

DATE: March 19, 2003

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In re:

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SSN: -----

Applicant for Security Clearance

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ISCR Case No. 01-21474

## **DECISION OF ADMINISTRATIVE JUDGE**

**ROGER C. WESLEY**

### **APPEARANCES**

#### **FOR GOVERNMENT**

Jonathan Byer, Department Counsel

#### **FOR APPLICANT**

*Pro Se*

### **SYNOPSIS**

Applicant has a history of delinquent debts accumulated during periods of employment and intermittent unemployment. While the bulk of her debts were discharged in a 1996 Chapter 7 bankruptcy, several reaffirmed consumer debts and federal tax debts persisted after her bankruptcy discharge. Subsequent attempts to resolve these debts have been unsuccessful, thus, leaving her at risk to future IRS levies and other enforcement measures. As such, Applicant fails to absolve herself of security risks associated with her unresolved debts and unwillingness to address them through the variety of options available to her. Clearance is denied.

### **STATEMENT OF THE CASE**

On August 22, 2002, the Defense Office of Hearings and Appeals (DOHA), pursuant to Executive Order 10865 and Department of Defense Directive 5220.6 (Directive), dated January 2, 1992, issued a Statement of Reasons (SOR) to Applicant, which detailed reasons why DOHA could not make the preliminary affirmative finding under the Directive that it is clearly consistent with the national interest to grant or continue a security clearance for Applicant, and recommended referral to an administrative judge to determine whether clearance should be granted, continued, denied or revoked.

Applicant responded to the SOR on September 18, 2002, and requested a hearing. The case was assigned to this Administrative Judge on October 30, 2002. Hearing scheduling was initially continued at Applicant's request. Pursuant to notice of January 8, 2003, a hearing was convened on January 28, 2003, for the purpose of considering whether it would be clearly consistent with the national interest to grant, continue, deny or revoke Applicant's security clearance. At hearing, the Government's case consisted of seven exhibits; Applicant relied on two witnesses (including herself) and no exhibits. The transcript (R.T.) of the proceedings was received on February 5, 2003.

### **PROCEDURAL ISSUES**

Before the close of the hearing, Applicant asked for leave to keep the record open to permit her to supplement the record

with an updated credit report. Department Counsel offering no objections, and for good cause shown, Applicant was allowed ten (10) days to supplement the record with a current credit report. Within the time permitted, Applicant provided a current credit report. The exhibit is accepted as Applicant's exhibit A. In its response, Government cited to three more charged off debts that were not covered in Applicant's 1996 bankruptcy and claimed the exhibit does not demonstrate any mitigation.

## **STATEMENT OF FACTS**

Applicant is a 54-year old system administrator field engineer for a defense contractor who seeks a security clearance.

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

Applicant is alleged to owe the IRS approximately \$49,000.00 in back taxes for tax years 1993 to 1995. Additionally, Applicant is alleged, as of February 2002, to have not begun making any payments to satisfy her IRS obligation, despite extinguishing approximately \$97,000.00 of consumer debt through a bankruptcy she had filed in July 1996.

In her response to the SOR, Applicant denied the allegations in the SOR. Besides claiming an offer in compromise with the IRS to be in process, she characterized the balance of the information in the SOR to be incorrect.

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

Following her discharge from the US Army in April 1993, Applicant entered the private sector and for the first few years following her Army discharge held a number of jobs. In between jobs she experienced short periods of unemployment and fell increasingly behind in her consumer and tax-related debts. Most of her accumulated debts between 1993 and 1995 were credit-card related, which she allowed to get out of hand. Overextended in her personal debts, she became delinquent on her federal tax liabilities as well. Altogether, she accumulated consumer debts in excess of \$95,000.00 and federal tax liabilities exceeding \$27,000.00 for the tax years of 1993 through 1995.

Dissatisfied with the course of her career in State A, Applicant relocated to State B in January 1996. Once in State B, she assumed a series of administrative positions with different employers over a ten-month period spanning January to October 1996 (*see ex. 2; R.T., at 50-56*) at income levels much lower than she had been accustomed to earning in State A. Because she had accrued ample expense deductions, she did not concern herself too much with her low withholding in her 1993-1995 tax returns. When the IRS later dismissed most of her expense claims, she was not financially prepared to make up the difference in the taxes she owed. Over her head with credit card debts accumulated in State A where she was making more money, she was not prepared to keep these debts current. Consequently, she fell further behind in her debt servicing payments.

