

DATE: May 12, 2005

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In Re:

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SSN: -----

Applicant for Security Clearance

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CR Case No. 02-13657

**DECISION OF ADMINISTRATIVE JUDGE**

**MATTHEW E. MALONE**

**APPEARANCES**

**FOR GOVERNMENT**

Juan J. Rivera, Esquire, Department Counsel

**FOR APPLICANT<sup>(1)</sup>**

*Pro Se*

**SYNOPSIS**

The security concerns over Applicant's financial difficulties and personal conduct are either refuted by lack of intent to make false statements to the government, or mitigated by positive changes in personal lifestyle, such as more stable marital circumstances and a solid employment record. Clearance is granted.

**STATEMENT OF THE CASE**

After reviewing the results of Applicant's background investigation, adjudicators for the Defense Office of Hearings and Appeals (DOHA) were unable to make a preliminary affirmative finding<sup>(2)</sup> it is clearly consistent with the national interest to give Applicant a security clearance. On October 20, 2003, DOHA issued to Applicant a Statement of Reasons (SOR) alleging facts that raise security concerns addressed in the Directive under Guideline E (personal conduct) and Guideline F (financial considerations). Applicant timely answered the SOR (Answer), admitted with explanation all but three<sup>(3)</sup> of the allegations, and requested a hearing.

The case was assigned to me on August 5, 2004, and I convened a hearing December 13, 2004. The parties appeared as scheduled and the government presented 13 exhibits (GE 1 through 13), which were admitted without objection. Applicant testified in her own behalf and presented 12 exhibits (AE A through L) and the testimony of one other witness. I also left the record open after the hearing to afford Applicant an opportunity to submit additional information I deemed relevant to the issues in this case. Applicant timely submitted what are admitted without Department Counsel objection as AE M and N. The record closed on December 20, 2004 and DOHA received the transcript (Tr) on December 21, 2004.

**FINDINGS OF FACT**

After a thorough review of the pleadings, transcript, and exhibits, I make the following essential findings of fact:

Applicant is 30 years old and employed by a contractor supporting State Department diplomatic security and personnel screening missions. She began work in support of that agency in June 2000 with a different company which employed her, first as a uniformed protection officer, then as a technical writer. Her work record in this field with three different companies since 2000 has been exemplary. In 2003, she began working in an administrative capacity to ensure State Department clearances and diplomatic requests are properly screened and processed expeditiously. Letters of support and recommendation submitted at hearing reflect a conscientious, professional employee who has the trust and confidence of both her company and the State Department customers she supports.

Applicant has been married three times. Her first marriage, which lasted from 1994 until 1996, was marred by her husband's involvement with illegal drugs and by financial irresponsibility by both Applicant and her husband. In September 1995, Applicant was pulled over for a moving violation and it was determined her driver's license had been revoked. Apparently, her husband had told her he would pay an earlier ticket she had received but failed to do so. Contrary to the allegation in SOR ¶1.f, Applicant was not taken into custody for this offense; rather, she parked her car and went to police headquarters where she waited for a ride home. She was issued a citation and eventually paid a fine. She also made good on the earlier offense and her driving privileges were restored.

In 1995, Applicant separated from her first husband and joined the United States Marine Corps, where she was trained in law enforcement and worked in the military police. Applicant met and married her second husband, also a Marine, during her enlistment. The couple had a child together. This marriage ended in divorce in December 2001 after the couple separated in September 2000. During the marriage, there were at least three domestic violence incidents between Applicant and her husband. In each case, Applicant's husband was intoxicated and assaulted her; however, it was not until the third incident, wherein her husband head butted Applicant and split open her forehead, that the previous two incidents were reported. At that time, because Applicant had also consumed a small amount of alcohol during the second incident, she was ordered to be evaluated for possible substance abuse issues.

Applicant disagreed with the need for alcohol or drug evaluation and twice failed to show up for her scheduled sessions. However, after she was seen by the command substance abuse counselor, it was determined she did not have a substance abuse problem of any kind. Because she failed to show for the evaluation, and because she had been involved in an alcohol-related domestic disturbance, a counseling sheet was entered into Applicant's service record. However, based on Applicant's credible testimony in this regard, which is consistent with all of her previous accounts of this incident, I specifically find, contrary to SOR ¶1.a, that she was not under the influence of alcohol when her husband assaulted her.

Applicant's second marriage was also marred by poor financial management. In December 1998, she and her husband received non-judicial punishment (NJP) for failing to pay their just debts (a utility bill, which was paid immediately thereafter). In May 1998, Applicant was charged with issuing a check with insufficient funds after there was confusion over how much money was in their account when she wrote the check. When notified of the charge, she immediately went to the merchant to whom she had presented the check and made restitution. The charge was entered as nolle prosequi at her court hearing the next month.

