

DATE: November 12, 2002

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In Re:

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SSN: -----

Applicant for Security Clearance

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CR Case No. 01-22411

**DECISION OF ADMINISTRATIVE JUDGE**

**JOHN G. METZ, JR.**

**APPEARANCES**

**FOR GOVERNMENT**

Rita C. O'Brien, Esquire, Department Counsel

**FOR APPLICANT**

*Pro Se*

**SYNOPSIS**

Applicant's financial difficulties were mitigated where initial difficulties were due largely to circumstances beyond her control and Applicant had taken a series of disciplined steps to resolve delinquent debts long before the issuance of the SOR and had become better organized financially, notwithstanding that some of the debts were not resolved until after the issuance of the SOR. Clearance granted.

**STATEMENT OF THE CASE**

On 26 March 2002, the Defense Office of Hearings and Appeals (DOHA) issued a Statement of Reasons (SOR) to Applicant, stating that DOHA could not make the preliminary affirmative finding [\(1\)](#) that it is clearly consistent with the national interest to grant or continue a security clearance for Applicant. On 1 April 2002, Applicant answered the SOR and requested a hearing. The case was assigned to me on 20 June 2002. I set the hearing on 23 August 2002 and on 26 August 2002 I issued a notice of hearing for 11 September 2002.

At the hearing, the Government presented ten exhibits--admitted without objection--and no witnesses; Applicant presented ten exhibits--admitted without objection--and the testimony of two witnesses, including herself. DOHA received the transcript on 19 September 2002.

**PROCEDURAL ISSUES**

At the close of the hearing, I kept the record open until close of business on 20 September 2002 to permit the Applicant to submit documentation of payments claimed in her testimony (Tr. 103-4). Applicant timely submitted documents to Department Counsel on 19 and 20 September 2002. Department Counsel raised no objection to the submissions, which are admitted into the record as Applicant's Exhibit K (A.E. K).

**FINDINGS OF FACT**

Applicant admitted the financial allegations of the SOR; accordingly, I incorporate those admissions as findings of fact.

The SOR alleges seven past due debts totaling approximately \$9,700.00, most falling past due in the spring/summer 1996 and spring/summer 1997, and all unpaid as of August/September 2000. Of the seven debts, one (1.a.) was a nearly \$8,100.00 deficiency on a May 1996 voluntary automobile repossession. Five (1.b., c., d., e., and f.) were past due medical accounts totaling about \$1,200.00.<sup>(2)</sup> The last account (1.g) was \$400.00 for a past due educational loan.

In her Answer, while admitting the allegations of the SOR, Applicant discussed the background of each debt and her efforts to resolve it. The voluntary repossession (1.a.) revolved around Applicant's warranty dispute with the manufacturer and the vendor of her extended warranty--and the fact that she never received any deficiency notice after the auction of the automobile. Applicant's direct contact with the creditor (not the collection agent) on the \$450.00 medical account (1.b) revealed no single account, but two combined accounts, both indicated as paid.<sup>(3)</sup> Applicant's direct contact with the creditor (with the same collection agent) on the \$60.00 medical account (1.c.) revealed that the account had been paid on 27 November 2000.<sup>(4)</sup> Applicant's direct contact with the creditor (again, not the collection agent, and a different collection agent than in 1.b. and c.) on the \$124.00 medical (1.d.) account revealed no record of the account, despite checking with two different offices where account information might have appeared.<sup>(5)</sup> Similarly, Applicant's direct contact with the creditor on the \$495.00 medical account (1.e.) revealed no record of the account, despite checking with two different offices where account information might have appeared.<sup>(6)</sup> She provided proof that the \$79.00 medical account (1.f.) had been paid on 30 March 2002.<sup>(7)</sup> She provided proof that she paid the \$400.00 educational account (1.g) on 18 February 2002.

Applicant--a 33-year-old employee of a defense contractor--seeks access to classified information. She is a divorced mother of three, receiving no child support from the father of her children (Tr. 42-44, 49, 66-67). When she was married, her husband provided little income to the family finances (Tr. 47-49), and had medical expenses of his own. She has a master's degree in business education (Tr. 6).

On 28 September 1998, Applicant executed a Security Clearance Application (SCA)(SF 86)(G.E. 1) on which she truthfully answered "yes" to a question requiring her to disclose any accounts 180 days past due (question 38), disclosing the debts in subparagraphs 1.d. and e., and "yes" to a question requiring her to disclose any repossessions (question 35), disclosing the debt in subparagraph 1.a. On 13 February 2002, Applicant executed a Security Clearance Application (SCA)(SF 86)(G.E. 2) on which she truthfully answered "yes" to the same questions and disclosed the appropriate information.

