

DATE: June 28, 2004

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In re:

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SSN: -----

Applicant for Security Clearance

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ISCR Case No. 02-32751

## **DECISION OF ADMINISTRATIVE JUDGE**

**PHILIP S. HOWE**

### **APPEARANCES**

#### **FOR GOVERNMENT**

Francisco Mendez, Esq., Department Counsel

#### **FOR APPLICANT**

*Pro Se*

### **SYNOPSIS**

Applicant is a clerical worker for a defense contractor. Enticed by easy credit and credit cards, she incurred debts which she found difficult to pay. Borrowing to pay those debts led to other unpaid obligations. Applicant has a plan to repay her debts, and lives simply to enhance her ability to repay her delinquent debts. Applicant mitigated the financial consideration concern. Clearance is granted.

### **STATEMENT OF THE CASE**

On November 20, 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 November 16, 2003, Applicant responded to the SOR allegations. She requested a hearing. This case was assigned to me on January 30, 2004 due to a change in hearing regions, having been transferred from another Administrative Judge who was assigned the case on January 22, 2004. On February 2, 2004, a Notice of Hearing was issued setting the hearing date for February 12, 2004. 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 five exhibits, all of which were admitted into evidence. Applicant submitted four exhibits, which were admitted into evidence. I received the transcript (Tr.) of the hearing on February 25, 2004.

### **FINDINGS OF FACT**

Applicant admitted the allegations in the SOR. 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 24-year-old word processor and assistant to a buyer for a defense contractor. She is unmarried. She has been on her own for the past five years and paying her own expenses. (Exhibit 1 at 1; Tr. 14, 46, 48)

Applicant got into financial problems in 2001 when she took a couple of days off from work to attend two funerals, one of an uncle, the other of the brother of a close friend. Not having enough vacation time built up, her employer did not pay her for the days off for which she did not have vacation time to use. She lived outside her income, and found the credit cards easy to use for purchases, and to pay some of her utility bills. She also had an auto accident, and had to buy another used automobile. Applicant has not used credit cards since 2001. She obtained a better paying job, the job she has at present, and has reduced her living expenses to the basic minimum. She moved into a less expensive apartment, paying \$425 for rent. She also sought credit counseling. (Tr. 40 to 45, 51)

Applicant's mother is giving her \$200 monthly to use for an extra payment on her automobile. Applicant's payments now are \$213 monthly. Applicant's plan is to pay off her automobile by June 2004, and then apply the \$213 to other debts. (Tr. 36 to 38)

Applicant pays \$50 monthly on a credit card debt of \$2082 (subparagraph 1.a.). When she can pay more by paying off other debts earlier, she will increase this amount. (Tr. 26, 62; Exhibit 2 at 1, Exhibit 4 at 4, Exhibit 5; Answer)

Applicant pays \$100 monthly on a credit card debt of \$1200 (subparagraph 1.b.). She intends to pay off this debt by December 2004. No interest is being charged by the creditor. (Tr. 25, 27, 32, 42, 62; Exhibit D; Exhibit 2 at 2, Exhibit 4 at 8 and 14, and Exhibit 5)

Applicant pays \$50 monthly on a third credit card debt of approximately \$3400 (subparagraph 1.c.). She will increase the payment when her automobile is paid off in 2004. No interest is being charged by the creditor. (Tr. 24, 28, 33, 42, 62; Exhibit B; Answer; Exhibit 2 at 2, Exhibit 4 at 8 and 14, Exhibit 5)

A personal loan Applicant took out of \$3000 to pay auto damages after her accident remains unpaid, and a judgment entered against her (subparagraph 1.d.). At least \$985 remains unpaid. Applicant wants to pay off other debts first to free up more money to pay this debt faster when she does resume payments, and will contact the creditor about a payment plan. (Tr. 28; Exhibit 2 at 2, Exhibit 4 at 7 and 14, Exhibit 5)

Applicant's fourth credit card debt of \$8072 remains unpaid (subparagraph 1.e.). Applicant entered into a consent judgment with the attorneys representing the creditor, and is paying them \$50 monthly since September 2003. Applicant will increase the amount to \$75 after she pays other debts. (Tr. 34, 62; Exhibits A and C; Exhibit 2 at 2, Exhibit 4 at 2, 8 and 14, Exhibit 5)

