

DATE: August 15, 2005

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In Re:

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SSN: -----

Applicant for Security Clearance

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ISCR Case No. 02-30963

**DECISION OF ADMINISTRATIVE JUDGE**

**THOMAS M. CREAN**

**APPEARANCES**

**FOR GOVERNMENT**

Richard A. Stevens, Esq., Department Counsel

**FOR APPLICANT**

*Pro Se*

**SYNOPSIS**

Applicant is a radiological control monitor for a defense contractor. She and a former husband had their debts discharged in bankruptcy in 1995. By 2001 with a new husband, Applicant had accumulated more delinquent debts that she has not satisfied or resolved with creditors. Her 2002 electronically submitted security clearance application did not list the bankruptcy nor any debts past due over 180 days and 90 days. Applicant did answer "yes" on the written form to the questions concerning bankruptcy and 180 days and 90 days past due debts. Applicant's information was not correctly transferred to the electronic form. Applicant has not mitigated security concerns for financial considerations but she did not deliberately conceal or provide false relevant and material facts on her application. Clearance is denied.

**STATEMENT OF THE CASE**

On August 31, 2004, the Defense Office of Hearings and Appeals (DOHA) issued a Statement of Reasons (SOR) detailing the basis for its decision to deny a security clearance for Applicant. The action was taken under Executive Order 10865, *Safeguarding Classified Information within Industry* (February 20, 1990), as amended and modified, and Department of Defense Directive 5220.6, *Defense Industrial Personnel Security Clearance Review Program* (January 2, 1992), as amended and modified (Directive). Applicant acknowledged receipt of the SOR on September 8, 2004. The SOR alleges security concerns under Guideline F (Financial Considerations) and Guideline E (Personal Conduct) of the Directive.

Applicant answered the SOR in writing on September 22, 2004. She admitted 16 allegations and denied six allegations under Guidelines F and denied the two allegations with explanation under Guideline E. She requested a hearing before an administrative judge and the request was received by DOHA on September 27, 2004. Department Counsel was prepared to proceed with the case on May 19, 2005, and the case was assigned to me on May 20, 2005. A notice of hearing was issued on May 25, 2005, and the hearing convened on June 22, 2005. Five government exhibits, one Applicant exhibit, and the testimony of the Applicant were received during the hearing. DOHA received the transcript on June 30, 2005.

## FINDINGS OF FACT

Applicant is 37-years-old and has been employed as a radiological control monitor for a defense contractor for four years. Applicant has a technical associate's degree received in 2000. She received students loans to pay her tuition for this degree. She has been married three times and has five children, three of whom live with her. One of the children living with her is from a prior marriage and the other two are with her present husband. She receives child support of \$400.00 per month from the father of the child living with her.<sup>(1)</sup> Applicant and a former husband petitioned for and their debts of approximately \$11,000.00 were discharged in a Chapter 7 bankruptcy in 1995. Applicant was then debt free. She was divorced from this husband in 2001 and married her present husband in 2002.<sup>(2)</sup> Her present husband is not now employed.<sup>(3)</sup>

There are 22 allegations for over \$20,000.00 of delinquent debts in the SOR. SOR allegation 1.a. is the 1995 discharge in bankruptcy. SOR allegation 1.b. is an August 1998 delinquent debt of \$1,875.00 to a store for furniture. Applicant has made no payments on this debt.<sup>(4)</sup> SOR allegation 1.c. is a November 1998 credit card delinquent debt of \$309.00 to a home improvement store where Applicant was previously employed. She has paid some of the outstanding debt but the balance has continued to grow because of penalties and interest.<sup>(5)</sup>

SOR allegation 1.d. is a November 1998 delinquent credit card debt of \$482.00. This debt was originally for \$964.00 but the creditor agreed to settle the debt for \$482.00. Applicant stated the debt has been paid except for \$8.00 in interest charges, but she has no documents to corroborate the debt has been paid. However, the latest credit report lists the debt as only \$8.00.<sup>(6)</sup> SOR allegation 1.e. is a February 1999 credit card delinquent debt of \$1,600.00 which Applicant settled with the creditor for \$800.00. Applicant stated the settlement amount was paid but had no documentary information to establish the payment. The debt is not listed on the latest credit bureau report.<sup>(7)</sup> SOR allegation 1.f. is a March 1999 department store delinquent debt for \$82.00 for clothing and other household items. Applicant states the debt has been paid in full, but has no documentary information on the payment. The debt is not listed on the latest credit bureau report.<sup>(8)</sup>

