

DATE: September 8, 2003

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In Re:

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SSN: -----

Applicant for Security Clearance

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ISCR Case No. 02-20802

**DECISION OF ADMINISTRATIVE JUDGE**

**PHILIP S. HOWE**

**APPEARANCES**

**FOR GOVERNMENT**

Melvin A. Howry, Esq., Department Counsel

**FOR APPLICANT**

Michael M. Hennessey, Personal Representative

James Woodward, Personal Representative

**SYNOPSIS**

Applicant incurred credit card debts during her marriage. Applicant is now divorced, raising three sons and working as a bus driver for a defense contractor. She has a payment plan in effect to resolve her debts. Applicant mitigated the financial concerns and it is clearly consistent with security concerns to issue a clearance. Clearance granted.

**STATEMENT OF THE CASE**

On April 3, 2003, the Defense Office of Hearings and Appeals (DOHA), 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, issued a Statement of Reasons (SOR) to Applicant. The SOR detailed reasons under the personnel security Guideline F (Financial Considerations) 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. The SOR recommended referral to an Administrative Judge to conduct proceedings and determine whether clearance should be granted, continued, denied, or revoked.

In a signed and notarized statement, dated April 22, 2003, Applicant responded to the SOR allegations. She requested a hearing. This case was originally assigned to another Administrative Judge May 2, 2003, but was reassigned to me July 21, 2003 due to caseload considerations. On July 2, 2003, a Notice of Hearing was issued setting the hearing date for July 25, 2003. On that date, I convened the hearing to consider whether it is clearly consistent with the national interest to grant Applicant's security clearance. The Government presented four exhibits, all of which were admitted into evidence. Applicant submitted six exhibits, which were admitted into evidence. One witness testified on behalf of Applicant, in addition to her testimony. Applicant was given two weeks, until August 8, 2003, to submit additional documents about her liability for the debt alleged in subparagraph 1.c. She did submit those documents on August 6,

2003, and they were marked as Exhibit F. I received the transcript (Tr.) of the hearing on August 8, 2003.

### FINDINGS OF FACT

Applicant admitted the allegations in subparagraphs 1.a., 1.b., 1.d., 1.e., and 1.f. of the SOR. Applicant denied the allegations in subparagraph 1.c. Those admissions are incorporated herein as findings of fact. After a complete and thorough review of the evidence in the record, and upon due consideration of the same, I make the following additional findings of fact:

Applicant is a 35 year old female who divorced this year after 16 years of marriage. She has three sons, aged 9, 14, and 16. The middle son was injured ten years ago in an auto accident and rendered a paraplegic. Applicant was also seriously injured in that crash in 1991, and her youngest son had internal injuries from the accident. The medical expenses incurred as a result of that accident exceeded \$100,000, but were paid for by Applicant, her husband, and various federal health care programs. Applicant was unable to work for three years after the accident. Applicant's annual family income usually did not exceed \$40,000 per year during her marriage. Her former husband worked as a logger and commercial fisherman, and at other seasonal employments. Applicant's past employments have been as a school bus driver, waitress, and housekeeper. She currently works for a defense contractor as a bus driver. She needs a security clearance to continue to perform that work on the facility where she is employed. (Exhibit 1 at 1, 3 and 4; Exhibit 2 at 15, 20; Exhibit 3 at 1; Tr. 21 to 23, 38, 54 )

Applicant filed for bankruptcy in 1999 because of various debts. Her listed debts were discharged in bankruptcy in 1999. From 1992 to 1995 Applicant was current on her debts. Then she and her family moved to an apartment in 1998 from a rent free cabin owned by her sister. Having to pay rent in addition to all other expenses caused financial problems for Applicant and the debts started to accumulate. Her husband had frequent periods of unemployment. A garnishment action started by a time share company with whom they made a purchase caused further financial difficulties, resulting eventually in the filing of the bankruptcy. (Exhibit 3 at 2)

Applicant used a credit card after the completion of the bankruptcy to use in emergencies and financed a vehicle loan. Later she found herself using the card to buy necessities because of her husband's unemployment. She entered a debt consolidation loan program with a debt counseling service and paid \$280 monthly on a debt of \$6,500. Payments were current from June 2000 to sometime in 2001 after her first interview with an investigative agent. She and her husband tried to pay three creditors directly. Those creditors are listed in subparagraphs 1.b. and c. In May, 2002, Applicant declared her intention of paying the debts starting in June, 2002. Applicant's May, 2002, financial statement shows a negative cash balance of \$43 monthly, after payment of all ordinary and customary payments, including the debt repayments. (Exhibit 3 at 2 to 4)

In 2002 Applicant and her husband divorced. Applicant was to pay certain bills and has been trying to make those payments. Her former husband was to pay the debt listed in subparagraph 1.c. That debt was satisfied by her former husband and the credit reporting agencies notified by the creditor. Her former husband does not pay much money, if any, in child support. (Exhibit F at 4; Tr. 27, 28, 30, 61)

Three of the remaining debts listed in the SOR are being paid through a consumer credit counseling service to which Applicant pays \$289 per month. Those debts are to the credit card company listed in subparagraphs 1.a., the finance company listed in subparagraph 1.b., and the credit card company listed in subparagraph 1.d. The payments started in July, 2003. They are supposed to be paid off in eleven months. Applicant's take home pay is \$900 per pay period, at the rate of \$16.81 per hour, with overtime. Her rent for a two bedroom apartment is \$790 monthly. (Exhibit A; Tr. 25, 26-31, 48, 52, 54, 56, 68)