Applicant has a telephone bill from 2001. She will contact the company and pay the bill of \$196 (subparagraph 1.f.). She did not have the money to pay this debt until now, and with her mother helping pay off the car loan and her new job that increased her income she will be able to pay the bill. (Tr. 29; Exhibit 2 at 2)

Applicant owes her natural gas supplier for her apartment heat \$104 (subparagraph 1.g.). Applicant will pay this debt in 2004. (Tr. 30, 32)

Applicant owes her cable television company for a bill of \$71 for service (subparagraph 1.h.). Applicant intends to arrange payment in June 2004 of this bill. (Tr. 30, 32, 57; Exhibit 2 at 2)

Applicant does not intend to file bankruptcy because she wants to pay her debts. She has a lot of pride and intends to extricate herself from this predicament. Applicant does not know the basis of a debt for \$819 recorded on her latest credit report and would research this debt, which had been purchased by a debt acquisition company. If she does not dispute the debt, she will pay it. (Tr. 20, 67)

## 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 has restricted eligibility for access to classified information to United States citizens "whose personal and professional history affirmatively indicates loyalty to the United States, strength of character, trustworthiness, honesty, reliability, discretion, and sound judgement, as well as freedom from conflicting allegiances and potential for coercion, and willingness and ability to abide by regulations governing the use, handling, and protection of classified information." Exec. Or. 12968, *Access to Classified Information* § 3.1(b) (Aug. 4, 1995). Eligibility for a security clearance is predicted upon the applicant meeting the security guidelines contained in the Directive.

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. of 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.

Initially, the Government must establish, by substantial evidence, that conditions exist in the personal or professional history of the applicant which disqualify, or may disqualify, the applicant from being eligible for access to classified information. *See Egan*, 484 U.S. at 531. All that is required is proof of facts and circumstances that indicate an applicant is at risk for mishandling classified information, or that an applicant does not demonstrate the high degree of judgment, reliability, or trustworthiness required of persons handling classified information. ISCR Case No. 00-0277, 2001 DOHA LEXIS 335 at \*\*6-8 (App. Bd. 2001). Once the Government has established a *prima facie* case by substantial evidence, the burden shifts to the applicant to rebut, explain, extenuate, or mitigate the facts. *See* Directive ¶ E3.1.15. An applicant "has the ultimate burden of demonstrating that is clearly consistent with the national interest to grant or continue his security clearance.: ISCR Case No. 01-20700 at 3 (App. Bd. 2002). "Any doubt as to whether access to classified information is clearly consistent with national security will be resolved in favor of the national security." Directive ¶ E2.2.2. "[S]ecurity clearance determinations should err, if they must, on the side of denials." *Egan*, 484 U.S. at 531. *See*

Exec. Or. 12968 § 3.1(b).

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 which she tried to repay but could not. 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 income earned and her use of credit cards she accepted when mailed to her residence. The time she took off work in 2001 reduced her income and adversely affected her ability to maintain her repayment schedule. She did not exert the best effort to repay her debts until recently, but now she has a plan and her mother is giving her money to pay off her car loan by July 2004. Applicant then will take the car payment money and apply it to the remaining debts. She will increase her other payments using the available cash until she pays each debt in turn. She is not paying interest on two debts, and the credit counseling service she contacted at one point was going to charge her interest, so she decided to handle her debts by herself. Mitigating Condition (MC) 3 applies because the death of two persons she knew caused her to take off work and reduce her income those months, which affected her ability to maintain her repayment schedule. MC 4 applies because Applicant tried to obtain counseling, but realized she would be paying more than the debt costs with the service she contacted. She stopped using credit cards, and reduced her expenses to the basic necessities. She also sought and obtained a better paying job. She applies that increased disposable income to resolving her debts. MC 6 applies because Applicant has a plan to pay her debts. It appears to be the best plan given her income, and her mother's financial assistance counts in her favor.

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. Her explanations of how she will have five debts, including her car loan, paid off by the end of 2004 is persuasive. The larger debts will be paid over time and from her future pay increases. Therefore, I conclude this financial consideration concern for Applicant.

## 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

Subparagraph 1.g.: For the Applicant

Subparagraph 1.h.: 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. Clearance is granted.

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Philip S. Howe

Administrative Judge