

DATE: May 31, 2005

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In re:

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SSN: -----

Applicant for Security Clearance

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CR Case No. 02-20586

**DECISION OF ADMINISTRATIVE JUDGE**

**ROGER C. WESLEY**

**APPEARANCES**

**FOR GOVERNMENT**

Jason Perry, Department Counsel

**FOR APPLICANT**

*Pro Se*

**SYNOPSIS**

Applicant has a history of delinquent debts which she accumulated during periods of illness-related work losses, added family responsibilities and pay refusals from various trucking concerns she worked for. While her efforts in contacting her employers to set up repayment plans with her creditors holding mostly charged-off balances are encouraging, they are not enough to mitigate Government concerns about her past inability to stabilize her finances. Also, Applicant is not able to mitigate the Government's security concerns about her omissions of her delinquent debts from her security clearance application in 2001. Clearance is denied.

**STATEMENT OF CASE**

On April 19, 2004, the Defense Office of Hearings and Appeals (DOHA), under Executive Order 10865 and Department of Defense Directive 5220.6 (Directive), dated January 2, 1992, 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, and recommended referral to an administrative judge for determination whether clearance should be granted or continued.

Applicant responded to the SOR on May 6, 2004, and elected to have his case decided on the basis of the written record. Applicant received the File of Relevant Material (FORM) on August 3, 2004. Applicant responded to the FORM within the 30 days afforded him to provide supplement documentation regarding the issues. The case was assigned to me September 7, 2005.

**SUMMARY OF PLEADINGS**

Under Guideline F, Applicant is alleged to have accumulated delinquent debts: 24 in all totaling more than \$60,000.00, including two judgments exceeding \$4,000.00. Under Guideline E, she is alleged to have falsified her security clearance application (SF-86) of November 2001 by omitting he two judgments and debts over 180 days delinquent.

For her response to the SOR, Applicant admitted the allegations pertaining to her debts, while attributing the debts to her loss of employment, medical expenses, and inability to work out payment plans with her creditors. Applicant denied falsifying her SF-86. She claimed difficulty sorting out creditors she owed. She claimed she did not have a credit report with her when she filled out her SF-86 and honestly thought the debts she omitted had been written off and were therefore not covered by the questions.

### **FINDINGS AND FACTS**

Applicant is a 43-year old truck driver for a defense contractor who seeks a security clearance. The allegations covered in the SOR and admitted to by Applicant are incorporated herein by reference adopted as relevant and material findings. Additional findings follow.

Following the death of her former husband in 1993, Applicant experienced difficulty in managing her finances and got behind with her debts. Her finances didn't improve any under her second marriage either, which lasted only four months (*i.e.*, between September 1993 and January 1994).

After remarrying for the second time (in May 1995 to her current husband), Applicant continued to experience financial problems, which persisted for a number of years before joining her current employer. She attributes her financial difficulties to a number of set backs she experienced over the ensuing five years: illness-related work losses (*e.g.*, eight weeks in 1995 and four weeks in 1998), extra financial burdens associated with the care of her new husband's mother (to the extent of \$400.00 a month), and income losses from trucking companies who either failed to pay her what she was due or went out of business.

Between 1993 and 1998, Applicant accumulated numerous delinquent debts: 23 in all totaling more than \$60,000.00 (with one debt, covered by subparagraph 1.g, duplicating the one covered by subparagraph 1.a). While she does not know the identities of all of her creditors on her credit report, and can't recognize some of them, she acknowledged to an interviewing DSS agent in February 2002 that she is aware of her delinquent debts generally and has made unsuccessful attempts to enlist some of her creditors to accept monthly payment arrangements with her. Absent better documentation from Applicant of erroneous carried debts on her credit report, causal inferences warrant identification of these listed debts as her own. She has even endured "continuous phone calls and written correspondence from collection agents over past due bills" from many of the listed creditors in her credit report (*see ex. 5*).

Her written attempts notwithstanding, Applicant has not been successful with any of her creditors in working out repayment arrangements in any way she can document (*see exs. 7 and 8*). While she considered bankruptcy, she has declined to pursue this course of debt resolution.

Applicant completed a security clearance application (SF-86) in November 2001. In completing the SF-86, Applicant omitted her two judgments and debts over 180 days delinquent, respectively. She acknowledged having delinquent debts, just not the amounts and identities of all her creditors without a credit report to assist her. Her stated assumptions about the charge-off status of many of her debts does not dispel her basic knowledge about the delinquent status of many of her debts.

Even if Applicant did not have express notice of any judgment being entered against her, her overall knowledge of her delinquent status on most of her debts precludes her from averting inferences of knowing and wilful omission re: her debts covered by question 38 of her SF-86. When interviewed by a DSS agent three months later in February 2002, Applicant acknowledged most of her debts, but only after being shown a copy of her credit report (*see ex. 7*).

