

KEYWORD: Financial

DIGEST: Applicant's financial difficulties are not due to circumstances beyond her control and she has taken few steps to address the 16 debts alleged in the SOR, even though she has had positive cash flow since at least May 2002. Clearance denied.

CASENO: 03-21619.h1

DATE: 02/02/2005

DATE: February 2, 2005

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In Re:

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SSN: -----

Applicant for Security Clearance

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ISCR Case No. 02-21619

**DECISION OF ADMINISTRATIVE JUDGE**

**JOHN G. METZ, JR.**

**APPEARANCES**

**FOR GOVERNMENT**

Edward W. Loughran, Esquire, Department Counsel

## FOR APPLICANT

*Pro Se*

### SYNOPSIS

Applicant's financial difficulties are not due to circumstances beyond her control and she has taken few steps to address the 16 debts alleged in the SOR, even though she has had positive cash flow since at least May 2002. Clearance denied.

### STATEMENT OF THE CASE

Applicant appeals the 2 October 2003 Defense Office of Hearings and Appeals (DOHA) Statement of Reasons (SOR) recommending denial or revocation of Applicant's clearance because of Financial Considerations. <sup>(1)</sup> Applicant answered the SOR and requested a decision on the record on 10 November 2003. She did not respond to the Government File of Relevant Material (FORM) of 31 December 2003; the record in this case closed 6 February 2004, the day the response was due at DOHA. The case was assigned to me on 15 April 2004 to decide if clearance should be granted, continued, denied or revoked.

### FINDINGS OF FACT

Applicant generally admitted the allegations of the SOR; <sup>(2)</sup> accordingly, I incorporate those admissions as findings of fact.

Applicant--a 28-year-old employee of a defense contractor--seeks access to classified information. She has not previously held a clearance.

Applicant has 16 delinquent debts, totaling nearly \$22,000.00. (3) She has repayment scheduled with only two of the accounts: the state educational loan, on which she is obligated to pay \$50.00 per month, and the judgment at 1.a., on which she is obligated to pay \$60.00 per month. The record contains no evidence that she is actually paying on the educational loans, and the payment evidence on the judgment account suggests that she made only three of the required five payments between April and August 2003, and her November 2003 answer indicates that she has apparently made no payments since the August 2003 payment. The other accounts remain unpaid.

Applicant attributes her financial problems to her periods of unemployment. She was unemployed for about 18 months between March 1994 and November 1995, and again from December 1998 and April 1999. Nevertheless, she was otherwise continuously employed during all periods covered by her clearance application. However, all of the delinquent accounts were sent to collection after June 2001, and the overwhelming majority of delinquent accounts were sent to collection in 2002 and 2003. The large amount of debt accumulated during periods of employment suggests financial mismanagement or indifference to her debts. In her May 2002 sworn statement (in which she disclosed a positive monthly cash flow of \$269.00 while making no payments to any of her creditors), she stated that she could not bring any of these debts current unless the creditors were willing to forgive substantial amounts of her indebtedness. Yet, the record reflects that the creditor at 1.m. (a successor-in-interest to the original creditor) was willing to accept fifty cents on the dollar on the same debt originally recorded by the creditor. Applicant did not respond to the offer. In addition, Applicant stated in her sworn statement that she would contact all of the listed creditors by August 2002. Yet, she has submitted no evidence that she contacted any of the creditors.

The record contains no evidence of Applicant's work performance or character.

## POLICIES

Enclosure 2 of the Directive sets forth adjudicative guidelines to be considered in evaluating an individual's security eligibility. The Administrative Judge must take into account the conditions raising or mitigating security concerns in each area applicable to the facts and circumstances presented. Each adjudicative decision must also assess the factors listed in Section 6.3. and in Enclosure (2) of the Directive. Although the presence or absence of a particular condition for or against clearance is not determinative, the specific adjudicative guidelines should be followed whenever a case can be measured against this policy guidance, as the guidelines reflect consideration of those factors of seriousness, recency, motivation, *etc.*

Considering the evidence as a whole, the following adjudication policy factors are most pertinent to this case:

## **FINANCIAL CONSIDERATIONS (GUIDELINE F)**

E2.A6.1.1. The Concern: An individual who is financially overextended is at risk of having to engage in illegal acts to generate funds. Unexplained affluence is often linked to proceeds from financially profitable criminal acts.