Applicant bought a new car in 1994, purchasing an extended warranty (G.E. 7). In 1996, the engine blew, and after some wrangling between the manufacturer and the warrantor, was repaired. Shortly thereafter, the engine blew again, and neither the manufacturer nor the warrantor would repair the vehicle again. Applicant did not have the means to pay the repair cost herself and continue to make her payments, or the perseverance to pursue the warranty repairs she believed she was entitled to (Tr. 48, 90-93; G.E. 6). She voluntarily surrendered the car to the bank. In March 1997, the bank informed Applicant of the pending auction, and advised her that they would inform her of any deficiency amount (G.E. 8, 9). However, the bank never did. The account was eventually sold to a collection agent (G.E. 10). By the time Applicant learned of the deficiency on the auto loan, the amount due asserted was so high that Applicant was unwilling to pay it until she received documentation of the sale and deficiency amount (G.E. 6).<sup>(8)</sup> Applicant ultimately negotiated a settlement amount with the collection agent in May 2002, which she paid in June 2002 (A.E. A., B.; Tr. 50, 92-94).

Applicant attributed her past due medical accounts to problems between providers and her insurance company. Although Applicant had medical insurance through a major insurance carrier, her medical providers would frequently miss the contractual filing deadline for claims. The carrier would deny the claim, and Applicant would have to fight--not always successfully--to get the carrier to pay the claim. In the meantime, the provider would report the account to the credit bureaus and/or refer the account for collection (G.E. 6; Tr. 49). Some of these bills Applicant was unaware of until she met with the DSS agent. Applicant committed to follow-up action, which she undertook.<sup>(9)</sup> Although Applicant's Answer stated she was unable to get confirmation of the debt in subparagraph 1.e., she later provided records confirming three payments totaling \$395.30 to the original creditor on 30 March 2002, the day after Applicant<sup>(10)</sup>

received the SOR (A.E. C.).

The past due educational loan involved an educational disbursement that got tangled up in record problems when the lender had a fire in a records center. Applicant believed the amounts were paid, but the records were lost in the fire. When Applicant returned to school, the past due amount reappeared. The account was eventually placed in a deferment status, where it should have been (G.E. 6). During her DSS interview, Applicant acknowledged the debt, but believed it in deferment status, and indicated she would look into the account status. She did so, and ultimately paid the account off (Tr. 64-66; Answer; A.E. C.).

The record in this case reflects a wider number of past due accounts over the years not reflected in the SOR, most of which are paid, closed accounts. Some are post-SOR accounts which Applicant disputes, at least in part. Department Counsel spent some time at hearing examining these accounts (Tr. 68-75). The record also reflects a large number of federal educational loan disbursements totaling approximately \$65,000.00, all currently in deferment status. At the end of the deferment period, Applicant will consolidate the loans, and may request the additional one-year forbearance period that she is entitled to. She has been told by the loan counselor that her monthly payment on the consolidated loans will be approximately \$207.00 per month (Tr. 94-96, 99-100).

Applicant has a positive cash flow of \$1,600.00 per month. She has no credit cards (Tr. 53-54). When her finances deteriorated, Applicant and her father co-signed on a consolidation loan to reduce her debt payments; that loan is paid (Tr. 89-90). She later refinanced her house in October/November 2001, taking out cash to pay other past due accounts (Tr. 50, 97-97). Although she talked to some credit counselors about entering a debt reduction program, she did not want to pay the fee the counselors required, and so undertook to reorganize her finances on her own (Tr. 97).

A.E. K demonstrates Applicant's perseverance in resolving her past due accounts. Two medical accounts that may or may not be the accounts underlying subparagraph 1.e. have been confirmed paid.<sup>(11)</sup> After being told that the account at subparagraph 1.d. had been paid (because there was no record of it), Applicant was told on 11 September 2002, that the account had not been paid; Applicant promptly paid the balance.<sup>(12)</sup> Applicant also provided confirmation from the collection agent on the debts at subparagraphs 1.b. and c. that the accounts had been paid.<sup>(13)</sup>

Applicant's brother considers her "very honest, loyal, responsible, dependable, and probably more than likely one of the best people I know or have known (Tr. 40).

## **POLICIES**

Enclosure 2 of the Directive sets forth adjudicative guidelines to be considered in evaluating an individual's security eligibility. The Administrative Judge must take into account the conditions raising or mitigating security concerns in each area applicable to the facts and circumstances presented. Each adjudicative decision must also assess the factors listed in Section F.3. and in Enclosure (2) of the Directive. Although the presence or absence of a particular condition for or against clearance is not determinative, the specific adjudicative guidelines should be followed whenever a case can be measured against this policy guidance, as the guidelines reflect consideration of those factors of seriousness, recency, motivation, *etc.*

Considering the evidence as a whole, the following adjudication policy factors are most pertinent to this case:

### **FINANCIAL CONSIDERATIONS (GUIDELINE F)**

E2.A6.1.1. The Concern: 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.

