

DATE: November 16, 2004

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In Re:

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SSN: -----

Applicant for Security Clearance

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ISCR Case No. 03-02007

## **DECISION OF ADMINISTRATIVE JUDGE**

**ROGER E. WILLMETH**

**APPEARANCES**

**FOR GOVERNMENT**

Erin C. Hogan, Department Counsel

**FOR APPLICANT**

*Pro Se*

**SYNOPSIS**

Applicant paid off or settled the 16 delinquent debts, totaling \$30,432.00, listed in the SOR for which she is actually liable. However, she failed to adequately explain or mitigate her failure to report but one of them as more than 180 days delinquent on her SF 86. In fact, they all were more than 180 days delinquent when she submitted her SF 86. Moreover, she actually owed \$4,839.00 on the single debt she listed with a liability of \$600.00. Applicant also asserted in her answer to the SOR that she had paid or was paying debts seven months before she actually settled the debts. Applicant has not demonstrated the candor the Government has the right to expect from an applicant in granting a security clearance. Clearance is denied.

## **STATEMENT OF THE CASE**

On August 23, 2003, the Defense Office of Hearings and Appeals (DOHA), pursuant to the applicable Executive Order (1) and Department of Defense Directive, (2) issued a Statement Reasons (SOR) to Applicant. The SOR details security concerns under Guideline F (Financial Considerations) and Guideline E (Personal Conduct). The SOR states that DOHA was unable to find that it is clearly consistent with the national interest to grant her access to classified information and recommends that her case be submitted to an Administrative Judge.

On October 6, 2003, Applicant answered the SOR and requested a decision on the written record. On February 19, 2004, Applicant requested a hearing. The case was assigned to me on April 7, 2004. A notice of hearing was issued on April 28, 2004 and the hearing was held on May 12, 2004. During the hearing, five Government exhibits (Govt Ex), 25 Applicant exhibits (Ap Ex), and the testimony of Applicant were received. The transcript (Tr) was received on May 24, 2004.

## **PROCEDURAL ISSUE**

Without objection by Department Counsel, I granted Applicant additional time to provide further documentation of debt

payments. I have marked those two submissions as applicant Exhibit Z and included it in the file.

## FINDINGS OF FACT

Having thoroughly considered the evidence in the record, I make the following findings of fact:

Applicant is a 39-year-old implementation coordinator employed by a defense contractor. She is seeking a security clearance.

In August 1992, Applicant opened a credit account with a credit union. By September 2000, she incurred a \$969.00 debt that she failed to pay and that the creditor referred to a debt collector. On April 14, 2004, a credit reporting agency notified Applicant that the debt had been deleted from her credit report (SOR ¶ 1.u). She was further notified that a another debt on her credit report had been deleted as a duplicate (SOR ¶ 1.g).

In December 1993, Applicant established a credit account with a military department store. By May 2000, she incurred a \$4,839.00 debt that she failed to pay and that the creditor charged off as a bad debt. On June 13, 2003, Applicant paid off the debt in full (SOR ¶ 1.a).

In August 1994, Applicant opened an account with a clothing store. By April 2001, she incurred a \$867.00 debt that she failed to pay and that the creditor charged off as a bad debt. On May 10, 2004, Applicant settled the account with a payment of \$433.86 (SOR ¶ 1.n).

In September 1994, Applicant established a credit account with an automobile tire dealer. By February 1999, Applicant incurred a \$289.00 debt that she failed to pay and that the creditor referred to a debt collector. On September 19, 2003, Applicant paid the debt in full (SOR ¶ 1.f).

In January 1995, Applicant opened a credit account with a department store. By September 2000, she incurred a \$960.00 debt that she failed to pay and that the creditor charged off as a bad debt. On October 3, 2003, Applicant paid the debt in full (SOR ¶ 1.h).

In October 1995, Applicant opened a credit account with a department store. By November 2000, she incurred a \$354.00 debt on the account that she failed to pay and that was referred to a debt collector. On September 16, 2003, Applicant paid a debt collector \$197.00 to settle the account (SOR ¶ 1.q).

In October 1995, Applicant opened a credit account with a women's clothing store. By February 2001, she incurred a \$686.00 debt on the account that she failed to pay and that was referred to a debt collector. On February 27, 2004, Applicant paid \$343.18 to settle the account (SOR ¶ 1.s).

