

DATE: November 21, 2003

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In Re:

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SSN: -----

Applicant for Security Clearance

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ISCR Case No. 02-18812

## **DECISION OF ADMINISTRATIVE JUDGE**

**PAUL J. MASON**

### **APPEARANCES**

#### **FOR GOVERNMENT**

Kathryn A. Trowbridge, Esq., Department Counsel

#### **FOR APPLICANT**

*Pro Se*

### **SYNOPSIS**

Applicant's indebtedness amounting to more than \$53,000.00 in April 2002 has been extenuated by (1) losing her boyfriend she shared living expenses with from approximately 1982 to 1997, and (2) the large student loan debts and drug addiction expenses of her daughter between 1998 and 2000. These unforeseen events combined with Applicant's positive action in paying off six of the seven listed debts in 2002 and 2003, satisfy her burden of persuasion under the financial considerations guideline. However, her intentional omission of material financial information from questions 38 and 39 of the security clearance application (SCA) in December 2000 has not been mitigated. Clearance is denied.

### **STATEMENT OF CASE**

On April 30, 2003, the Defense Office of Hearings and Appeals (DOHA), pursuant to Department of Defense Directive 5220.6, dated January 2, 1992, as reissued through Change 4 thereto, dated April 20, 1999, issued an SOR to the Applicant which detailed reasons why DOHA could not make the preliminary affirmative finding under the Directive that it is clearly consistent with the national interest to grant or continue a security clearance for Applicant. DOHA recommended referral to an Administrative Judge to conduct proceedings and determine whether clearance should be granted, continued, denied or revoked. In an undated response (notarized) Applicant responded to the SOR and requested a hearing before an Administrative Judge.

The case was transferred to this Administrative Judge on June 30, 2003. On July 16, 2003, this case was set for hearing on August 7, 2003. The Government submitted seven exhibits and Applicant submitted five exhibits. Testimony was taken from Applicant. The transcript was received on August 15, 2003.

### **RULINGS ON PROCEDURE**

Government exhibits shall be referred to as (GE) while Applicant's exhibits shall be marked as (AE). References to the transcript shall be referred to as (Tr.) followed by the page number.

At page 37 of the transcript, a one page document (wage statement) was identified as AE E and received in evidence, but returned to Applicant so she could provide copies of the document to the parties. In her post-hearing submission, Applicant resubmitted AE E as an attachment to other documents. To keep the chronological order of the documents, Applicant's exhibits after AE D shall be remarked as follows: AE E shall identify the stapled documents that have a cover page addressed to Department Counsel and a notation indicating "39 pages." The next group of documents is AE F. Within AE F is a one page wage statement (formerly AE E) that has been identified by Applicant as Attachment R. AE E and AE F are admitted in evidence.

### FINDINGS OF FACT

The SOR alleges financial considerations (Guideline F) and personal conduct (Guideline E). Applicant admitted factual allegations under paragraph 1 but denied she provided false information on her SCA dated December 21, 2000, explaining she knew she was trying to pay the debts and would maintain her efforts until all debts were paid. Applicant is 52 years old and employed as a senior systems analyst for a defense contractor. She seeks a secret clearance.

**Financial considerations.** Paragraph 1.a. of the SOR, which is based on a credit bureau report (CBR) dated October 16, 2001, lists a credit account debt of \$7738.00, with last payment activity occurring in August 1998. Applicant stopped paying the 1.a. credit account in early 1999 because of a lack of resources. She used the credit card to pay for living expenses. Recently, Applicant has been trying to settle the account (Tr. 30) or establish a payment schedule to repay the debt. On August 4, 2003, the creditor offered to settle the account for \$4,643.00. (AE E) In her sworn statements of April 2002, Applicant stated she never contacted the creditor in 1.a. or set up a payment plan.

Subparagraph 1.b. identifies a second credit card debt of \$14,619.00, with last payment to the account occurred on August 2000. On June 24, 2003, Applicant settled 1.b. for \$12,000.00. (AE B) Applicant used the account for her first daughter's wedding and her own living expenses. (Tr. 49) Applicant never attempted to contact or set up a payment plan with creditor 1.b.

