

DATE: January 14, 2005

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In Re:

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SSN: -----

Applicant for Security Clearance

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ISCR Case No. 02-31440

**DECISION OF ADMINISTRATIVE JUDGE**

**JOAN CATON ANTHONY**

**APPEARANCES**

**FOR GOVERNMENT**

Jennifer I. Campbell, Esq., Department Counsel

**FOR APPLICANT**

*Pro Se*

**SYNOPSIS**

Applicant has a history of financial instability. She has declared bankruptcy four times, but has been unable to stabilize her financial situation. Her financial problems raise serious security concerns. Clearance is denied.

**STATEMENT OF THE CASE**

The Defense Office of Hearings and Appeals (DOHA) declined to grant or continue a security clearance for Applicant. On October 15, 2003, under the applicable Executive Order<sup>(1)</sup> and Department of Defense Directive,<sup>(2)</sup> DOHA issued a Statement of Reasons (SOR) detailing the basis for its decision-security concerns raised under Guideline F (Financial Considerations) of the Directive. Applicant answered the SOR in writing on November 10, 2003, and requested her case be determined on the record in lieu of a hearing. The Government compiled its File of Relevant Material (FORM) on January 15, 2004. The FORM contained documents identified as Items 1 through 17. By letter dated January 16, 2004, a copy of the FORM was forwarded to Applicant, with instructions to submit any additional information and/or objections within 30 days of receipt. Applicant's response was due February 28, 2004. Applicant did not submit a response to the FORM. On March 5, 2004, the case was assigned to me for a decision.

**FINDINGS OF FACT**

The SOR contains eight allegations of disqualifying conduct under Guideline F, Financial Considerations. In her answer to the SOR, Applicant admitted seven allegations and denied one allegation. Her admissions are incorporated as findings of fact.

Applicant is a 46-year-old woman employed by a government contractor as an administrative assistant. She reports holding security clearances in 1982 and 1995. She has been married and divorced twice and is the mother of three children. Two of her children are minors.

Applicant has a history of financial problems. She has filed for bankruptcy four times. In November 1981 she filed for

Chapter 7 bankruptcy in State A, listing her liabilities at \$14,658. Her debts were discharged in January 1982. In 1989 she filed for Chapter 13 bankruptcy in State A, listing her liabilities at \$32,064.50. Her debts were discharged in October 1992. In 1992, she filed for Chapter 13 bankruptcy in State B and her debts were discharged in 1995. In 2001 she petitioned for Chapter 7 bankruptcy in State A, listing liabilities totaling \$239,780. Her debts were discharged in September 2001.

Applicant admits a pattern of financial instability. She was able to earn overtime in her job. The overtime was not guaranteed by her employer. Nevertheless, Applicant reported the overtime as regular income on credit applications, thereby appearing qualified to handle higher amounts of indebtedness than she would have been if she had reported her regular income alone. (Item 6) Applicant has sought credit counseling and advice from her clergyman in handling her finances.

Applicant denied responsibility for a debt identified at 1.c. of the SOR, and said it was the debt of her former husband. In her signed sworn statement she reaffirmed the debt as her own. (Item 6).

## 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. The President has restricted eligibility for access to classified information to United States citizens "whose personal and professional history affirmatively indicates loyalty to the United States, strength of character, trustworthiness, honesty, reliability, discretion, and sound judgment, as well as freedom from conflicting allegiances and potential for coercion, and willingness and ability to abide by regulations governing the use, handling, and protection of classified information." Exec. Or. 12968, *Access to Classified Information* § 3.1(b) (Aug. 4, 1995). Eligibility for a security clearance is predicated upon the applicant meeting the security guidelines contained in the Directive.

Enclosure 2 of the Directive sets forth personal security guidelines, as well as the disqualifying conditions (DC) and mitigating conditions (MC) under each guideline. In evaluating the security worthiness of an applicant, the administrative judge must also assess the adjudicative process factors listed in ¶ 6.3 of the Directive. The decision to deny an individual a security clearance is not necessarily a determination as to the loyalty of the applicant. *See* Exec. Or. 10865 § 7. 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 establish, by substantial evidence, conditions in the personal or professional history of the applicant that disqualify, or may disqualify, the applicant from being eligible for access to classified information. *See Egan*, 484 U.S. at 531. The Directive presumes a nexus or rational connection between proven conduct under any of the disqualifying conditions listed in the guidelines and an applicant's security suitability. *See* ISCR Case No. 95-0611 at 2 (App. Bd. May 2, 1996).

Once the Government establishes a disqualifying condition by substantial evidence, the burden shifts to the applicant to rebut, explain, extenuate, or mitigate the facts. ISCR Case No. 01-20700 at 3 (App. Bd. Dec. 19, 2002); *see* Directive ¶ E3.1.15. An applicant "has the ultimate burden of demonstrating that it is clearly consistent with the national interest to grant or continue his security clearance." ISCR Case No. 01-20700 at 3.

