

DATE: June 23, 2004

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In Re:

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SSN: -----

Applicant for Security Clearance

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ISCR Case No. 02-33035

**DECISION OF ADMINISTRATIVE JUDGE**

**WILFORD H. ROSS**

**APPEARANCES**

**FOR GOVERNMENT**

Jennifer I. Campbell, Esquire, Department Counsel

**FOR APPLICANT**

*Pro Se*

**SYNOPSIS**

The Applicant has reduced the indebtedness from \$10,000.00 to \$4,000.00. The Applicant's recent divorce, and her ex-husband's failure to pay his share of the indebtedness, was a major cause of the problem. The Applicant has shown a good faith attempt to pay her debts or otherwise resolve them. Sufficient mitigation is shown. Adverse inference is overcome. Clearance is granted.

**STATEMENT OF THE CASE**

On September 15, 2003, the Defense Office of Hearings and Appeals (DOHA), pursuant to Executive Order 10865 (as amended) and Department of Defense Directive 5220.6 (Directive), dated January 2, 1992, issued a Statement of Reasons (SOR) to the Applicant, which detailed reasons 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 the Applicant and recommended referral to an Administrative Judge to determine whether a clearance should be denied or revoked.

The Applicant responded to the SOR in writing on October 30, 2003, and requested that the Decision be made without a hearing. The Department Counsel submitted the File of Relevant Material (FORM) to the Applicant on January 5, and February 25, 2004. The Applicant was given 30 days after receipt of the FORM to submit any additional information to the Administrative Judge. The Applicant acknowledged receipt the FORM on March 2, 2004. She submitted additional information on January 30, 2004. The case was received by the undersigned for Decision on April 12, 2004.

**FINDINGS OF FACT**

The Applicant is 33, divorced and has custody of her three children. She is employed by a defense contractor as an Administrative Assistant, and she seeks to obtain a DoD security clearance in connection with his employment in the defense sector.

The Government opposes the Applicant's request for a security clearance, based upon the allegations set forth in the Statement of Reasons (SOR). The following findings of fact are entered as to each paragraph and guideline in the SOR. They are based on the Applicant's Answer to the SOR and the exhibits.

Paragraph 1 (Guideline F - Financial considerations). The Government alleges in this paragraph that the Applicant is ineligible for clearance because she is financially overextended and therefore at risk of having to engage in illegal activities in order to obtain funds.

Subparagraph 1.a. The Applicant originally owed Credit Card Company A \$1,742.00 for a charged off account. She has successfully paid down this debt to \$1,265.40 as of January 2004. (Applicant's Additional Documentation at 2.) She states that she will continue to pay down this debt at the agreed rate of \$50.00 a month.

Subparagraph 1.b. The Applicant admits that she owes Credit Card Company A \$1,020.00 for another charged off account. No payments have yet been made on this debt. The Applicant states that she will be paying off this debt as soon as possible.

Subparagraph 1.c. The Applicant admits originally owing a Financial Services Company \$7,946.00 for a charged off account. By January 2004, the balance had been reduced to \$4,155.90. The collection agency that had taken over the account agreed to settle the account for \$1,106.00. The Applicant provided evidence that she had made the initial payment of \$100.00. (Applicant's Additional Documentation at 3-4.) The final payment of \$1,006.00 became due after the record closed in this case.

Subparagraph 1.d. The Applicant admits owing this creditor \$210.00 for a charged off account. No payments have yet been made on this debt. The Applicant states that she will pay this debt off as soon as possible.

Subparagraph 1.e. In her sworn statement of February 7, 2002, the Applicant stated, "The [financial] difficulties stemmed from my divorce from my former spouse . . . [My former spouse] refuses to take any responsibility for the debts we incurred while we were married and the responsibility has fallen back to me." (Government Exhibit 7 at 2.)

The Applicant had a negative \$300 cash flow in February 2002. (Government Exhibit 7 at 4.) By June 2003, she had a positive \$300 cash flow. (Government Exhibit 5 at 5.)

