

KEYWORD: Financial

DIGEST: Applicant incurred \$80,000 in debt over 10 years. She filed a Chapter 13 bankruptcy in 2001, on which she has paid faithfully for three years. She has one year remaining until discharge. Applicant is an office administrator for a defense contractor. Applicant mitigated the financial consideration security concern. Clearance is granted.

CASENO: 03-00929.h1

DATE: 07/16/2004

DATE: July 16, 2004

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In re:

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SSN: -----

Applicant for Security Clearance

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ISCR Case No. 03-00929

**DECISION OF ADMINISTRATIVE JUDGE**

**PHILIP S. HOWE**

**APPEARANCES**

**FOR GOVERNMENT**

Juan Rivera, Esq., Department Counsel

**FOR APPLICANT**

**SYNOPSIS**

Applicant incurred \$80,000 in debt over 10 years. She filed a Chapter 13 bankruptcy in 2001, on which she has paid faithfully for three years. She has one year remaining until discharge. Applicant is an office administrator for a defense contractor. Applicant mitigated the financial consideration security concern. Clearance is granted.

**STATEMENT OF THE CASE**

On September 8, 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 October 4, 2003, Applicant responded to the SOR allegations. She requested a hearing. This case was originally assigned to another Administrative Judge December 23, 2003, but was reassigned to me on February 10, 2004 due to a hearing region realignment.

On February 19, 2004, a Notice of Hearing was issued setting the hearing date for March 1, 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 two

exhibits, which were admitted into evidence. I received the transcript (Tr.) of the hearing on March 11, 2004.

### **FINDINGS OF FACT**

Applicant admitted the allegations in subparagraphs 1.a., and 1.b. of 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 long-time office administrator for a defense contractor. During the course of her employment, she had about three years in the early 1980s to work a lot of overtime, and her income in those years was increased by about \$10,000 annually due to overtime. During those years she used her income to pay her debts and to help the less advantaged members of her family. For example, her 18-year-old nephew came to live with her for several years starting in 1991. Later, when she stopped working overtime, her income dropped, but she continued to help her family financially by using credit cards. Her debt load was \$80,000 after about 15 years. In August 2001 Applicant filed a Chapter 13 bankruptcy action. She will pay on that court-enforced installment payment plan until October 2005. (Tr. 14, 19, 22, 26, 57, 58, Exhibits 2, 3, 4, and 5)

Applicant goes to gambling casinos in her home area that are licensed by the state. She started gambling in 1993. She may gamble several times a week, in small amounts if she has any disposable funds. Applicant's gambling started as an effort to win enough money to pay off her credit cards, on which she had started to carry balances. Applicant stays a short time during her casino visits, and if she wins \$10 or \$20 she departs and goes home. Until she had to have car repairs of \$1000 done, payment for which she used a credit card, she had been paying off her balances. But she could not pay off that balance, and her credit card balances grew from that event. The failure to pay off the balances started before Applicant's nephew came to live with her. Her budget leaves her about \$200 monthly for disposable funds. Applicant included about \$10,000 in gambling debt in her bankruptcy. (Tr. 22 to 25, 27, 30; Exhibit A)

Applicant has a few current credit cards, on which she does not owe any money at present. About a year before filing bankruptcy, Applicant refinanced her mortgage, and used the money to pay off some credit card debt. But she also later incurred new debt on credit cards. That debt was put into the bankruptcy. Applicant drives an 18 year old auto. (Tr. 29, 35, 41, 44)

### **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., 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.

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:

(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 credit card debts totaling about \$80,000, including gambling debts of \$10,000. Disqualifying Conditions (DC) 1 and 3 apply here.

The next issue is whether Applicant mitigated these conditions. Applicant's financial problems arose over a 10 year period. She struggled to pay her credit card debts while providing for herself and several less fortunate members of her immediate family to whom she gave money. Soon her debt load became too large to handle, and she filed a Chapter 13 bankruptcy action in 2001. Her use of the federal bankruptcy statute, is reasonable and legal, and within the requirements of Guideline F that she has otherwise resolved her debts. Applicant has been making her monthly payments faithfully for three years and has one year more to pay until she is discharged. It is likely she will accomplish that payment schedule and be discharged. Therefore, Mitigating Condition (MC) 6 would apply to Applicant's case.

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 debt. Evaluating the totality of the evidence, I conclude Applicant's financial problems have been mitigated and successfully and legally resolved. Therefore, it would be clearly consistent with national security concerns to grant her security clearance. I conclude for Applicant under Guideline F.

## **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

## **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.

Philip S. Howe

Administrative Judge