

KEYWORD: Financial; Personal Conduct

DIGEST: Applicant has a history of delinquent accounts that have been placed for collection. While her financial statement indicates she has made some effort to reduce her outstanding obligations, she has made little or no effort to satisfy other indebtedness. Further, Applicant concealed material facts about her financial obligations on a security clearance application. She failed to mitigate the resulting serious questions about her security suitability. Clearance is denied.

CASENO: 02-20168.h1

DATE: 03/08/2005

DATE: March 8, 2005

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In re:

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SSN: -----

Applicant for Security Clearance

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ISCR Case No. 02-20168

**DECISION OF ADMINISTRATIVE JUDGE**

**CHRISTOPHER GRAHAM**

**APPEARANCES**

**FOR GOVERNMENT**

Catherine M. Engstrom, Esq., Department Counsel

## **FOR APPLICANT**

*Pro Se*

### **SYNOPSIS**

Applicant has a history of delinquent accounts that have been placed for collection. While her financial statement indicates she has made some effort to reduce her outstanding obligations, she has made little or no effort to satisfy other indebtedness. Further, Applicant concealed material facts about her financial obligations on a security clearance application. She failed to mitigate the resulting serious questions about her security suitability. Clearance is denied.

### **STATEMENT OF THE CASE**

On October 1, 2003, the Defense Office of Hearings and Appeals (DOHA), issued a Statement of Reasons (SOR) to Applicant alleging facts which raise security concerns under Guideline F (Financial Considerations) and Guideline E (Personal Conduct). The SOR detailed reasons why DOHA could not find that it is clearly in the national interest to grant or continue a security clearance. [\(1\)](#)

In a sworn written statement, dated October 28, 2003, Applicant answered the SOR (Answer) and elected to have her case decided on the written record in lieu of a hearing. Department Counsel submitted a file of relevant material (FORM) in support of the government's preliminary decision, a copy of which was received by Applicant on March 23, 2004. Applicant was afforded the opportunity to file objections and submit material in refutation, extenuation, or mitigation by April 23, 2004. Applicant objected to the FORM and submitted evidence on her own behalf, which was accepted by Department Counsel on or about April 28, 2004. The case was previously assigned to another administrative judge on April 30, 2004, but was reassigned to me on February 18, 2005, due to caseload considerations.

### **FINDINGS OF FACT**

Applicant has admitted 17 of 18 factual allegations pertaining to financial considerations under Guideline F, and admitted the allegation regarding Guideline E, as stated in the SOR. These admissions are incorporated herein as findings of fact.

After a thorough review of the record as a whole, I make the following additional findings of fact:

Applicant is a separated, 28-year-old administrative assistant employed by a defense contractor. <sup>(2)</sup> The SOR, paragraph 1, subparagraphs 1.a. through 1.r., details 18 debts unpaid, including an automobile repossession. <sup>(3)</sup> Applicant admits SOR subparagraphs 1.a. through 1.p., inclusive and 1.r., and denies 1.q. <sup>(4)</sup> She claims her financial problems started during 1997 when her car was repossessed. During the following years until the SOR was issued, she had amassed unpaid debts in excess of \$11,000, and had made no effort to pay them. In response to the FORM, Applicant submitted a copy of a credit report dated March 25, 2004, with four attached statements indicating she had paid debts listed in SOR. See the chart below.

The SOR identifies 17 delinquent accounts totaling nearly \$11,000.00. Those accounts, and their current status, are as described below:

SOR ¶	DELINQUENT	TYPE DEBT	AMOUNT	CURRENT STATUS <sup>(5)</sup>
1.a.	March 2000	collection account	\$43.00	Unpaid
1.b.	March 2000	collection account (cable service)	\$513.00	Paid
1.c.	May 2001	collection account (medical services)	\$135.00	Unpaid
1.d.	November 2001	collection account (dental services)	\$593.00	Unpaid
1.e.	October 2001	collection account	\$148.00	Paid
1.f.	September 2001	collection account	\$51.00	Paid
1.g.	March 2002	collection account	\$101.00	Settled for \$22.25
1.h.	October 2002	collection account (telephone services)	\$1119.00	Unpaid
1.i.	September 1997	collection account	\$62.00	Unpaid
1.j.	December 2001	collection account	\$213.00	Paid
1.k.	November 2001	credit card	\$963.00	Settled for \$578.24
1.l.	May 2000	retail credit account (charged off)	\$858.00	Unpaid
1.m.	January 2001	collection account (food)	\$225.00	Unpaid
1.n.	January 1997	collection account	\$53.00	Unpaid
1.o.	January 1997	hospital bills (charged off)	\$729.00	Unpaid
1.p.	March 1998	deficiency on repossessed car (charged off)	\$5,210.00	Unpaid
1.q.	March 1999	credit union	\$36.00	Not on credit report

