

KEYWORD: Financial

DIGEST: Applicant owned a restaurant that failed in 1998 leaving her with more than \$64,000 in delinquent debt and a federal tax lien of more than \$28,000. Applicant refuses to "grovel" to creditors whom she believes acted in bad faith by rejecting her offers of partial payment of the debts. Applicant failed to mitigate financial consideration security concerns. Clearance is denied.

CASENO: 03-20597.h1

DATE: 01/23/2006

DATE: January 23, 2006

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In re:

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SSN: -----

Applicant for Security Clearance

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ISCR Case No. 03-20597

**DECISION OF ADMINISTRATIVE JUDGE**

**JAMES A. YOUNG**

**APPEARANCES**

**FOR GOVERNMENT**

**FOR APPLICANT**

*Pro Se*

**SYNOPSIS**

Applicant owned a restaurant that failed in 1998 leaving her with more than \$64,000 in delinquent debt and a federal tax lien of more than \$28,000. Applicant refuses to "grovel" to creditors whom she believes acted in bad faith by rejecting her offers of partial payment of the debts. Applicant failed to mitigate financial consideration security concerns. Clearance is denied.

**STATEMENT OF THE CASE**

The Defense Office of Hearings and Appeals (DOHA) declined to grant or continue a security clearance for Applicant. On 8 February 2005, DOHA issued a Statement of Reasons<sup>(1)</sup> (SOR) detailing the basis for its decision-security concerns raised under Guideline F (Financial Considerations) of the Directive.<sup>(2)</sup> Applicant answered the SOR in writing on 2 March 2005 and elected to have a hearing before an administrative judge. The case was assigned to me on 6 September 2005. On 18 October 2005, I convened a hearing to consider whether it is clearly consistent with the national interest to grant or continue a security clearance for Applicant. DOHA received the hearing transcript (Tr.) on 31 October 2005.

**FINDINGS OF FACT**

Applicant is a 46-year-old flight control engineer for a defense contractor. She was married from 1980-94. Applicant

has held a security clearance, with a small break in service, since 1983. This proceeding was initiated after Applicant applied to upgrade her clearance from secret to top secret.

In 1995, Applicant left her job with a defense contractor to open a restaurant. The restaurant did not succeed and, in February 1997, Applicant found employment with a defense contractor. Her secret clearance was reinstated. In 1998, she was forced to close the restaurant.

Because of the restaurant failure, Applicant had a loss and carried that loss forward on her taxes. In 1998, the IRS audited Applicant on her 1996 tax return. The IRS claims she owes the Government more than \$28,000. Applicant asserts the IRS insists she carry losses back before she can carry them forward. Applicant does not dispute this, but claims the IRS miscalculated her liability. She believes the IRS owes her \$12,000 with ten years of interest. Tr. 23. She is still arguing with the IRS about this.

In addition to the tax debt, Applicant incurred other debts as a result of expenses from her restaurant. One of the banks to which she was indebted obtained a judgment against her in 1999 for \$16,893. SOR ¶ 1.b. The judgment has not been paid. Tr. 28. Applicant admits the judgment, but denies she owes the amount stated in the judgment.

The debt alleged in ¶ 1.c of more than \$40,000 is from a line of credit she established for her business.<sup>(3)</sup> Tr. 28. She expects the debt will come off her credit report soon due to the passage of time. She has not paid the debt and does not intend to do so.

The debt alleged in ¶ 1.d is from a bank for \$6,899. Applicant is not sure how she acquired this debt, but claims she reduced it to \$3,000 before "a policy change caused the debt to fall back into collections." She accused the creditor of not acting in good faith. She has not paid this debt but it has been "retired" because it no longer appears on her credit reports. Answer at 7.

Applicant's mother and father are deceased. She now owns ten acres of real estate and houses outright valued at approximately \$250,000. She owns four vehicles and a tractor, all paid for. She has a pension plan with two defense contractors, more than \$100,000 in a bank account, and more than one-half million dollars in investments. Tr. 20. Although she has the money to pay these debts, she has chosen not to do so. Tr. 31-32. She was willing to work with these creditors, but they refused to accept partial payments of the debts. She pays her bills. She is not going back to "grovel" to people who she took abuse from in the past. Tr. 37.

