

DATE: August 25, 2003

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In Re:

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SSN: -----

Applicant for Security Clearance

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ISCR Case No. 02-15790

## **DECISION OF ADMINISTRATIVE JUDGE**

**JOHN G. METZ, JR.**

### **APPEARANCES**

#### **FOR GOVERNMENT**

Erin C. Hogan, Esquire, Deputy Chief Department Counsel

#### **FOR APPLICANT**

Gwendolyn Christophy, Personal Representative

### **SYNOPSIS**

Although Applicant's financial difficulties were not due to circumstances entirely beyond her control, they were inextricably connected to her bi-polar disorder and her alcohol dependence--itself a consequence of attempting to self-medicate her disorder. While a loan from a friend (essentially a consolidation loan) permitted her to resolve the last of her past due debts just before the hearing, Applicant has mitigated her financial difficulties because both her recovery from alcohol dependence and her treatment for bi-polar disorder have included a focus on improving her financial standing, and she has put into place networks of medical professionals, family, and AA contacts to help maintain her sobriety and financial responsibility. Clearance granted.

### **STATEMENT OF THE CASE**

On 16 January 2003, the Defense Office of Hearings and Appeals (DOHA) issued a Statement of Reasons (SOR) to Applicant, stating that DOHA could not make the preliminary affirmative finding<sup>(1)</sup> that it is clearly consistent with the national interest to grant or continue a security clearance for Applicant. On 4 February 2003, Applicant answered the SOR and requested a hearing. The case was assigned to me on 3 March 2003. I set the on 26 March 2003 and on 27 arch 2003 I issued a notice of hearing for 29 April 2003.

At the hearing, the Government presented six exhibits--admitted without objection--and no witnesses; Applicant presented 16 exhibits--admitted without objection--and the testimony of six witnesses, including herself. DOHA received the transcript on 8 May 2003.

### **FINDINGS OF FACT**

Applicant--a 38-year-old employee of a defense contractor since September 2000--seeks access to classified information. She previously held a clearance from 1985 to 1994, when she resigned from an earlier job while facing revocation of her clearance.

The SOR alleges seven past due debts totaling approximately \$6,400.00, all falling past due after Applicant was discharged of approximately \$12,900.00 in debt in a chapter 7 bankruptcy petition filed in June 1993, discharged in October 1993. Applicant admitted indebtedness totaling approximately \$4,600.00 (subparagraphs 1.a., b., and g.) and the bankruptcy discharge (1.h). She denied four debts totaling approximately \$1,800.00 (1.c., d., e., and f.). I incorporate Applicant's admissions as findings of fact.

For the four debts denied by Applicant, the record evidence demonstrates--consistent with her Answer and sworn statement (G.E. 3)--that the debt at subparagraph 1.c. was a delinquent Sears account owned by her ex-husband and incorrectly included on her credit report. The debt at 1.d. was a medical debt for which she had insurance and which insurance ultimately paid. The \$77.00 debt at 1.e. (which Applicant nevertheless paid in March 2003) was a fraudulent account in which another person used Applicant's social security number to obtain credit. The debt at 1.f. was a medical bill from Applicant's former therapist which had been mailed to her old address, but not forwarded by her ex-husband, and had been paid in January 2003.

Applicant's chapter 7 bankruptcy filing in 1993 was the product of her financial irresponsibility, a non-working husband (her second), and her alcohol dependence--which unknown to Applicant at the time, was born of her attempts to self-medicate her bi-polar disorder. In the face of her financial troubles, possible revocation of her security clearance, and resigning from her job in anticipation of being fired because of her alcohol-related absenteeism and tardiness, Applicant sought help for her alcohol problem in 1994 and ultimately completed a treatment program. She has remained active in AA.

As Applicant sobered up, her counselors realized that her alcohol problem was an attempt to self-medicate an underlying bi-polar disorder. Appropriate referrals were made, and Applicant began to receive treatment--including medication--to address her condition. However, in February 1996, Applicant took three medications that had recently been prescribed for her, had an adverse reaction (she blacked out) and was charged with DUI. This incident also created the debt at 1.g. (emergency medical transport), although Applicant was not aware of the debt until much later. When this incident occurred, Applicant did not have medical insurance. Even though the prescription intoxication was inadvertent, Applicant dates her continued sobriety from this incident, rather than from 1994, when she stopped drinking.

The other two debts Applicant admitted (1.a. and b.) were for two low-limit credit cards that Applicant had accepted as "credit rebuilding" promotions in the late 1990s. At the time, she was married to her third husband, and between her salary as a waitress and his employment they were able to keep the accounts current. When her husband became depressed himself and stopped working, they were unable to pay the accounts, which were eventually charged off.

Applicant and her husband separated, and ultimately divorced. Applicant returned to her hometown and obtained employment in September 2000. Since then, she has been an exemplary employee. She has received consistently high performance appraisals and received several promotions, accompanied by substantial increases in pay.