In November 1995, Applicant established a credit account with a bank. By July 2000, she incurred a \$2,388.00 debt that she failed to pay and that the creditor charged off as a bad debt. Her credit report reflects that the debt has been paid off (SOR ¶ 1.k).

In February 1996, Applicant established an account with a major credit card company. By February 1999, she incurred a \$1,434.00 debt that she failed to pay and that the creditor charged off as a bad debt. Applicant settled the account in May 2004 with a payment of \$1,076.00 (SOR ¶ 1.b).

In November 1996, Applicant opened a credit account with a merchant. By March 2000, she incurred a \$2,898.00 debt that she failed to pay and that the creditor referred to a debt collector. In 2004, Applicant agreed to a payment plan with a debt collector to whom the debt was reassigned and has been paying \$50.00 per month to resolve the debt (SOR ¶ 1.j).

In March 1997, Applicant opened a credit account with a bank. By June 2000, she incurred a \$4,420.00 debt that she did not pay and that was charged off as a bad debt. In June 2000, Applicant paid off the debt (SOR ¶ 1.t).

In October 1997, Applicant opened an account with a loan company. By June 2000, she incurred a \$3,064.00 debt to the loan company that she did not pay. Applicant's husband paid off the debt. On April 22, 2004, the company that had

acquired the debt notified Applicant that the account, having the same original loan number, was being deleted from her credit reports (SOR ¶ 1.c).

In March 1998, applicant opened an account with a department store. By July 2000, she incurred a \$597.00 debt that she failed to pay and that was charged off by the creditor as a bad debt. By September 16, 2003, Applicant had paid the debt (SOR ¶ 1.p).

In November 1998, Applicant opened a credit account with a department store. By July 2000, she incurred a \$554.00 debt that she failed to pay and that the creditor charged off as a bad debt. On October 31, 2003, Applicant settled the account (SOR ¶ 1.m).

In 1998, Applicant's telecommunications carrier for long distance service billed her both directly and through the carrier providing her local telephone service. After her telephone service was terminated, in January 1999, Applicant retained the services of a law firm in an effort to resolve the matter. On March 30, 2004, the debt collector for the long distance carrier notified Applicant that her account had been closed and was being returned to the long distance carrier "as cease and desist" (SOR ¶ 1.o). By April 27, 2004, the debt collectors for the local service carrier had notified Applicant that her accounts were being closed (SOR ¶ 1.v and w).

In February 1999, Applicant opened a credit card account with a bank. By February 2000, she incurred a \$750.00 debt that she failed to pay and that the bank charged off as a bad debt. On October 10, 2003, Applicant paid the debt in full (SOR ¶ 1.e).

In February 1999, Applicant opened a credit account with a jeweler. She failed to pay her account and the jeweler charged it off as a bad debt. Her credit reports reflected a \$1,108.00 debt but Applicant disputed the amount owed. On May 24, 2004, Applicant reached an agreement with the jeweler to pay a principal balance of \$595.92, beginning with a payment of \$100.00 (SOR ¶ 1.l).

In August 1999, Applicant opened an account with a loan company. By August 2000, she incurred a \$5,363.00 debt that she failed to pay and that was referred to a debt collector. In April 2004, she paid off the debt in full (SOR ¶ 1.d).

By October 2003, her sister's credit card accounts were deleted from Applicant's credit reports. Applicant had been an authorized user under these accounts (SOR ¶ 1.i and r).

On May 16, 2001, Applicant executed a security clearance application (SF 86). In response to question 38, <sup>(3)</sup> Applicant answered, "yes," but only listed a \$600.00 debt to a military department store. She understated that debt by over \$4,000.00. Applicant also failed to disclose 15 other debts (SOR ¶ 1.b-f, h, j-k, m-n, p-q, and s-u) that were more than 180 days delinquent. These debts approximated \$25,593.00 (SOR ¶ 2.a).

In response to question 39-<sup>(4)</sup> on the same SF 86, Applicant answered, "yes," and listed six debts on which she was more than 90 days delinquent. She failed to disclose 11 other debts (SOR ¶ 1.b-f, k, n, p, and s-u) on which she was more than 90 days delinquent (SOR ¶ 2.b).

