

DATE: October 26, 2004

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In Re:

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SSN: -----

Applicant for Security Clearance

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ISCR Case No. 02-30093

**DECISION OF ADMINISTRATIVE JUDGE**

**HENRY LAZZARO**

**APPEARANCES**

**FOR GOVERNMENT**

Juan R. Rivera, Esquire, Department Counsel

**FOR APPLICANT**

*Pro Se*

**SYNOPSIS**

Applicant is a 53-year-old woman who has been employed by the same defense contractor since March 1970. She has three relatively small accounts that were submitted for collection, a fourth account that has been past due for several years, and a large past due account that resulted from the repossession of her adult daughter's automobile for which Applicant had co-signed. She has failed to mitigate the financial consideration security concern in this case. Clearance is denied.

**STATEMENT OF THE CASE**

On November 17, 2003, the Defense Office of Hearings and Appeals (DOHA) issued a Statement of Reasons (SOR) to Applicant stating they were unable to find it is clearly consistent with the national interest to grant or continue a security clearance for Applicant. [\(1\)](#) The SOR, which is in essence the administrative complaint, alleges facts raising a security concern under Guideline F, financial considerations.

Applicant submitted an answer to the SOR that was received by DOHA on November 26, 2003, and requested a hearing. Applicant admitted the allegation contained in SOR subparagraph 1.e., and denied the remaining SOR allegations.

The case was assigned to another administrative judge on June 28, 2004. A notice of hearing was issued on June 29, 2004 scheduling the hearing for July 16, 2004. However, the case was reassigned to me on July 2, 2004, to be heard in connection with other cases I had scheduled in the same region. On July 12, 2004, the previously scheduled hearing date was cancelled, and on July 23, 2004 a new notice of hearing was issued rescheduling the hearing for August 18, 2004. The hearing was conducted as rescheduled. The government submitted four documentary exhibits at the hearing that were marked as Government Exhibits (GE) 1-4. The government called one witness to authenticate GE 2, and all government exhibits were admitted into the record without an objection. Applicant testified, and submitted four exhibits that were marked as Applicant's Exhibits (AE) 1-4, and admitted into the record without an objection. Applicant

submitted five post-hearing exhibits through Department Counsel that were marked as AE 5-9, and admitted into the record without an objection. The transcript was received by DOHA on August 27, 2004.

### **FINDINGS OF FACT**

Applicant's admission to the allegation contained in SOR subparagraph 1.e. is incorporated herein. In addition, after a thorough review of the pleadings, exhibits, and testimony, I make the following findings of fact:

Applicant is a 53-year-old woman who has been employed by a defense contractor since March 1970. Her present job title is supervisor of government services. She was married from October 1972 until the marriage ended in divorce in February 1996. Her ex-husband is now deceased. She has two children, a 30-year-old daughter and a 25-year-old son. Although both children were previously living on their own, they have now returned to reside with Applicant.

The SOR lists three relatively small debts that Applicant acknowledges belong to her. The first is a past due account in the amount of \$531.00. On August 27, 2002, Appellant provided a statement (GE 2) in which she claimed this account was paid off in 2001, and would be removed from her credit report by September 2002. However, it appears from reading her entire description of the account in GE 2 that she was mistaken about which account was actually at issue. She testified she is now making payments on the account. The evidence she submitted as proof of payments being made (AE 7) discloses the balance has now risen to \$601.13, in part because of a \$29.00 late fee assessed on July 17, 2004, and that no payment was made other than a handwritten entry on the document wherein Applicant stated she made a \$28.00 payment on August 14, 2004.

The other two accounts Applicant acknowledged belong to her are hospital charges in the amounts of \$147.00 and \$113.00. In her August 2002 statement she stated she either thought the accounts were paid or had been successfully challenged through a credit reporting agency. She also indicated at that time that she intended to again ask the credit reporting agency to investigate the entry in her credit report. She testified she was making payments on the accounts, and submitted AE 6, an account statement dated July 20, 2004, that does disclose a recent payment having been made and a balance due of \$232.20.

A fourth account listed in the SOR is a telephone bill that has been submitted for collection in the amount of \$488.39. Applicant has consistently maintained she has no knowledge of this account, speculates it may represent charges incurred by a former live-in boyfriend who had access to her personal information, and that she has asked that it be removed from her credit report. GE 4 discloses that as of December 2003 Applicant has disputed the account through the credit reporting agency.

The last delinquent account, in the amount of \$13,547.00, arises from a repossessed automobile. This delinquency has been outstanding since about 1996. Applicant claims this debt is owing on an automobile loan on which she co-signed for her daughter. She also claims to have made inquiry about the amount owing from the creditor without receiving a response. She indicated in both the August 2002 statement and her testimony that she was financially unable to make any payments on the account.

Applicant's testimony was vague and confusing about why these accounts have been delinquent for many years. She in part attributes her financial problems to a relationship she had with a truck driver with whom she lived, and the downturn in the trucking industry following the events of September 11, 2001. However, when asked about the accounts that were delinquent long before that date, she testified about the truck driver being gone for extended periods of time and her having to pay all the bills without financial assistance from him.

Applicant stated in her August 2002 statement that her net monthly pay was \$2,772.00, and her monthly expenses were approximately \$2,005.00. However, when asked at the hearing why she had not at least been able to pay off the small debts in view of the discretionary income she stated was available each month, she testified she didn't have the extra cash to pay them off. She also is unable to provide any meaningful explanation why she has not satisfied the accounts with the added income of her two adult children, both of whom are employed and contributing to the household income.