Additionally, Applicant and her husband were sued by a former landlord who claimed they owed her for damage to their apartment after they moved out. The case was settled through mediation and the debt was paid. Lastly, a local health care provider obtained a judgment against Applicant for medical services provided for her child. Applicant was unaware of this civil action until it showed up in her background investigation in 2002.

Applicant left active duty in November 1999. A few days before her discharge, she made arrangements for another Marine to take her duty while she took a test for possible employment with a civilian law enforcement agency. While she was at the test, an incident occurred for which she should have been on post to handle. Because there was no official written permission for Applicant to be away from her post, she received NJP two days before her discharge. Applicant was reduced in rank from corporal to lance corporal.

After her honorable discharge from the service and her separation from her husband, Applicant lived as a single mother and worked at various jobs. Her divorce became final in December 2001 and her husband was ordered to pay monthly child support. However, he has rarely paid as ordered and now has an arrearage of over \$5,000. For about three years

after leaving the military, Applicant struggled to make ends meet. At one point, the lease on her apartment was not renewed because she had a record of paying her rent late. She also accumulated several unpaid parking tickets because she had a lengthy commute into the city to work but could not afford the parking costs. In early 2001, Applicant was cited for having let her car inspection and registration lapse. She was able to bring both accounts current soon thereafter; however, she knew both requirements were delinquent, but drove the car anyway because she had no other way to get to work.

Applicant submitted a security clearance questionnaire (SF 86) on May 31, 2000. In response to questions about any delinquent debts she may have greater than 180 days or accounts more than 90 days past due, Applicant disclosed a telephone bill she had owed while in the military. However, unbeknownst to her there were five other delinquent accounts listed on her credit report. Four of the accounts, three of which were credit card accounts either opened without her knowledge by her first husband or about which she had forgotten, dated back to her first marriage. Applicant had no knowledge of the fourth account from her first marriage. The fifth account arose during her second marriage and consisted of the balance of a medical bill Applicant thought would be covered by Tricare as she was still in the military at the time.

Applicant was generally forthcoming in completing her SF 86 about the adverse information of which she was aware. For example, she listed both NJP's from her time in the Marine Corps, and she listed her involvement in a civil suit not at issue in this case.

In November 2000, Applicant was interviewed by a special agent of the Defense Security Service (DSS). In the course of discussing her financial difficulties, Applicant omitted the fact she had been sued for the aforementioned medical services bill and that she and her husband had been sued for damages after they left a rental property. As for the latter issue, Applicant had forgotten about the matter and reasonably did not see it as noteworthy because she and her husband had satisfied the debt through mediation. In the case of the medical services bill, Applicant did not know about the judgment until DSS presented her with the information during her interview.

Applicant tried to settle or otherwise resolve her debts; however, in January 2004, she was discharged of her debts through a Chapter 7 bankruptcy petition. One debt that was not included in the petition was a state tax debt, for which Applicant established a payment plan in December 2003. She has paid that debt regularly through payroll deductions each month.

Applicant met her current husband while both were working the same security detail for the State Department. They were married in August 2003 and now own a home together. Their financial condition appears sound and they have accrued no unnecessary debt and regularly pay the obligations they do have. Since her bankruptcy discharge, Applicant has set about restoring her credit through use of three secured credit cards with low credit limits. She has also bought a reliable used car outright and the couple exercise positive control over their finances through disciplined monthly accounting of their assets and liabilities. They are currently negotiating with Applicant's second husband to allow her current husband to adopt Applicant's child as his own.

### **POLICIES**

The Directive sets forth adjudicative guidelines<sup>(4)</sup> to be considered in evaluating an Applicant's suitability for access to classified information. Security clearance decisions must reflect consideration of both disqualifying and mitigating conditions under each adjudicative issue applicable to the facts and circumstances of each case. Each decision must also reflect a fair and impartial common sense consideration of the factors listed in Section 6.3 of the Directive. The presence or absence of a disqualifying or mitigating condition is not determinative of a conclusion for or against an Applicant. However, specific applicable guidelines should be followed whenever a case can be measured against them as they represent policy guidance governing the grant or denial of access to classified information. Having considered the record evidence as a whole, I conclude the relevant adjudicative guidelines to be applied here are Guideline E (personal conduct) and Guideline F (financial considerations).

