

DATE: February 20, 2004

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In Re:

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SSN: -----

Applicant for Security Clearance

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ISCR Case No. 02-23253

## **DECISION OF ADMINISTRATIVE JUDGE**

**HENRY LAZZARO**

### **APPEARANCES**

#### **FOR GOVERNMENT**

Juan R. Rivera, Esquire, Department Counsel

#### **FOR APPLICANT**

*Pro Se*

### **SYNOPSIS**

Applicant is a 65-year-old woman who has been employed by a defense contractor as a management analyst since February 2000. Her financial problems, including a Chapter 13 bankruptcy and mortgage foreclosure, resulted from her loss of employment in 1997, a legal dispute with the mortgage company, and a drug addict son who is now in a penitentiary. She has now mitigated those concerns with the sale of the house and payment or other resolution of all past-due debts. Clearance is granted.

### **STATEMENT OF THE CASE**

On June 3, 2003, the Defense Office of Hearings and Appeals (DOHA) issued a Statement of Reasons (SOR) to Applicant stating they were unable to find that it is clearly consistent with the national interest to grant or continue a security clearance for Applicant. [\(U\)](#) The SOR, which is in essence the administrative complaint, alleges a security concern under Guideline F, financial considerations.

Applicant submitted an answer to the SOR that was received on July 3, 2003, and requested a hearing. Applicant admitted the allegations contained in subparagraphs 1.a., 1.e., and 1.h. of the SOR, and denied the remaining SOR allegations.

The case was assigned to me on October 29, 2003. A notice of hearing was issued on November 24, 2003 scheduling the hearing for December 10, 2003. The hearing was conducted as scheduled. The government submitted seven documentary exhibits at the hearing that were marked as Government Exhibits (GE) 1-7 and admitted into the record without an objection. The Applicant testified at the hearing, presented one witness to testify on her behalf, and submitted three exhibits that were marked as Applicant's Exhibits (AE) 1-3, and admitted into the record. Department Counsel's objection to AE 1 and 3 were overruled. AE 2 was admitted without an objection. Applicant submitted one additional exhibit post-hearing through Department Counsel that was marked as AE 4 and admitted into the record without an objection. The transcript was received by DOHA on December 29, 2003.

### **FINDINGS OF FACT**

Applicant's admissions to the allegation contained in subparagraphs 1.a., 1.e., and 1.h. of the SOR are incorporated herein. In addition, after a

thorough review of the pleadings, exhibits and testimony, I make the following findings of fact:

Applicant is a 65-year-old woman who has been employed by a defense contractor as a management analyst since February 2000. She presently earns approximately \$47,000.00 per year. Applicant was married in November 1957 and divorced in March 1962. She again married in March 1962 and was widowed in November 1966. She married for the third and last time in October 1972 and was divorced in April 1980. She has three adult children.

Applicant's financial problems appear to have begun following her dismissal from employment with a government contractor in September 1997. She was fired from that job after she was discovered playing a card game on a government computer after working hours. From the time she lost that employment until she was hired by her present employer, she was either unemployed or underemployed.

After being fired, Applicant found herself in a dispute with her mortgage holder because the lender allegedly applied payments to unwanted insurance and failing to apply payments to her principal and interest. The mortgage holder filed foreclosure proceedings and Applicant retained the services of an attorney (AE 2) who filed for Chapter 13 bankruptcy protection on her behalf in an effort to reinstate the mortgage through the Chapter 13 plan. The bankruptcy pleadings list the mortgage company as the only creditor holding a secured claim, and only three other creditors holding unsecured claims. The three unsecured claims are listed in the SOR and consist of a long-distance phone service charge in the amount of \$324.56, a phone service charge in the amount of \$418.57, and a personal bank loan that was taken to judgment in the amount of \$6,000.00. The bankruptcy was dismissed on January 30, 2002 due to a check Applicant submitted as payment on the plan in the amount of \$458.49 being returned because of insufficient funds being on deposit.

Following dismissal of the bankruptcy, Applicant placed her house for sale, obtained a buyer, and closed on the sale on October 30, 2003. The judgment listed in SOR subparagraph 1.e. was paid directly from the proceeds of the sale of the residence. Applicant netted \$97,171.99 from the sale (AE 3), and, as of December 9, 2003, had \$43,087.01 on deposit in a bank (AE 1).

Applicant credibly testified the delinquent telephone accounts belonged to her drug addict son who is now serving an eight-year sentence in the penitentiary, that her name was on the accounts only because they were originally opened in her name, and the creditors have accepted her explanation and are not pursuing her to collect on the accounts. It is clear from the evidence that following the sale of her house, Applicant had the ability to satisfy these accounts were that not the case.

Applicant issued a check in the amount of \$92.53 to a hardware store in 1994 that was returned because she had insufficient funds (NSF) on deposit with the bank. The NSF check resulted from an apparent misunderstanding between Applicant and a contractor she had hired about the deposit of money in the account. Applicant went to the store to pay the money but discovered the check had been forwarded to the sheriff's office. She then went to the sheriff's office, paid a \$45.00 fee and satisfied the check. <sup>(2)</sup>

Applicant issued an NSF check in the amount of \$34.65 to a store in 2002. Applicant credibly testified she was initially unaware of the NSF check because, as a consequence of her drug addict son living with her, she would at times not receive mail addressed to her. When she did receive notification of the check, she went to the courthouse, satisfied the check, and paid fees in the amount of \$65.00. <sup>(3)</sup>

Applicant's supervisor for the past four years testified that he has no reason to suspect she may by a threat to national security, that she has kept him informed during the past two years of her financial problems, and that her problems all appeared to be a disagreement on what she owed the mortgage company.

