

DATE: October 27, 2004

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In Re:

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SSN: -----

Applicant for Security Clearance

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ISCR Case No. 02-27047

**DECISION OF ADMINISTRATIVE JUDGE**

**CHARLES D. ABLARD**

**APPEARANCES**

**FOR GOVERNMENT**

Braden M. Murphy, Esq., Department Counsel

**FOR APPLICANT**

*Pro Se*

**SYNOPSIS**

Applicant is a 32-year-old administrative assistant employed by a defense contractor. She was arrested in 1995 and charged with credit card theft, pled guilty, and was sentenced to five years confinement suspended with three years supervised probation and a fine of \$350. Applicant is indebted to four creditors for a total amount of over \$7,000.00. She admits that these debts are outstanding but avers that she intends to pay one, is paying on two others, and disputes the fourth. No evidence was offered to prove those assertions but even assuming that the one disputed debt is not owed and that some payments have been made, the remaining debts exceed \$4,000.00 according to her credit report. Clearance is denied.

**STATEMENT OF CASE**

On January 26, 2003, the Defense Office of Hearings and Appeals (DOHA), pursuant to Executive Order 10865, *Safeguarding Classified Information Within Industry*, 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 which detailed reasons 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. DOHA recommended the case be referred to an administrative judge to determine whether a clearance should be granted, continued, denied, or revoked.

In a sworn written statement dated February 12, 2004, Applicant responded to the allegations set forth in the SOR, and elected to have her case decided on the written record in lieu of a hearing. Department Counsel submitted the Government's written case on May 25, 2004. A complete copy of the file of relevant material (FORM) was provided to the Applicant, and she was afforded an opportunity to file objections and submit material in refutation, extenuation, or mitigation. Applicant did not respond and the case was assigned to me on July 29, 2004.

**FINDINGS OF FACT**

After a complete and thorough review of the information in the record, and upon due consideration of same, I make the following additional findings of fact:

Applicant is a 32-year-old administrative assistant employed by a defense contractor. She was arrested in 1995 and charged with credit card theft and pled guilty. She was sentenced to five years confinement suspended with three years supervised probation and a fine of \$350. These facts were admitted but she offered some exculpatory explanations but without proof.

Applicant is also indebted to four creditors for a total amount of over \$7,000.00. She admits that these debts are outstanding but avers that she intends to pay one, is paying on two others and disputes the fourth one. No evidence was offered to prove those assertions but even assuming the disputed debt is not owed and some payments have been made, the remaining debts still exceed \$4,000.00 according to her credit report.

Applicant holds a passport for a foreign country where she was born but cannot locate it and claims she would relinquish it if it could be found and has no intent to use it. The FORM concedes that issue and asks for a finding in favor of the Applicant on that allegation.

### POLICIES

"[N]o one has a 'right' to a security clearance." *Department of the Navy v. Egan*, 484 U.S. 518, 528 (1988). As Commander in Chief, the President has "the authority to control access to information bearing on national security and to determine whether an individual is sufficiently trustworthy to occupy a position that will give that person access to such information." *Id.* at 527.

An evaluation of whether the applicant meets the security guidelines includes consideration of the following factors: (1) the nature, extent, and seriousness of the conduct; (2) the circumstances surrounding the conduct; (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 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. Directive, ¶ E2.2.1. Security clearances are granted only when "it is clearly consistent with the national interest to do so." Executive Order No. 10865 § 2. *See* Executive Order No. 12968 § 3.1(b).

Initially, the Government must establish, by something less than a preponderance of the evidence, that conditions exist in the personal or professional history of the applicant which disqualify, or may disqualify, the applicant from being eligible for access to classified information *See Egan*, 484 U.S. at 531. The applicant then bears the burden of demonstrating that it is clearly consistent with the national interest to grant or continue the applicant's clearance. "Any doubt as to whether access to classified information is clearly consistent with national security will be resolved in favor of the national security." Directive, ¶ E2.2.2. "[S]ecurity clearance determinations should err, if they must, on the side of denials." *Egan*, 484 U.S. at 531. *See* Executive Order No. 12968 § 3.1(b).

### 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 all allegations set forth in the SOR.

Allegations of criminal conduct raise a number of Disqualifying Conditions (DC) under Guideline J relating to a single serious crime or multiple lesser offenses (E2.A10.1.2.2.) and allegations or admissions of criminal conduct, regardless of whether the person was formally charged (E2.A10.1.2.1.). While several mitigating factors might be applicable if adequate evidence had been offered, the provisions of 10 U.S.C. 986 and the implementing regulations are unequivocal that an applicant is disqualified from holding a security clearance if convicted of a crime and sentenced to more than one year of imprisonment absent a waiver from the Secretary of Defense. However, in view of my finding regarding financial considerations, no recommendation regarding a waiver is necessary.

Applicant's delinquent debts prompted the allegation in the SOR of violation of Guideline F in that an individual who is financially overextended is at risk of having to engage in illegal acts

to generate funds. (E2.A6.1.1.) Conditions that could raise a security concern and may be disqualifying include a history of not meeting financial obligations (E2.A6.1.2.1.) and evidence of

inability or unwillingness to satisfy debts. (E2.A6.1.2.3.) Mitigating Conditions (MC) include the

fact that the person has initiated a good faith effort to repay overdue creditors or otherwise resolve debts. (E2.A6.1.3.6.)

Based on the evidence of record, including Applicant's admissions, the Government has established reasons to deny her a security clearance because of criminal conduct. Having established such reasons, the Applicant has the burden to establish security suitability through evidence which refutes, mitigates, or extenuates the disqualification and demonstrates that it is clearly consistent with the national interest to grant a security clearance. ISCR Case No. 99-0424 (App. Bd. Feb. 8, 2001).

As the policy prescribes, the burden shifted to the Applicant to show that the mitigating conditions are applicable to her. She has failed to meet that burden.

I concur in the recommendation of Department Counsel in the FORM that the allegation relating to Guideline C be in favor of Applicant.

In all adjudications the protection of our national security is of paramount concern. Persons who have access to classified information have an overriding responsibility for the security concerns of the nation. The objective of the security clearance process is the fair-minded, commonsense assessment of a person's trustworthiness and fitness for access to classified information.

After considering all the evidence in its totality and as an integrated whole to focus on the whole person of Applicant, I conclude that it is not clearly consistent with the national interest to grant clearance to Applicant.

### **FORMAL FINDINGS**

Formal findings as required by the Directive (Par. E3.1.25) are as follows:

Paragraph 1. Guideline J: AGAINST APPLICANT

Subparagraph 1.a.: Against Applicant

Subparagraph 1.b.: Against Applicant

Paragraph 2. Guideline F AGAINST APPLICANT

Subparagraph 2.a.: Against Applicant

Subparagraph 2.b.: Against Applicant

Subparagraph 2.c.: Against Applicant

Paragraph 3. Guideline C FOR APPLICANT

Subparagraph 3.a.: For Applicant

### **DECISION**

After full consideration of all the facts and documents 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. Clearance is denied.

Charles D. Ablard

## Administrative Judge