

DATE: October 22, 2002

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In Re:

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SSN: -----

Applicant for Security Clearance

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ISCR Case No. 01-24504

## **DECISION OF ADMINISTRATIVE JUDGE**

**CLAUDE R. HEINY**

### **APPEARANCES**

#### **FOR GOVERNMENT**

Rita C. O'Brien, Department Counsel

#### **FOR APPLICANT**

*Pro Se*

### **STATEMENT OF THE CASE**

The Applicant has a long history of financial difficulties. She has paid some of her debts and is currently paying on other debts pursuant to repayment agreements. However, she has seven past due debts, which includes four judgments, on which a minimum owed is approximately \$16,700.00. The Applicant has contacted the creditors, but has yet made payment on these debts. Due to her financial irresponsibility, which has not been mitigated, clearance is denied.

### **STATEMENT OF THE CASE**

On February 25, 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 [\(U\)](#) it is clearly consistent with the national interest to grant or continue a security clearance for Applicant. On March 6, 2002, the Applicant answered the SOR and requested a hearing. The case was assigned to me on May 7, 2002. A Notice of Hearing was issued on May 16, 8, 2002, scheduling the hearing which was held on June 5, 2002.

The Government's case consisted of six exhibits (Gov Ex). The Applicant relied on her testimony, the testimony of another witness, and presented one exhibit (App Ex). Following the hearing, 142 pages of documents in fifteen additional documents were received, provisions having been made for their post hearing submission. On June 24, 2002, Department Counsel (DC) object to Applicant's Exhibit (App Ex) H., but had no objection to the other items. On July 1, 2002, the Applicant responded to DC's objection. DC had no objection to the Applicant's response. DC's argument goes to the amount of weight, if any, to be accorded App Ex. H. DC's objection was overruled and all the submissions were admitted as Applicant Exhibits B through P. The transcript (tr.) of the hearing was received on June 14, 2002.

### **FINDINGS OF FACT**

The SOR alleges financial considerations (Guideline F). The SOR alleged the Applicant owes approximately \$39,000.00 on 11 accounts. In her answer to the SOR, the Applicant admitted owing all of the debts except for the credit

union debt (SOR subparagraph 1.b) of \$14,000.00 which followed the involuntary repossession of a vehicle. At the time of the hearing, the Applicant had paid three debts (SOR subparagraphs 1.f., 1.h., and 1.j.) totaling approximately \$3,800.00, and disputes two debts (SOR subparagraphs 1.i. and 1.k.) She was paying one debt (SOR subparagraph 1.a.) which has a balance of \$4,656.26, and had contacted the creditors and made arrangements on three accounts (SOR subparagraphs 1.c., 1.d., and 1.e.) totaling \$13,400.00.

The Applicant is 53-years-old, has worked for a defense contractor since January 2000 and is seeking to obtain a security clearance. The Applicant is a hard worker whose duty performance has been outstanding, exceeded requirements, or was commendable. (App Ex M) She is of good character, a good citizen, and who was characterized as being very trustworthy. (tr. 82)

In 1989, the Applicant filed for bankruptcy which discharged debts of \$24,000.00. (tr. 58) In November 1989, the Applicant was divorced and was given custody of her three children. (App Ex N) The Applicant received \$150.00 per week child support until April 1998, when her youngest child turned 18. In 1992, the Applicant used the credit union to purchase a vehicle (SOR subparagraph 1.b.) for \$12,000.00, which was repossessed in November 1994. The Applicant had made payments for a year and a half before the repossession. When the vehicle was purchased, the Applicant's son was not in college and she did not have to pay tuition. She stopped making her auto payments in order to make tuition payments during her son's freshman year. The Applicant made a \$150.00 payment on this debt in July 2000. In mid-2000, the Applicant arranged to make \$150.00 monthly payments on the balance. As of June 2002, the balance is \$4,646.26. (App Ex C)