## POLICIES

"[N]o one has a 'right' to a security clearance." *Department of the Navy v. Egan*, 484 U.S. 518, 528 (1988). As Commander in Chief, the President has "the authority to . . . control access to information bearing on national security and to determine whether an individual is sufficiently trustworthy to occupy a position . . . that will give that person access to such information." *Id.* at 527. The President authorized the Secretary of Defense or his designee to grant applicants eligibility for access to classified information "only upon a finding that it is clearly consistent with the national interest to do so." Exec. Or. 10865, *Safeguarding Classified Information within Industry* § 2 (Feb. 20, 1960). Eligibility for a security clearance is predicated upon the applicant meeting the security guidelines contained in the Directive. An applicant "has the ultimate burden of demonstrating that it is clearly consistent with the national interest to grant or continue his security clearance." ISCR Case No. 01-20700 at 3.

Enclosure 2 of the Directive sets forth personnel security guidelines, as well as the disqualifying conditions (DC) and mitigating conditions (MC) under each guideline. In evaluating the security worthiness of an applicant, the administrative judge must also assess the adjudicative process factors listed in ¶ 6.3 of the Directive. The decision to deny an individual a security clearance is not necessarily a determination as to the loyalty of the applicant. *See* Exec. Or. 10865 § 7. It is merely an indication the applicant has not met the strict guidelines the President and the Secretary of Defense have established for issuing a clearance.

## CONCLUSIONS

In the SOR, DOHA alleged Applicant is indebted to the IRS for more than \$28,950 from tax year 1998 (¶ 1.a); has an unpaid judgment of more than \$16,890 (¶ 1.b); has a bad debt of more than \$40,750 (¶ 1.c); and has an account that is 120 days past due for more than \$6,890 (¶ 1.d). Applicant admits the existence of debts, but denies the amounts and asserts that the debt alleged in ¶ 1.c is actually the same debt alleged in ¶ 1.b. An individual who is financially overextended is at risk of having to engage in illegal acts to generate funds. Directive ¶ E2.A6.1.1.

The Government's evidence establish potentially disqualifying conditions under Guideline F. Applicant has a history of not meeting her financial obligations (DC E2.A6.1.2.1) and has been unwilling to satisfy these debts (DC E2.A6.1.2.3). An applicant may mitigate the security concerns by establishing that the debt was an isolated incident (MC E2.A6.1.3.2), the debts resulted from conditions that were largely beyond the applicant's control (MC E2.A6.1.3.3) or the applicant initiated a good-faith effort to repay the overdue creditors or otherwise resolve her debts (MC E2.A6.1.3.6).

Applicant's delinquent debts arose from the failure of her restaurant, a condition beyond her control. Thus, MC E2.A6.1.3.2 and MC E2.A6.1.3.3 apply. And Applicant testified that she had paid off some of her delinquent debts from the restaurant failure. So MC E2.A6.1.3.6 applies, at least to a limited extent. Nevertheless, I find against Applicant. The restaurant failed more than seven years ago, Applicant obviously has the means to pay the outstanding delinquent debts, but has refused to do so. She is upset that creditors expect to be paid in full and have not made concessions to her. She is waiting for these debts to drop off her credit report.

Although Applicant has been disputing her debt to the IRS some seven years, as it is still actively disputed, I granted her the benefit of the doubt. I find for Applicant on ¶ 1.a.

### **FORMAL FINDINGS**

The following are my conclusions as to each allegation in the SOR:

Paragraph 1. Guideline F: AGAINST APPLICANT

Subparagraph 1.a: For Applicant

Subparagraph 1.b: Against Applicant

Subparagraph 1.c: Against Applicant

Subparagraph 1.d: Against Applicant

### **DECISION**

In light of all of the circumstances in this case, it is not clearly consistent with the national interest to grant or continue a security clearance for Applicant. Clearance is denied.

James A. Young

Administrative Judge

1. As required by Exec. Or. 10865 (Feb. 20, 1960), as amended and modified, and Department of Defense Directive 5220.6 (Jan. 2, 1992), as amended and modified (Directive).
2. The SOR incorrectly states the ISCR Case No. as 03-20957.
3. Applicant insisted she had never incurred such a debt and that it was the same debt as alleged in ¶ 1.b. Answer at 7. She provided no corroboration of this claim and, at the hearing, seemed unsure of the status of this debt. Tr. 29.