

KEYWORD: Financial; Personal Conduct; Criminal Conduct

DIGEST: Applicant's financial irresponsibility was not mitigated where Applicant's debts were caused both by circumstances beyond her control and her own irresponsibility and where she had taken no effective action to address her indebtedness, in large part because she lacks the means to do so at present, and is not expected to have the means to do so in the foreseeable future. Applicant's falsification of her financial history suggested she could not be relied upon to state the truth if the truth presented potential adverse consequences to her personal interest. Clearance denied.

CASENO: 02-03859.h1

DATE: 05/15/2002

DATE: May 15, 2002

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In Re:

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SSN: -----

Applicant for Security Clearance

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CR Case No. 02-03859

**DECISION OF ADMINISTRATIVE JUDGE**

**JOHN G. METZ, JR.**

## **APPEARANCES**

### **FOR GOVERNMENT**

Matthew E. Malone, Department Counsel

### **FOR APPLICANT**

*Pro Se*

## **SYNOPSIS**

Applicant's financial irresponsibility was not mitigated where Applicant's debts were caused both by circumstances beyond her control and her own irresponsibility and where she had taken no effective action to address her indebtedness, in large part because she lacks the means to do so at present, and is not expected to have the means to do so in the foreseeable future. Applicant's falsification of her financial history suggests she could not be relied upon to state the truth if the truth presented potential adverse consequences to her personal interest. Clearance denied.

## **STATEMENT OF THE CASE**

On 25 February 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<sup>(1)</sup> that it is clearly consistent with the national interest to grant or continue a security clearance for Applicant. On 11 arch 2002, Applicant answered the SOR and requested a hearing. The case was assigned to me on 8 April 2002, and received by me and set the same day. On 9 April 2002, I issued a notice of hearing for 25 April 2002.

At the hearing, the Government presented five exhibits--admitted without objection--and no witnesses; Applicant

presented one exhibit--admitted without objection--and the testimony of three witnesses, including herself. DOHA received the transcript on 3 May 2002.

### **PROCEDURAL ISSUES**

At the hearing, I gave Applicant until the close of business on 3 May 2002 to provide me with photocopies of the original payment receipts which she brought to the hearing, along with copies of any correspondence relevant to the debt reduction program she had entered into. Applicant responded within the deadline given, and Department Counsel entered no objection to the exhibit, which I received as Applicant's Exhibit B (A.E. B).

### **FINDINGS OF FACT**

Applicant admitted the allegations of subparagraphs 1. a., b., c., d., h., k., and l. of the SOR. Accordingly, I incorporate these admissions as findings of fact. She denied subparagraph e. because she did not know what the debt was for; she denied subparagraphs f., g., and i. <sup>(2)</sup> because these debts were medical expenses which should have been covered by insurance. She denied subparagraphs j. and m. because these debts were duplicates of the debts alleged in subparagraphs d. and a., respectively. She denied subparagraph n. (regarding her deficit budget) because she did not know what her payment (on past due debts) was to be. She denied the allegations of paragraphs 2 and 3.

Applicant--a 51-year old employee of a defense contractor--seeks access to classified information. She has been employed by her current employer since 1998.

On 23 June 1999, Applicant falsified a Security Clearance Application (SCA)(SF 86)(G.E. 1) by answering "no" to a question requiring Applicant to disclose any property repossessions in the last seven years, and "no" to two questions requiring Applicant to disclose any accounts 90 or 180 days past due in the last seven years. In fact, she had a vehicle repossessed in August 1998 (1.d), and all the debts alleged in the SOR were more than a year old. Applicant's Answer to the SOR asserted that she misunderstood the questions, but her testimony at the hearing belied that claim. <sup>(3)</sup>

The SOR alleges Applicant's thirteen delinquent credit accounts totaling approximately \$22,000.00, and falling delinquent between approximately 1992 and 1999. The Government's evidence (G.E. 4, 5) demonstrates that the debts at

subparagraphs a. and j. are the same debt.<sup>(4)</sup> I am unable to similarly corroborate Applicant's assertion that the debts at subparagraphs d. and m. are the same.<sup>(5)</sup> However, Applicant denied the allegation in subparagraph m. and the Government did not provide independent support for this allegation, which is not cited in the CBR. Accordingly, I find subparagraph m. for Applicant.

Applicant attributed her past due accounts to a variety of factors: separation and ultimate divorce from her husband in 1990, an unmarried daughter living with her--and providing her with a grandchild to provide for--and a December 1997 fire which destroyed their home. She asserts that the medical debts at subparagraph f., g., and i. should have been covered by insurance, but she has not consistently pursued payment by that third party and does not seem to comprehend that she remains primarily liable on those accounts. In her sworn statement in October 2001 (G.E. 3) she acknowledged that the doctor's bill at subparagraph i. was denied by her insurer for failure to obtain necessary pre-authorization; this debt was later reduced to judgment and remains unpaid.

Applicant is currently making payments on only two of the debts alleged in the SOR, the debts alleged at subparagraphs h. and k., totaling approximately \$2,300.00. However, she only entered into a payment plan for these creditors on 28 March 2002, and has made only three monthly payments of \$105.00 on these two debts.<sup>(6)</sup> Further, it is clear from the record that Applicant only pursued the consolidation plan in the face of the pending SOR, having previously stated an intent to seek credit counseling (G.E. 3), but having not followed up on that intention.

Applicant appears to lack the financial means to address the remainder of her indebtedness. Both financial statements prepared by her during her subject interviews (G.E. 2, 3) show negative cash flow. At the hearing, she acknowledged that her financial situation is not likely to improve dramatically in the near future. She is more focused on providing the immediate needs of her family, including her adult daughter and grand child, than on addressing her debts.