### **BURDEN OF PROOF**

A security clearance decision is intended to resolve whether it is clearly consistent with the national interest for an Applicant to either receive or continue to have access to classified information. The government bears the initial burden of proving, by something less than a preponderance of the evidence, controverted facts alleged in the SOR. If the government meets its burden it establishes a *prima facie* case that it is not clearly consistent with the national interest for the Applicant to have access to classified information. The burden then shifts to the Applicant to refute, extenuate or mitigate the government's case. Because no one has a "right" to a security clearance, the Applicant bears a heavy burden of persuasion.<sup>(6)</sup> A person who has access to classified information enters into a fiduciary relationship with the government based on trust and confidence. The government, therefore, has a compelling interest in ensuring each Applicant possesses the requisite judgement, reliability and trustworthiness of one who will protect the national interests as his or her own. The "clearly consistent with the national interest" standard compels resolution of any reasonable doubt about an Applicant's suitability for access in favor of the government.<sup>(7)</sup>

## CONCLUSIONS

Under Guideline E, a security concern arises where it is shown an applicant has exhibited questionable judgment, untrustworthiness, unreliability, lack of candor, dishonesty, or unwillingness to comply with rules and regulations. Such conduct may indicate the person may not properly safeguard classified information.<sup>(8)</sup> Here, the government questions Applicant's trustworthiness and personal conduct based on the following: (i) her two NJP's and an early intervention counseling while she was in the military (SOR ¶¶1.a, 1.b, 1.c, and 1.d); (ii) passing bad checks (SOR ¶1.e); (iii) two moving violations stemming from an expired license and expired registration (SOR ¶¶1.f and 1.h); and (iv) her alleged deliberate falsification of her financial information in an SF 86 and in an interview with a DSS agent (SOR ¶¶1.g, 1.i, and 1.j).

The government has presented sufficient information to support the allegations in SOR ¶¶1.a, 1.b, 1.c, 1.d, 1.e, 1.f, 1.g, and 1.h. However, as to the allegations in SOR ¶¶1.i and 1.j that Applicant deliberately falsified her SF 86, I conclude the government has not established these omissions were deliberate. A review of the SF 86, her statements to DSS, her Answer, and her testimony at hearing shows she disclosed the adverse information (financial and otherwise) she knew of at the time she filled out the questionnaire. Further, it is not unusual for applicants in these cases to be unaware of all the information in their credit history when completing the SF 86. The absence of information from an SF 86 that is later produced through routine investigative record checks does not automatically mean the subject intentionally withheld the information. Nonetheless, the government's information about the other allegations in SOR ¶1 establishes a *prima facie* case for disqualification under Guideline E insofar as disqualifying condition (DC) 3<sup>(9)</sup> applies and the general security concern under this guideline must also be considered.

By contrast, the conditions that gave rise to the allegations in SOR ¶¶1.a, 1.b, 1.c, 1.d, 1.e, 1.f, and 1.h. are no longer present and such conduct is not likely to recur. Regarding the financial aspects of these allegations, as will be discussed under Guideline F, below, Applicant's situation has improved dramatically. As for the allegations arising from her time in the military, there have been no similar incidents since her separation from both the service and her second husband. Her personal condition is now more stable than she has probably ever experienced; together with a maturation that comes with age and experience, I conclude these concerns are not likely to recur.

Lastly, as to SOR 1.g, Applicant did not know about the judgment to collect a medical bill; however, it does appear Applicant chose to withhold the fact she and her second husband were party to a civil action brought by a former landlord. She reasonably thought this was something that had been settled and did not see its investigative import, but she still should have disclosed it during her first DSS interview. On these facts, despite the applicability of DC 3, this deliberate omission appears to be an isolated event that took place over four years ago. Further, the fact withheld concerns a financial concern that has been mitigated (as discussed below) and is no longer of much adjudicative significance insofar as Applicant has since provided the information about the suit. Guideline E mitigating condition (MC) 2<sup>(10)</sup> applies. On balance, considering the record as whole which shows a significant change in circumstances, judgment, and reliability, I conclude Guideline E for Applicant.

Under Guideline F, the security concern is that someone who is financially overextended through delinquent debt and poor personal financial management may be at risk of engaging in illegal acts to generate funds to resolve their fiscal

difficulties. Here, the government's concerns about Applicant's suitability to hold a clearance are based on the fact she has in the past written checks knowing she did not have sufficient funds to cover them (SOR 2.b), and on the fact she had her debts discharged in bankruptcy two years ago. (SOR 2.a) The government has presented sufficient information to support these allegations, thereby establishing a *prima facie* case for disqualification under Guideline F. Applicant has admitted to intentionally passing bad checks during her second marriage. She has also admitted that she did not have enough money to pay her past debts and still meet her current expenses. Despite all her best intentions, she eventually had no choice but to seek relief through federal bankruptcy provisions. These facts support application of Guideline F DC 1, [\(11\)](#) DC 2, [\(12\)](#) and DC 3. [\(13\)](#)