SOR allegation 1.g. is a default to the Department of Education on \$13,970.00 of student loans for Applicant's associate's degree. The original debt was for over \$16,000.00 but the Department of Education seized a tax refund which paid almost \$3,000.00 of the loan. Applicant contacted the Department of Education and a payment plan was established on March 31, 2005. There was to be an automatic deduction from Applicant's bank account. The bank was not able to make the automatic payments, so there have been no payments made on this loan.<sup>(9)</sup>

SOR allegation 1.h. is a \$210.00 delinquent medical bill for Applicant's son incurred in January 1999 that is in collection. Applicant has not paid this bill. Applicant disputes the bill because the military health care system should have paid the bill since the son is entitled to military medical care through his father.<sup>(10)</sup> SOR allegations 1.i. and 1.j. are for returned checks in collection of \$65.00 and \$44.00 written in May and June 1999 to restaurants for food. Applicant states the debts were paid in full by cash and she has no documentary information the debts were paid.<sup>(11)</sup> The \$44.00 bill is not listed on the latest Credit Bureau Report but the \$65.00 bill is listed. SOR allegation 1.k. is a June 1999 delinquent telephone bill in collection for \$644.00. Applicant has not been in contact with the telephone company in over four years and has not paid any amount on this debt.<sup>(12)</sup>

SOR allegation 1.l. through 1.q. are delinquent charges in collection for admission at various times to an amusement park in the summer and fall of 1999. The total amount of these unpaid charges is \$240.00. Applicant thought she paid these charges since she was recently able to purchase a season pass to the amusement park. Applicant was not able to provide documentary information for her payments on the debts. The debts are listed on the latest credit bureau report.<sup>(13)</sup>

SOR allegation 1.r. is an August 2000 delinquent debt of \$262.00 to a video store. Applicant disputes this debt stating she returned the video and it is in the store. She does not have any documentary information concerning this dispute. The debt is listed on the latest credit bureau report.<sup>(14)</sup> SOR allegations 1.s. and 1.t. are March 2001 delinquent debts of \$399.00 and \$182.00 in collection for a cable provider. Applicant states she paid the \$182.00 debt in cash but has no

documentary information on the payment. The debt is listed on the latest credit bureau report. <sup>(15)</sup> SOR allegation 1.u. is a March 2001 delinquent debt for \$146.00 for telephone service Applicant terminated before the contract expired. Applicant has not paid this debt. <sup>(16)</sup> SOR allegation 1.v. is a \$147.00 delinquent debt for a check returned for non-payment in December 1999. Applicant disputes this debt as not her debt but for a person with a similar name. This debt is not listed on the latest credit bureau report. <sup>(17)</sup>

Applicant's employer submitted an electronic security clearance application for her on April 24, 2002. Question 33 asking in the last seven years have you filed for bankruptcy was answered "NO". Question 38 asking if there were ever any debts delinquent over 180 days in the last seven years was answered "NO." Question 39 asking if there were any debts presently delinquent over 90 days was answered "NO." Applicant was provided a form by her employer to complete. She completed the form and a clerk in the security office prepared the written copy. Applicant read the form completed by the clerk before signing it. The copy Applicant signed had the answer "YES" to question 33 because the 1995 bankruptcy was very close to the seven year time requirement. Also, the copy had "YES" as the answer to both questions 38 and 39 because she knew she had delinquent debts. Applicant states that all of the information on the form she signed was correct. <sup>(18)</sup> The company, not Applicant, submitted the electronic version of the security clearance application relied on for the SOR allegations. Applicant did not sign the electronic version of the application.

### POLICIES

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." <sup>(19)</sup> Eligibility for a security clearance is predicated upon the applicant meeting the security guidelines contained in the Directive. <sup>(20)</sup>

The Directive sets out the adjudicative guidelines for making decisions on security clearances. Enclosure 2 of the Directive sets forth adjudicative guidelines for determining eligibility for access to classified information, and it lists the disqualifying conditions and mitigating conditions for each guideline. Each clearance decision must be fair, impartial, and a commonsense decision based on the relevant and material facts and circumstances, the whole person concept, and the factors listed in the Directive ¶ 6.3.1 through ¶ 6.3.6.