## POLICIES

Security clearance decisions are not made in a vacuum. Accordingly, the Department of Defense, in Enclosure 2 of the 1992 Directive, has set forth policy factors which must be given "binding" consideration in making security clearance determinations. These factors should be followed in every case according to the pertinent guideline. However, the factors are neither automatically determinative of the decision in any case, nor can they supersede the Administrative Judge's reliance on his own common sense, as well as his knowledge of the law, human nature and the ways of the world, in making a reasoned decision. Because each security clearance case presents its own unique facts and circumstances, it cannot be assumed that these factors exhaust the realm of human experience, or apply equally in every case. Based on the Findings of Fact set forth above, the factors most applicable to the evaluation of this case are:

### Guideline F (Financial considerations)

#### Condition that could raise a security concern:

(1) a history of not meeting financial obligations;

#### Conditions that could mitigate security concerns:

(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);

(6) the individual initiated a good-faith effort to repay overdue creditors or otherwise resolve debts.

In addition, as set forth in Enclosure 2 of the Directive at pages 16-17, "In evaluating the relevance of an individual's conduct, the [Administrative Judge] should consider the following factors [General Factors]:

- a. The nature, extent and seriousness of the conduct
- b. The circumstances surrounding the conduct, to include knowledgeable participation
- c. The frequency and recency of the conduct
- d. The individual's age and maturity at the time of the conduct
- e. The voluntariness of participation
- f. The presence or absence of rehabilitation and other pertinent behavior changes
- g. The motivation for the conduct
- h. The potential for pressure, coercion, exploitation or duress
- i. The likelihood of continuation or recurrence."

The eligibility guidelines established in the DoD Directive identify personal characteristics and conduct which are reasonably related to the ultimate question of whether it is "clearly consistent with the national interest" to grant an Applicant's request for access to classified information.

In the defense industry, the security of classified industrial secrets is entrusted to civilian workers who must be counted upon to safeguard such sensitive information twenty-four hours a day. The Government is therefore appropriately concerned where available information indicates that an Applicant for clearance may have financial problems that demonstrates poor judgement, untrustworthiness or unreliability on the Applicant's part.

The DoD Directive states, "Each adjudication is to be an overall common sense determination based upon consideration and assessment of all available information, both favorable and unfavorable, with particular emphasis placed on the seriousness, recency, frequency, and motivation for the individual's conduct; the extent to which conduct was negligent, willful, voluntary, or undertaken with the knowledge of the circumstances or consequences involved; and, to the extent that it can be estimated, the probability that conduct will or will not continue in the future." The Administrative Judge can only draw those inferences or conclusions that have a reasonable and logical basis in the evidence of record. The Judge cannot draw inferences or conclusions based on evidence which is speculative or conjectural in nature. Finally, as emphasized by President Eisenhower in Executive Order 10865, "Any determination under this order...shall be a determination in terms of the national interest and shall in no sense be a determination as to the loyalty of the applicant concerned."

### CONCLUSIONS

It is the Government's responsibility to present substantial evidence to support the finding of a nexus, or rational connection, between the Applicant's conduct and the granting of a security clearance. If such a case has been established, the burden then shifts to the Applicant to go forward with evidence in rebuttal, explanation or mitigation which is sufficient to overcome or outweigh the Government's case. The Applicant bears the ultimate burden of persuasion in proving that it is clearly consistent with the national interest to grant him or her a security clearance.

In this case the Government has met its initial burden of proving by substantial evidence that the Applicant has extensive past due indebtedness, which she has not yet resolved.

The Applicant, on the other hand, has introduced persuasive evidence in rebuttal, explanation or mitigation which is sufficient to overcome the Government's case against her. Based on the available evidence, it appears that the Applicant's financial problems are directly related to her recent divorce. She has custody of her three children, and is

supporting them. There is no evidence that the Applicant has engaged in poor judgment regarding her finances. In fact, the evidence shows that the Applicant has worked diligently to resolve the indebtedness remaining from her marriage. Of course, the Applicant must continue to work diligently at resolving the remaining indebtedness in order to remain eligible for a security clearance.

Her success in reducing the indebtedness by half in the past year is a very positive sign. Disqualifying Condition 1 applies to this case, but the application of itigating Conditions 3 and 6 is sufficient to support a finding for the Applicant in this case.

On balance, it is concluded that the Applicant has overcome the Government's information opposing her request for a security clearance. Accordingly, the evidence supports a finding for the Applicant as to the conclusionary allegations expressed in Paragraph 1.

### **FORMAL FINDINGS**

Formal findings For or Against the Applicant on the allegations in the SOR, as required by Paragraph 25 of Enclosure 3 of the Directive, are:

Paragraph 1: 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.

### **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 the Applicant.

Wilford H. Ross

Administrative Judge