The credit card debt listed in subparagraph 1.e. is not one for which Applicant received a monthly bill. That is why it is not listed on the consumer credit counseling monthly list of debts to be paid from her \$289 monthly payment. The credit report shows it as a charged off debt. Applicant's most recent research shows the creditor is not in business any longer, having been closed by regulatory agencies for consumer fraud. Applicant was unable to contact the creditor to discuss a repayment schedule. (Tr. 32; Exhibit F-3; Exhibit 6 at 2)

Applicant submitted statements from her mother, and three co-workers about her work ethic and her struggles to take

care of her three sons and her debts. These statements show Applicant is a hard worker and a good mother. The testimony from Applicant's witness supports that opinion. (Exhibits B, C, D, and E; Tr. 74-76)

## POLICIES

The adjudication process is based on the whole person concept. All available, reliable information about the person, past and present, is to be taken into account in reaching a decision as to whether a person is an acceptable security risk. Enclosure 2 to the Directive sets forth adjudicative guidelines that must be carefully considered according to the pertinent Guideline in making the overall common sense determination required.

Each adjudicative decision must also include an assessment of: (1) the nature, extent, and seriousness of the conduct; (2) the circumstances surrounding the conduct, and the extent of knowledgeable participation; (3) how recent and frequent the behavior was; (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 pertinent behavioral changes; (7) the motivation for the conduct; (8) the potential for pressure, coercion, exploitation, or duress; and (9) the likelihood of continuation or recurrence (See Directive, Section E2.2.1., Enclosure 2). Because each security case presents its own unique facts and circumstances, it should not be assumed that the factors exhaust the realm of human experience or that the factors apply equally in every case. Moreover, although adverse information concerning a single condition may not be sufficient for an unfavorable determination, the individual may be disqualified if available information reflects a recent or recurring pattern of questionable judgment, irresponsibility, or other behavior specified in the Guidelines.

Based upon a consideration of the evidence as a whole, I find the following adjudicative guidelines most pertinent to an evaluation of the facts of this case:

### **Guideline F - Financial Considerations:**

An individual who is financially overextended is at risk of having to engage in illegal acts to generate funds. Directive, ¶ E2.A6.1.1.

Conditions that could raise a security concern and may be disqualifying include:

- (1) A history of not meeting financial obligations. Directive, ¶ E2.A6.1. 2.1.
- (3) Inability or unwillingness to satisfy debts. Directive, ¶ E2.A6.1.2.3.

Conditions that could mitigate security concerns include:

- (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). Directive, ¶ E2.A6.1.3.3.
- (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. Directive, ¶ E2.A6.1.3.4.
- (6) The individual initiated a good-faith effort to repay overdue creditors or otherwise resolve debts. Directive, ¶ E2.A6.1.3.6.

## CONCLUSIONS

Upon consideration of all the facts in evidence, and after application of all appropriate legal precepts, factors, and conditions above, I conclude the following with respect to each allegation set forth in the SOR:

The Government proved Applicant had financial problems. She incurred debts during her marriage to purchase the necessities of life for family. She admitted all but one of the debts, and her own exhibit shows other debts are owed. All of the debts are less than \$1,000 individually, and currently total \$3,333.64 or less. Disqualifying Conditions (DC) 1 and 3 apply.

The next issue is whether Applicant mitigated these conditions. Applicant's financial problems clearly arose from the low and periodic income both she and her former husband earned during the course of their marriage. The terrible automobile accident in 1991 which paralyzed one son, left Applicant and another son seriously injured and left her out of work for three years, caused large medical bills which started the family on the road to financial difficulty. Her former husband's periodic employment as a logger or commercial fisherman added impediments to Applicant's ability to pay off the debts. Her lack of education and low paying bus driving jobs impeded her capability to defease the debts. She still suffers economic disadvantages in providing for herself and her three sons. itigating Condition (MC) 3 applies. The divorce makes Applicant fall under MC 3, also.

The bankruptcy and the two attempts at paying the bills through consumer credit counseling agencies shows Applicant is trying to do the responsible activity to pay her just debts, and these actions support the applicability of MC 4. Payments are being made, and in eleven months from now Applicant will have these debts resolved by payment.

Her use of the federal bankruptcy statute, is reasonable and legal, and within the requirements of Guideline F that she has otherwise resolved her debts. Therefore, MC 6 would apply to Applicant's case.

After observing her demeanor at the hearing, and considering her testimony, I find her explanations of her financial problems to be credible. I also believe her explanations of her attempts to pay her debts, and her struggles in life. Her explanations of the two debts alleged in subparagraphs 1.c. and 1.f. being paid or not her debts were credible and supported by the additional facts she submitted subsequently to the hearing.

Evaluating the totality of the evidence, I conclude Applicant's financial problems have been mitigated and successfully and legally resolved. Therefore, it would be clearly consistent with national security concerns to grant her security clearance.

### **FORMAL FINDINGS**

Formal Findings as required by Section E3.1.25 of Enclosure 3 of the Directive are hereby rendered as follows:

Paragraph 1 Guideline F: For the Applicant

Subparagraph 1.a.: For the Applicant

Subparagraph 1.b: For the Applicant

Subparagraph 1.c: For the Applicant

Subparagraph 1.d.: For the Applicant

Subparagraph 1.e.: For the Applicant

Subparagraph 1.f.: For the Applicant

### **DECISION**

In light of all the circumstances and facts presented by the record in this case, it is clearly consistent with the national interest to grant or continue a security clearance for Applicant.

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Philip S. Howe

Administrative Judge