On January 11, 2002, Applicant provided a sworn statement to a contract investigator for the Defense Investigative Service (DIS) concerning her failure to report delinquent indebtedness on her SF 86.

## POLICIES

Department Counsel is responsible for presenting witnesses and other evidence to establish facts alleged in the SOR that have been controverted. Directive E3.1.14. The applicant is responsible for presenting witnesses and other evidence to rebut, explain, extenuate, or mitigate facts admitted by the applicant or proven by Department Counsel, and has the ultimate burden of persuasion as to obtaining a favorable clearance decision. Directive E3.1.15.

Eligibility for access to classified information is predicated upon an individual meeting adjudicative guidelines discussed in Enclosure 2 of the Directive. An evaluation of whether an applicant meets these guidelines includes the consideration of a number of variables known as the "whole person concept." Available, reliable information about the

person, past and present, favorable and unfavorable, should be considered in reaching a decision. This assessment should include the following factors: (1) the nature, extent, and seriousness of the conduct; (2) the circumstances surrounding the conduct, to include knowledgeable participation; (3) the frequency and recency of the conduct; (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. Any doubt as to whether access to classified information is clearly consistent with national security will be resolved in favor of national security. Directive E2.2.2.

Enclosure 2 provides conditions for each guideline that could raise a concern and may be disqualifying, as well as further conditions that could mitigate a concern and support granting a clearance. The following guidelines are applicable to this case.

#### Guideline F: Financial Considerations

The concern is that an individual who is financially overextended is at risk of having to engage in illegal acts to generate funds. Conditions that could raise a security concern and may be disqualifying include E2.A6.1.2.1, a history of not meeting financial obligations (Disqualifying Condition 1). They also include E2.A6.1.2.3, inability or unwillingness to satisfy debts (Disqualifying Condition 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, a business downturn, unexpected medical emergency, or a death, divorce or separation) (Mitigating Condition 3). They also include E2.A6.1.3.6, the individual initiated a good-faith effort to repay overdue creditors or otherwise resolve debts (Mitigating Condition 6).

#### Guideline E: Personal Conduct

The concern under Guideline E is conduct involving questionable judgment, untrustworthiness, unreliability, lack of candor, dishonesty, or unwillingness to comply with rules and regulations could indicate that the person may not properly safeguard classified information. Conditions that could raise a security concern and may be disqualifying under Guideline E include E2.A5.1.2.2 (Disqualifying Condition 2). Disqualifying Condition 2 covers the deliberate omission, concealment, or falsification of relevant and material facts from any personnel security questionnaire, personal history statement, or similar form used to conduct investigations, determine employment, qualifications, award benefits or status, determine security clearance eligibility or trustworthiness, or award fiduciary responsibilities.

## CONCLUSIONS

#### Guideline F: Financial Considerations

The record establishes that Applicant became delinquent on 16 debts, totaling \$30,432.00, that she failed to pay and that were charged off as bad debts and referred to debt collectors (SOR ¶¶ 1.a-f, h, j-k, m-n, p-q, and s-u). This establishes a history of Applicant not meeting her financial obligations as well as an inability or unwillingness to satisfy debts. It raises both Disqualifying Condition 1 and Disqualifying Condition 3.

Although Applicant indicated that her bills became late because her employer went out of business, the employment history on her SF 86 fails to support any period of unemployment prior to when she said she accompanied her husband overseas for his military assignment. Although her income may have been reduced after she arrived overseas, the record establishes that she had incurred a number of delinquent debts before leaving the United States. Therefore, Applicant has not established the applicability of Mitigating Condition 3.

Since her interview by a DIS investigator, however, Applicant appears to have paid off, settled, or otherwise resolved her bad debts. This record supports mitigating Condition 6. I note that Applicant's answer to the SOR was not consistent with her later evidence that two of the debts were her sister's accounts (SOR ¶¶ 1.i and r). However, the fact the debts have been eliminated from her credit reports substantiates her latest evidence. Given the resolution of all of her delinquent indebtedness, I find in favor of Applicant with regard to SOR ¶ 1.