The president of Applicant's company considers her an exceptionally good employee; he is generally aware that Applicant's case involves finances, but not the particulars. He has given Applicant an advance on her salary 3-5 times; she has always paid the advance back.<sup>(7)</sup> The company security officer considers Applicant a good, honest worker, but is not otherwise aware of the SOR. Applicant is an active member of her church (A.E. A).

## **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. loss of employment. . . divorce or separation).

### **PERSONAL CONDUCT (GUIDELINE E)**

E2A5.1.1. **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. . .

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

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, . . . [or] determine security clearance eligibility or trustworthiness. . . ;

E2.A5.1.2.3. Deliberately providing false or misleading information concerning relevant and material matters to an investigator, . . . in connection with a personnel security or trustworthiness determination;

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

None.

### **CRIMINAL CONDUCT (GUIDELINE J)**

E2.A10.1.1. A history or pattern of criminal activity creates doubt about a person's judgment, reliability and trustworthiness.

E2.A10.1.2. Conditions that could raise a security concern and may be disqualifying include:

E2.A10.1.2.1. Allegations or admissions of criminal conduct, regardless of whether the person was formally charged;

E2.A10.1.2.2. A single serious crime or multiple lesser offenses.

E2.A10.1.3. Conditions that could mitigate security concerns include:

None.

### **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. The record evidence clearly establishes Applicant's indebtedness and her current inability to address that indebtedness. While circumstances beyond her control may have contributed to the original indebtedness, she appears in some instances to have taken on financial obligations which were not otherwise hers to the detriment of her past due debts. Her recent payment arrangement addresses only two of her outstanding debts, yet that plan was undertaken only in the face of a pending SOR, and only three payments of an otherwise undisclosed number of payments have been made. The remainder of Applicant's debts remains unpaid--and unpayable for the foreseeable future.

Applicant meets none of the mitigating factors for financial considerations. Her financial difficulties are both recent and not isolated; indeed they are ongoing. It does not appear that Applicant has stopped digging herself into a financial hole, much less started to pull herself out of it. Her belated--and incomplete--effort to repay her creditors or otherwise resolve her debts does not constitute a good faith effort within the meaning of the Directive. I find Guideline F. against Applicant.

The Government has established its case under Guideline E. Applicant knew she had past due accounts, including a judgment, going back many years. Failure to recall the details of the various accounts does not excuse the omission of the past due accounts, nor does it render the omission any less deliberate. The omissions had the potential to influence the course of the background investigation. I find Guideline E. against Applicant.

The Government has established its case under Guideline J. Applicant's falsifications violate the provisions of 18 U.S.C. §1001, and Applicant has provided insufficient mitigation of her conduct. I find Guideline J. against Applicant.

## **FORMAL FINDINGS**

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

Subparagraph a: Against the Applicant

Subparagraph b: Against the Applicant

Subparagraph c: Against the Applicant

Subparagraph d: Against the Applicant

Subparagraph e: Against the Applicant



Subparagraph f: Against the Applicant

Subparagraph g: Against the Applicant

Subparagraph h: Against the Applicant

Subparagraph i: Against the Applicant

Subparagraph j: Against the Applicant

Subparagraph k: Against the Applicant

Subparagraph l: Against the Applicant

Subparagraph m: For the Applicant

Subparagraph n: Against the Applicant

Paragraph 2. Guideline E: AGAINST THE APPLICANT

Subparagraph a: Against the Applicant

Subparagraph b: Against the Applicant

Paragraph 3. Guideline J: Against the Applicant

Subparagraph a: 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 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. A debt which the creditor doctor reduced to judgment.
3. Applicant variously claimed in her sworn statement on 24 October 2001 (G.E. 3) that she "misunderstood" the question or that she had answered "NA" because she could not recall the details on the debts. However, it is clear that she knew that she had past due debts and a repossession which should have been reported. The fact that she believed the Government would otherwise discover her financial situation does not absolve her of the failure to disclose the broad outline of her situation. Indeed, while she asserted at hearing that she intended to answer "NA" to the questions (Tr. 40) she acknowledged that there was no option on the SCA for that answer (Tr. 41-42) and "NA" was also not a truthful answer (Tr. 60). Applicant's failure to disclose that she had past due debts, whether she knew the details or not, belies her claim that she did not intend to mislead the Government.
4. Contrary to Applicant's assertion that subparagraphs a. and m. are the same debt. Subparagraph a. alleges a deficiency amount on a repossession that matches the amount in G.E. 4., and further alleges transfer of the debt to the third party intermediary listed on G.E. 4. The third party intermediary in G.E. 4 purports to be acting on behalf of a creditor account number that matches the account number in the CBR (G.E.5) for both the original creditor in subparagraph a., and the listed creditor in subparagraph j. Further, The CBR entry for both creditors shows identical opening dates for both accounts, essentially identical high credit balances; the entry for creditor a. shows a zero balance with an account transfer, while the entry for creditor j. shows a past due balance referred for collection. Consequently, I conclude the two accounts are the same.
5. Although Applicant asserts that she only had two cars repossessed, and I consider it unlikely that she had more than two cars repossessed, the SOR only alleges two repossessions, and there is nothing in the CBR (unlike subparagraphs a. and j. above) to suggest that the two debts are the same.
6. Applicant's records do not document how long the payments are to run or what percentage of the outstanding debts to the two creditors will be satisfied if Applicant makes the scheduled payments.
7. The president has also given other employees of the company advances as necessary in time of need.