Subparagraph 1.c. is a state education debt of \$24,175.00 that is the responsibility of Applicant's daughter (but Applicant has agreed to pay) which was consolidated in March 2001, and then transferred for collection. A wage garnishment of almost \$400.00 a month from Applicant's earnings was established in December 2001. After Applicant's parents died in 1997, she applied two-thirds of an inheritance of \$30,000 in repayment of 2 ½ years of the her daughter's student loan debt.

Subparagraph 1.d. is a delinquent telephone debt in the amount of \$154.00 that was transferred for collection in August 2000. Applicant opened the account in 1998, and paid the account in May 2003. (Tr. 32; AE E) Applicant never contacted the creditor or established a payment plan to repay this creditor.

Subparagraph 1.e. is a fuel account of \$2,494.15 that has been unpaid since November 2000. Applicant opened this account in early 2000 and was unable to make additional payments after November 2000 for reasons that shall be discussed below. She finally paid the delinquent account in October 2002 for \$3,440.00.

Subparagraph 1.f. refers to back taxes amounting to \$795.00 for tax year 2000. She set up a payment plan in September 2001 to pay \$250.00 a month but only made two payments under the plan. Applicant was notified in May 2002 her tax debt for the year 2000 was subtracted from her 2002 Federal tax return.

Subparagraph 1.g. lists delinquent monthly mortgage arrearage in the amount of \$3,123.00 for unpaid mortgage payments beginning in May 2001. Foreclosure proceedings were initiated in February 2002. With financial assistance of \$800.00 from her daughter, Applicant sent a check for \$3,123.00 to the mortgage company to bring the account current but the check was returned. The mortgage company ultimately accepted the arrearage payment and discontinued the foreclosure action. (AE A, E) Applicant applied most of her inheritance from her aunt's estate toward the mortgage and currently owes only \$2,000.00. (Tr. 28; AE F)

Applicant's post-hearing exhibits indicate she has settled or paid \$31,649.00 of the delinquent debts totaling \$53,098.00, according to the October 2001 CBR. With her inheritance money, Applicant settled or paid all debts except for the credit card debt in 1.a, and the mortgage remainder.

Applicant's financial problems began in 1981 when she divorced her husband and became a single mother of ultimately two children and four grandchildren. In 1996, Applicant began caring for her sick father. After her father and mother died in 1997, she inherited about \$30,000.00. She applied \$20,000.00 in repayment of 2 ½ years of delinquent education loans for her daughter, and the \$10,000.00 remaining toward purchasing a house. In 1997, Applicant also ended a 15-year relationship with a person who helped pay household expenses.

In 1998, Applicant's youngest daughter came home from college addicted to drugs. Between 1998 and late 2000, Applicant had to pay all her daughter's living expenses, including some large therapy debts connected with rehabilitation. In 1999, Applicant took out a \$17,000.00 loan against her retirement fund to purchase a car for her daughter and to pay her daughter's other remaining medical expenses; Applicant still has \$300.00 a month automatically taken out of her check to repay the retirement-fund loan.

Applicant provided two sworn statements in April 2002 acknowledging the SOR debts and claiming she would pay off the debts when she was able. She noted she would pay off the debts when she received her inheritance (\$160,000) from her aunt who died in February 2002. Applicant was mistaken in her April 2002 sworn statement about having no past wage garnishments, as action was taken against her in April 1991 by at least two creditors. (GE 5, 6) Her personal financial statement (PFS) in April 2002 revealed she had a net monthly income remainder of \$169.00. Recently, the PFS has changed because Applicant purchased a car and one of her daughters and her son-in-law have been paying monthly utilities since they moved in with Applicant in December 2002. (Tr. 52)

Applicant has never had financial counseling (Tr. 25). She has always shown restraint when spending money is concerned. She has no credit cards. (Tr. 42)

**Personal Conduct.** On December 21, 2000, Applicant filled out a security questionnaire (SCA). In response to questions 38 (**Your Financial Delinquencies - 180 Days** In the last 7 years, have you ever been over 180 days delinquent on any debt(s)? and 39 (**Your Financial Delinquencies - 90 days** Are you currently over 90 days delinquent on any debt(s)), Applicant answered "no." Applicant's explanations for her "no" answers to questions 38 and 39 begin in her sworn statements (April 2002) with her claim the 1.a. debt did not become delinquent until after she submitted the SCA in December 2000. It is difficult to reconcile this statement with her acknowledgment in the same sworn statement that she fell behind in payments in late 1998 or early 1999, almost two years before she filled out the SCA.

