

DATE: January 20, 2004

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In Re:

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SSN: -----

Applicant for Security Clearance

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ISCR Case No. 02-29407

**DECISION OF ADMINISTRATIVE JUDGE**

**MARTIN H. MOGUL**

**APPEARANCES**

**FOR GOVERNMENT**

Jennifer Campbell, Esq., Department Counsel

**FOR APPLICANT**

*Pro Se*

**SYNOPSIS**

Applicant was arrested in 1996, and plead guilty to the charge of Petit Larceny. Additionally, she has had a history of overdue debts, and these debts had not been resolved at the time she completed a Security Clearance Application (SCA) in 2001. Applicant did not provide the required information regarding her arrest or her debts to the Government in the SCA, and she knew or should have known her responses were materially incorrect and incomplete. Mitigation has not been shown. Clearance is denied.

**STATEMENT OF THE CASE**

On January 17, 2003, the Defense Office of Hearings and Appeals (DOHA), pursuant to 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 E (Personal Conduct), Guideline F (Financial Considerations), and Guideline J (Criminal 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 or denied.

In a signed and sworn statement, dated February 26, 2003, Applicant responded to the SOR allegations. She requested that her case be decided on the written record in lieu of a hearing. On July 8, 2003, Department Counsel submitted the Department's written case. A complete copy of the file of relevant material (FORM) was provided to the Applicant, and she was given the opportunity to file objections and submit material in refutation, extenuation, or mitigation. Applicant submitted a timely response to the FORM on August 25, 2003. The case was assigned to this Administrative Judge on September 9, 2003.

In the FORM, Department Counsel offered seven documentary exhibits (Exhibits 1 - 7). Applicant offered several

exhibits which were introduced in the FORM. The only original document was a one page, updated financial statement of Applicant (Exhibit A).

### **FINDINGS OF FACT**

After a complete and thorough review of the evidence in the record, including Applicant's Answer to the SOR and the documents, and upon due consideration of that evidence, I make the following findings of fact:

Applicant is a 25 year old employee of a defense contractor. She is a high school graduate and has never been married.

On February 27, 1996, Applicant was arrested for shoplifting at a department store, and she was charged with Petit Larceny. She plead guilty and was ordered to pay a fine and court costs totaling approximately \$200. She was given a deferred sentence and ordered to serve one year probation (Exhibits 5 and 7).

Applicant has admitted owing four debts as of May 8, 2002, under Adjudicative Guideline F . These debts were all long overdue, most for several years.

Debt 1 was in the amount of approximately \$476. Debt 2 was in the amount of approximately \$187. Debt 3 was is in the amount of approximately \$737, and debt 4 was in the amount of \$1,378.

Applicant has made some payments on debts 2 and 3, but no payments have been made on debts 1 and 4 (Exhibits 3 and 6).

Applicant completed a signed, sworn Security Clearance Application (SCA) on April 3, 2001 (Exhibit 4).

Question #26 asks, "In the last 7 years, have you been arrested for, charged with, or convicted of any offenses not listed in modules 21, 22, 23, 24, or 25? Applicant answered "no" to this question. The evidence shows, as discussed above, that Applicant was arrested on February 26, 1996, and plead guilty to the charge of Petit Larceny. Applicant should have answered "yes" to this question and included this arrest in the response to question #26.

Question #38 asks, "In the last 7 years, have you been over 180 days delinquent on any debt(s)?" Applicant answered "no" to this question. At the time she completed the SCA, Applicant was delinquent on all of the debts discussed above, and she should have answered "yes" to this question and included all of the debts listed in the SOR.

Question #39 asks, "Are you currently over 90 days delinquent on any debt (s)?" Applicant answered "no" to this question. At the time she completed the SCA, Applicant was delinquent on all of the debts discussed above, and she should have answered "yes" to this question and included all of the debts listed in the SOR.

### **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 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.. 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.*

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 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 this processing for clearance eligibility:

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.A5.1.3.2. None

**(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.A6.1.3.3. None

**(Guideline J - Criminal Conduct)**

E2.A10.1.1. *The Concern:* 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

Upon consideration of all the facts in evidence, and after application of all appropriate legal precepts, factors, and conditions, including those described briefly above, I conclude the following with respect to the allegation set forth in the SOR:

It is the Government's responsibility to present substantial evidence to support the finding of a nexus, or rational connection, between Applicant's conduct and the continued holding of a security clearance. If such a case has been established, the burden then shifts to the Applicant to go forward with evidence in rebuttal, explanation or mitigation which is sufficient to overcome or outweigh the Government's case. Applicant bears the ultimate burden of persuasion in proving that it is clearly consistent with the national interest to grant him or her a security clearance.

**(Guideline E - Personal Conduct)** With respect to Guideline E, the evidence establishes that Applicant provided false material information to the Government in response to three questions on the SCA that she executed in April 2001. Applicant knew, or should have known, that the three questions required affirmative responses and information regarding her criminal history and her overdue debts. There is no reasonable explanation for her not providing this information.

The Government relies heavily on the honesty and integrity of individuals seeking access to our nation's secrets. When such an individual intentionally falsifies material facts on a security clearance application, it is extremely difficult to conclude that she nevertheless possesses the judgment, reliability and trustworthiness required of clearance holders. In this case, Applicant's falsifications of her SCA occurred less than three years ago, and her failure to offer any independent evidence indicating that she has reformed and is now reliable and trustworthy, precludes a finding that it is now clearly consistent with the national interest to grant her access to classified information. I resolve Guideline E against Applicant.

In reviewing the Disqualifying Conditions (DC) under Guideline E, I conclude that DC E2.A5.1.2.2. applies because the information that Applicant provided in her SCA was known or should have been known by her to be an omission and concealment of relevant and material facts. No Mitigating Condition (MC) apply.

**(Guideline F - Financial Considerations)** The government has established its case under Guideline F. The record evidence clearly establishes Applicant's indebtedness. It shows Applicant has a history of financial difficulties.

Applicant's overall conduct pertaining to her financial obligations falls within Financial Considerations Disqualifying Condition (DC) E2.A6.1.2.1., and DC E2.A6.1.2.3. I find that no MC is applicable to this case.

Applicant appears to have finally made an effort to resolve her indebtedness and has begun making payments to two of her creditors. However, since Applicant's other debts have not yet been addressed, I cannot conclude that Applicant's financial problems are resolved. Until her past due debts are paid, and she can establish a record of financial responsibility and stability, security concerns will continue to exist under Guideline F. I resolve Guideline F. against

Applicant

**(Guideline J - Criminal Conduct)** The Government has established by substantial evidence that Applicant engaged in a criminal act by intentionally giving false or misleading information on the SCA that she completed on April 3, 2001, as stated in SOR 1.a. and 1.b. The law, which Applicant violated, is Title 18, United States Code, Section 1001, which is a felony.

DC E2.A10.1.2. and DC E2.A10.1.2.1. apply in this case. Applicant has not mitigated this allegation. Paragraph 3 is found against Applicant.

### **FORMAL FINDINGS**

Formal findings For or Against the Applicant on the allegations in the SOR, as required by Paragraph 25 of Enclosure 3 of the Directive, are:

Paragraph 1. Guideline E: AGAINST THE APPLICANT

Subparagraph a: Against the Applicant.

Subparagraph b: Against the Applicant

Paragraph 1. Guideline F: 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.

Martin H. Mogul

Administrative Judge