## CONCLUSIONS

### **Guideline F-Financial Considerations**

The Government's concern under Guideline F, Financial Considerations, is that individuals who are financially overextended and unable or unwilling to pay their just debts may try to generate funds by engaging in illegal acts. Applicant has a history of not meeting her financial obligations, and this financial history suggests an inability or unwillingness to satisfy her debts, conditions which raise security concerns under subparagraphs E2.A6.1.2.1. and E2.A6.1.2.3. of Guideline F. DOHA's Appeal Board has concluded that "[a] person who is unwilling to fulfill his legal

obligations does not demonstrate the high degree of good judgment and reliability required of persons granted access to classified information." ISCR Case No. 98-0810 at 4 (App. Bd. June 8, 2000).

In the SOR, DOHA alleged that Applicant had one delinquent account that was 180 days past due, with a balance of \$23,538 (¶ 1.a.) and that she was 30 days past due on three accounts, with a combined balance of \$25,138 (¶¶ 1.b; 1.c., and 1.d.) DOHA also alleged that Applicant had filed for Chapter 7 bankruptcy in June 2001, listing liabilities totaling \$239,780, and her debts had been discharged September 27, 2001 (¶ 1.e.); that she had filed for Chapter 13 bankruptcy in February 1992 and her debts were discharged in July 1995 (¶ 1.f.); that she had filed for Chapter 13 bankruptcy in July 1989, listing liabilities of \$32,064.50, and her debts had been discharged in October 1992(¶ 1.g.);and that in November1981 she had filed for Chapter 7 bankruptcy, listing liabilities totaling \$14,658, and her debts were discharged in January 1982. An applicant who is financially overextended is at risk of having to engage in illegal acts to generate funds. Directive ¶ E2.A6.1.1.

Applicant provided no evidence she had paid the debts identified in the SOR, which were identified as unpaid in a credit report dated July 16, 2003, and submitted as Item 7 of the FORM. In her answer to the SOR, Applicant denied the debt alleged at ¶ 1.c. of the SOR although she acknowledged responsibility for that debt in her signed, sworn statement, dated September 12, 2002. (Item 6.). The Government has established, through the FORM, Applicant's admissions, her credit reports of July 16, 2003 and August 12, 2002 (Items 7 and 8), and her signed, sworn statement, a *prima facie* case that Applicant is financially overextended. Applicant provided no persuasive evidence to rebut the financial concerns specified in the SOR and identified as disqualifying conditions under ¶¶ E2.A6.1.2.1. and E2.A6.1.2.3. of Guideline F.

We turn to a review of the several conditions that could mitigate the security concerns raised by Applicant's financial delinquencies. Applicant's acknowledged delinquencies involve long-standing debts which continue to be unsatisfied to this day. Thus, neither mitigating condition E2.A.6.1.3.1. nor mitigating condition E2.A6.1.3.2. applies. The record also shows that Applicant's financial difficulties were not the result of circumstances beyond her control, and thus, mitigating condition E2.A6.1.3.3. does not apply.

Applicant has sought counseling for her financial problems, but she submits no persuasive evidence that she has developed and implemented a practical plan for resolving her indebtedness. She provided some evidence that she had contacted or attempted to contact her creditors, but she failed to produce sufficient persuasive evidence to demonstrate that she negotiated payment plans acceptable to her creditors. Thus, neither mitigating condition E2.A6.1.3.4. nor E2.A6.1.3.6. applies to the facts of Applicant's case. Accordingly, the allegations of debt in subparagraphs 1.a., 1.b., 1.c., 1.d., 1.e., 1.f.,1.g., and 1.h. of the SOR are concluded against the Applicant.

In all adjudications, the protection of our national security is the paramount concern. Security clearance decisions are not intended to assign guilt or to impose further punishment for past transgressions. Rather, the objective of the security clearance process is the fair-minded, common sense assessment of a person's trustworthiness and fitness for access to classified information. Indeed, the "whole person" concept recognizes we should view a person by the totality of his or her acts and omissions, including all disqualifying and mitigating conduct. Having done so, I conclude Applicant should not be entrusted with a security clearance. In reaching my decision, I have considered the evidence as a whole, including the appropriate factors and guidelines in Department of Defense Directive, 5220.6, as amended.

### **FORMAL FINDINGS**

The following are my conclusions as to each allegation in the SOR:

Paragraph 1. Guideline F: AGAINST APPLICANT

Subparagraph 1.a.: Against Applicant

Subparagraph 1.b.: Against Applicant

Subparagraph 1.c.: Against Applicant

Subparagraph 1.d.: Against Applicant

Subparagraph 1.e.: Against Applicant

Subparagraph 1.f.: Against Applicant

Subparagraph 1.g.: Against Applicant

Subparagraph 1.h.: Against Applicant

### **DECISION**

In light of all of 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.

Joan Caton Anthony

Administrative Judge

1. Exec. Or. 10865, *Safeguarding Classified Information within Industry* (Feb. 20, 1960), as amended and modified.
2. Department of Defense Directive 5220.6, *Defense Industrial Personnel Security Clearance Review Program* (Jan. 2, 1992), as amended and modified.