In September 1996, the Applicant had another car repossessed which, when sold, left a balance of \$5,800.00 (SOR subparagraph 1.a.). The vehicle had been financed through a credit corporation. At the time of the repossession, the Applicant's daughter was a freshman in college and the Applicant was working part-time for a temporary service. From August 1995 until September 1997, the Applicant did not have a full time salary. (Gov Ex 3, p. 5) As of August 2001, \$12,327.61<sup>(2)</sup> was owed on this account. The amount owed is more than what she had paid for the used vehicle the previous year. (Gov Ex3, p.2)

The Applicant has a second account (SOR subparagraph 1.c.) with the credit union which might involved the same repossession on which is owed \$10,871.00. (Answer to the SOR) Correspondence from the credit union's law firm indicates this account might have been opened after the repossession whereby the outstanding balance due from the repossession was made into an auto loan account. In August 2001, the credit union's attorney agreed to accept 80% of the amount owed (\$6,100.17) if payment of \$4,500.00 was made by September 2001. A June 2002 letter (App Ex D) from the credit union's law firm fails to state how much is yet owed on this account nor does the letter substantiate the Applicant's claim that she is making \$200.00 monthly payments to the credit union. The same letter stated the credit union would be contacted to determine if a second loan exists.

The Applicant owes a credit card company \$2,817.03. (SOR subparagraph 1.d.) In March 1998, she made a \$300.00 payment after being told such a payment would bring her current on the account. This was not true. In late July 2000, following her mid-July 2000 interview with the Defense Security Service (DSS) special agent, the Applicant stated she was going to contact the debtor and offer a repayment of \$60.00 per month starting in September 2000. Payments were not made. In response to the SOR, the Applicant stated she had contacted the creditor and the bill would be paid by the end of March 2002, which was not done. In mid-June 2002, following the hearing, a letter from management company (App Ex E) states \$2,817.03 is owed on this account.

The Applicant owes \$632.00 to a different credit card company. (SOR subparagraph 1.e.) In July 2000, she was going to make a lump sum offer to pay this debt. (Gov Ex 3, p.3) Payment was not made. She then made arrangements to pay this debt by March 2002, but was unable to meet that commitment. She has contacted the creditor and been told that partial payment would be acceptable. As of March 26, 2000, the Applicant was to send \$200.00 and then notify the company when the rest would be sent. (App Ex. F) No documentation has been submitted to show payment on this account has been made. The \$43.00 debt listed in SOR subparagraph 1.f. has been paid. (App Ex G)

In April 1995, an apartment complex secured a \$2,828.65 judgement (SOR subparagraph 1.h.) against the Applicant for unpaid rent when she had failed to give sufficient notice when she moved. Between June 1998 and February 2000, 25% of the Applicant's income was garnished (App Ex I) to pay this judgment, which has now been paid.

In December 1997, a judgement was entered against the Applicant in the amount of \$424.98 for emergency room service (SOR subparagraph 1.g.). As of mid-July 2000, the Applicant intended to make monthly payments of \$50.00 starting in September 2000. No payments were made. The hospital has since closed and at the hearing the Applicant was unsure where to pay this debt. In response to the SOR, the Applicant stated this bill would be paid by the end of March 2002, which was not done. (tr. 46) Following the hearing, the Applicant called the company and arranged to pay

\$60.00 on June 7, 2002 and pay \$200.00 every other week starting on June 21, 2002, to pay the balance of \$542.58. (App Ex H) No documentation has been presented showing payment has actually been made.

The Applicant had two telephone accounts. She claims both accounts were paid, but the telephone company's records indicate there was final payment on only one of the two accounts. The Applicant disputes she owes the telephone company \$454.55. (SOR subparagraph 1.i.) She has been trying to correct this matter since July 2000. She has copies of her utility bills related only to her current address which she has occupied since November 1995. In July 2000, she attempted to resolve this matter and was told that the final bill had been paid on one telephone number and nothing on the other number. Following the hearing, in mid-June 2000, the Applicant was given similar information, but the conversations differ as to which account had been paid in full. (App Ex J)

In March 1993, a second apartment complex got a \$900.83 judgement against the Applicant. (SOR subparagraph 1.j.) The day prior the hearing, the Applicant called the legal department for this debt, but received no information about the debt. The Applicant owes the debt and has not established a repayment plan concerning the debt. (tr. 54) No documentation has been received showing this debt has been paid.

