

DATE: June 14, 2005

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In Re:

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SSN: -----

Applicant for Security Clearance

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ISCR Case No. 02-27024

**DECISION OF ADMINISTRATIVE JUDGE**

**JOHN GRATTAN METZ, JR.**

**APPEARANCES**

**FOR GOVERNMENT**

Stephanie C. Hess, Esquire, Department Counsel

**FOR APPLICANT**

Wayne L. Allen, Esquire

**SYNOPSIS**

Applicant's falsification of her clearance application and financial irresponsibility renders her an unsuitable candidate for a security clearance. Clearance denied.

**STATEMENT OF THE CASE**

Applicant challenges the 26 April 2004 Defense Office of Hearings and Appeals (DOHA) Statement of Reasons (SOR) recommending denial or revocation of her clearance because of financial considerations and personal conduct.<sup>(1)</sup> Applicant answered the SOR on 17 May 2004, and requested a hearing. The case was assigned to me 23 November 2004, and heard on 30 November 2004. DOHA received the transcript (Tr.) on 9 December 2004.

**FINDINGS OF FACT**

Applicant admitted Guideline F allegations 1.b. and 1.c.<sup>(2)</sup> of the SOR, but denied the remaining financial allegations and the Guideline E allegations. Accordingly, I incorporate her admissions as findings of fact. She is a 50-year-old schedule control analyst for a defense contractor since March 2002. She has never applied for a clearance before.

When Applicant applied for her security clearance in March 2002, she answered "no" to six questions (questions 34-39) seeking adverse financial information within the last seven years. In fact, Applicant had an automobile voluntarily repossessed in March 2000 (question 35), had a judgment against her for an unpaid mortgage in October 1998 (question 37), and had three accounts currently more than 180-days past due (questions 38 and 39). Applicant's explanation for her omissions stretch credibility. She asserts that because she surrendered the automobile to the dealer voluntarily, it was not a repossession.<sup>(3)</sup> Yet she was aware that she and her husband had stopped paying the loan on the vehicle and that there was a deficiency balance due on the vehicle after the dealer resold it. She claims she was unaware of the judgment on the mortgage deficiency, yet she was aware that she was behind on her mortgage and did not claim to have been unaware of the judgment when she was discussing her adverse financial history with the Defense Security Service

(DSS) in May 2002 (G.E. 2). Further, she offers no credible explanation for her failure to disclose any of these delinquent accounts in response to questions 38 and 39.

Applicant attributes her financial difficulties to her husband's work-related accident in approximately 1996, when she was a stay-at-home mom. <sup>(4)</sup> He was out of work for 4-5 months. During that time, workman's compensation paid all of his medical expenses and approximately one-third of his income. They fell behind in paying their bills; however, in approximately October 2000, her husband received a \$35,000.00 settlement from the party responsible for his injuries.

Applicant and her husband did not use the settlement to repay their past-due debt, but used some of the money to buy her father-in-law's pizza business. They used some of the money to buy the house they were renting at the time. They paid off some debts the lender required to be paid, but not the three debts alleged in the SOR. When Applicant was interviewed in May 2002 (G.E. 2), she was not paying on the account at 1.c., was not paying on the accounts at 1.a./1.b. (although she asserted she was making payment arrangements with that creditor, and claimed to be paying \$100.00 per month to the creditor at 1.d. At the time of this interview, Applicant's positive monthly cash flow was \$375.00.

In her June 2003 response to DOHA financial interrogatories (G.E. 4), Applicant indicated she had stopped paying on the debt at 1.d. in August 2002, when her father-in-law died and they had to pay his funeral expenses of approximately \$2,000.00. She had not made payment arrangements on any of her other debts. However, she stated they were in the process of refinancing their house and hoped to address the past-due bills then.

Applicant took no further action to resolve her past-due debts until well after she received the 26 April 2004 SOR. She settled the debt at 1.c.--which had grown to nearly \$2,900.00 with assessed interest--for \$700.00-900.00 in September 2004 (A.E. D). She settled the debt at 1.d. for an additional payment of \$1,000.00 in November 2004. Applicant paid these accounts when they refinanced their house in September 2004. She has not paid the debts at 1.a./1.b. because she has not been able to locate the creditor. However, she has not corroborated her claimed efforts to contact the creditor.

Applicant and her husband have a combined income of \$59,000.00 per year. They claim a net worth of \$80,000.00 (A.E. A). Their present mortgage is current (A.E. E, F). Applicant's coworkers consider her an honest and trustworthy employee. However, they are not completely aware of the issues raised in the SOR.

