

KEYWORD: Financial; Personal Conduct

DIGEST: Applicant's financial irresponsibility was not mitigated where her debts were caused by 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: 02-06805.h1

DATE: 10/07/2002

DATE: October 7, 2002

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In Re:

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SSN: -----

Applicant for Security Clearance

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ISCR Case No. 02-06805

**DECISION OF ADMINISTRATIVE JUDGE**

**JOHN G. METZ, JR.**

**APPEARANCES**

**FOR GOVERNMENT**

Jonathan A. Beyer, Esquire, Department Counsel

## **FOR APPLICANT**

*Pro Se*

### **SYNOPSIS**

Applicant's financial irresponsibility was not mitigated where her debts were caused by 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.

### **STATEMENT OF THE CASE**

On 18 April 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 [\(U\)](#) that it is clearly consistent with the national interest to grant or continue a security clearance for Applicant. On 13 May 2002, Applicant answered the SOR and requested a hearing. The case was originally assigned to a different Administrative Judge but was re-assigned to me on 2 July 2002, and received by me the same day. I set the case on 23 August 2002, and on 26 August 2002, I issued a notice of hearing for 26 September 2002.

At the hearing, the Government presented six exhibits--admitted without objection--and no witnesses; Applicant presented four exhibits--admitted without objection--and the testimony of one witness, herself. DOHA received the transcript on 4 October 2002.

### **PROCEDURAL ISSUES**

At the hearing, I gave Applicant until the close of business on 4 October 2002 to provide me with photocopies of payment receipts for the accounts she claimed payment for (Tr. 61-61). Applicant responded within the deadline given, and Department Counsel entered no objection to the exhibit, which I received as Applicant's Exhibit E (A.E. E).

### **FINDINGS OF FACT**

Applicant admitted the allegations of the SOR, except for the allegations of subparagraphs 1.g. and k., and 2.d.(2); accordingly I incorporate these admissions as findings of fact. <sup>(2)</sup> She denied subparagraphs 1.g. and 2.d. (2) because she did not know what the debt was for; she denied subparagraph k because she asserted she had paid this account. <sup>(3)</sup>

Applicant--a 50-year old employee of a defense contractor--seeks access to classified information. She has been employed by her current employer since 1998.

On 7 April 1999, Applicant falsified a Security Clearance Application (SCA)(SF 86)(G.E. 1) by answering "no" to two questions requiring Applicant to disclose any tax liens filed and unpaid judgments 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 tax lien and an unpaid judgment for that tax lien filed in November 1992 for unpaid state income tax in 1989, and she had an unpaid judgment for a past due medical account filed in October 1995. She failed to disclose the unpaid tax judgment as an account more than 180 days past due. In addition, she failed to disclose the past due medical bill and an unpaid rent account as either 90- or 180-days past due, and she failed to report one financial account as 90-days past due. In her 19 December 2001 sworn statement (G.E. 2), Applicant acknowledged deliberately concealing her financial delinquencies (while denying any intent to conceal information from the Government) because she felt she was still in control of her financial situation at the time. However, she falsified her statement by asserting that she had not listed the medical account judgment on her SCA because she had not incurred that debt at the time she completed the SCA. In fact, the judgment was filed in October 1995, over three years before she completed the SCA in April 1999.

The SOR alleges the 1992 tax lien and judgment (paid in February 2001) and Applicant's fourteen delinquent credit accounts totaling approximately \$12,000.00, and falling delinquent between approximately 1993 and January 2002. Applicant provided proof that the debt at subparagraph 1.b. was paid on 19 August 2002 (A.E. D). She asserts that the debt at subparagraph 1.d. is less than the \$5,500.00 alleged because of a payment she made at the time the services were rendered (Tr. 48-49); Applicant's post-hearing exhibit documents that the debt is slightly more than \$4,000.00, but does not corroborate her claim of a \$500.00 payment on the account. Applicant provided some corroboration of her claim that she had entered into a repayment plan with a consumer credit counseling firm (A.E. A), but acknowledged (Tr. 43, 53) that the repayment plan did not cover all her past due accounts and had only begun in August 2002 (Tr. 39).

Applicant attributed her past due accounts to "over-extending my credit cards for purchases of clothing." (G.E. 2). At the time of her sworn statement, her negative cash flow was \$619.00 per month, and she contemplated filing bankruptcy. However, she did not do so because she is applying to buy a house (Tr. 40-42).

According to A.E. A., Applicant's repayment plan--for which she pays \$83.00 per month (Tr. 44)--covers only five credit accounts, one of which is not listed as past due on either of her two credit bureau reports (G.E. 3, 5). Applicant claims that more accounts are covered in the plan (Tr. 45-48), but has provided no corroboration of that claim.

Applicant appears to lack the financial means to address the remainder of her indebtedness.

The record is silent on Applicant's work record or character.

## **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:

None.

### **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.

### **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. Her original indebtedness was caused by her irresponsible handling of her finances. Further, she is planning to take on additional debt (a mortgage), without addressing her existing indebtedness. Her recent payment arrangement addresses only some of her outstanding debts, yet that plan was undertaken only in the face of a pending SOR, and it does not appear that any payments have been made on the plan. The remainder of Applicant's debts remain 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 resolve 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, and failed to completely disclose her financial difficulties, either on her SCA or during her subject interview. The omissions had the potential to influence the course of the background investigation. I resolve Guideline E. 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: Against the Applicant

Subparagraph n: Against the Applicant

Subparagraph o: Against the Applicant

Paragraph 2. Guideline E: 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

**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. On 13 May 2002, Applicant only partially answered the SOR; the record contains a photocopy of the original SOR which has been annotated by Applicant to provide some of the missing answers. The final responses to the SOR were obtained at hearing (Tr. 14-18).

3. Although she had no proof of payment at the hearing. This is one of the accounts for which Applicant was to produce payment records by 4 October 2002. However, she did not produce proof of payment on this account in her post-hearing submission.