

DATE: October 26, 2004

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In re:

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SSN: -----

Applicant for Security Clearance

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ISCR Case No. 03-04927

**ECISION OF ADMINISTRATIVE JUDGE**

**PHILIP S. HOWE**

**APPEARANCES**

**FOR GOVERNMENT**

Francisco J. Mendez, Jr., Esq., Department Counsel

**FOR APPLICANT**

*Pro Se*

**SYNOPSIS**

Applicant works for a defense contractor as an access administrator handling security clearance applications and other duties. Applicant has 10 delinquent debts, including two judgments against her. One judgment was a consent judgment from 1997. Applicant has not paid any of these debts. Also, Applicant did not disclose on her security clearance application (SF 86) her 1997 Chapter 13 bankruptcy filing, her delinquent debts, or the two judgments. Applicant failed to mitigate the financial considerations and personal conduct security concerns. Clearance is denied.

**STATEMENT OF THE CASE**

The Defense Office of Hearings and Appeals (DOHA) declined to grant or continue a security clearance for Applicant. On December 8, 2003, DOHA issued a Statement of Reasons [\(u\)](#) (SOR) detailing the basis for its decision-security concerns raised under Guideline F (Financial Considerations) and Guideline E (Personal Conduct) of the Directive. Applicant answered the SOR in writing on January 19, 2004 and elected to have a hearing before an administrative judge. The case was assigned to me on May 14, 2004. On June 15, 2004, I convened a hearing to consider whether it is clearly consistent with the national interest to grant or continue a security clearance for Applicant. The Government and the Applicant submitted exhibits which were admitted into evidence. DOHA received the hearing transcript (Tr.) on June 23, 2004.

**FINDINGS OF FACT**

Applicant's admissions to the SOR allegations are incorporated here as findings of fact. Applicant denied SOR subparagraphs 1.b. to 1.d., 1.i., and 1.j., in addition to Paragraph 2 and its subparagraphs. After a complete and thorough review of the evidence in the record, and full consideration of that evidence, I make the following additional findings of fact:

Applicant is 48 years old, and works as an access administrator for a defense contractor, and is very familiar with the

security clearance application used by the government, known as the Standard Form 86 (SF 86). She has one minor-aged child. Applicant lives in the home her now-deceased mother owned, and is not paying rent or mortgage payments. Her mother died intestate, and the estate has yet to be probated. In the meantime, Applicant maintains the property while living there. (Tr. 44, 54, 74, 82, 86, 110; Exhibit 1)

Applicant does not have a checking account, instead paying her bills with money orders. Applicant does not have a record-keeping system for her bills and past-due debts. Applicant does try to pay her monthly utility bills on time. She also tries to pay her \$365 monthly car payment on time, owing \$6,000 at present, and is one payment behind now. Applicant does not understand the extent of her delinquent debts or even which creditors she owes. Her debts are old and she cannot remember what amount she owes to whom, as a result of owing the debts for so long. Applicant has not taken any financial planning courses to help her manage her finances. She made a budget, but sometimes ignores the budget and spends freely on herself and her daughter, including money on vacations. Applicant assumed that if her pay was being garnished by creditors, that action meant the debts were being paid and were not delinquent. Applicant does not know which creditors were garnishing her wages, yet in her statement of November 2002 she listed three creditors who were garnishing her wages. Applicant filed bankruptcy in 1997, paid on it for about two years, asserts that she pulled herself out of the bankruptcy by hard work, but the Chapter 13 bankruptcy action was dismissed in March 2000. (Tr. 33 to 36, 48, 49, 54 to 56, 58 to 61, 96 to 107; Exhibits 2 and 13)

Applicant owes about \$3,100 on three credit cards from 1998. These debts are alleged in SOR subparagraphs 1.b. through 1.d. (Tr. 64, 65, 76 to 80; Exhibits 2 to 8)

Applicant owes two telephone companies about \$1,500 for telephone service. She terminated her residential telephone service several years ago, but never paid the bill. These debts are alleged in SOR subparagraphs 1.e. through 1.h., and the later allegation is a duplicate in amount and creditor of subparagraph 1.g., meaning they are the same debt submitted to two different debt collectors. (Tr. 80 to 86; Exhibits 2 to 8)

