

DATE: November 28, 2003

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In Re:

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SSN: -----

Applicant for Security Clearance

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ISCR Case No. 01-25571

## **DECISION OF ADMINISTRATIVE JUDGE**

**ROGER E. WILLMETH**

### **APPEARANCES**

#### **FOR GOVERNMENT**

Robert J. Tuider, Department Counsel

#### **FOR APPLICANT**

*Pro Se*

### **SYNOPSIS**

Applicant mitigated nine of ten delinquent debts listed in the SOR by paying them off. But she has not established her contention that the remaining debt, a judgment against her, is the same as one of the debts she paid and other evidence in the record places that contention in doubt. It is plausible that Applicant was not aware of the judgment when she completed her security clearance application, since she had moved to a new address. However, it is unreasonable to accept that she would not have been aware that she was more than 180 days delinquent on more than the one debt she reported, when she was more than two years delinquent on two additional debts and more than a year delinquent on two others. Moreover, she was not a credible witness because she provided conflicting sworn statements as to whether she received child support. Clearance is denied.

### **STATEMENT OF THE CASE**

On October 23, 2002, the Defense Office of Hearings and Appeals (DOHA), pursuant to the applicable Executive Order [\(1\)](#) and Department of Defense Directive, [\(2\)](#) issued a Statement Reasons (SOR) to Applicant. The SOR details security concerns under Guideline F (Financial Considerations) and Guideline E (Personal Conduct). The SOR states that DOHA was unable to find that it is clearly consistent with the national interest to grant her access to classified information and recommends that his case be submitted to an Administrative Judge.

On January 30, 2003, DOHA received a second and more complete response from Applicant in which she requested a hearing. The case was assigned to me on arch 17, 2003. A notice of hearing was issued on March 26, 2003 and the hearing was held on April 17, 2003. During the hearing, five Government exhibits (Govt Ex), six Applicant exhibits (Ap Ex) and the testimony of Applicant were received. The transcript (Tr) was received on April 23, 2003.

### **FINDINGS OF FACT**

Having thoroughly considered the evidence in the record, I make the following findings of fact:

Applicant is a 32-year-old administrative secretary employed by a defense contractor. She is seeking a security clearance.

In May 1997, Applicant incurred a debt in the amount of \$1,128.00 to a creditor. In February 1999, the creditor reported the debt as a past due account with a balance of \$1,072.00 (SOR ¶ 1.a).<sup>(3)</sup> The creditor assigned it to a collection agency. Applicant paid the balance on that debt to the collection agency on or about November 11, 2002.<sup>(4)</sup> Applicant's credit reports, dated November 26, 2001, and July 10, 2002, list the same account number of the debt addressed in SOR ¶ 1.a under the name of the creditor listed therein, as well as under the name of the creditor referred to in SOR ¶ 1.j, who obtained a judgment against her.<sup>(5)</sup> In addition to that debt, her July 10, 2002 credit report lists two additional debts to the creditor referred to in SOR ¶ 1.j, as well as the judgment.<sup>(6)</sup>

In January 1998, Applicant had incurred a debt in the amount of \$1,573.00 to her state employment commission for overpayment of unemployment insurance benefits (SOR ¶ 1.b).<sup>(7)</sup> In April 2003, the outstanding balance on this obligation was satisfied when her state department of revenue withheld \$154.00 from Applicant's tax refund.<sup>(8)</sup>

In April 1997, Applicant incurred a debt to a cable company in the amount of \$99.00 (SOR ¶ 1.c).<sup>(9)</sup> By March 25, 2003, Applicant paid off the debt, which had been assigned the debt to a collection agency.<sup>(10)</sup>

Between August 1996 and December 1999, Applicant incurred debts of \$30.00 (SOR ¶ 1.d), \$25.00 (SOR ¶ 1.e), \$143.00 (SOR ¶ 1.f), \$94.54 (SOR ¶ 1.g), \$127.65 (SOR ¶ 1.h), and \$212.16 (SOR ¶ 1.i) to three different medical providers. She incurred the \$30.00 debt referred to in SOR ¶ 1.d in May 1998 and the \$143.00 debt cited in SOR ¶ 1.f in December 1998.<sup>(11)</sup> By February 13, 2003, she paid off these obligations by paying the collection agency that had been assigned all these debts.<sup>(12)</sup>

On February 24, 1999, one of Applicant's creditors obtained a judgment against her in the amount of \$1,325.44.<sup>(13)</sup>