## **POLICIES**

The Directive, Enclosure 2 sets forth adjudicative guidelines to be considered in evaluating an Applicant's suitability for access to classified information. The Administrative Judge must take into account both disqualifying and mitigating conditions under each adjudicative issue fairly raised by the facts and circumstances presented. Each adjudicative decision must also reflect a fair and impartial common sense consideration of the factors listed in Section 6.3. of the Directive. The presence or absence of a disqualifying or mitigating condition is not determinative for or against Applicant. However, specific adjudicative guidelines should be followed whenever a case can be measured against them, as they represent policy guidance governing the grant or denial of access to classified information. Considering the SOR allegations and the evidence as a whole, I conclude the relevant, applicable, adjudicative guidelines are Guideline F (Financial Considerations) and Guideline E (Personal Conduct).

## **BURDEN OF PROOF**

A clearance decision resolves whether it is clearly consistent with the national interest to grant or continue an Applicant's security clearance. The government must prove, by something less than a preponderance of the evidence, controverted facts alleged in the SOR. If it does so, it establishes a *prima facie* case against access to classified information. Applicant must then refute, extenuate, or mitigate the government's case. Because no one has a right to a security clearance, the Applicant bears a heavy burden of persuasion.

A person with access to classified information enters into a fiduciary relationship with the government based on trust and confidence. The government, therefore, has a compelling interest in ensuring each Applicant possesses the requisite judgement, reliability, and trustworthiness of those who must protect national interests as their own. The "clearly consistent with the national interest" standard compels resolution of any reasonable doubt about an Applicant's

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suitability for access in favor of the government.

## CONCLUSIONS

The Government established a Guideline F case under disqualifying conditions 1 and 3,<sup>(6)</sup> and Applicant did not mitigate the security concerns. Although her husband's accident might reasonably be considered a causation beyond her control,<sup>(7)</sup> only two of the alleged debts (1.a./1.b. and 1.c.) might have been influenced by that accident. The debt at 1.d. was clearly caused by their dispute with the automobile dealer over the alleged "lemon." Further, Applicant and her husband were made substantially whole in approximately October 2000, when he received a \$35,000.00 settlement. Applicant did not address her past due accounts then, but addressed new financial issues first: buying her father-in-law's business and buying the house they were living in after paying just enough of their past due debt to satisfy the lender. Applicant was then paying on only one account (1.d) at a time, and stopped paying that account when her father-in-law died in August 2002 and they paid his funeral expenses of \$2,000.00. Without minimizing the impact of that expense, Applicant had not resumed payments on any of her past due accounts by June 2003, when DOHA inquired about the status of her past due accounts, had not resumed payments on any of her past due accounts by April 2004, when the SOR was issued, and did not begin to address any of the past due debt until her hearing was imminent. This delay does not demonstrate good faith in addressing her debts.<sup>(8)</sup> Rather, Applicant appears to have address some of her debts (excluding 1.a./1.b.) only because of the pendency of her hearing. This is irresponsible financial behavior and suggests that Applicant is unwilling to meet her financial obligations unless compelled to. I conclude Guideline F against Applicant.

The government established a Guideline E case and Applicant did not mitigate the security concerns. Applicant's clearance application gives no hint of her substantial financial trouble and she has offered no credible explanation for her failure to disclose that information to the government. It does not appear that she sought to disclose the adverse financial information between the time she completed her clearance application and her May 2002 subject interview. Nor does it appear she disclosed the financial information before being presented with the adverse credit report during her subject interview. I conclude 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

Paragraph 2. Guideline E: AGAINST THE APPLICANT

Subparagraph a: Against the Applicant

Subparagraph b: Against the Applicant

Subparagraph c: 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 and Department of Defense Directive 5220.6, as amended (Directive).
2. And by extension 1.a., which appears to be a duplicate of the debt at 1.b., reduced to judgment.
3. She and her husband had constant trouble with the vehicle but did not qualify for "lemon law" protection under state law.
4. She also points to paying \$2,000.00 in funeral expenses when her father-in-law died in 2002.
5. *See Department of the Navy v. Egan*, 484 U.S. 518 (1988).
6. E2.A6.1.2.1. A history of not meeting financial obligations; E2.A6.1.2.3. Inability or unwillingness to satisfy debts
7. E2.A6.1.3.3. The conditions that resulted in the behavior were largely beyond the person's control (e.g. loss of employment. . .).
8. E2.A6.1.3.6. The individual initiated a good-faith effort to repay overdue creditors or otherwise resolve debts.