

DATE: April 2, 2003

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In Re:

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SSN: -----

Applicant for Security Clearance

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ISCR Case No. 02-00469

**DECISION OF ADMINISTRATIVE JUDGE**

**PHILIP S. HOWE**

**APPEARANCES**

**FOR GOVERNMENT**

Erin C. Hogan, Esq., Department Counsel

**FOR APPLICANT**

*Pro Se*

**SYNOPSIS**

Applicant refuses to pay a judgment debt and another debt. Applicant did not disclose on her security clearance application her unpaid judgment, financial delinquencies over 180 days, and a mortgage repossession. The failure to pay debts and lack of disclosure raise grave questions and doubts about her security eligibility and suitability. Clearance is denied.

**STATEMENT OF THE CASE**

On November 14, 2002, the Defense Office of Hearings and Appeals (DOHA), under Executive Order 10865, *Safeguarding Classified Information Within Industry*, dated February 20, 1960, as amended and modified, and Department of Defense Directive 5220.6, *Defense Industrial Personnel Security Clearance Review Program* (Directive), dated January 2, 1992, as amended and modified, issued a Statement of Reasons (SOR) to Applicant. The SOR detailed reasons under Guideline F (Financial Considerations) and Guideline E (Personal Conduct) 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 conduct proceedings and determine whether clearance should be granted, continued, denied, or revoked.

In a signed and sworn statement, dated November 25, 2002, Applicant responded to the SOR allegations. She requested her case be decided on the written record in lieu of a hearing.

On January 6, 2003, Department Counsel submitted the Department's written case. A complete copy of the file of relevant material (FORM) [\(1\)](#) was provided to the Applicant, and she was given the opportunity to file objections and submit material in refutation, extenuation, or mitigation. Nothing in the record indicates that Applicant filed a response to the FORM. The case was assigned to me on March 18, 2003.

**FINDINGS OF FACT**

Applicant admitted all of the SOR allegations (subparagraphs 1.a, 1.b, 2.a., 2.b, and 2.c). Those admissions are incorporated herein as findings of fact. After a complete and thorough review of the evidence in the record, and upon due consideration of the same, I make the following additional findings of fact:

Applicant works as an assembler for a defense contractor. She has one son. (Item 6 at 1)

Applicant refuses to pay the mortgage foreclosure deficiency because she believes the mortgage company should not have approved her for the loan. Her income was not sufficient to pay the mortgage, she contends, and the interest of 14% annually was too much for her to afford. The mortgage was a "buy-down" type with the higher interest after the fourth year of the loan for the balance of the term. She asserts she tried to pay the mortgage, but she was no longer working overtime and did not receive child support after her former husband went to jail for some crime she does not specify in her statement. Also, repairs needed to be made to the home, and she could not afford them, the mortgage, and ordinary living expenses. Finally she had to move out of the house and let it be foreclosed. Applicant defaulted on the foreclosure lawsuit. (Item 6 at 2 to 4)

She admits her debt to a physician for \$78.00, but will not pay it because he allegedly performed an "unnecessary medical procedure" on her person. (Item 6 at 5)

Applicant signed her security clearance application on July 23, 2001. The seven year cut off date for disclosure on that application for Questions 35 (subparagraph 2.c.), Question 37 (subparagraph 2.a.), and Question 38 (subparagraph 2.b.), the questions at issue in this case, would be July 23, 1994. Question 35 asked what repossessions Applicant had in the past seven years. Question 37 asked what unpaid judgements Applicant had in the past seven years. Question 38 asked what financial delinquencies over 180 days Applicant had in the past seven years. (Item 5 at 6 and 7)

Applicant did not list the mortgage foreclosure and the physician's debt on her security clearance application in response to Questions 35, 37, and 38 because she thought they were more than 7 years old. She acknowledged the debts and explained her thinking of why she did not list them in her statement of November 14, 2001. (Item 5 at 1; Item 6 at 1 to 9)

Applicant's mortgagee filed the foreclosure action on March 23, 1995, and judgment was entered on July 5, 1995. The amount for which Applicant was held liable is \$55,730.71 plus interest. Her house was repossessed by the creditor as a result of this mortgage foreclosure action. This debt fell within the seven year period of time and should have been listed on the security clearance form in response to Questions 35, 37, and 38, as alleged in subparagraph 2.a., 2.b., and 2.c. of the SOR. (Item 6 at 4; Item 7 at 1 to 9)

Applicant's credit report shows the one judgment, the foreclosure, and the past due bill to the physician for \$78.00. This debt was turned over for collection in July, 1996. Therefore, this debt fell within the seven year requirement to disclose on the security clearance application and should have been disclosed in response to Question 38, as alleged in subparagraph 2.b. of the SOR. (Item 7 at 9)

Applicant also has on her record additional credit card and installment loan debt in excess of \$8000. She seems to be paying regularly monthly amounts on these debts while not paying the mortgage deficiency and the physician's bill. (Item 8 at 2, 5 and 6)

### **POLICIES**

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. Enclosure 2 to the Directive sets forth adjudicative guidelines that must be carefully considered according to the pertinent Guideline in making the overall common sense determination required.