### **POLICIES**

The Adjudicative Guidelines of the Directive (Change 4) list Guidelines to be considered by judges in the decision making process covering DOHA cases. These revised Guidelines require the judge to consider all of the "Conditions that could raise a security concern and may be disqualifying" (Disqualifying Conditions), if any, and all of the "Mitigating Conditions," if any, before deciding whether or not a security clearance should be granted, continued or denied. The Guidelines do not require the judge to assess these factors exclusively in arriving at a decision. In addition to the relevant Adjudicative Guidelines, judges must take into account the pertinent considerations for assessing

extenuation and mitigation set forth in E.2.2 of the Adjudicative Process of Enclosure 2

of the Directive, which are intended to assist the judges in reaching a fair and impartial common sense decision.

### **Financial Considerations**

*The Concern:* An individual who is financially overextended is at risk at having to engage in illegal acts to generate funds. Unexplained influence is often linked to proceeds from financially profitable criminal acts.

### **Personal Conduct**

*The Concern:* 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**

By virtue of the precepts framed by the Directive, a decision to grant or continue an applicant's security clearance may be made only upon a threshold finding that to do so is clearly consistent with the national interest. Because the Directive requires Administrative Judges to make a common sense appraisal of the evidence accumulated in the record, the ultimate determination of an applicant's eligibility for a security clearance depends, in large part, on the relevance and materiality of that evidence. As with all adversary proceedings, the Judge may draw only those inferences which have a reasonable and logical basis from the evidence of record. Conversely, the Judge cannot draw factual inferences that are grounded on speculation or conjecture.

The Government's initial burden is twofold: (1) It must prove any controverted fact[s] alleged in the SOR and (2) it must demonstrate that the facts proven have a material bearing to the applicant's eligibility to obtain or maintain a security clearance. The required showing of material bearing, however, does not require the Government to affirmatively demonstrate that the applicant has actually mishandled or abused classified information before it can deny or revoke a security clearance. Rather, consideration must take account of cognizable risks that an applicant may deliberately or inadvertently fail to safeguard classified information.

Once the Government meets its initial burden of proof of establishing admitted or controverted facts, the burden of persuasion shifts to the applicant for the purpose of establishing his or her security worthiness through evidence of refutation, extenuation or mitigation of the Government's case.

### **CONCLUSIONS**

Applicant accrued considerable delinquent debt between 1993 and 2000 due to a confluence of problems: money mismanagement, illness-related job losses, additional family burdens and employers either refusing to pay her or going out of business. Applicant's two judgments and delinquent together exceed \$60,000.00 debts, and for the most part were charged off. These debts, together with her omissions of the same, raise security clearance issues covered by Guidelines F (financial considerations) and E (personal conduct).

#### **Applicant's financial issues**

Based on Applicant's considerable accumulation of delinquent debt, two of the Disqualifying Conditions (DC) of the Adjudicative Guidelines for Guideline F apply: E2.A6.1.2.2 (*A history of not meeting financial obligations*) and E2.A6.1.2.3 (*Inability or unwillingness to satisfy debts*). While her accrued debts are accompanied by some extenuating circumstances (*viz.*, illness-related job losses, additional family burdens and employers either refusing to pay her or going out of business), for the most part her finances (since at least December 2001). have permitted modest attempts to pay on her old creditors, if not with the resources available to her, then through instituted debt consolidation or Chapter 13 relief.

Applicant's debts are neither extenuated nor mitigated enough to enable her to take advantage of any of the mitigating

conditions at this time. Her periodic work/pay losses and extraordinary family burdens imposed on her before December 2001, while problematic, stabilized considerably since she joined her current trucking employer and do not appear to have inhibited her ability to address her debts since at least December 2001. Significant delinquent debt attributable to an applicant that is neither extenuated nor mitigated by good-faith resolution raises implicit security risks over the potential for needed funds and recurrent judgment lapses. The government does not have to wait until an individual mishandles or fails to safeguard classified information before it can make an unfavorable security clearance decision. *Cf. Adams v. Laird*, 420 F.2d 230, 238-39 (DC Cir. 19969), *cert. denied*, 397 U.S. 1039 (1970).

True, Applicant's debts are extenuated enough to enable her to invoke 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)*). However she is not able to document sufficient mitigation to warrant application of E2.A6.1.3.6 (*The individual initiated a good-faith effort to repay overdue creditors*) of the Guideline based on the repayment efforts she is able to document.

