

DATE: April 13, 2004

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In Re:

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SSN: -----

Applicant for Security Clearance

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ISCR Case No. 01-23764

## **DECISION OF ADMINISTRATIVE JUDGE**

**MATTHEW E. MALONE**

### **APPEARANCES**

#### **FOR GOVERNMENT**

Erin C. Hogan, Esquire, Department Counsel

#### **FOR APPLICANT**

*Pro Se*

### **SYNOPSIS**

Applicant accumulated over \$12,000.00 in delinquent and overdue debts between 1996 and 2003. Despite a stated intent to pay several of her debts in early 2001, she failed to act until two years later. Applicant also deliberately omitted information about her delinquencies from a security questionnaire in 1999. She has failed to present information sufficient to mitigate the resulting security concerns about her finances and personal conduct. Clearance is denied.

### **STATEMENT OF THE CASE**

On June 20, 2003, the Defense Office of Hearings and Appeals (DOHA) issued to Applicant a Statement of Reasons (SOR) alleging facts that raise security concerns under Guideline F (Financial Considerations) and Guideline E (Personal Conduct). The SOR further informed Applicant that, based on information available to the Government, DOHA adjudicators could not make a preliminary affirmative finding that it is clearly consistent with the national interest to continue Applicant's security clearance. [\(1\)](#)

On September 26, 2003, Applicant answered the SOR (Answer) and requested a determination without a hearing. DOHA Department Counsel submitted a file of relevant materials (FORM) in support of the government's preliminary decision, a copy of which was sent to Applicant on December 1, 2003. Applicant was informed she had until February 5, 2004, to submit any response, rebuttal, or objection to the FORM. The deadline was extended 30 days until March 5, 2004; however, Applicant did not submit anything further in her own behalf. The case was assigned to me on March 5, 2004.

### **FINDINGS OF FACT**

Applicant has admitted all of the allegations in SOR ¶1, but denies the allegations in SOR ¶2. Her admissions are incorporated herein as facts. After a thorough review of the pleadings and exhibits, I make the following additional findings of fact:

Applicant is 39 years old and has worked as a mail clerk for a defense contractor since November 1999. She occupied a similar position with a different defense contractor between May 1999 and October 1999. She seeks a security clearance in connection with her current duties. <sup>(2)</sup>

Applicant has been married since September 1989; however, it appears she and her husband lived apart from December 1996 until November 1998. During that time, Applicant lived in an apartment with a roommate. <sup>(3)</sup>

Since December 1996, Applicant has accumulated approximately \$12,779.00 in debts that have been referred for collection, charged off as losses by the creditor, or are more than 90 days late. Two of the debts are for unpaid rent (SOR 1.g) and electrical bills (SOR 1.j). They became delinquent after Applicant moved back in with her husband and her roommate failed to pay them. Applicant claims to have paid the latter account, but has not provided documentation to support her claim. Another delinquency is for an unpaid telephone account that was referred for collection in May 2002 (SOR 1.f). Applicant claims no knowledge of this account, but intends to pay it. <sup>(4)</sup> Applicant does not know what the delinquency listed in SOR 1.a is for but claims she will repay it. She also states her intent to pay a credit union debt listed at SOR 1.i. <sup>(5)</sup>

On December 6, 2000, during her background investigation, Applicant gave a written statement to investigators about her financial problems. She acknowledged several of the debts listed in her then-current credit report and stated her intent to pay several of the debts, including those listed in SOR 1.g, 1.i, and 1.j in the coming six months. Included in that written statement was a Personal Financial Statement (PFS) showing she had about \$440.00 left over each month after expenses.

On June 18, 2003, Applicant and her husband sought assistance from a credit counseling and debt consolidation service. On July 30, 2003, they began a 46-month payment plan to resolve the debts listed in SOR 1.b, 1.c, 1.d, 1.e, and 1.h. The plan requires a monthly "Debt Management Program (DMP)" payment of \$326.00.

The SOR also alleges Applicant submitted a Standard Form 86 (SF-86) in November 1999 which she deliberately falsified by answering "no" to questions 28a and 28b regarding financial delinquencies. In support of this allegation, the government has submitted an unsigned electronic Personnel Security Questionnaire (EPSQ) submitted on or about January 20, 2001, and the last three pages of a handwritten SF-86 showing, *inter alia*, questions 28a and 28b and signed by Applicant in November 1999. The FORM contains no explanation of why the rest of the SF-86 is not available.

### **POLICIES**

The Directive sets forth adjudicative guidelines <sup>(6)</sup> to be considered in evaluating an Applicant's suitability for access to classified information. The Administrative Judge must take into account both disqualifying and mitigating conditions under each adjudicative issue applicable to the facts and circumstances of each case. Each decision must also reflect a fair and impartial common sense consideration of the factors listed in Section 6.3 of the Directive. The presence or absence of a disqualifying or mitigating condition is not determinative of a conclusion for or against an Applicant. However, specific applicable guidelines should be followed whenever a case can be measured against them as they represent policy guidance governing the grant or denial of access to classified information. Having considered the SOR allegations and having reviewed the record evidence as a whole, I conclude the relevant adjudicative guidelines to be applied here are those conditions listed under Guideline F (Financial Considerations) and Guideline E (Personal Conduct).