After consulting with a bankruptcy attorney, Applicant filed a Chapter 7 bankruptcy petition in June 1996 (*see ex. 7*). Her bankruptcy schedules included a schedule of unsecured creditors holding claims in excess of \$97,000.00 (*see ex. 7*), which consisted of credit card debts exceeding \$80,000.00 and \$27,764 in federal tax claims covering tax years 1993 and 1994 (*see ex. 7*). Applicant received her bankruptcy discharge in October 1996 (*see ex. 7*). This discharge did not include either Applicant's tax debts or three debts, which she reaffirmed with her creditors. These three debts, which are covered in Applicant's latest credit report (*see A*), were not satisfied by Applicant after her bankruptcy discharge and eventually were charged off by the creditors (*see ex. A*). The debts exceed \$7,000.00 in the aggregate and are addressed in the Government's post-hearing memorandum.

Following Applicant's bankruptcy discharge, the IRS issued a series of notices of intent to levy on her tax debts owed for tax years 1993 through 1995. The IRS's December 1997 notice included an attached account summary of the covered taxes owed as follows: \$13,576.53, inclusive of \$3,879.50 in added penalties and interest, for tax year 1993, \$22,942.12, inclusive of \$4,814.97 in added penalties and interest, for tax year 1994, and \$8,338.27, inclusive of \$2,785.32 in added penalties and interest, for tax year 1995. Altogether, Applicant's federal tax liabilities for the tax years of 1993 through 1995, aggregated \$44,856.92 (*see ex. 5; R.T., at 55-57*).

Applicant was reportedly audited by the IRS in 1995, who, in turn, set off \$10,000.00 of her \$52,000.00 severance pay entitlement against her accrued 1995 tax liability (*see ex. 2*). She later arranged (during the 1998 time period) a

\$10,000.00 compromise offer with the IRS that year on her tax liability, and then defaulted. Throughout 1999, she made a number of other compromise offers on her tax debt with the IRS, none of which were accepted by the Service.

After being levied by the IRS in February 2002 on what remained of her bank account (\$1,800.00 at the time), Applicant was able to work out a partial release (*i.e.*, \$400.00) with the IRS as a part of an installment proposal. Facing an aggregate federal tax liability in excess of \$48,000.00, Applicant arranged an installment agreement with the IRS (*see* R.T., at 59-65). Applicant's offer provided for her making \$800.00 monthly payments, commencing in May 2002. The IRS accepted Applicant's offer in May 2002. The IRS added a \$43.00 monthly processing fee to Applicant's agreed monthly installment commitment (*see* ex. 5). Still waiting to hear from the IRS on an earlier compromise offer she had submitted to the IRS before its February 2002 levy, Applicant submitted a second compromise offer. On this second offer, she continues to await word from the IRS on whether they will accept it or not (*see* R.T., at 66-67). While she waits to hear from the IRS on her latest compromise offer, she continues to defer any escrow of the funds to meet any accepted installment obligations (*see* R.T., at 57-58, 66-70). As of the close of the record, Applicant had not heard from the IRS on her latest compromise offer on an aggregate federal tax liability that continues to grow: now approximating \$51,000.00.

Applicant currently has an estimated \$400.00 monthly remainder after all of her estimated expenses and obligations are deducted, inclusive of her anticipated \$800.00 monthly installment obligation with the IRS (*see* ex. 2; R.T., at 84-85). She is currently waiting to hear from the IRS on her latest compromise offer and, in the interim, claims to have worked out a delay in the commencement date of her installment agreement obligations, pending the IRS's notification of its action on Applicant's latest compromise offer. Without any details of her latest offer, or history of success with previous offers with the IRS, there is little to suggest she will be successful in enlisting IRS agreement with her latest compromise offer.

Applicant appears to be well regarded by her supervisors and coworkers at work (*see* R.T., at 117). She is characterized by her immediate supervisor as a system administrator who can be entrusted to carry out her tasked responsibilities in a reliable and trustworthy fashion.

## **POLICIES**

The Adjudicative Guidelines of the Directive (Change 4) list "binding" policy considerations to be made by Judges in the decision making process covering DOHA cases. The term "binding," as interpreted by the DOHA Appeal Board, requires the Judge to consider all of the "Conditions that could raise a security concern and may be disqualifying" (Disqualifying Conditions), if any, and all of the "Mitigating Conditions," if any, before deciding whether or not a security clearance should be granted, continued or denied. The Guidelines do not require the Judge to assess these factors exclusively in arriving at a decision. In addition to the relevant Adjudicative Guidelines, judges must take into account the pertinent considerations for assessing extenuation and mitigation set forth in E.2.2 of the Adjudicative Process of Enclosure 2 of the Directive, which are intended to assist the judges in reaching a fair and impartial common sense decision.

