

DATE: June 9, 2005

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In Re:

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SSN: -----

Applicant for Security Clearance

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ISCR Case No. 03-01210

**DECISION OF ADMINISTRATIVE JUDGE**

**HENRY LAZZARO**

**APPEARANCES**

**FOR GOVERNMENT**

Sabrina Redd, Esquire, Department Counsel

**FOR APPLICANT**

*Pro Se*

**SYNOPSIS**

Applicant is making consistent progress in resolving her delinquent accounts. She has mitigated the security concern that arose from her prior financial instability. Clearance is granted.

**STATEMENT OF THE CASE**

On December 31, 2003, the Defense Office of Hearings and Appeals (DOHA) issued a Statement of Reasons (SOR) to Applicant stating they were unable to find it is clearly consistent with the national interest to grant or continue a security clearance for Applicant. [\(1\)](#) The SOR, which is in essence the administrative complaint, alleges a security concern under Guideline F, financial considerations. Applicant submitted an answer to the SOR that was received by DOHA January 28, 2004, but failed to indicate whether or not she wanted a hearing. After being notified of the deficiency in her answer, Applicant resubmitted the answer on March 19, 2004, and requested a hearing. Applicant admitted all SOR allegations except subparagraph 1.e.

The case was assigned to me on April 21, 2005. A notice of hearing was issued on April 26, 2005, scheduling the hearing for May 12, 2005. The hearing was conducted as scheduled. The government submitted five documentary exhibits that were marked as Government Exhibits (GE) 1-5, and admitted into the record without objection. Applicant testified at the hearing, and submitted six documentary exhibits that were marked as Applicant's Exhibits (AE) 1-6, and admitted into the record without objection. The record was held open to provide Applicant the opportunity to submit additional documentation in support of her case. Two additional documents (an excerpt from a credit report and a series of negotiated checks) were timely received, marked as AE 7 and 8, and admitted into the record without objection. DOHA received the transcript on May 20, 2005.

**FINDINGS OF FACT**

Applicant's admissions to the SOR allegations are incorporated herein. In addition, after a thorough review of the pleadings, exhibits, and testimony, I make the following findings of fact:

Applicant is a 59-year-old woman who is employed as a truck driver. She ended her formal education in the eighth grade, and thereafter obtained a

general education development certificate indicating she possessed educational development equivalent to the tenth grade. Applicant was first married in February 1973. That marriage ended in divorce in May 1985. She married her present husband in January 1988. For the most part, Applicant and her husband live on the road and reside in their truck. However, they do rent a room from her brother to stay in on the four or so days they take off from driving each month. Applicant has three adult children, age 44, 33, and 28.

Applicant has been driving 18-wheelers with her husband since 1990. Although she possesses a commercial driver's license and does her share of the driving, all income is received solely in her husband's name. Applicant admits she has always struggled to make ends meet, however, her financial problems worsened after she purchased her own truck in the late 1980s which experienced major mechanical problems that she did not have the money to fix. The truck was repossessed, and Applicant and her husband were forced to seek employment driving company-owned trucks. Their income fell from eighty-three cents a mile to twenty-five cents a mile as a result.

The deficiency owing on the repossessed truck, as listed in SOR subparagraph 1.a., was \$20,205.07. Applicant began making \$300.00 per month payments on this debt sometime before January 2004, reducing the balance owing to \$19,005.07 as of that month. (AE 2) She has continued to make payments on this debt, and, as of April 9, 2005, had reduced the balance owing to \$14,505.07. (AE 4)

Applicant testified the charged off account listed in SOR subparagraph 2.b. did not belong to her, and, while she previously had an account with the same company, her account had been paid in full sometime around 1997/98. She challenged her liability for this account, and has been notified the account is now closed and the various credit bureaus will be notified to remove it from her credit report. (AE 6)

Applicant incurred the debt alleged in SOR subparagraph 1.c. as a result of cosigning on a lease for her husband's daughter. The daughter walked out on the lease and Applicant has been pursued for the \$4,247.00 damages that resulted. Applicant testified she has been making payments on this account, and, after the hearing, submitted proof that she made five \$200.00 payments on this debt between July and December 2004.

Applicant began making payments on the \$4,610.00 debt alleged in SOR subparagraph 1.d. sometime before December 2003. By January 2004, she had reduced the amount owing on this account to \$4,292.00. As of April 2005, she had further reduced the amount owing to \$2,279.45.

Applicant testified she did not recognize the creditor listed in SOR subparagraph 1.e. as an account for which she was liable. Reviewing her credit report, it appears this account belongs to a collection agency that acquired the account from a telephone company. Applicant testified she had not contacted the creditor, but that being a relatively insignificant debt (\$171.00) she would attempt to contact the creditor and pay the debt in the event she is responsible for it.

### POLICIES

The Directive sets forth adjudicative guidelines to consider when evaluating a person's eligibility to hold a security clearance. Chief among them are the Disqualifying Conditions (DC) and Mitigating Conditions (MC) for each applicable guideline. Additionally, each clearance decision must be a fair and impartial commonsense decision based upon the relevant and material facts and circumstances, the whole person concept, and the factors listed in ¶ 6.3.1 through ¶ 6.3.6 of the Directive. Although the presence or absence of a particular condition or factor for or against clearance is not outcome determinative, the adjudicative guidelines should be followed whenever a case can be measured against this policy guidance. Considering the evidence as a whole, Guideline F, pertaining to financial considerations, with its respective DC and MC, is most relevant in this case.