In October 1994, a third apartment complex got a judgement against the Applicant in the amount of \$1,081.14 (SOR subparagraph 1.k.). The judgment was not served on the Applicant because she could not be located. The Applicant claimed to have paid this debt, but at the hearing indicated she had been mistaken as to having paid this debt and the debt was still outstanding. The day prior the hearing, the Applicant called the creditor's legal department, but received no information about the debt. No documentation has been received showing this debt has been paid.

In mid-July 2000, the Applicant gave a sworn statement (Gov Ex 3) to the DSS special agent which addressed all of the debts listed in the SOR with the exception of two judgments (SOR subparagraph 1.j. and 1.h.). In each debt, except for her telephone bill, she indicated she had or would contact the creditor in the near future to set up a repayment plan and start making payment within two months. There is no showing any repayment plans were established or that payments were made pursuant to such plans.

At some time in the recent past, the Applicant had a full time job, a part-time job, and for eight months worked three jobs. (tr. 19) In January 2000, the Applicant secured employment with her current employer which increased her salary by \$15,000.00 per year. (Gov Ex 3. p. 5) Effective late September 2001, as a result of her duty performance, the Applicant's salary was increased to \$50,575.00 per year and in March 2002 it increased to \$51,081.00. (App Ex M) As of June 2000, the Applicant was \$26,000.00 in debt. (Gov Ex 5) As of June 2002, she is \$22,000.00 in debt, on some of which she is making payment and the remainder she is not. (App Ex O) The Applicant has attended seminars and workshop during the evenings and Saturday morning to repair her credit. In February 2002, the Applicant incurred additional medical expenses as the result of knee surgery. From mid February 2002 through mid-March 2002, the Applicant received 65% of her base pay as disability pay. (App Ex P) In March 2002, the Applicant began automatic purchase of U.S. Saving Bonds to have funds available should emergencies arise. In May 2002, the Applicant made her last payment for her children's education.

## POLICIES

The Adjudicative Guidelines in the Directive are not a set of inflexible rules of procedure. Instead, they are to be applied by Administrative Judges on a case-by-case basis with an eye toward making determinations that are clearly consistent with the interests of national security. In making overall common sense determinations, Administrative Judges must consider, assess, and analyze the evidence of record, both favorable and unfavorable, not only with respect to the relevant Adjudicative Guidelines, but in the context of factors set forth in section E 2.2.1. of the Directive as well. In that vein, the government not only has the burden of proving any controverted fact(s) alleged in the SOR, it must also demonstrate the facts proven have a nexus to an Applicant's lack of security worthiness.

The adjudication process is based on the whole person concept. All available, reliable information about the person, past and present, is to be taken into account in reaching a decision as to whether a person is an acceptable security risk. 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.

Considering the evidence as a whole, this Administrative Judge finds the following adjudicative guidelines to be most pertinent to this case:

Financial Considerations (Guideline F) 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.

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

1. A history of not meeting financial obligations. (E2.A6.1.2.1.)
3. Inability or unwillingness to satisfy debts. (E2.A6.1.2.3.)

Conditions that could mitigate security concerns include:

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

### **BURDEN OF PROOF**

Initially, the Government has the burden of proving any controverted fact(s) alleged in the Statement of Reasons. If the Government meets that burden, the burden of persuasion then shifts to the Applicant who must remove that doubt and establish her security suitability with substantial evidence in explanation, mitigation, extenuation, or refutation, sufficient to demonstrate that despite the existence of guideline conduct, it is clearly consistent with the national interest to grant or continue her security clearance.

A person who seeks access to classified information enters into a fiduciary relationship with the Government predicated upon trust and confidence. Where the 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 she is nonetheless security worthy. As noted by the United States Supreme Court in *Department of 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." As this Administrative Judge understands the Court's rationale, doubts are to be resolved against the applicant.