Each adjudicative decision must also include an assessment of: (1) the nature, extent, and seriousness of the conduct; (2) the circumstances surrounding the conduct, and the extent of knowledgeable participation; (3) how recent and frequent the behavior was; (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 (See Directive, Section E2.2.1. of Enclosure 2). Because each security case presents its own unique facts and circumstances, it should not be assumed that the factors exhaust the realm of human experience or that the factors apply equally in every case. Moreover, although adverse information concerning a single condition may not be sufficient for an unfavorable determination, the individual may be disqualified if available information reflects a recent or recurring pattern of questionable judgment, irresponsibility, or other behavior specified in the Guidelines.

Based upon a consideration of the evidence as a whole, I find the following adjudicative guidelines most pertinent to an evaluation of the facts of this case:

**Guideline F - Financial Considerations:**

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.A6.1.3.1. The behavior was not recent.

E2.A6.1.3.2. It was an isolated incident.

E2.A6.1.3.3. 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).

**Guideline E - Personal Conduct:**

E2.A5.1.1. *The Concern:* 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. The following will normally result in an unfavorable clearance action or administrative termination of further processing for clearance eligibility:

E2.A5.1.1.2. Refusal to complete required security forms, releases, or provide full, frank and truthful answers to lawful questions of investigators, security officials or other official representatives in connection with a personal security or trustworthiness determination.

E2.A5.1.2. Conditions that could raise a security concern and may be disqualifying also include:

E2.A5.1.2.2. The deliberate omission, concealment, falsification or misrepresentation 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;

E2.A5.1.3. Conditions that could mitigate security concerns include:

E2.A5.1.3.3. The individual made prompt, good-faith efforts to correct the falsification before being confronted with the facts;

**CONCLUSIONS**

Upon consideration of all the facts in evidence, and after application of all appropriate legal precepts, factors, and

conditions above, I conclude the following with respect to each allegation set forth in the SOR:

With respect to Guideline F, the Government established its case. Applicant is delinquent on two accounts, the first the balance of the mortgage foreclosure owed, and the second a small medical bill. Applicant admits these failures to pay. Applicant has not sought to resolve or compromise these debts. She has not paid even the small debt of \$78.00. In fact, she refuses to pay both debts. There is no evidence Applicant offered which showed she could not pay the \$78.00, and in fact, she has incurred installment and credit card debt which she is paying regularly. I cannot find any reasonable basis for Applicant to refuse willfully not to pay these two debts. Applicant's overall conduct pertaining to her financial obligations clearly falls within Financial Considerations Disqualifying Condition (DC) E2.A6.1.2.1., and DC E2.A6.1.2.3.

Regarding Mitigating Conditions (MC)1, 2, and 3, I find them not applicable to this case. The behavior continues, so it is recent and not isolated. The lack of overtime work was within Applicant's control. She also could have attempted to refinance the loan to lower the interest rate, or given a deed in lieu of foreclosure. Walking away from the debt is not a responsible way to proceed. Nor has she presented any evidence she attempted to compromise the deed with her mortgagee. Therefore, the MC E2.A6.1.3.1, MC E2.A6.1.3.2, MC E2.A6.1.3.3 are not applicable.

With respect to Guideline E, I conclude the Government proved its case. Applicant deliberately did not include the information requested on her security clearance application concerning her finances in reply to Questions 35, 37 and 38 thereof. It is easy to count back to July 23, 1994 as the start date of the 7 year period for which she had the duty to disclose. Therefore, I do not find her explanation as to why she did not list them as credible. Applicant admits she failed to disclose both debts, which are the foreclosure, and the unpaid judgment. These matters are of such magnitude and importance in a person's life that it is not credible to believe they could be forgotten and not listed on an application which is directly related to whether Applicant can renew her security clearance and retain her employment which is dependent upon the security clearance. Therefore, DC E2.A5.1.2.2. is applicable.

Regarding the MC E2.A5.1.3.3. (a good faith effort to correct), I cannot find any evidence that Applicant took that action. She did not make the necessary disclosures until November 14, 2001, four months after she initially completed her security clearance application. There is no information that she came forward voluntarily in a good faith effort to provide the additional information. Therefore, I conclude MC E2.A5.1.3.3. is not met or applicable.

### **FORMAL FINDINGS**

Formal Findings as required by Section E3.1.25 of Enclosure 3 of the Directive are hereby rendered as follows:

Paragraph 1 Guideline F: Against the Applicant

Subparagraph 1.a.: Against the Applicant

Subparagraph 1.b.: Against the Applicant

Paragraph 2 Guideline E: Against the Applicant

Subparagraph 2.a.: Against the Applicant

Subparagraph 2.b.: Against the Applicant

Subparagraph 2.c.: Against the Applicant

### **DECISION**

In light of all the circumstances and facts presented by the record in this case, it is not clearly consistent with the national interest to grant or continue a security clearance for Applicant.

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Philip S. Howe

Administrative Judge

1. The Government submitted eight items or exhibits in support of its contention.