The adjudicative process is an examination of a sufficient period of a person's life to make an affirmative determination that the person is eligible for a security clearance. An administrative judge must apply the "whole person concept," and consider and carefully weigh the available, reliable information about the person. <sup>(21)</sup> An administrative judge should consider: (1) the nature, extent, and seriousness of the conduct; (2) the circumstances surrounding the conduct, to include knowledgeable participation; (3) the frequency and recency of the conduct; (4) the applicant'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 of recurrence. <sup>(22)</sup>

A person granted access to classified information enters into a special relationship with the government. The government must be able to repose a high degree of trust and confidence in those individuals to whom it grants access to classified information. The decision to deny an individual a security clearance is not necessarily a determination as to the loyalty of the applicant. <sup>(23)</sup> It is merely an indication that the applicant has not met the strict guidelines the President and the Secretary of Defense have established for issuing a clearance.

Initially, the Government must present evidence to establish controverted facts in the SOR that disqualify or may disqualify the Applicant from being eligible for access to classified information. <sup>(24)</sup> Thereafter, Applicant is responsible for presenting evidence to rebut, explain, extenuate, or mitigate facts. <sup>(25)</sup> An applicant "has the ultimate burden of demonstrating that it is clearly consistent with the national interest to grant or continue his security clearance." <sup>(26)</sup> "[T]he Directive presumes there is a nexus or rational connection between proven conduct under any of the criteria listed therein and an applicant's security suitability." <sup>(27)</sup> "Any doubt as to whether access to classified information is clearly <sup>(28)</sup>

consistent with national security will be resolved in favor of the national security."

Based upon a consideration of the evidence, I find the following adjudicative guidelines most pertinent to the evaluation of the facts in this case:

**Guideline F - Financial Considerations:** A security concern exists for an individual who is financially irresponsible. An individual who is financially irresponsible may also be irresponsible, unconcerned, or careless in their obligations 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.

**Guideline E - Personal Conduct:** A security concern exists for conduct involving questionable judgment, untrustworthiness, unreliability, lack of candor, dishonesty, or unwillingness to comply with rules and regulations. Any of these characteristics in a person could indicate that the person may not properly safeguard classified information.

Conditions that could raise a security concern and may be disqualifying, as well as those which would mitigate security concerns, pertaining to the adjudicative guidelines are set forth and discussed in the conclusions section below.

### CONCLUSIONS

I carefully considered all of the facts in evidence and the legal standards discussed above. I reach the following conclusions regarding the allegations in the SOR.

The government has established its case under Guideline F. Applicant's delinquent debts brings the matter within Financial Considerations Disqualifying Conditions E2.A6.1.2.1 (*a history of not meeting financial obligations*) and E2.A6.1.2.3 (*inability or unwillingness to satisfy debts*). Applicant had enough delinquent debts to petition for discharge of those debts in bankruptcy in 1995 with her prior husband. Bankruptcy is a legal and permissible means of resolving debts. It does not preclude consideration of the security significance of the actions leading to the delinquent debts. (29) The bankruptcy was filed over ten years ago with a prior husband. However, the bankruptcy does add to Applicant's history of not meeting financial obligations. Applicant accumulated delinquent debts within a few years after the bankruptcy. I conclude Applicant has paid the debts in allegations 1.d., 1.e., 1.f., and 1.j. since Applicant claims they were paid in cash and they are not on Applicant's latest credit bureau report. The debt in allegation 1.h. is not valid and should have been paid by the military health care system. The debt in allegations 1.v. is for another person and not Applicant. All the remaining debts are Applicant's valid delinquent debts totaling approximately \$18,500.00. Applicant's financial history shows she has not meet her financial obligations, and is unwilling or unable to satisfy debts. The above disqualifying conditions have been established.

I have considered Financial Consideration Mitigating Conditions E2.A6.1.3.1 (*the behavior was not recent*); E2.A6.1.3.2 (*it is an isolated incident*); E2.A6.1.3.3 (*the conditions that resulted in the behavior were largely beyond the person's control*); and E2.A6.1.3.6 (*the individual initiated a good-faith effort to repay overdue creditors or otherwise resolve debts*). The behavior is recent since these delinquent debts accumulated from 1998 to 2001 after the 1995 bankruptcy and the debts are still unpaid. Applicant's debts are not isolated since the debts came shortly after the bankruptcy and there are 14 unpaid delinquent debts accumulated over three years. While Applicant's husband is not employed, there is no reasons provided that he cannot work so it is not a condition beyond her control. Applicant has paid some of her delinquent debts but for most she has made no effort to either pay or resolve them with the creditors. I conclude Applicant has not mitigated the security concerns based on financial considerations.