Applicant entered into a debt repayment plan through an attorney in 2002 (AE 9) under the terms of which 14 creditors, including two or three of the accounts listed in the SOR were to be paid amounts ranging from \$10.00 to \$85.00 per

month. Her total monthly payment in the plan was to be \$454.00 per month, and she made at least one such payment on December 16, 2002. However, by August 2003, the repayment account was closed and the attorney notified her creditors she had discontinued his services.

## POLICIES

The Directive sets forth adjudicative guidelines to consider when evaluating a person's eligibility to hold a security clearance. Chief among them are the Disqualifying Conditions (DC) and Mitigating Conditions (MC) for each applicable guideline. Additionally, each clearance decision must be a fair and impartial commonsense decision based upon the relevant and material facts and circumstances, the whole person concept, and the factors listed in ¶ 6.3.1 through ¶ 6.3.6 of the Directive. Although the presence or absence of a particular condition or factor for or against clearance is not outcome determinative, the adjudicative guidelines should be followed whenever a case can be measured against this policy guidance. Considering the evidence as a whole, Guideline F, pertaining to financial considerations, with its respective DC and MC, is most relevant in this case.

## BURDEN OF PROOF

The sole purpose of a security clearance decision is to decide if it is clearly consistent with the national interest to grant or continue a security clearance for an applicant.<sup>(2)</sup> The government has the burden of proving controverted facts.<sup>(3)</sup> The burden of proof in a security clearance case is something less than a preponderance of evidence<sup>(4)</sup>, although the government is required to present substantial evidence to meet its burden of proof.<sup>(5)</sup> "Substantial evidence is more than a scintilla, but less than a preponderance of the evidence."<sup>(6)</sup> Once the government has met its burden, the burden shifts to an applicant to present evidence of refutation, extenuation, or mitigation to overcome the case against him.<sup>(7)</sup> Additionally, an applicant has the ultimate burden of persuasion to obtain a favorable clearance decision.<sup>(8)</sup>

No one has a right to a security clearance<sup>(9)</sup> and "the clearly consistent standard indicates that security clearance determinations should err, if they must, on the side of denials."<sup>(10)</sup> Any reasonable doubt about whether an applicant should be allowed access to classified information must be resolved in favor of protecting national security.<sup>(11)</sup>

## CONCLUSIONS

Under Guideline F, a security concern exists when a person has significant unpaid debts. An individual who is financially overextended is at risk of having to engage in illegal or unethical acts to generate funds to meet financial obligations. Similarly, an individual who is financially irresponsible may also be irresponsible, unconcerned, or careless in their obligation to protect classified information. Behaving responsibly or irresponsibly in one aspect of life provides an indication of how a person may behave in other aspects of life.

Applicant has at least one substantial debt and several smaller debts that have been delinquent for many years. She has made little to no effort to resolve the debts despite having been made aware of their security significance more than two years ago and having the apparent income to pay at least the smaller ones in a short period of time. Disqualifying Condition (DC) 1: *A history of not meeting financial obligations*; and DC 3: *Inability or unwillingness to satisfy debts* apply.

Applicant entered into a debt repayment plan in 2002, but failed to carry through with her obligation to satisfy the listed creditors. She has allowed several relatively small accounts to languish in a delinquent state for years. The balances remaining on the three accounts she is now making payments on indicate it is only very recently that she has even attempted to satisfy those creditors. Finally, she has bluntly stated she does not intend to make any payments on the largest account because of a claimed lack of resources. I have considered all mitigating conditions and none apply.

Considering all relevant and material facts and circumstances present in this case, the whole person concept, the factors listed in ¶ 6.3.1 through ¶ 6.3.6 of the Directive, and the applicable disqualifying and mitigating conditions, I find Applicant has failed to mitigate this security concern. She has for many years displayed a financially irresponsible attitude that is inconsistent with the character that must be expected of one who is to be entrusted with the nation's

secrets. Applicant has failed to overcome the case against her and satisfy her ultimate burden of persuasion. Guideline F is decided against Applicant.

### **FORMAL FINDINGS**

SOR ¶ 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

### **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. Clearance is denied.

Henry Lazzaro

Administrative Judge

1. This action was taken under Executive Order 10865 and DoD Directive 5220.6, dated January 2, 1992, as amended and modified (Directive).
2. ISCR Case No. 96-0277 (July 11, 1997) at p. 2.
3. ISCR Case No. 97-0016 (December 31, 1997) at p. 3; Directive, Enclosure 3, Item E3.1.14.
4. *Department of the Navy v. Egan* 484 U.S. 518, 531 (1988).
5. ISCR Case No. 01-20700 (December 19, 2002) at p. 3 (citations omitted).
6. ISCR Case No. 98-0761 (December 27, 1999) at p. 2.
7. ISCR Case No. 94-1075 (August 10, 1995) at pp. 3-4; Directive, Enclosure 3, Item E3.1.15.
8. ISCR Case No. 93-1390 (January 27, 1995) at pp. 7-8; Directive, Enclosure 3, Item E3.1.15
9. *Egan*, 484 U.S. at 528, 531.
10. *Id* at 531.
11. *Egan*, Executive Order 10865, and the Directive.