Applicant claimed she did not supply information about the 1.b. debt in response to questions 38 or 39 because she did not think the debt qualified as an answer for any of the financial questions of the SCA. I am unable to reconcile the claim against her statement she became delinquent on the credit card account in August 2000, and recalled receiving delinquent notices. Accordingly, I find against Applicant under 1.b. of the SOR.

Applicant stated the reason she did not list the education debt on her SCA in December 2000 was that the wage garnishment was not filed until after she completed the SCA in December 2000. Even though I do not find Applicant intentionally omitted the education loan from the SCA in December 2000, the fact she had already repaid two and a half of years in delinquent education loans, and the loans had been outstanding since 1995, suggests the loans had been delinquent for an unknown period of time when she completed the SCA in December 2000.

Regarding the 1.d. account, Applicant stated she forgot about the bill when she filled out the SCA.

At the hearing, Applicant provided different explanations for not disclosing on the SCA she had debts over 90 and/or 180 days. She claimed she did not read question 38 correctly because she did not consider the debts late even though they had been written off. (Tr. 45), and she did not think she had any debts over 90 days delinquent. Regarding the 1.a. debt, even though she stated in her sworn statement that she stopped making payments in early 1999 (more than 18 months before December 2000 when she completed the SCA), she claimed at the hearing she was actually making sporadic payments on the debt. (Tr. 46) Having weighed the contradictory explanations Applicant provided in her sworn statement against her testimony, I find she intentionally omitted the debt information in 1.a. and 1b from questions 38 and 39 of the SCA.

**Character evidence.** On April 10, 2000, Applicant received a letter of congratulations from the vice president and

project manager for her performance. On February 17, 2000, Applicant received electronic mail recognition for attaining associate of the quarter status; her professionalism and interface with the customer was identified as quality traits. Applicant received a letter of appreciation in April 1998 for a superb job performance. In December 1990, Applicant was singled out for her contribution to inventory tracking during physical move of certain offices. Applicant's performance evaluations for 1993, 1995 and 1997 highlight her initiative on work assignments and her problem solving capability. Having carefully reviewed all the character evidence, I note there is no exhibits more recent than April 2000 describing Applicant's job performance.

### **POLICIES**

Enclosure 2 of the Directive sets forth disqualifying conditions (DC) and mitigating conditions (MC) which must be given binding consideration in making security clearance determinations. These conditions must be considered in every case according to the pertinent guideline; however, the conditions are in no way automatically determinative of the decision in any case nor can they supersede the Administrative Judge's reliance on his own common sense. Because each security case presents its own unique facts and circumstances, it should not be assumed that the conditions exhaust the entire realm of human experience or that the conditions apply equally in every case. In addition, the Judge, as the trier of fact, must make critical judgments as to the credibility of witnesses. Conditions most pertinent to evaluation of the facts in this case are:

### **Financial Considerations**

Disqualifying Conditions (DC):

1. A history of not meeting financial obligations:
3. Inability or unwillingness to satisfy debts;
4. Unexplained affluence.

Mitigating Conditions (MC):

1. The behavior was not recent;
2. It was an isolated event.
3. The conditions that resulted in the behavior were largely beyond the person's control;
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;
5. The affluence was from a legal source.
6. The individual has made a good faith effort to repay overdue creditors or otherwise resolver debts.

### **Personal Conduct**

Disqualifying factors (DC):

2. The deliberate omission, concealment, or falsification of relevant and material facts from any personnel security questionnaire, personal history statement, or similar form used to conduct investigation, determine employment qualifications, award benefits or status, determine security clearance eligibility or trustworthiness, or award fiduciary responsibilities.