Less than \$1,600.00 was paid on the debts, about \$6,900.00 was charged off and unpaid, and \$600.49 was paid to settle \$1,064.00 of debts. In her statement to a DSS Special Agent, dated November 5, 2001, <sup>(6)</sup> Applicant indicated she would pay most of the debts she discussed with the agent. Two years later those amounts were still unpaid. <sup>(7)</sup>

On Standard Form 86, Security Clearance Application, signed by Applicant on August 17, 2001, Question 38 asked: "*Your Financial Delinquencies - 180 Days. In the last 7 years, have you been over 180 days delinquent on any debt(s)?*" Applicant failed to list those debts set forth in SOR subparagraphs 1.a., 1.d., 1.e., 1.f., 1.j., 1.k., 1.l., 1.m., 1.n., 1.o., and 1.p. <sup>(8)</sup> Her car was repossessed and a resulting deficiency of \$5210.00 was written off by the creditor. <sup>(9)</sup> She claims she was unaware of these debts but the accounts are listed on her credit report, which was available to her. <sup>(10)</sup> Her revised financial statement in April 2003 indicates continued financial instability. <sup>(11)</sup>

She was arrested for a bad check charge in 1997 and convicted of forgery in 2000. <sup>(12)</sup>

## POLICIES

The Directive sets forth adjudicative guidelines <sup>(13)</sup> to be considered in evaluating an Applicant's suitability for access to classified information. The Administrative Judge must take into account 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 ¶ 6.3 of the Directive: nature and seriousness of the conduct and surrounding circumstances; frequency and recency of the conduct; age of the Applicant; motivation of the applicant, and the extent to which the conduct was negligent, wilful, voluntary, or undertaken with knowledge of the consequences involved; absence or presence of rehabilitation; and probability that the circumstances or conduct will continue or recur in the future.

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 SOR allegations and having reviewed the record evidence as a whole, I conclude the relevant adjudicative guidelines to be applied here are those concerns listed under guideline F (financial considerations), Directive, ¶ E2.A6.1.1.1. *An individual who is financially overextended is at risk of having to engage in illegal acts to generate funds*; and Guideline E (personal conduct), Directive, ¶ E2.A5.1.1.1. *Conduct involving questionable judgment, untrustworthiness, unreliability, lack of candor, dishonesty, or unwillingness to comply with rules and regulations could indicate that the*

person may not properly safeguard classified information.

### **BURDEN OF PROOF**

A security clearance decision is intended to resolve whether it is clearly consistent with the national interest<sup>(14)</sup> for an Applicant to either receive or continue to have access to classified information. The government bears an 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>(15)</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 judgment, 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>(16)</sup>

### **CONCLUSIONS**

The Government has established its case under Guideline F A security concern exists where it is shown an individual is financially overextended, thus being at risk of having to engage in illegal acts to generate funds. An inability or unwillingness to pay one's debts and to manage one's finances in a reasonably sound manner may also indicate poor judgment and reliability. Applicant has a long-standing and sizable credit delinquency and another debt remaining from the repossession of her car, which was written off by the creditor. In fact, almost two-thirds of her debts were charged off without any payment on her part. She has not paid or otherwise resolved many of the remaining debts. Financial Considerations Disqualifying Conditions (FC DC) E2.A6.1.2.1. (*history of not meeting financial obligations*), and FC DC E2.A6.1.2.3. (*inability or unwillingness to satisfy debts*) apply here. To her credit, she has paid some of these debts, and I find applicable FC Mitigating Condition E2.A6.1.3.6. (*The individual initiated a good-faith attempt to repay overdue creditors or otherwise resolve debts*). Because she has paid only 15% of her debts and 63% were charged off by the creditors without payment, I conclude Guideline F against the Applicant.