On September 22, 1999, Applicant executed a security clearance application (SF 86). In response to question 38,<sup>(14)</sup> Applicant answered, "yes," but only listed a student loan, deliberately omitting additional delinquent debts that she should have reported.<sup>(15)</sup>

On the same SF 86, Applicant answered, "no," in response to question 37.<sup>(16)</sup>

On August 13, 2001, applicant provided a sworn statement, including a personal financial statement, to a special agent for the Defense Security Service (DSS). Applicant represented that she received \$275.00 per month in child support from the father of her daughter. She asserted that she had a net remainder of \$195.00 each month to apply toward her past due debts.<sup>(17)</sup>

## POLICIES

Department Counsel is responsible for presenting witnesses and other evidence to establish facts alleged in the SOR that have been controverted. Directive E3.1.14. The applicant is responsible for presenting witnesses and other evidence to rebut, explain, extenuate, or mitigate facts admitted by the applicant or proven by Department Counsel, and has the ultimate burden of persuasion as to obtaining a favorable clearance decision. Directive E3.1.15.

Eligibility for access to classified information is predicated upon an individual meeting adjudicative guidelines discussed in Enclosure 2 of the Directive. An evaluation of whether an applicant meets these guidelines includes the consideration of a number of variables known as the "whole person concept." Available, reliable information about the person, past and present, favorable and unfavorable, should be considered in reaching a decision. This assessment should include the following factors: (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. Any doubt as to whether

access to classified information is clearly consistent with national security will be resolved in favor of national security. Directive E2.2.2.

Enclosure 2 provides conditions for each guideline that could raise a concern and may be disqualifying, as well as further conditions that could mitigate a concern and support granting a clearance. The following guidelines are applicable to this case.

#### Guideline F: Financial Considerations

The concern is that an individual who is financially overextended is at risk of having to engage in illegal acts to generate funds. Conditions that could raise a security concern and may be disqualifying include E2.A6.1.2.1, a history of not meeting financial obligations (Disqualifying Condition 1). They also include E2.A6.1.2.3, inability or unwillingness to satisfy debts (Disqualifying Condition 3).

Conditions that could mitigate security concerns include E2.A6.1.3.6, the individual initiated a good-faith effort to repay overdue creditors or otherwise resolve debts (Mitigating Condition 6).

#### Guideline E: Personal Conduct

The concern under Guideline E is 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 under Guideline E include E2.A5.1.2.2 (Disqualifying Condition 2). Disqualifying Condition 2 covers 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.

None of the conditions that could mitigate security concerns are applicable in this case.

### CONCLUSIONS

#### Guideline F

Applicant's delinquent indebtedness listed in SOR ¶ 1.a through SOR ¶ 1.i demonstrate a history of not meeting financial obligations on the part of Applicant, as well as inability or unwillingness to satisfy debts on her part. This establishes both Disqualifying Condition 1 and Disqualifying Condition 3.

Applicant has demonstrated that she has paid off all of these obligations. This mitigates these debts by establishing Mitigating Condition 6. Admittedly, the debt listed in SOR ¶ 1.b was paid through an involuntary reduction from Applicant's state tax refund. However, she had reduced the debt to \$154.00 from the original obligation of \$1,573.00 by the time that action was taken.

Applicant contends that the judgment referred to in SOR ¶ 1.j is to the same account addressed by SOR ¶ 1.a that she has satisfied. <sup>(18)</sup> However, she has not provided evidence of this. Her correspondence from the collection agency only confirms payment of a balance owed to the creditor listed in SOR ¶ 1.a. It is true that the same account number of the debt referred to in SOR ¶ 1.a is listed under the names of two different creditors in both of her credit reports in evidence. Although one of those creditors is the same one who obtained the judgment against Applicant, there are two additional accounts with that same creditor listed in her latest credit report, as well as the judgment in question. Her earlier credit report reflects that the balance on the account listed in SOR ¶ 1.a was \$1,072.00 in February 1999. However, that same month, the judgment creditor obtained a \$1,325.44 judgment against Applicant, after filing a claim for \$1,437.57 against her a month earlier. Therefore, it is not consistent with the record and certainly not clear from the record that the account addressed by SOR ¶ 1.a and the judgment referred to in SOR ¶ 1.j are the same. Given the requirements of E.2.2.2, the

uncertainty in this case must be resolved in favor of national security and against Applicant.