Mitigating Conditions (MC):

1. The information was unsubstantiated or not pertinent to a determination of judgment, trustworthiness, or reliability;

2. The falsification was an isolated incident, was not recent, and the individual has subsequently provided correct information voluntarily;
3. The individual made prompt, good-faith efforts to correct the falsification before being confronted with the facts.

### **General Policy Factors (Whole Person Concept)**

Every security clearance case must also be evaluated under additional policy factors that make up the whole person concept. Those factors (found at pages 16 and 17 of Enclosure 2 of the Directive) include: (1) the nature, extent, and seriousness of the conduct; (2) the circumstances surrounding the conduct; (3) the frequency and recency of the conduct; (4) the individual's age and maturity at the time of the conduct; (5) the voluntariness of participation; (6) the presence or absence of rehabilitation and other behavioral changes; (7) the motivation for the conduct; and, (8) the potential for pressure, coercion, exploitation, or duress; and (9) the likelihood of continuation or recurrence.

### **Burden of Proof**

As set forth in the Directive, every personnel security determination must be a fair and impartial overall commonsense decision based upon all available information, both favorable and unfavorable, and must be arrived at by applying the standard that the granting (or continuance) of a security clearance under this Directive may only be done upon a finding that to do so is clearly consistent with the national interest. In reaching determinations under the Directive, careful consideration must be directed to the actual as well as the potential risk involved that an applicant may fail to properly safeguard classified information in the future. The Administrative Judge can only draw those inferences or conclusions that have a reasonable and logical basis in the evidence of record. The Judge cannot draw inferences or conclusions based on evidence which is speculative or conjectural in nature.

The Government must establish a *prima facie* case under financial considerations influence (Guideline F) and personal conduct (Guideline E), which establishes doubt about a person's judgment, reliability and trustworthiness. Then, the Applicant must remove that doubt with evidence in refutation, explanation, mitigation or extenuation which demonstrates that the past adverse conduct is unlikely to repeat itself and Applicant presently qualifies for a security clearance.

### **CONCLUSIONS**

**Financial Considerations.** Security concerns are raised when the record shows an individual is not paying her bills as they become due. History provides valuable examples of individuals that are financially overextended who resort to illegal acts to generate funds. As the SOR indicates, when Applicant's sworn statements were taken in April 2002, she owed seven creditors \$53,098.00. The period in which listed debts became delinquent was early 1999 to February 2002, when the mortgage company began action to foreclose on Applicant's house for delinquent mortgage payments. Considering the record as a whole, including Applicant's two wage garnishments in April 1991, and her more recent financial indebtedness addressed in the SOR, Applicant has a history of not meeting financial obligations within the scope of DC 1.

When Applicant provided her sworn statements in April 2002, she stated she had contacted none of her creditors or established a payment plan any of with them. She also indicated she had a net monthly remainder of approximately \$169.00 after paying her expenses. As noted in the factual findings, she could have contacted the creditor in 1.d. and paid the \$154.00 debt in installments without upsetting her monthly budget. Her decision not to contact the creditors or set up repayment plans shows an unwillingness to satisfy debts within the scope of DC 3. [\(1\)](#)

Having determined a *prima facie* case has been made under the financial considerations guideline, Applicant must present evidence in mitigation or extenuation to remove the security concerns raised by her financial problems. MC 1, which applies when the behavior was not recent, does not apply to the facts of this case because of Applicant's indebtedness was substantiated by the October 2001 credit report as well as Applicant's sworn statement in April 2002. Moreover, Applicant's financial status is always relevant to Applicant's judgment, reliability and trustworthiness.