### **POLICIES**

The Directive sets forth adjudicative guidelines to consider when evaluating a person's eligibility to hold a security clearance. Chief among them are the Disqualifying Conditions (DC) and Mitigating Conditions (MC) for each applicable guideline. Additionally, each clearance decision must be a fair and impartial commonsense decision based upon the relevant and material facts and circumstances, the whole person concept, and the factors listed in ¶ 6.3.1 through ¶ 6.3.6 of the Directive. Although the presence or absence of a particular condition or factor for or against clearance is not outcome determinative, the adjudicative guidelines should be followed whenever a case can be measured against this policy guidance. Considering the evidence as a whole, Guideline F, pertaining to financial considerations, with its respective DC and MC, is most relevant in this case.

### **BURDEN OF PROOF**

The sole purpose of a security clearance decision is to decide if it is clearly consistent with the national interest to grant or continue a security clearance for an applicant. <sup>(4)</sup> The government has the burden of proving controverted facts. <sup>(5)</sup> The burden of proof in a security clearance case is something less than a preponderance of evidence <sup>(6)</sup>, although the government is required to present substantial evidence to meet its burden of proof. <sup>(7)</sup> "Substantial evidence is more than a scintilla, but less than a preponderance of the evidence." <sup>(8)</sup> Once the government has met its burden, the burden shifts to an applicant to present evidence of refutation, extenuation, or mitigation to overcome the case against him. <sup>(9)</sup> Additionally, an applicant has the ultimate burden of persuasion to obtain a favorable clearance decision. <sup>(10)</sup>

No one has a right to a security clearance<sup>(11)</sup> and "the clearly consistent standard indicates that

security clearance determinations should err, if they must, on the side of denials."<sup>(12)</sup> Any reasonable doubt about whether an applicant should be allowed access to classified information must be resolved in favor of protecting national security.<sup>(13)</sup>

### **CONCLUSIONS**

Under Guideline F, a security concern exists when a person has significant unpaid debts. An individual who is financially overextended is at risk of having to engage in illegal or unethical acts to generate funds to meet financial obligations. Similarly, an individual who is financially irresponsible may also be irresponsible, unconcerned, or careless in their obligation to protect classified information. Behaving responsibly or irresponsibly in one aspect of life provides an indication of how a person may behave in other aspects of life.

It is apparent that Applicant had a disagreement with her mortgage company that resulted in foreclosure proceedings being initiated and a Chapter 13 bankruptcy proceeding being filed, upon her attorney's advice, in an effort to resolve those issues. She also had a judgment entered against her on a personal bank loan that appears to have been a result of her loss of employment. The two NSF checks were quickly satisfied after Applicant was notified the checks had been returned.

Applicant credibly testified the two remaining accounts belong to her son and that she is no longer being held liable for them by the creditors. She is presently financially sound, and has adequate funds in her bank accounts to satisfy these two outstanding creditors should the need arise. Further she now has regained full-time employment, is being paid approximately \$47,000.00 per year, and the son who contributed to much of her distress is now serving an eight-year sentence in the penitentiary.

Based on all the evidence presented in this case, I find that Disqualifying Condition (DC) 1: *A history of not meeting financial obligations*; and DC 3: *Inability or unwillingness to satisfy debts* apply in this case. I also find that Mitigating Conditions (MC) 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)*; and DC 6: *The individual initiated a good-faith effort to repay overdue creditors or otherwise resolve debts* apply in this case.

Considering all relevant and material facts and circumstances present in this case, the whole person concept, the factors listed in ¶ 6.3.1 through ¶ 6.3.6 of the Directive, and the applicable disqualifying and mitigating conditions, I find that Applicant has mitigated this security concern. She has overcome the case against her and satisfied her ultimate burden of persuasion. Guideline F is decided for Applicant.

### **FORMAL FINDINGS**

SOR ¶ 1-Guideline F: For the Applicant

Subparagraph a: For the Applicant

Subparagraph b: For the Applicant

Subparagraph c: For the Applicant

Subparagraph d: For the Applicant

Subparagraph e: For the Applicant

Subparagraph f: For the Applicant

Subparagraph g: For the Applicant

Subparagraph h: For the Applicant

### **DECISION**

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

Henry Lazzaro

## Administrative Judge

1. This action was taken under Executive Order 10865 and DoD Directive 5220.6, dated January 2, 1992, as amended and modified (Directive).
2. SOR subparagraph 1.b. alleges Applicant was arrested in connection with this offense. However, GE 7 specifically states that she entered into the agreement recorded therein "in consideration of my not appearing in court." Accordingly, I have accepted the explanations she provided in her SOR answer and testimony as being true and accurate.
3. SOR subparagraph 1.c. alleges Applicant was arrested in connection with this offense. However, GE 6 specifically states that she entered into the agreement recorded therein "in consideration of my not appearing in court." Accordingly, I have accepted the explanations she provided in her SOR answer and testimony as being true and accurate.
4. ISCR Case No. 96-0277 (July 11, 1997) at p. 2.
5. ISCR Case No. 97-0016 (December 31, 1997) at p. 3; Directive, Enclosure 3, Item E3.1.14.
6. *Department of the Navy v. Egan* 484 U.S. 518, 531 (1988).
7. ISCR Case No. 01-20700 (December 19, 2002) at p. 3 (citations omitted).
8. ISCR Case No. 98-0761 (December 27, 1999) at p. 2.
9. ISCR Case No. 94-1075 (August 10, 1995) at pp. 3-4; Directive, Enclosure 3, Item E3.1.15.
10. ISCR Case No. 93-1390 (January 27, 1995) at pp. 7-8; Directive, Enclosure 3, Item E3.1.15
11. *Egan*, 484 U.S. at 528, 531.
12. *Id* at 531.
13. *Egan*, Executive Order 10865, and the Directive.