### BURDEN OF PROOF

The sole purpose of a security clearance decision is to decide if it is clearly consistent with the national interest to grant or continue a security clearance for an applicant.<sup>(2)</sup> The government has the burden of proving controverted facts.<sup>(3)</sup> The burden of proof in a security clearance case is something less than a preponderance of evidence<sup>(4)</sup>, although the government is required to present substantial evidence to meet its burden of proof.<sup>(5)</sup> "Substantial evidence is more than a scintilla, but less than a preponderance of the evidence."<sup>(6)</sup> Once the government has met its burden, the burden shifts to an applicant to present evidence of refutation, extenuation, or mitigation to overcome the case against him.<sup>(7)</sup> Additionally, an applicant has the ultimate burden of persuasion to obtain a favorable clearance decision.<sup>(8)</sup>

No one has a right to a security clearance<sup>(9)</sup> and "the clearly consistent standard indicates that

security clearance determinations should err, if they must, on the side of denials."<sup>(10)</sup> Any reasonable doubt about whether an applicant should be allowed access to classified information must be resolved in favor of protecting national security.<sup>(11)</sup>

### CONCLUSIONS

Under Guideline F, a security concern exists when a person has significant unpaid debts. An individual who is financially overextended is at risk of having to engage in illegal or unethical acts to generate funds to meet financial obligations. Similarly, an individual who is financially irresponsible

may also be irresponsible, unconcerned, or careless in their obligation to protect classified information. Behaving responsibly or irresponsibly in one aspect of life provides an indication of how a person may behave in other aspects of life.

The SOR alleges four relatively large debts and one much smaller debt that have been delinquent for a number of years. Two of those accounts were charged off, two others were submitted for collection, and the fifth was past due. Disqualifying Condition (DC) 1: *A history of not meeting financial obligations*: and DC 3: *Inability or unwillingness to satisfy debts* apply in this case.

Applicant decided to launch her own business in the late 1990s by purchasing a truck to haul freight. Unfortunately, the truck soon experienced major mechanical problems she could not afford to repair. The truck was repossessed and she was forced to return to driving for others with a substantial loss of income. Accordingly, she is entitled to consideration under Mitigating Conditions (MC) 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)*.

Applicant waited several years before she began to bring her financial situation under control, however, and to her credit, she began making payments on at least two of the delinquent accounts even before the SOR was issued. <sup>(12)</sup> While admitting she has always had to struggle to make ends meet, Applicant has submitted proof that she has made major inroads in bringing her financial situation under control by making substantial payments on the debts alleged in the SOR. MC 6: *The individual initiated a good-faith effort to repay overdue creditors or otherwise resolve debts* applies.

Although Applicant has substantial debt outstanding, her diligent effort to satisfy her creditors during the past year and a half strongly indicates she is well on her way to becoming financially stable. Most important, her efforts demonstrate she is a responsible and concerned woman who can be depended on to satisfy the remainder owing on her delinquent accounts as expeditiously as her circumstances permit.

Considering all relevant and material facts and circumstances present in this case, the whole person concept, the factors listed in ¶ 6.3.1 through ¶ 6.3.6 of the Directive, and the applicable disqualifying and mitigating conditions, I find Applicant has mitigated this security concern. She has overcome the case against her and satisfied her ultimate burden of persuasion. Guideline F is decided for Applicant.

### **FORMAL FINDINGS**

SOR ¶ 1-Guideline F: For Applicant

Subparagraph a - e: For 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 Applicant. Clearance is granted.

Henry Lazzaro

Administrative Judge

1. This action was taken under Executive Order 10865 and DoD Directive 5220.6, dated January 2, 1992, as amended and modified (Directive).
2. ISCR Case No. 96-0277 (July 11, 1997) at p. 2.
3. ISCR Case No. 97-0016 (December 31, 1997) at p. 3; Directive, Enclosure 3, Item E3.1.14.
4. *Department of the Navy v. Egan* 484 U.S. 518, 531 (1988).
5. ISCR Case No. 01-20700 (December 19, 2002) at p. 3 (citations omitted).
6. ISCR Case No. 98-0761 (December 27, 1999) at p. 2.
7. ISCR Case No. 94-1075 (August 10, 1995) at pp. 3-4; Directive, Enclosure 3, Item E3.1.15.
8. ISCR Case No. 93-1390 (January 27, 1995) at pp. 7-8; Directive, Enclosure 3, Item E3.1.15
9. *Egan*, 484 U.S. at 528, 531.

10. Id at 531.

11. *Egan*, Executive Order 10865, and the Directive.

12. The SOR was issued on December 31, 2003. AE 1 discloses a \$200.00 payment was made on the account alleged in subparagraph 1.d. sometime between November 26 and December 25, 2003. The SOR alleged the amount owing on the debt alleged in subparagraph 1.a. as of September 18, 2003 was \$20,205.07. AE 2 discloses that debt had been reduced to \$19,005.07 by January 3, 2004.