Applicant provided evidence that an additional debt of the judgment creditor was deleted from her credit report. <sup>(19)</sup> Here again, however, the record does not demonstrate that the debt and the judgment are the same. Moreover, the reason the debt was deleted from her credit report is not clear. In addition, I have not found Applicant to be a credible witness, in light of her conflicting sworn statements discussed below. In light of all of the above reasons, I find against Applicant with regard to SOR ¶ 1.j.

#### Guideline E

Applicant's failure to list her delinquent debts on her SF 86, as alleged in SOR ¶ 2.a, is sufficient to establish Disqualifying Condition 2. Her failure to list the judgment against her also raises the same disqualifying condition with respect to SOR ¶ 2.b.

Applicant contends she was unaware of the judgment against her that is listed in SOR ¶ 1.j until after she submitted her SF 86 and obtained a copy of her credit report. She testified that she did not live at the address shown listed for her on the judgment. At the time the judgment was entered against her, Applicant had moved to another address, as is reflected on her SF 86. It is plausible that Applicant would not have known of the judgment, if she had not left a forwarding address and the creditor was unable to locate her. Therefore, I find in favor of Applicant with respect to SOR ¶ 2.b.

Applicant also maintains that at the time she completed her SF 86, she was unaware the debts listed in SOR ¶ 2.a were delinquent. I do not find her assertion credible. At the time she submitted her SF 86, two of the listed debts were more than two years delinquent and two of the remaining three were well over a year delinquent. It is unreasonable to accept that Applicant was not aware of these delinquent debts. Pertinent to this determination are her conflicting sworn statements on another matter. At the hearing and in an apparent effort to establish mitigation, Applicant testified that the father of her daughter does not and did not help out with support, although she claimed that she had filed with the state in an effort to collect child support. <sup>(20)</sup> In her sworn statement to the DSS special agent, however, Applicant claimed that the father was paying her \$275.00 per month. At the time, that payment was critical in her being able to show a net remainder of \$195.00. Her sworn statements cannot be reconciled. Either Applicant received child support or she did not. Applicant's conflicting sworn statements on this matter cause me to question her credibility. Because of that, I am not able to accept that her omission of delinquent debts from her security clearance application was not deliberate, just as I am not able to accept her assertion that the debt addressed in SOR ¶ 1.a and the judgment against her are the same. Applicant's irreconcilable statements concerning child support also demonstrate that her falsification on her SF 86 was not an isolated incident. Therefore, I find against Applicant with regard to SOR ¶ 2.a.

### **FORMAL FINDINGS**

Formal findings, as required by section E3.1.25 of Enclosure 3 of the Directive, are as follows:

#### Paragraph 1. Guideline F: AGAINST APPLICANT

Subparagraph 1.a: For Applicant

Subparagraph 1.b: For Applicant

Subparagraph 1.c: For Applicant

Subparagraph 1.d: For Applicant

Subparagraph 1.e: For Applicant

Subparagraph 1.f: For Applicant

Subparagraph 1.g: For Applicant

Subparagraph 1.h: For Applicant

Subparagraph 1.i: For Applicant

Subparagraph 1.j: Against Applicant

Paragraph 2. Guideline E: AGAINST APPLICANT

Subparagraph 2.a: Against Applicant

Subparagraph 2.b: For Applicant

### **DECISION**

In light of the evidence of record in this case, it is not clearly consistent with the national interest to grant or continue a security clearance for Applicant.

*Signed*

**Roger E. Willmeth**

**Administrative Judge**

1. Executive Order 10865, *Safeguarding Classified Information Within Industry*, dated February 20, 1960, as amended.
2. Department of Defense Directive 5220.6, *Defense Industrial Personnel Security Clearance Review Program* (Directive), dated January 2, 1992, as amended and modified.
3. Govt Ex 2 at 5-6; Govt Ex 4 at 8.
4. Ap Ex B.
5. Govt Ex 2 at 5-6; Govt Ex 4 at 4, 8.
6. Govt Ex 4 at 8, 11.
7. Govt Ex 2 at 6.
8. Ap Ex C.
9. Govt Ex 2 at 7.
10. Ap Ex D. Although the name of the creditor shown on Govt Ex 2 at 7 is not the same as that referenced by the collection agency in ap Ex D, both refer to the same account numbers.
11. Govt Ex 2 at 7.
12. Ap Ex E.
13. Govt Ex 5.
14. "In the last 7 years, have you been over 180 days delinquent on any debt(s)?"
15. Govt Ex 1 at 10.
16. "In the last 7 years, have you had any judgments against you that have not been paid?"

17. Govt Ex 3.

18. Tr 21-22.

19. Ap Ex A.

20. Tr 25.