Where (as here) there is insufficient evidence of repayment efforts after the conditions that contributed to an applicant's delinquent debts have passed, the Appeal Board has cautioned against crediting the applicant with either non-recent financial difficulties (E2.A6.1.3.1 of the Guidelines) or excusing her from addressing her delinquent debts (even those accrued because of extenuating circumstances). *See* ISCR Case No. 03-01059 (September 2004).

Taking into account all of the circumstances surrounding Applicant's accumulated debts and the absence of sufficient attention she has shown with her debts after her finances began to stabilize, Applicant fails to mitigate the Government's security concerns at this time. Unfavorable conclusions warrant, accordingly, with respect to subparagraphs 1.a through 1.f and 1.h through 1.x of the allegations governed by the Adjudicative Guidelines pertinent to Guideline F. Favorable conclusions warrant only as to subparagraph 1.g, which is accepted as a duplicate debt.

### **Applicant's SF-86 omissions**

Security concerns over Applicant's judgment, reliability and trustworthiness are raised under Guideline E, too, as the result of her omissions of her two judgments and debts in the SF-86 she completed in November 2001. By her written explanations, Applicant refutes the allegations she deliberately omitted the two listed judgments in her credit report. Such is not the case, though, with her debt omissions. In omitting her numerous debts over 180 days delinquent, Applicant failed to furnish materially important background information about her debts that was needed for the Government to properly process and evaluate her security clearance application. Applicant's omissions are attributable to her mistaken belief the questions sought only creditor information relative to debts that had not been charged off. The questions pertaining to her judgments and debts (questions 37 and 38) were straight forward, however, and made no exceptions for debts not being pursued by the creditors.

Applicant's omissions warranted inferences of knowing and wilful concealment under all the facts and circumstances considered.. Accordingly, DC 2 of Guideline E (*The deliberate omission, concealment, falsification or misrepresentation of relevant and 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*) is applicable to the developed facts in Applicant's case.

Not until confronted with her credit report by the interviewing DSS agent some two months later did Applicant acknowledge the delinquent debts listed therein. While her disclosures Applicant's may be considered relatively prompt, they do not satisfy the good-faith requirements of either MC E2.A5.1.3.2 (*The falsification was an isolated incident, was not recent, and the individual has subsequently provided correct information voluntarily*) or MC E2.A5.1.2.3 (*The individual made prompt, good-faith efforts to correct the falsification before being confronted with the facts*).

Considering all of the evidence produced in this record and the available guidelines in the Directive (inclusive of the E.2.2 factors), unfavorable conclusions warrant with respect to subparagraph 2.b of Guideline E. Applicant is entitled to favorable conclusions with respect to subparagraph 2.a, which is unsubstantiated.

In reaching my decision, I have considered the evidence as a whole, including each of the E 2.2 factors enumerated in

the Adjudicative Guidelines of the Directive.

### **FORMAL FINDINGS**

In reviewing the allegations of the SOR and ensuing conclusions reached in the context of the FINDINGS OF FACT, CONCLUSIONS, CONDITIONS, and the factors listed above, this Administrative Judge makes the following FORMAL FINDINGS:

**GUIDELINE F (FINANCIAL CONSIDERATIONS): AGAINST APPLICANT**

Sub-para. 1.a: AGAINST APPLICANT

Sub-para. 1.b: AGAINST APPLICANT

Sub-para. 1.c: AGAINST APPLICANT

Sub-para. 1.d: AGAINST APPLICANT

Sub-para. 1.e: AGAINST APPLICANT

Sub-para. 1.f: AGAINST APPLICANT

Sub-para. 1.g: FOR APPLICANT

Sub-para. 1.h: AGAINST APPLICANT

Sub-para. 1.i: AGAINST APPLICANT

Sub-para. 1.j: AGAINST APPLICANT

Sub-para. 1.k: AGAINST APPLICANT

Sub-para. 1.l: AGAINST APPLICANT

Sub-para. 1.m: AGAINST APPLICANT

Sub-para. 1.n: AGAINST APPLICANT

Sub-para. 1.o: AGAINST APPLICANT

Sub-para. 1.p: AGAINST APPLICANT

Sub-para. 1.q: AGAINST APPLICANT

Sub-para. 1.r: AGAINST APPLICANT

Sub-para. 1.s: AGAINST APPLICANT

Sub-para. 1.t: AGAINST APPLICANT

Sub-para. 1.u: AGAINST APPLICANT

Sub-para. 1.v: AGAINST APPLICANT

Sub-para. 1.w: AGAINST APPLICANT

Sub-para. 1.x: AGAINST APPLICANT

GUIDELINE E (PERSONAL CONDUCT): AGAINST APPLICANT

Sub-para. 2.a: FOR APPLICANT

Sub-para. 2.b: AGAINST 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.

Roger C. Wesley

Administrative Judge