The evidence leaves me with grave questions and doubts as to Applicant's continued security eligibility and suitability. Accordingly, allegations 2.a. and 2.b. of the SOR are concluded against Applicant.

For the reasons stated, I conclude Applicant is not eligible for access to classified information.

### **FORMAL FINDINGS**

Formal findings For or Against Applicant on the allegations set forth in the SOR, as required by Section E3.1.25 of Enclosure 3 of the Directive, are:

Paragraph 1. Guideline F: AGAINST THE APPLICANT

Subparagraph 1.a.: Against the Applicant

Subparagraph 1.b.: Against the Applicant

Subparagraph 1.c.: Against the Applicant

Subparagraph 1.d.: Against the Applicant

Subparagraph 1.e.: For the Applicant

Subparagraph 1.f.: Against the Applicant

Subparagraph 1.g.: Against the Applicant

Paragraph 2. Guideline E: AGAINST THE APPLICANT



Subparagraph 2.a.: Against the Applicant

Subparagraph 2.b.: 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 Applicant.

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Robert Robinson Gales

Chief Administrative Judge

1. *See* Government Exhibit 3 (Statement, dated December 20, 1990), at 1.

2. *See* Government Exhibit 2 (Statement, dated July 17, 1990), at 1.

3. *Id.*

4. *Id.*

5. *Id.* at 2.

6. *Id.* In addition, Applicant admitted to not having filed her Federal Income Tax returns for the years 1988-89, but expected to do so because she did not believe she owed the Internal Revenue Service (IRS) any money.

7. *See* Government Exhibit 3, *supra* note 1, at 3.

8. *Id.*

9. *See* Government Exhibit 4 (Statement, dated April 5, 1991), at 2.

10. *See* Government Exhibit 1 (SF 86, dated October 29, 1999).

11. *Id.* at 8.

12. *Id.*

13. *Id.*

14. *See* Government Exhibit 5 (Statement, dated October 4, 2000).

15. *Id.* at 2.

16. *Id.*

17. *Id.*

18. *See* Government Exhibit 6 (Statement, dated July 3, 2001).

19. *Id.* at 3.

20. *Id.*

21. *See* Response to SOR, dated November 22, 2002, at 1.

22. *Id.*

23. Tr. at 47.

24. Tr. at 56. It should be noted that nothing was offered by Applicant to support her contentions regarding a statute of limitations which would wipe her financial slate clean.

25. *See* Government Exhibit 10 (Report of Credit, dated May 2, 2000), at 5.

26. *Id.*

27. *See* Government Exhibit 5, *supra* note 14, at 2.

28. *See* Government Exhibit 6, *supra* note 18, at 2.

29. *See* Response to SOR, *supra* note 21, at 1.

30. *Id.*

31. Tr. at 34 and 57.

32. Tr. at 33-34.

33. Tr. at 34.

34. Tr. at 34.

35. Tr. at 59.

36. *See* Government Exhibit 5, *supra* note 14, at 2.

37. *See* Government Exhibit 6, *supra* note 18, at 2.

38. *Id.*

39. *Id.*

40. *Id.* It is also interesting to note that in October 2000, Applicant, in a monthly financial statement furnished to DSS during her interview of October 4, 2000, indicated her scheduled payment was \$100.00 and her actual payment was the same figure. *See* Government Exhibit 5, *supra* note 14, at 3.

41. *See* Government Exhibit 6, *supra* note 18, at 2..

42. *See* Response to SOR, *supra* note 21, at 2.

43. *Id.*

44. *Id.*

45. Tr. at 36.

46. Tr. at 37.

47. *See* Government Exhibit 10, *supra* note 25, at 5.

48. *See* Government Exhibit 5, *supra* note 14, at 2.

49. *See* Government Exhibit 6, *supra* note 18, at 1.

50. *See* Response to SOR, *supra* note 21, at 2.

51. Tr. at 37-38, 59-60.

52. *See* Government Exhibit 10, *supra* note 25, at 5-6.