E2.A6.1.2. Conditions that could raise a security concern and may be disqualifying include:

E2.A6.1.2.1. A history of not meeting financial obligations;

E2.A6.1.2.3. Inability or unwillingness to satisfy debts;

E2.A6.1.3. 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., . . . unexpected medical emergency. . . divorce or separation).

E2.A6.1.3.6. The individual initiated a good-faith effort to repay overdue creditors or otherwise resolve debts.

### **Burden of Proof**

Initially, the Government must prove controverted facts alleged in the Statement of Reasons. If the Government meets that burden, the burden of persuasion then shifts to the applicant to establish his security suitability through evidence of refutation, extenuation or mitigation sufficient to demonstrate that, despite the existence of disqualifying conduct, it is nevertheless clearly consistent with the national interest to grant or continue the security clearance.

A person who seeks access to classified information enters into a fiduciary relationship with the Government predicated upon trust and confidence. Where facts proven by the Government raise doubts about an applicant's judgment, reliability or trustworthiness, the applicant has a heavy burden of persuasion to demonstrate that he or she is nonetheless security worthy. As noted by the United States Supreme Court in *Department of the Navy v. Egan*, 484 U.S. 518, 531 (1988), "the clearly consistent standard indicates that security-clearance determinations should err, if they must, on the side of denials."

### **CONCLUSIONS**

The Government has established its case under guideline F, but the Applicant has met her burden of mitigating the conduct. The record evidence establishes Applicant's indebtedness and her history of financial difficulties in approximately 1996-1997. However, the record shows that the financial problems were largely beyond her control. A husband who did not work, and had medical expenses of his own taxed family finances. Whether married or divorced, Applicant was essentially the sole provider for her family. She had demonstrated good judgment in purchasing an extended warranty on her new car purchase, but lacked the savvy to pursue repairs when neither the manufacturer nor warrantor would fix her blown engine a second time. Similarly, Applicant had demonstrated good judgment in having medical insurance, but encountered the all-too-familiar dance between providers and insurers. In these situations, consumers are at a distinct disadvantage because it is quite easy for creditors to enter adverse information on a credit report, and difficult for consumers to get that information challenged. Further, Applicant has shown additional good judgement because, with a couple of exceptions, she had been unwilling to simply accept a creditors claim for alleged past due amounts, and has required documentation that she is not only responsible for the account, but for the amount claimed.

In addition, the record also demonstrates Applicant's ongoing efforts to address her financial problems in a responsible fashion. Applicant's clearance application in September 1998 began the process of taking snapshots of Applicant's financial standing. On balance, each of the credit reports<sup>(14)</sup> shows improving financial status, with Applicant not only paying accounts, but closing them.<sup>(15)</sup> By the time the SOR was written, only seven accounts remained unresolved, even though many other accounts had fallen past due in the mid 1990s. Only the automobile account had a significant balance. In the wake of the SOR, Applicant continued to check with creditors about the status of her accounts, and where the creditor continued to show a balance due, Applicant made payment. She continued this in her post-hearing submission, paying an account that had previously been represented as paid. The accounts alleged in the SOR now appear to be paid.

Beyond her repayment efforts, I am satisfied Applicant has taken the necessary steps to keep her financial house in order. She has gotten better organized in terms of her finances. She now appears to be operating on a cash basis, and has a monthly positive cash flow of \$1,600.00. While she has substantial educational loans which she will have to start repaying by November 2003 or so, the projected monthly payment on the consolidated loans is well-within Applicant's current financial ability. I conclude that Applicant is unlike to experience financial difficulties in the future. Accordingly, I resolve Guideline F. for Applicant.

## FORMAL FINDINGS

Paragraph 1. Guideline F: FOR THE APPLICANT

Subparagraph a: For the Applicant

Subparagraph b: For the Applicant

Subparagraph c: For the Applicant

Subparagraph d: For the Applicant

Subparagraph e: For the Applicant

Subparagraph f: For the Applicant

Subparagraph g: For the Applicant

## DECISION

In light of all the circumstances presented by the record in this case, it is clearly consistent with the national interest to grant or continue a security clearance for Applicant.