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

### **Financial Considerations**

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

### **Disqualifying Conditions**

DC 1. A history of not meeting financial obligations.

DC 3. Inability or unwillingness to satisfy debts.

### **Mitigating Conditions**

MC 3. The conditions that resulted in the behavior were largely beyond the person's control (e.g., loss of employment, a business downturn, unexpected medical emergency, or a death, divorce or separation).

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

### **Burden of Proof**

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

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

### **CONCLUSIONS**

Applicant accrued considerable consumer and tax-related debt during periods of employment in States A and B, interspersed with short periods of unemployment during the 1993 to 1996 time periods. Unable to address the \$97,000.00 in unsecured debts and over \$27,000.00 in accrued federal tax liabilities, she filed for Chapter 7 bankruptcy in June 1996. The bankruptcy discharge she received in October 1996 discharged only her listed secured and unlisted consumer debts: It did not effect either her reaffirmed debts associated with three credit-card related accounts or her accumulated federal tax liabilities for tax years 1993 and 1994. Subsequent efforts to compromise her federal tax liabilities for the 1993-1994 tax years, as well as the 1995 tax year, were unsuccessful and ultimately resulted in threatened levies from the IRS, failed compromise attempts and a more recent installment agreement that is on hold pending IRS action on her latest compromise offer. Applicant's accrued federal tax debts now exceed \$51,000.00 and show no clear promise of being addressed in the foreseeable future. On the strength of the evidence presented, Government may invoke two Disqualifying Conditions (DC) of the Adjudicative Guidelines for financial considerations: DC 1 (history of not meeting financial obligations) and DC 3 (inability or unwillingness to satisfy debts).

While Applicant's federal tax debts may be partially attributable to employment set backs and inadequate planning, her explanations for failing to pursue earlier installment arrangements with the IRS to cover her accumulated tax liabilities are not convincing. Once the IRS rebuffed her past attempts to compromise her accrued tax debts, she was placed on notice of likely collection actions through levies and other types of IRS collection methods. Despite finally reaching an installment accord with the IRS in February 2002, she has deferred initiation of her agreed monthly payments in the hopes of once again forging a compromise with the Service for a lower overall tax liability. With the ample time and current income resources afforded her to finally establish a repayment record, she has once again chosen to delay paying on her tax debts in the expectation of working out a better deal with the IRS. Valuable payment seasoning is lost in the process.

An applicant's exhibited history of ignoring undisputed creditor obligations (tax liabilities included) even when resources become available for repayment bears close resemblance to an applicant's being asked to place his or her other private interests in subordination to the Government's security interests when the two clash with each other. Over time, our Appeal Board has shown general consistency in disallowing applicant claims to mitigation based on faulty or non-existent repayment histories. Cf. ISCR Case No. 01-17474 (March 7, 2003); ISCR Case No. 01-13653 (March 7, 2003); ISCR Case No. 01-12147 (January 21, 2003). Security clearance decisions are, of course, never an exact science, but rather involve predictive judgments about a person's security eligibility based on the person's past conduct and present

circumstances. *See Department of Navy v. Egan*, 484 U.S. 518, 528-29 (1988). Without any payment seasoning to rely on to advance her mitigation claims regarding her federal tax liabilities, she lacks the probative mitigation necessary to absolve her of the pressure and judgment risks associated with being in debt.

So, while Applicant may take advantage of MC 3 (conditions largely beyond the person's control) of the Adjudicative Guidelines to extenuate her debt delinquencies, she may not fully invoke the mitigating provisions of MC 6 (initiated good-faith effort to repay overdue creditors), absent more concerted efforts to address both her old charged off creditors she reaffirmed and her federal tax debts.

Applicant, to her credit, is highly thought of by her employer. For her professional accomplishments, she merits acknowledgment and commendation. But the trustworthy impressions she draws from her employer is not enough to mitigate her financial difficulties associated with her outstanding federal tax liabilities. Unfavorable conclusions warrant with respect to sub-paragraphs 1.a and 1.b of the Adjudicative Guidelines governing financial considerations.

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

### **FORMAL FINDINGS**

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

GUIDELINE F (FINANCIAL): AGAINST APPLICANT

Sub-para. 1.a: AGAINST APPLICANT

Sub-para. 1.b: 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 Applicant's security clearance.

Roger C. Wesley

Administrative Judge