The government has also made its case under Guideline E. Applicant's omission of material facts on her answer to Question 38 on SF86 and the lack of any mitigating evidence lead me to find applicable Personal Conduct Disqualifying

Condition (PC DC) E2.A5.1.2.2. *(the deliberate omission, concealment, or falsification of relevant material facts from any personnel security questionnaire, personal history statement, or similar form used to conduct investigations, determine employment qualifications, award benefits or status, determine security clearance eligibility or trustworthiness, or award fiduciary responsibilities)*. Although PC MC E2.A5.1.3.5. *(the individual has taken positive steps to significantly reduce or eliminate vulnerability to coercion, exploitation, or duress)*, might apply as some debt has been reduced, nevertheless, a significant amount of her obligations have been written off without payment. And the fact remains that she lied on her security clearance application and has provided no mitigating reasons that would significantly reduce or eliminate her vulnerability to coercion, exploitation, or duress.

I have carefully weighed all of the evidence, and I have applied the disqualifying and mitigating conditions as listed under each applicable adjudicative guideline. I have also considered the whole person concept as contemplated by the Directive in ¶ 6.3. To that end, I have reviewed Applicant's criminal conduct but as it was not charged as a part of the SOR, it is not the basis for my findings. A fair and commonsense assessment of the adverse information about Applicant's financial history 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. Absent substantial information to resolve those doubts, which Applicant failed to provide, I conclude the record evidence shows Applicant has not overcome the information supporting the government's decision to deny Applicant access to classified information.

### **FORMAL FINDINGS**

Formal Findings regarding each SOR allegation as required by Directive ¶ E3.1.25 are as follows:

Paragraph 1., Guideline F: AGAINST THE APPLICANT

Subparagraph 1.a. Against the Applicant

Subparagraph 1.b. For the Applicant

Subparagraph 1.c. Against the Applicant

Subparagraph 1.d. Against the Applicant

Subparagraph 1.e. For the Applicant

Subparagraph 1.f. For the Applicant

Subparagraph 1.g. For the Applicant

Subparagraph 1.h. Against the Applicant

Subparagraph 1.i. Against the Applicant

Subparagraph 1.j. For the Applicant

Subparagraph 1.k. For the Applicant

Subparagraph 1.l. Against the Applicant

Subparagraph 1.m. Against the Applicant

Subparagraph 1.n. Against the Applicant

Subparagraph 1.o. Against the Applicant

Subparagraph 1.p. Against the Applicant

Subparagraph 1.q. For the Applicant

Subparagraph 1.r. Against the Applicant

Paragraph 2., Guideline E: AGAINST THE APPLICANT

Subparagraph 2.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 Applicant's security clearance. Clearance is denied.

Christopher Graham

Administrative Judge

1. This action was taken under Executive Order 10865, *Safeguarding Classified Information Within Industry*, dated February 20, 1960, as amended and modified, and Department of Defense Directive 5220.6, *Defense Industrial Personnel Security Clearance Review Program* (Directive), dated January 2, 1992, as amended and modified.
2. Item 4 (*Security Clearance Application dated August 17, 2001*) at 1-2.
3. Item 1 (*Statement of Reasons dated October 1, 2003*) at 1-3.
4. Item 3 (*Applicant's Answer dated October 28, 2003*) at 1-2.
5. Item 1, *supra*, at 1-3; and *Applicant's Response to FORM* at 1-9.
6. Item 5.
7. Item 1, *supra*, at 1-3.
8. Item 4, *supra*, at 10.
9. Item 5 (*Applicant's Sworn Statement dated November 5, 2001*) at 2; (*Applicant's Response to FORM*) at 1-9.
10. Item 6 (*Answers to Interrogatories dated April 7, 2003*) at 6-15.
11. *Id.*, at 5.
12. Item 9 (*FBI Record dated August 29, 2001*) at 1-5; and Item 10 (*Records from North Carolina v. Curtis, 00CR-053914*) at 1-24.
13. Directive, Enclosure 2.
14. See *Department of the Navy v. Egan*, 484 U.S. 518 (1998).
15. See *Egan*, 484 U.S. at 528, 531.
16. See *Egan*; Directive ¶ E2.2.2.