The Personal Conduct Disqualifying Condition pertaining to Applicant's answers on her electronic security clearance application is E2.A5.1.2.3 (*the deliberate omission, concealment, or falsification of relevant and material facts from any form used to . . . determine security clearance eligibility or trustworthiness*). The answers to questions 33, 38, and 39 on the electronic version of Applicant's security clearance application are wrong. The information on the electronic form was entered by a clerk for the employer and not signed by Applicant. Applicant states the answers she provided on the written form were correct and accurate. She entered the correct information since the bankruptcy was within five months of the seven year time limit and she knew she had debts within the 180 days and 90 days time periods. Her statement on the circumstances surrounding the completion of the form is logical, reasonable, and credible. Since there

is no written form to compare the answers on the electronic form, I conclude Applicant did not deliberately and intentionally conceal information or provide false answers on the security clearance application.

I carefully considered all of the circumstances in light of the "whole person" concept. I conclude Applicant is not eligible for access to classified information.

### **FORMAL FINDINGS**

Formal findings for or against Applicant on the allegations in the SOR, as required by Section E3.1.25 of Enclosure 3 of the Directive, are:

Paragraph 1, Guideline F: AGAINST APPLICANT

Subparagraph 1.a.: Against Applicant

Subparagraph 1.b.: Against Applicant

Subparagraph 1.c.: Against Applicant

Subparagraph 1.d.: For Applicant

Subparagraph 1.e.: For Applicant

Subparagraph 1.f.: For Applicant

Subparagraph 1.g.: Against Applicant

Subparagraph 1.h.: For Applicant

Subparagraph 1.i.: Against Applicant

Subparagraph 1.j.: For Applicant

Subparagraph 1.k.: Against Applicant

Subparagraph 1.l.: Against Applicant

Subparagraph 1.m.: Against Applicant

Subparagraph 1.n.: Against Applicant

Subparagraph 1.o.: Against Applicant

Subparagraph 1.p.: Against Applicant

Subparagraph 1.q.: Against Applicant

Subparagraph 1.r.: Against Applicant

Subparagraph 1.s.: Against Applicant

Subparagraph 1.t.: Against Applicant

Subparagraph 1.u.: Against Applicant

Subparagraph 1.v.: For Applicant

Paragraph 2, Guideline E: FOR APPLICANT

Subparagraph 2.a.: For Applicant

Subparagraph 2.b.: For Applicant

**DECISION**

In light of all of the circumstances presented by the record in this case, it is not clearly consistent with the national security to grant or continue a security clearance for Applicant. Clearance is denied.

Thomas M. Crean

Administrative Judge

1. Tr. 19-21.
2. Tr. 22; Government Exhibit 1 (Security Clearance Application, dated Apr. 24, 2002).
3. Tr. 30.
4. Tr. 31.
5. Tr 32.
6. Tr. 33-36; Tr. 48; Government Exhibit 5 (Credit Bureau Report, dated May 19, 2005).
7. Tr. 36; Government Exhibit 5 (Credit Bureau Report, dated, May 19, 2005).
8. Tr. 37; Government Exhibit 5 (Credit Bureau Report, dated May 19, 2005).
9. Tr. 23-30.
10. Tr. 37-38.
11. Tr. 39.
12. Tr. 40.
13. Tr. 40-41; Government Exhibit 5 (Credit Bureau Report, dated May 19, 2005).
14. Tr. 41.
15. Tr. 42-43; Government Exhibit 5 (Credit Bureau Report, dated May 19, 2005).
16. Tr. 43.
17. Tr. 43; Government exhibit 5 (Credit Bureau Report, dated, May 19, 2005).
18. Tr. 53-58; Applicant's exhibit A (Applicant's Statement, dated Jun. 21, 2005).
19. *Department of the Navy v. Egan*, 484 U.S. 518 (1988).
20. Directive ¶ E2.2.1.
21. *Id.*

22. Directive ¶¶ E2.2.1.1 through E2.2.1.9.

23. *See* Exec. Or. 10865 § 7.

24. Directive ¶ E3.1.14.

25. ISCR Case No. 01-20700 at 3 (App. Bd. Dec. 19, 2002); *see* Directive ¶ E3.1.15.

26. ISCR Case No. 01-20700 at 3 (App. Bd. Dec. 19, 2002).

27. ISCR Case No. 95-0611 at 2 (App. Bd. May 2, 1996) (quoting DISCR Case No. 92-1106 (App. Bd. Oct. 7, 1993))

28. *Egan*, 484 U.S. at 531; *see* Directive ¶ E2.2.2.

29. ISCR Case No. 01-26675 at 3 (App. Bd. Jun. 13, 2003), *See*, ISCR Case No. 97-0016 (App. Bd. Dec. 13, 1997).