As her financial situation improved, she attempted to reach a repayment agreement with the two credit card accounts, but the creditors were unwilling to accept the amount she was prepared to pay. Concerned about her pending clearance hearing, she eventually negotiated a settlement amount with both creditors, and borrowed \$4,400.00 from a friend to pay these two debts, as well as the debt at 1.g., in the month or so before the hearing. She signed a promissory note for \$75.00 per month, an amount budgeted for in her positive-cash-flow budget (A.E. H.). She has only three debts. One jewelry account, an account with her behavioral therapist, and the above loan. Her positive cash flow is \$231.00 per month. She has no credit cards.

Applicant's improved financial situation is a direct result of treatment choices made by her and by other actions she has taken. When she returned to her hometown, she began to see a psychiatrist who is an expert in both addictions and bi-polar disorder. His March 2002 statement to the DSS (A.E. N) and his arch 2003 statement provided to me (A.E. J) reflect his ongoing treatment of Applicant since December 2002, her complete compliance with all treatment and medications, and his assessment that she presents no risk to national security.

Applicant also began to see a behavioral therapist in October 2000 (Tr. 91-101; A.E. I) to work on a number of issues, including her handling of her finances. He reports consistent progress on the financial front as a treatment issue. In

addition, Applicant enlisted the assistance of her mother to develop more responsible financial habits. She had a friend help her with a spread sheet of her finances. She has gotten support from her AA sponsor for both continued sobriety and continued financial discipline. <sup>(2)</sup>

The DSS agent who conducted Applicant's background investigation, including her subject interview found Applicant honest and would hire her, work with her, and give her a work recommendation (Tr. 120-127). The background investigation references were all favorable (A.E. P). Applicant's sister--a special education teacher for 19 years--has regular contact with her, knows the financial problems she has had, knows the progress she has made, and is part of her support system to keep her finances on track (Tr. 120-134). In a similar fashion, Applicant's AA sponsor helps keep her focused on continued sobriety and financial responsibility (Tr. 112-116). Applicant's supervisor considers her an excellent employee, one of the best at what she does, and one who would do better still if she had a clearance. He considers her to be no security risk (Tr. 103-109; A.E. K). A co-worker (a retired Army O-5) concurs (A.E. G.)

## **POLICIES**

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. Each adjudicative decision must also assess the factors listed in Section F.3. and in Enclosure (2) of the Directive. 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.*

Considering the evidence as a whole, the following adjudication policy factors are most pertinent to this case:

### **FINANCIAL CONSIDERATIONS (GUIDELINE F)**

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.A6.1.2.5. Financial problems that are linked to gambling, drug abuse, alcoholism, or other issues of security concern.

E2.A6.1.3. Conditions that could mitigate security concerns include:

E2.A6.1.3.3. The conditions that resulted in the behavior were largely beyond the person's control (e.g., . . . unexpected medical emergency. ).

E2.A6.1.3.4. The person has received or is receiving counseling for the problem and there are clear indications that the problem is being resolved or is under control;

E2.A6..1.3.6. The individual initiated a good-faith effort to repay overdue creditors or otherwise resolve debts.

### **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**

The Government has established its case under guideline F, but the Applicant has met her burden of mitigating the conduct. The record evidence establishes Applicant's indebtedness and her history of financial difficulties, and that they resumed after her bankruptcy discharge in 1993. However, while the financial problems were not largely beyond her control, they were rooted in her alcohol-dependence and bi-polar disorder. Neither condition is a security concern at this hearing, but they inform my judgment in assessing Applicant's fitness for access to classified information in a way that augurs well for Applicant.

As argued by the Government in closing, I was concerned that Applicant's recent settlement and payment of the last three accounts suggested that it was too early to tell if she would continue to be financially disciplined. However, Applicant's response to her alcoholism and bi-polar disorder suggest that she will continue to be financially responsible, at least as long as she is disciplined in her treatment of her alcohol dependence and bi-polar disorder. The record demonstrates, and Applicant clearly understands, that her financial irresponsibility was inextricably entwined with her addiction and depression. Just as she has demonstrated good judgment in making changes supportive of her sobriety, she has deliberately included a focus on her finances in that recovery program and aggressively manages it, along with her bi-polar disorder. Her medical, professional, AA, and family networks know of her alcohol problem, her bi-polar disorder, and her financial problems, and her networks have seen improvement in all three areas. Applicant's finances had improved before the hearing. The loan from a friend amounts to a consolidation loan and was just the last piece into place of a financial reorganization preceded by Applicant getting control of her psychological issues. Just as her treating physician and therapist expect continued progress on those issues, I conclude that Applicant's financial responsibility will continue as well. I conclude that Applicant is unlikely to experience financial difficulties in the future. Accordingly, I resolve Guideline F. for Applicant.

### **FORMAL FINDINGS**

Paragraph 1. Guideline F: FOR THE APPLICANT

Subparagraph a: For the Applicant

Subparagraph b: For the Applicant

Subparagraph c: For the Applicant

Subparagraph d: For the Applicant

Subparagraph e: For the Applicant

Subparagraph f: For the Applicant

Subparagraph g: For the Applicant

Subparagraph h: 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 Applicant.

**John G. Metz, Jr.**

**Administrative Judge**

1. Required by Executive Order 10865, as amended, and Department of Defense Directive 5220.6, dated January 2, 1992--and amended by Change 3 dated 16 February 1996, and by Change 4 dated 20 April 1999 (Directive).
2. And she has improved both her long-term health and financial health by quitting smoking.