Applicant's choice to seek relief through Chapter 7 liquidation was not taken lightly, and Applicant was well within her rights to seek such relief. Adverse security significance arises when a person is relieved of debt through bankruptcy, but the financial practices and decision making that caused the debts in the first place are not addressed. It might also arise when a bankruptcy petition is submitted only after an SOR has issued or when some other adverse action against the applicant is imminent. In such cases, it is more likely than not the debtor's relief will be short lived and the financial difficulties will recur. I do not believe the instant matter to be such a case. Her petition in bankruptcy should not be viewed as adverse conduct; rather, it was remedial in nature. I find for Applicant as to SOR 2.a. This applicant has taken advantage of her fresh start. She has begun rebuilding her credit in a measured and sensible way, and has accumulated no unnecessary obligations. Those obligations she does have are paid on time. I also note Applicant's newfound marital stability. Her two previous marriages were often chaotic and not conducive to properly managing financial or other personal affairs. She now finds herself in a more balanced and healthy relationship where both partners appear to be working toward common goals regarding financial security and personal growth. In light of the positive changes in Applicant's personal and financial circumstances, and of the fact that her debts were caused largely by the effects of two divorces, I conclude Guideline F MC 3 [\(14\)](#) applies here. Further, Applicant's conduct in passing bad checks is not recent as the last known instance of such occurred while Applicant was still in the military. Accordingly, MC 1 [\(15\)](#) also applies, and I conclude Guideline F for the Applicant.

I have carefully weighed all of the available evidence, and I have applied the appropriate disqualifying and mitigating conditions. Further, I have tried to make a fair and commonsense assessment of the record before me as required by Directive Section E2.2.3. This record initially raises reasonable doubts about Applicant's ability to protect classified information and to exercise the requisite good judgment and discretion expected of one in whom the government entrusts its interests. However, the record also supports a conclusion she has mitigated those doubts and has overcome the government's case.

### **FORMAL FINDINGS**

Formal findings regarding each SOR allegation are as follows:

Paragraph 1, Guideline E (Personal Conduct): FOR THE APPLICANT

Subparagraph 1.a: For the Applicant

Subparagraph 1.b: For the Applicant

Subparagraph 1.c: For the Applicant

Subparagraph 1.d: For the Applicant

Subparagraph 1.e: For the Applicant

Subparagraph 1.f: For the Applicant

Subparagraph 1.g: For the Applicant

Subparagraph 1.h: For the Applicant

Subparagraph 1.i: For the Applicant

Subparagraph 1.j: For the Applicant

Paragraph 2, Guideline F (Financial): FOR THE APPLICANT

Subparagraph 2.a: For the Applicant

Subparagraph 2.b: For the Applicant

### **DECISION**

In light of all the circumstances presented by the record in this case, it is clearly consistent with the national interest to grant or continue a security clearance for the Applicant. Clearance is granted.

Matthew E. Malone

Administrative Judge

1. The SOR and other documents in the case file identify Applicant by her former married name; however, she re-married during the pendency of this case.
2. Required by Executive Order 10865, as amended, and by DoD Directive 5220.6 (Directive), as amended.
3. Applicant denied SOR ¶¶1.g, 1.i, and 1.j.
4. Directive, Enclosure 2.
5. *See Department of the Navy v. Egan*, 484 U.S. 518 (1988).
6. *See Egan*, 484 U.S. at 528, 531.
7. *See Egan*; Directive E2.2.2.
8. Directive, E2.A5.1.1.
9. Directive, E2.A5.1.2.3. Deliberately providing false or misleading information concerning relevant and material matters to an investigator, security official, competent medical authority, or other official representative in connection with a personnel security or trustworthiness determination;
10. Directive, E2.A5.1.3.2. The falsification was an isolated incident, was not recent, and the individual has subsequently provided correct information voluntarily;
11. Directive, E2.A6.1.2.1. A history of not meeting financial obligations;
12. Directive, E2.A6.1.2.2. Deceptive or illegal financial practices such as embezzlement, employee theft, check fraud, income tax evasion, expense account fraud, filing deceptive loan statements, and other intentional financial breaches of trust;
13. Directive, E2.A6.1.2.3. Inability or unwillingness to satisfy debts;
14. Directive, E2.A6.1.3.3. The conditions that resulted in the behavior were largely beyond the person's control (e.g., loss of employment, a business downturn, unexpected medical emergency, or a death, divorce or separation);
15. Directive, E2.A6.1.3.1. The behavior was not recent;