**John G. Metz, Jr.**

**Administrative Judge**

1. Required by Executive Order 10865, as amended, and Department of Defense Directive 5220.6, dated January 2, 1992--and amended by Change 3 dated 16 February 1996, and by Change 4 dated 20 April 1999 (Directive).
2. Of these, two (1.b., e.) were about \$500.00 each, two (1.c., f.) less than \$100.00, one (1.d.) less than \$150.00. I infer that the debt at subparagraph 1.f. was a medical account only because the collection agent named was the same as for the medical accounts in subparagraphs 1.a. and b. There is no record evidence of this debt, only Applicant's admission (see below).
3. G.E. 3 appears to confirm this account. The CBR shows two separate accounts with the same provider and collection agent, each for \$230.00, that appear to have been combined in subparagraph 1.b. G.E. 4 shows one of those \$230.00 accounts as paid as of December 2000.
4. She also provided a copy of the money order paying the account in full. G.E. 3 confirms the balance due and G.E. 4 reflects that the account had been paid as of December 2000. Applicant indicated she was not aware of this account until talking to the DSS agent in August 2000, which appears to be confirmed by her November 2000 payment.
5. The only record of this debt is Applicant's reporting this debt on her clearance applications (G.E. 1, 2). None of the credit reports (G.E. 3, 4, 5) contain any reference to either the listed creditor or the collection agent.
6. Again, this account was reported by Applicant on her clearance applications (G.E. 1, 2), and does not appear to be reflected in the credit reports. G.E. 3 lists no accounts that could be this account. G.E. 4 and 5 list two past due accounts totaling \$400.00 (one for \$215.00; one for \$185.00), to a creditor who could be a collection agent for the successor hospital corporation on this debt. However, it's not clear from any information on the credit reports that these two debts are the same creditor alleged in the SOR.
7. Although the Applicant admitted this debt, strictly speaking the Government's evidence does not corroborate the account. Applicant did not list it on her clearance applications (G.E. 1, 2). It does not exist on any of the credit reports (G.E. 3, 4, 5). It was not discussed in Applicant's sworn statement (G.E. 6). The allegation itself was vague: the same collection agent as in subparagraphs 1.a. and b. was collecting for an unnamed creditor. Applicant had no information

about this account, but contacted the collection agent the day she received the SOR (29 March 2002), accepted their representation that she owed the money, and sent a money order the next day.

8. Applicant was also concerned by the variation in the amount claimed, and indeed, the credit reports reflect varying amounts due, as a result of accumulating interest charges.

9. The record reflects November 2000 payments to the creditor on one of the accounts in subparagraph 1.b., later confirmed by a change in the credit report entry. There is also some evidence in the record to indicate that the other account with the identical balance is a duplicate entry, not a duplicate debt (A.E. C.). Applicant also paid the debt in subparagraph 1.c. in November 2000.

10. The payments highlight a great problem in financial cases--regarding tracking of account numbers through credit reports, collection agents, and Applicant records. Applicant reported this debt on her 1998 SCA with an account number, and a balance of \$495.00. The February 2002 SCA reports this debt with no account number, balance \$300.00. Only one of the money orders contained in A.E. C has the original account number Applicant listed for the debt. The other two money orders reflect different account numbers. On the one hand, this makes it difficult to establish a complete correlation between the SOR and the accounts reflected in the record. On the other hand, the two SCAs and the amounts paid in March 2002, tend to confirm Applicant's claim that she continued to work on paying her past due accounts.

11. Applicant discovered that she had been successful in getting her health insurer to pay \$195.00 of the \$215.00 account, leaving a balance of \$20.00. Although she had not been successful in getting the insurer to pay the \$185.00, she intended to continue to pursue reimbursement by the insurer, but in the meantime, provided copies of the 11 September 2002 money order to the creditor for the \$185.00 account and the \$20.00 balance remaining on the other account.

12. And provided what confirmation was available in a week's time, a website printout showing a check for \$124.00 clearing her account on 16 September 2002.

13. The printout reflects that as of 13 September 2002 three bills (with account numbers) from the medical provider in 1.b. and c. were paid in full as of 30 November 2000 and 2 April 2002. These dates correlate with Applicant's previously-submitted records of payments and well as the credit report entries for these account.

14. G.E. 3, 4, 5, and a 17 July 2002 report submitted by Applicant as part of A.E. C.

15. eTo be precise, Applicant did not submit the canceled checks representing the last two post-dated payments to the creditor in paragraph 1.e. However, Applicant averred in her answer that she was making a \$50.00 payment by check #1173 (22 November 2000), followed by three payments of \$25.00 by checks #1174 (8 December 2000), #1175 (22 December 2000), and #1176 (5 January 2001). She confirmed the first two payments made as proffered (A.E. C), and provided indirect corroboration of the impending deposit of one of the two remaining post-dated checks (A.E. D). I infer that the last payment was made as proffered and that the account is now paid in full.