### **BURDEN OF PROOF**

A security clearance decision is intended to resolve whether it is clearly consistent with the national interest <sup>(7)</sup> for an Applicant to either receive or continue to have access to classified information. The Government bears the initial burden of proving, by something less than a preponderance of the evidence, controverted facts alleged in the SOR. If the government meets its burden, it establishes a *prima facie* case that it is not clearly consistent with the national interest for the Applicant to have access to classified information. The burden then shifts to the Applicant to refute, extenuate or mitigate the Government's case. Because no one has a "right" to a security clearance, the Applicant bears a heavy

burden of persuasion.<sup>(8)</sup>

A person who has access to classified information enters into a fiduciary relationship with the Government based on trust and confidence. The Government, therefore, has a compelling interest in ensuring each Applicant possesses the requisite judgement, reliability and trustworthiness of one who will protect the national interests as his or her own. The "clearly consistent with the national interest" standard compels resolution of any reasonable doubt about an Applicant's suitability for access in favor of the Government.<sup>(9)</sup>

### CONCLUSIONS

Under Guideline F (Financial Considerations), a security risk may exist when facts show that an individual is financially overextended either through living beyond one's means or through accumulation of large amounts of delinquent debt. Such a person may be at risk of having to engage in illegal acts to generate funds.<sup>(10)</sup> Department Counsel has established a *prima facie* case for disqualification due to financial considerations. Applicant has accumulated significant unpaid debt since 1996. Despite stating her intentions to address her debts in late 2000 or early 2001, she took no action to pay or otherwise resolve her obligations until June 2003 when she and her husband signed on with a credit counseling service. This step is laudable and will eventually resolve about 80% of her delinquencies; however, there is no documentation to show she has actually been paying according to this plan since July 2003, and, in light of earlier unfulfilled promises to pay her debts, I am unwilling to accept her claim the plan is working. I view her claims that she will make arrangements to pay the remaining debts with equal skepticism. Further, assuming Applicant's PFS is still accurate, it shows she will have only about \$127.00 remaining each month, out of which she will have to pay the more than \$2,000 in remaining debts she has not included in the repayment plan. I believe this margin to be too slim to inspire confidence Applicant will be able to put her financial house in order.

Guideline F disqualifying condition (DC) 1<sup>(11)</sup> and DC 3<sup>(12)</sup> apply here. By contrast, having reviewed the listed mitigating conditions, I conclude for the reasons stated above that none apply. I conclude Guideline F against Applicant.

The security concern under Guideline E (Personal Conduct) is that 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.<sup>(13)</sup>

Department Counsel has established a *prima facie* case for disqualification because of Applicant's deliberate falsification of her SF-86. The accounts listed in SOR ¶1.a, ¶1.g, ¶1.i, and ¶1.j were delinquent well before Applicant applied for her clearance, but she failed to disclose them in her 1999 SF-86. Absent information that shows she lacked the intent to falsify her answers, it can only be assumed that she intended to omit the information requested. Guideline E DC 2<sup>(14)</sup> applies here. However, the allegation in SOR ¶2 as it pertains to the debt listed in SOR ¶1.h is misplaced as that debt did not, by the language in the allegation itself, arise until two years after the SF-86 was submitted. Still, on review of the record as a whole, I conclude that none of the listed mitigating conditions apply and I conclude Guideline E against the Applicant.

I have carefully weighed all of the evidence, and I have applied the disqualifying and mitigating conditions as listed under each applicable adjudicative guideline. I have also considered the whole person concept as contemplated by the Directive in Section 6.3, and as called for by a fair and commonsense assessment of the record before me as required by Directive Section E2.2.3. Even assuming *arguendo* the Applicant is paying down her debt according to credit counseling plan, she has provided no information about how she will avoid such problems in the future. These facts also raise reasonable doubts about Applicant's judgment and her truthfulness and, thus, her suitability for access to classified information. Absent substantial information to resolve those doubts, which Applicant failed to provide, I cannot conclude it is clearly consistent with the national interest to grant Applicant's request for a security clearance.

### FORMAL FINDINGS

Formal findings regarding each SOR allegation as required by Directive Section E3.1.25 are as follows:

Paragraph 1, Financial Considerations (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: Against the Applicant

Subparagraph 1.f: Against the Applicant

Subparagraph 1.g: Against the Applicant

Subparagraph 1.h: Against the Applicant

Subparagraph 1.i: Against the Applicant

Subparagraph 1.j: Against the Applicant

Subparagraph 1.k: Against the Applicant

Paragraph 2, Personal Conduct (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 the Applicant. Clearance is denied.

Matthew E. Malone

Administrative Judge

1. Required by Executive Order 10865, as amended, and by DoD Directive 5220.6 (Directive), as amended.
2. FORM Item 6.
3. FORM Item 6 and Item 7.
4. Answer.
5. Id.
6. Directive, Enclosure 2.
7. *See Department of the Navy v. Egan*, 484 U.S. 518 (1988).
8. *See Egan*, 484 U.S. at 528, 531.
9. *See Egan*; Directive E2.2.2.

10. Directive, E2.A6.1.1.

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

12. Directive, E2.A6.1.2.3. Inability or unwillingness to satisfy debts;

13. Directive, E2.A5.1.1.

14. 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;