E2.A6.1.2. Conditions that could raise a security concern and may be disqualifying include:

E2.A6.1.2.1. A history of not meeting financial obligations;

E2.A6.1.2.3. Inability or unwillingness to satisfy debts;

E2.A6.1.3. Conditions that could mitigate security concerns include:

E2.A6.1.3.3. The conditions that resulted in the behavior were largely beyond the person's control (e.g. loss of employment. . . divorce or separation).

### **Burden of Proof**

Initially, the government must prove controverted facts alleged in the SOR. If the government meets that burden, the burden of persuasion then shifts to the applicant to establish his security suitability through evidence of refutation, extenuation or mitigation sufficient to demonstrate that, despite the existence of disqualifying conduct, it is nevertheless clearly consistent with the national interest to grant or continue the security clearance.

A person who seeks access to classified information enters into a fiduciary relationship with the government predicated upon trust and confidence. Where facts proven by the government raise doubts about an applicant's judgment, reliability or trustworthiness, the applicant has a heavy burden of persuasion to demonstrate that he or she is nonetheless security

worthy. As noted by the United States Supreme Court in *Department of the Navy v. Egan*, 484 U.S. 518, 531 (1988), "the clearly consistent standard indicates that security-clearance determinations should err, if they must, on the side of denials."

## **CONCLUSIONS**

The government has established its case under Guideline F and Applicant has not mitigated the concerns. The record evidence clearly establishes her indebtedness and her current inability to address that indebtedness in a systematic fashion. Circumstances beyond her control do not appear to have contributed greatly to the original indebtedness and she has no plan to address her debts other than to, literally, claim forgiveness.

Applicant meets none of the mitigating factors for financial considerations. Her financial difficulties are both recent and not isolated; indeed they are ongoing. She has made no effort to try to resolve her debts, it does not appear that Applicant has stopped digging himself into a financial hole, much less started to pull himself out of it. I resolve Guideline F against Applicant.

## **FORMAL FINDINGS**

Paragraph 1. Guideline F: AGAINST THE APPLICANT

Subparagraph a: Against the Applicant

Subparagraph b: Against the Applicant

Subparagraph c: Against the Applicant

Subparagraph d: Against the Applicant

Subparagraph e: Against the Applicant

Subparagraph f: Against the Applicant

Subparagraph g: Against the Applicant

Subparagraph h: Against the Applicant

Subparagraph i: Against the Applicant

Subparagraph j: Against the Applicant

Subparagraph k: Against the Applicant

Subparagraph l: Against the Applicant

Subparagraph m: Against the Applicant

Subparagraph n: Against the Applicant

Subparagraph o: Against the Applicant

Subparagraph p: Against the Applicant

Subparagraph q: Against the Applicant

### **DECISION**

In view of the record presented in this case, it is not clearly consistent with the national interest to grant or continue Applicant's security clearance. Clearance denied.

**John G. Metz, Jr.**

**Administrative Judge**

1. Required by Executive Order 10865, as amended and Department of Defense Directive 5220.6, dated January 2, 1992, as amended (Directive).
2. Applicant denied the debt at 1.d. was hers, as she was only an authorized user of the account (confirmed by her credit reports). She denied the debt at 1.e., claiming that it was the same debt as 1.j, and possibly related to the debt at 1.i. However, Applicant provides no documentary support for her claim, and the record contains insufficient evidence to establish that the accounts are the same. In the same vein, she denies the debts at 1.n. and 1.o., claiming they are but the federal educational loan equivalent of the debt at 1.f., for which she has a repayment agreement. However, it appears that the debt at 1.f. is the state educational aid delinquent loan and the debts recorded at 1.n. and 1.o. are for the federal government's claim for the amounts past due to the state agency, as the government guarantor of educational loans.
3. However, her credit report shows several other delinquent accounts that were apparently not alleged in the SOR, as well as several accounts noted to be "slow pay."