MC 2 of the financial guideline refers to isolated conduct. MC 2 is not applicable to these facts. Applicant's current indebtedness was caused by events beyond her control. (MC 3) From 1996 to the end of 2000, Applicant was confronted with unanticipated events creating immediate financial problems that lasted for some time. First, Applicant's financial responsibility was negatively affected when she began taking care of her sick father in 1996. In 1997, her father passed; she also ended a 15-year romance with a person who helped her pay expenses. Even though she received a \$30,000.00 inheritance from her parent's estate, she had to apply \$20,000.00 to repay 2 ½ years of her daughter's delinquent education debt. In 1998, her daughter graduated from college but returned home addicted to drugs. Applicant obtained a \$17,000.00 loan from her retirement fund to pay for the child's living and medical expenses through the end of 2000. In sum, Applicant's indebtedness from 1996 through the end of 2000 was caused by events outside her control. However, after her child moved away from her house at the end of 2000, and never having had her employment interrupted, Applicant should have been in a position to address her debts by April 2002 rather than showing an indifference toward them. While Applicant is entitled to significant mitigation under MC 3, her lack of action to address the debts in April 2002 reduces the weight to be accorded MC 3.

MC 4 under the financial guideline may mitigate where the person has received counseling and there are clear indications the problem is being resolved or is under control. Financial counseling may have helped Applicant avoid two wage garnishments in 1991 and persuaded her to maintain contact with most of her creditors in April 2002, even though she was not in a position to repay them. However, having weighed the entire record, Applicant's financial difficulties were due to her MC 3 problems rather than a lack of counseling.

MC 6 of the financial guideline applies to circumstances demonstrating the individual has initiated a good-faith effort to repay overdue creditors or otherwise resolve debts. Even though the debt in 1.a. has been delinquent for more than four years, Applicant has finally taken serious action on the debt and intends to pay the debt soon. Five of the remaining debts have been completely satisfied since October 2002, and Applicant has paid down the mortgage to an amount that will be satisfied within a few months. Based on the entire record, Applicant has met her burden of persuasion under the financial considerations guideline.

**Personal Conduct.** A lack of candor or dishonesty demonstrated during the security investigation constitutes poor judgment within the meaning of the personal conduct guideline. I have weighed and balanced all Applicant's explanations for omitting the debt information from questions 38 and 39 of the SCA (December 21, 2000), and I find she intentionally concealed the information regarding the debts in 1.a. and 1.b. She knew both debts were delinquent when she completed the SCA on December 21, 2001. Her deliberate omission of relevant and material facts from the SCA falls within the scope of DC 2.

The first three mitigating conditions are potentially applicable to the facts of this case. However, MC 1 is inapplicable because Applicant knew she was in arrears regarding the credit card debts in 1.a and 1.b. Applicant's proffered explanations in her sworn statement, in her answer and at the hearing lead me to believe she still does not believe she intentionally falsified the security form in December 2000.

Both MC 2 and MC 3 of the financial considerations guideline have been carefully evaluated, however, neither condition is applicable. Even though the falsification in December 2000 was an isolated incident, Applicant's most recent explanation of not understanding question 38 indicates she still not believe she falsified the SCA.

MC 3 of the financial considerations guideline is also inapplicable to the facts of this case because the introductory paragraph of the April 2002 sworn statement, identifying Applicant's job title and dates of the interview, also indicates that during the interview, Applicant provided information about her unlisted financial matters. Based on the interview with the investigator (Tr. 48), I conclude the investigator initially presented the financial matters to Applicant for her response. Hence, MC 3 is not available to mitigate Applicant's deliberate falsification of her SCA.

Applicant's favorable character evidence until April 2000 has been carefully evaluated. The praiseworthy letters of appreciation and recognition tell me Applicant has enjoyed an excellent reputation on the job. However, the character evidence does not extenuate Applicant's intentional falsification of SCA in December 2000. In reaching my decision, I have evaluated the general factors of the whole person concept.

### **FORMAL FINDINGS**

Formal Findings required by Paragraph 25 of Enclosure 3 are:

Paragraph 1 (financial considerations, Guideline F): FOR THE APPLICANT.

- a. For the Applicant.
- b. For the Applicant.
- c. For the Applicant.
- d. For the Applicant.
- e. For the Applicant.
- f. For the Applicant.
- g. For the Applicant.

Paragraph 2 (personal conduct, Guideline E): AGAINST THE APPLICANT.

- a. 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.

Paul J. Mason

Administrative Judge

1. Though unexplained affluence was advanced as a disqualifying condition, Applicant's sworn statements, AE E, and AE F persuade me to believe the affluence came from lawful inheritance after the probate of her parents' and aunt's estates.