

DATE: June 30, 2004

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In Re:

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SSN: -----

Applicant for Security Clearance

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ISCR Case No. 02-19519

**DECISION OF ADMINISTRATIVE JUDGE**

**PAUL J. MASON**

**APPEARANCES**

**FOR GOVERNMENT**

Nygina T. Mills, Esq., Department Counsel

**FOR APPLICANT**

*Pro Se*

**SYNOPSIS**

Applicant has a long history of debt problems dating to 1996. While her marital problems in 1997 and a medical bill establish some extenuation for her inability to resolve her delinquent debts in a responsible manner, Appellant has offered no evidence of financial counseling or a sustained, good-faith effort to repay her creditors. There is insufficient evidence to find Applicant deliberately falsified question 38 of her security clearance questionnaire in January 2001. Clearance is denied.

**STATEMENT OF CASE**

On September 4, 2003, the Defense Office of Hearings and Appeals (DOHA), pursuant to Executive Order 10865 and Department of Defense Directive 5220.6 (Directive), dated January 2, 1992, amended April 4, 1999, issued a Statement of Reasons (SOR) to Applicant. The SOR 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 and recommended referral to an Administrative Judge to determine whether clearance should be denied or revoked.

Applicant furnished her answer to the SOR on October 3, 2003. Applicant elected to have her case decided on a written record. The Government provided Applicant a copy of the File of Relevant Material (FORM) on January 30, 2004. Applicant received the FORM on February 9, 2004. Her response to the FORM was due by March 10, 2004. No response was received. The case was assigned to me on March 22, 2004.

**FINDINGS OF FACT**

The SOR alleges financial considerations and personal conduct. Appellant admitted all the factual allegations under paragraph 1 but denied she intentionally omitted material information from her SCA. Applicant is 43 years old and employed as a missile technician by a defense contractor. She seeks a secret clearance.

**Financial Considerations.** Applicant owes 12 creditors approximately \$3,952.00. All delinquent debts except for subparagraph 1.a. have been sold to collection agencies for payment. Three of the identified debts are at least five years old. One debt (1.l.) was transferred for collection eight years ago. Another debt (1.b.) was transferred for collection in 2002.

Applicant paid the creditor in subparagraph 1.c. \$25.00 in July 2003. The creditor in subparagraph 1.g. was satisfied in May 2003.

In Item 6 (answers to interrogatories, May 12, 2003), Applicant provided explanations for her indebtedness. First, Applicant recalled a verbal agreement she made with her former husband during their divorce in 1997 where he agreed to pay some of the bills. Although she continued to receive \$300.00 in child support, her former husband decided not stick to the agreement regarding some of the bills. Second, Applicant discussed her struggles in maintaining suitable accommodations for her three children. Third, in an effort to establish a better quality of life for her children, Applicant worked a second job for awhile. Fourth, Applicant noted she also owed a furniture company \$760.00 and a hospital \$2,500.00 for a test Applicant believed her insurance would pay. Finally, Applicant considered she was ready to pay off her bills and had provided a \$25.00 payment (unsubstantiated) to the furniture company.

**Personal Conduct.** On January 17, 2001, Appellant listed one creditor in response to question 38<sup>(1)</sup> of her SCA. However, on the form in the available space next to the question, Applicant wrote "7 more see credit report attached, Total \$1,539.00" A reasonable interpretation of the above quoted notation is that Applicant is delinquent to seven additional creditors in an attached credit bureau report. In view of the notation, I find Applicant did not deliberately conceal material information about her delinquent debts.

## POLICIES

Enclosure 2 of the Directive sets forth policy conditions 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.

#### Mitigating Conditions (MC):

1. The behavior was not recent.
2. It was an isolated incident;
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;
6. The individual initiated a good-faith effort to repay overdue creditors or otherwise resolve debts.

### Personal Conduct

### Disqualifying Conditions (DC):

1. The deliberate omission, concealment, or falsification of relevant and material facts from a personnel security questionnaire used to determine security clearance eligibility.

### Mitigating Conditions (MC):

1. The information was 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 truthful information voluntarily.

### 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 page 2-1 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 the financial considerations guideline that established doubt about a person's judgment, reliability and trustworthiness. Then, the burden shifts to applicant to refute, explain, mitigate, or extenuate the facts. An applicant has the ultimate burden of persuasion to demonstrate he qualifies for a security clearance.

### CONCLUSIONS

**Financial Considerations.** An individual who is unable to pay her bills in a timely fashion is at risk of engaging in illegal acts to generate funds. Appellant's seven year history of not meeting her financial obligations falls within the scope of DC 1. The fact that several of the 12 delinquent debts are over five years old only underscores her inability to pay her debts in a timely fashion. (DC 3)

MC 1 of the financial guideline will mitigate the financial problems that are not recent. MC 1 must be removed from consideration because Applicant has provided no evidence inferring or suggesting a change in financial habits. The record reflects that even though Appellant was divorced in 1997, she continued to incur new debt that eventually became delinquent and referred for collection. MC 2 extends mitigation to those circumstances that show the behavior leading to the indebtedness was isolated. There is no reasonable way MC 2 can be applied given the 12 outstanding debts.

MC 3 acknowledges unanticipated events that can emerge to prevent a person from paying her bills regularly. The failure by Applicant's husband to pay his share of the bills following the divorce in 1997 entitles Applicant to extenuation under M 3 of the guideline. Applicant receives increased extenuation because of the medical bill she suddenly had to make arrangements to pay after she learned her insurance company would not pay for the bill.

MC 4 of the financial guideline gives an applicant credit for seeking financial counseling to resolve or bring the financial problems under control. Since Applicant provided no evidence of counseling, I do not know whether she has the right tools to regain control over her financial obligations.

MC 5 does not apply to the facts. MC 6 recognizes an applicant's good-faith efforts to repay creditors. Though Applicant stated in May 2003 she was ready to repay her creditors, only the debt in subparagraph 1.g. has been paid off. Applicant still owes \$635.00 to 1.c. even after her \$25.00 payment in July 2003. Applicant's repayment of only one of the 12 creditors in the last 10 months undercuts the credibility of Appellant's stated intention to resolve all her delinquent debts. In sum, the extenuating evidence under MC 3 is insufficient to overcome the adverse evidence under DC 1 of the guideline. Having weighed all the evidence, I find against Applicant under the financial guideline of the Directive. I also arrive at the same finding under the whole person concept.

**Personal Conduct.** Deliberately concealing material information from an SCA constitutes dishonest behavior within the purview of the personal conduct guideline. However, Appellant provided sufficient information in response to question 38 of the SCA to warrant the conclusion she did not do so deliberately. Hence, my finding for Appellant is based on a failure by the government to establish a *prima facie* case under the personal conduct guideline.

### **FORMAL FINDINGS**

Formal Findings required by Section 3, Paragraph 7, of Enclosure 1 of the Directive are:

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

- a. Against the Applicant.
- b. Against the Applicant.
- c. Against the Applicant.
- d. Against the Applicant.
- e. Against the Applicant.
- f. Against the Applicant.
- g. For the Applicant.
- h. Against the Applicant.
- i. Against the Applicant.
- j. Against the Applicant.
- k. Against the Applicant.
- l. Against the Applicant.
- m. Against the Applicant.

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

- a. For 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 Applicant a security clearance.

Paul J. Mason

Administrative Judge

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1. The question requires information any debts that are over 180 delinquent in the last 7 years.