### **CONCLUSIONS**

The Government has satisfied its burden of proof under Guideline F (Financial Considerations). Under Guideline F, the security eligibility of an applicant is placed into question when the applicant is shown to have a history of excessive indebtedness, recurring financial difficulties, or a history of not meeting financial obligations. The United States must consider whether individuals granted access to classified information are through financial irresponsibility in a position where they may be more susceptible to mishandling or compromising classified information or material for financial gain.

A person's relationship with his creditors is a private matter until evidence is uncovered demonstrating an inability or unwillingness to repay debts under agreed upon terms. Absent evidence of strong extenuating or mitigating circumstances, an applicant with a history of serious or recurring financial difficulties is in a situation of risk that is inconsistent with the holding of a security clearance. Here, Applicant's overall history of financial difficulties, which started in 1994, and continues to the present, provides concern. The Applicant owes approximately \$ 16,700.00 on seven accounts. Five judgements were filed against the Applicant. Disqualifying conditions (DC) 1.<sup>(3)</sup> and 3<sup>(4)</sup> apply.

In September 1996, the Applicant had a vehicle repossessed on which she yet owes \$4,656.00. (SOR subparagraph 1.a.) The Applicant has contacted the creditor and has not only arranged to make \$150.00 monthly payments on this debt, but is actually making those payments. Mitigating Condition (MC)6<sup>(5)</sup> applies to this debt. I find for the Applicant as to SOR subparagraph 1.a.

The Applicant has paid the \$43.00 owed in SOR subparagraph 1.f. She paid the \$2,828.65 judgement (SOR subparagraph 1.h) by garnishment. There is conflicting information about which of her two telephone bills (SOR subparagraph 1.i.) has been paid in full and which was unpaid. At different times the Applicant has been told each of the accounts has been fully paid. The accounts were for telephone service prior to December 1995. Having been told at different times that each of the accounts had been paid in full, I find for the Applicant as to her telephone debt. I find the Applicant has resolved the three debts in SOR subparagraphs 1.f., 1.h., and 1.i.

For the other seven debts listed in the SOR, none of the MC apply. The Applicant has acknowledged the debts in the SOR and repeatedly stated she intends to pay them. Although the Applicant has a desire to repay her debts, she has taken few steps to actually make payment. An Applicant is not required to be debt free but is required to manage her finances in such a way as to meet her financial obligations. For Mitigating Factor (MC) 6<sup>(6)</sup> to apply there must be an "ability" to repay the debts, the "desire" to repay, and evidence of a good faith effort to repay. The mere desire to pay past due debts without actually making some type of payment is insufficient to demonstrate a good-faith effort to repay. A systematic, concrete method of paying past due liabilities is needed, which is not present here. The Applicant has provided no cancelled checks, money order receipts, other receipts, letters from the creditors, or other evidence showing payment has been made.

The Applicant has repeatedly contacted a number of the debtors and once again indicated some type of repayment schedule has been established. Once again, she indicates that at some unspecified future date she will begin to make payments pursuant to the agreements. This promise to pay at some future date must be carefully considered in light of similar promises she made in mid-July 2000 (Gov Ex 3) and in March 2002 (Answer to the SOR) and failed to keep. Her mid-July 2000 sworn statement to the DSS special agent the Applicant said she would contact her creditors and establish a repayment plan with each of them. Her sworn statement addresses the same debts listed in the SOR with the exception of the two judgments (SOR subparagraph 1.j. and 1.h.) related to her apartment rent. In each case, except for her telephone bill, she indicated she had or would contact the creditor and had or would set up a repayment plan and start making payment within two months. There is no showing the repayment plan was established or that payments were made pursuant to those plans.

It is possible that the two debts listed in SOR subparagraphs 1.b. and 1.c. are the same debt. Following the repossession of her vehicle an account could have been opened at the credit union for her to repay the balance due following the repossession. However, the Applicant has failed to establish these two debts are the same debt. What the record shows is, in February 1995, the credit union had a \$9,900.00 judgment entered against the Applicant, on which \$10,871.65 is owed. (Answer to SOR) The June 2002 correspondence from the credit union's law firm (App Ex D) fails to show a repayment plan exists. There is no evidence that of payments pursuant to such a plan have been made. Additionally, the letter indicates the credit union will be questioned to determine how many accounts exist.