## Guideline E: Personal Conduct

At the time she submitted her SF 86, Applicant had incurred 16 debts, totaling \$30,432.00, that were more than 180 days delinquent. However, she only disclosed one of those and listed the amount of the indebtedness as \$600.00 when it was actually \$4,839.00. Whereas Applicant listed six debts as more than 90 days delinquent, they were actually more than 180 days delinquent and amounted to only \$5,808.00 of her delinquent indebtedness. Her actions raise Disqualifying Condition 2.

Applicant testified she knew she was delinquent on some accounts but did not report them because she did not know the exact number of days they were delinquent. It is difficult to accept such testimony in light of the fact that the delinquency of six of her debts was by that point measured by years not days. At the time she submitted her SF 86, four of her debts were more than a year delinquent and two others were more than two years delinquent. In addition, she had incurred nine other delinquent debts that were more than 180 days delinquent by the time she submitted her SF 86.

By Applicant's own admission, moreover, she knew she had other delinquent debts but was unclear on the period of the delinquencies. Even if she did not know if they were 180 days delinquent, by the same token she could not confirm they were not. Such circumstances should have compelled her to disclose what she knew. Applicant's failure to do so reveals a lack of the candor the Government has the right to expect from an applicant in granting a security clearance.

Even in the case of the delinquent debt that Applicant reported, she substantially understated her outstanding liability. She only reported \$600.00 when she actually owed \$4,839.00 on that account. Although Applicant reported six debts, amounting to \$5,808.00, as being 90 days delinquent, this still significantly understated her 16 delinquent debts for which she still owed \$30,432.00.

Applicant's sworn statement in response to the SOR, dated October 6, 2003, further reflects on her credibility. Although she stated one debt was "paid in full," evidence in the record demonstrates that she actually settled this debt on May 10, 2004, more than seven months later (SOR ¶ 1.n). During her testimony, Applicant acknowledged this "mistake." However, it is not an isolated incident. Her answer also claimed that she had a payment plan with another creditor and had reduced the balance to \$1,148.00. The evidence of record establishes that she actually settled this debt on May 10, 2004, at which time the balance remained \$1,434 (SOR ¶ 1.b).

Given the extent of her delinquent indebtedness, the burden is on Applicant to adequately explain or mitigate her failure to report it on her SF 86. Applicant's contentions that she answered the SF 86 to the best of her knowledge and that she did not have her credit report in front of her when she completed the SF 86 fail to meet this burden. I find against Applicant with regard to SOR ¶2.

## FORMAL FINDINGS

Formal findings, as required by section E3.1.25 of Enclosure 3 of the Directive, are as follows:

Paragraph 1. Guideline F: FOR APPLICANT

Subparagraph 1.a: For Applicant

Subparagraph 1.b: For Applicant

Subparagraph 1.c: For Applicant

Subparagraph 1.d: For Applicant

Subparagraph 1.e: For Applicant

Subparagraph 1.f: For Applicant

Subparagraph 1.g: For Applicant

Subparagraph 1.h: For Applicant

Subparagraph 1.i: For Applicant

Subparagraph 1.j: For Applicant

Subparagraph 1.k: For Applicant

Subparagraph 1.l: For Applicant

Subparagraph 1.m: For Applicant

Subparagraph 1.n: For Applicant

Subparagraph 1.o: For Applicant

Subparagraph 1.p: For Applicant

Subparagraph 1.q: For Applicant

Subparagraph 1.r: For Applicant

Subparagraph 1.s: For Applicant

Subparagraph 1.t: For Applicant

Subparagraph 1.u: For Applicant

Subparagraph 1.v: For Applicant

Subparagraph 1.w: For Applicant

Paragraph 2. Guideline E: AGAINST APPLICANT

Subparagraph 2.a: Against Applicant

Subparagraph 2.b: Against Applicant

## DECISION

In light of the evidence of record in this case, it is not clearly consistent with the national interest to grant or continue a security clearance for Applicant.

*Signed*

**Roger E. Willmeth**

**Administrative Judge**

1. Executive Order 10865, *Safeguarding Classified Information Within Industry*, dated February 20, 1960, as amended.
2. Department of Defense Directive 5220.6, *Defense Industrial Personnel Security Clearance Review Program* (Directive), dated January 2, 1992, as amended and modified.
3. "In the last 7 years, have you been over 180 days delinquent on any debt(s)?"

4. "Are you currently over 90 days delinquent on any debt(s)?"