53. *See* Government Exhibit 2, *supra* note 2, at 2.

54. *See* Government Exhibit 11 (Report of Credit, dated May 7, 1990), at 1, 3, 6.

55. *See* Government Exhibit 10, *supra* note 25, at 5-6; *see also* Government Exhibit 9, dated May 21, 2002), at 2; Government Exhibit 8 (Report of Credit, dated May 21, 2002), at 1.

56. *See* Government Exhibit 5, *supra* note 14, at 2.

57. *See* Government Exhibit 6, *supra* note 18, at 3.

58. *See* Response to SOR, *supra* note 21, at 2.

59. *Id.*

60. Tr. at 64.

61. Tr. at 38.

62. Applicant disputed the amount of the entire loan, claiming it was originally for \$6,300.00, and later contended the amount still owed should have been less. *See* Government Exhibit 6, *supra* note 18, at 2.

63. *Id.* at 2-3.

64. In her statement in July 2001, Applicant claimed the unemployment was for a period of three weeks (*id.*), but in her Comments in November 2002, she claimed it was for several months (*See* Response to SOR, *supra* note 21, at 2).

65. *Id.* (Response to SOR).

66. Applicant did not return the vehicle to the state of purchase, she merely told the creditor where to find it in another state. Tr. at 39.

67. *See* Response to SOR, *supra* note 21, at 3. *See also*, Government Exhibit 10, *supra* note 25, at 8.

68. *Id.* (Response to SOR).

69. *See* Government Exhibit 10, *supra* note 25, at 6.

70. *See* Response to SOR, *supra* note 21, at 3.

71. *See* Government Exhibit 6, *supra* note 18, at 3.

72. Tr. at 65.

73. Tr. at 66.

74. *See* Government Exhibit 10, *supra* note 25, at 4. The allegation in subparagraph 1.g. of the SOR identifies the amount owed as approximately \$6,349.00, while the Report of Credit (Government Exhibit 10) reflected the amount

remaining owed, on a \$11,950.00 purchase price, as \$6,299.00. I can find no evidence to support the higher debt figure.

75. Tr. at 40.

76. Tr. at 41-42.

77. *See* Government Exhibit 8, *supra* note 55, at 1.

78. Tr. at 42.

79. *See* Government Exhibit 10, *supra* note 25, at 4.

80. Tr. at 66-67.

81. *See* Government Exhibit 7 (Report of Credit, dated May 21, 2002), at 2. *See also*, Government Exhibit 9, *supra* note 55, at 3.

82. Tr. at 43.

83. *See* Applicant Exhibit A (Letter from current landlord, dated January 24, 2003).

84. Tr. at 49-50.

85. *See* Response to SOR, *supra* note 21, at 3.

86. *Id.*

87. *Id.*

88. Tr. at 27.

89. *Id.*

90. Applicant furnished the date June 1999 in her Security Clearance Application (Government Exhibit 1, *supra* note 10, at 2), but during the hearing indicated the divorce was granted in June 2000. Tr., at 49.

91. *See* Exec. Or. 12,968, "*Access to Classified Information*;" as implemented by Department of Defense Regulation 5200.2-R, "*Personnel Security Program*," dated January 1987, as amended by Change 3, dated November 8, 1995, and further modified by memorandum, dated November 10, 1998. However, the Directive, as amended by Change 4, dated April 20, 1999, uses both "clearly consistent with the national interest" (*see* Sec. 2.3.; Sec.2.5.3.; Sec. 3.2.; and Sec. 4.2.; Enclosure 3, Sec. E3.1.1.; Sec. E3.1.2.; Sec. E3.1.25.; Sec. E3.1.26.; and Sec. E3.1.27.), and "clearly consistent with the interests of national security" (*see* Enclosure 2, Sec. E2.2.3.); and "clearly consistent with national security" (*see* Enclosure 2, Sec. E2.2.2.)