The Applicant has contacted three other creditors: the credit card company (SOR subparagraph 1.d.), the apartment complex having a judgment against her (SOR subparagraph 1.j.), and the management corporation having a different judgment (SOR subparagraph 1.k.) against her, but has not made any payments. She has made payment arrangements with two creditors: a credit card company (SOR subparagraph 1.e.), and the hospital judgment. (SOR subparagraph 1.g.) However, she has made no payments pursuant to these arrangements. There is no evidence the Applicant is currently making payment pursuant to the agreement nor is there any evidence the creditors have accepted the arrangements. Merely writing a creditor asking to establish a repayment plan is insufficient. Without more it is not possible to find the Applicant has initiated a good-faith effort to repay her creditors. MC 6<sup>(7)</sup> does not apply to these seven debts.

None of the other mitigating factors apply in the Applicant's favor. The conduct is recent (MC 1)<sup>(8)</sup> in that the debts are still owed. It is not an isolated incident (MC 2)<sup>(9)</sup> because there are seven debts. Although the Applicant has received some financial counseling, there is no indication the Applicant's financial problems are under control. (MC 4)<sup>(10)</sup> Affluence was not alleged. (MC5)<sup>(11)</sup> The Applicant divorced in 1989 and was a single mother raising three children were factors beyond her control as was her period of under employment before securing her current job in January 1999. Although these factors were beyond her control, sufficient time has passed to allow some type of repayment plan to be established. MC 3<sup>(12)</sup> does not apply. Because the Applicant has failed to present sufficient mitigation to overcome her financial irresponsibility concerning these seven debts, I find against the Applicant as to SOR subparagraphs 1.b., 1.c., 1.d., 1.e., 1.g., 1.j., and 1.k.

In reaching my conclusions I have also considered: the nature, extent, and seriousness of the conduct; the Applicant's age and maturity at the time of the conduct; the circumstances surrounding the conduct; the Applicant's voluntary and knowledgeable participation; the motivation for the conduct; the frequency and recency of the conduct; presence or absence of rehabilitation; potential for pressure, coercion, exploitation, or duress; and the probability that the circumstance or conduct will continue or recur in the future.

### **FORMAL FINDINGS**

Formal Findings as required by Section 3., Paragraph 7., of Enclosure 1 of the Directive are hereby rendered as follows:

Paragraph 1 Guideline F (Financial): AGAINST THE APPLICANT

Subparagraph 1.a.: For 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.: For the Applicant

Subparagraph 1.g.: Against the Applicant

Subparagraph 1.h.: For the Applicant

Subparagraph 1.i.: For the Applicant

Subparagraph 1.j.: Against the Applicant

Subparagraph 1.k.: 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.

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**Claude R. Heiny**

**Administrative Judge**

1. Required by Executive Order 10865, as amended and Department of Defense Directive 5220.6 (Directive), dated January 2, 1992 as amended.
2. This amount represents: principal of \$6,700.00, \$4,100.00 in interest for the period of August 1985 through September 2001, \$1,200.00 in attorney fees, and \$ 235.00 in court costs. (App Ex D)
3. DC 1. A history of not meeting financial obligations. (E2.A6.1.2.1.)
4. DC 3. Inability or unwillingness to satisfy debts. (E2.A6.1.2.3.)
5. MC 6. The individual initiated a good-faith effort to repay overdue creditors or otherwise resolve debts. (E2.A6.1.3.6.)
6. MC 6. The individual initiated a good-faith effort to repay overdue creditors or otherwise resolve debts.
7. MC 6. The individual initiated a good-faith effort to repay overdue creditors or otherwise resolve debts. (E2.A6.1.3.6.)
8. MC 1. The behavior was not recent.
9. MC 2. It was an isolated incident.
10. MC 4. The person has received or is receiving counseling for the problem and there are clear indications that the problem is being resolved or is under control.
11. MC 5. The affluence resulted from a legal source. (E2.A6.1.3.5.)
12. WMC 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). (E2.A6.1.3.3.)