Applicant owes \$86 to a cab company. This debt has been unpaid for several years. The delinquent debt is alleged in SOR subparagraph 1.i. Applicant professes ignorance of the debt, but has taken no efforts to pay it or contest it seeking to have it removed from her credit record. (Tr. 87; Exhibits 2 to 8)

Applicant entered a consent judgment with a former landlord in February 1997. Applicant owed the landlord for rent on an apartment. Applicant has not paid the \$1,775 owed from that date. This delinquent debt and judgment were not disclosed on Applicant's SF 86. This debt is alleged in SOR subparagraph 1.j. (Tr. 89 to 91; Exhibit 10)

A judgment against Applicant was entered in March 1996 in the amount of \$1,125. This delinquent debt is alleged in SOR subparagraph 1.k. (Tr. 91 to 93)

Applicant did not disclose any of her financial difficulties in response to the SF 86 Questions 33 (bankruptcy filings in the past seven years), 37 (unpaid judgments in the past seven years), 38 (delinquent debts over 180 days old in the past seven years), or 39 (currently delinquent on any debt over 90 days). Applicant answered all these questions in the negative. Those answers were untrue and Applicant knew they were untrue. Applicant's explanation that she thought the garnishments on her paycheck were paying these debts and made them current is not credible, or supported by any documentary evidence submitted by Applicant. Applicant knew she had two judgments against her, including the consent judgment as alleged in subparagraph 1.j., and that several debts were more than 180 days delinquent as alleged in the SOR. Applicant deliberately failed to disclose this information. (Tr. 95 to 120; Exhibits 1 and 2)

## 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 judgment, 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 predicated 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 of the Directive sets forth personnel security guidelines, as well as the disqualifying conditions (DC) and mitigating conditions (MC) under each guideline that must be carefully considered in making the overall common sense determination required.

In evaluating the security worthiness of an applicant, the administrative judge must also assess the adjudicative process factors listed in ¶ 6.3 of the Directive. Those assessments include: (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.

The decision to deny an individual a security clearance is not necessarily a determination as to the loyalty of the applicant. *See* Exec. Or. 10865 § 7. It is merely an indication that the applicant has not met the strict guidelines the President and the Secretary of Defense have established for issuing a clearance.

Initially, the Government must establish, by substantial evidence, conditions in the personal or professional history of the applicant that disqualify, or may disqualify, the applicant from being eligible for access to classified information. *See Egan*, 484 U.S. at 531. The Directive presumes a nexus or rational connection between proven conduct under any of the disqualifying conditions listed in the guidelines and an applicant's security suitability. *See* ISCR Case No. 95-0611 at 2 (App. Bd. May 2, 1996). 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**

(A) The Concern: An individual who is financially overextended is at risk of having to engage in illegal acts to generate funds. Unexplained affluence is often linked to proceeds from financially profitable criminal acts.

(B) Conditions that could raise a security concern and may be disqualifying include:

(1) A history of not meeting financial obligations. E2.A6.1.2.1

(3) Inability or unwillingness to satisfy debts. E2.A6.1.2.3

(C) Conditions that could mitigate security concerns include:

None

### **Guideline E - Personal Conduct:**

(A) The Concern: 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. The following will normally result in an unfavorable clearance action or administrative termination of further processing for clearance eligibility:

(B) Conditions that could raise a security concern and may be disqualifying also include:

(2) The deliberate omission, concealment, falsification or misrepresentation 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; E2.A5.1.2.2

(C) Conditions that could mitigate security concerns include:

None

## **CONCLUSIONS**

In the SOR, DOHA alleged Applicant had delinquent debts that were in collection or charged off status (§ 1.b.-1.k.) totaling approximately \$8,000; and is unable or unwilling to pay these debts; filed for Chapter 13 bankruptcy in 1997, but the case was dismissed in 2000. The Government established by substantial evidence each of the allegations in the SOR. Applicant has a history of not meeting her financial obligations, and Disqualifying Condition (DC)1 applies. Applicant is unable or unwilling to satisfy her debts, and DC 2 applies. There are no Mitigating Conditions (MC) that applies. Applicant has not made any efforts to pay her delinquent debts, or to get her finances in order. At the hearing, she could not provide persuasive or even credible basic information about her debts and personal finances. It all seemed a mystery to her, and her explanations were confused and not credible. I conclude against Applicant on the financial considerations guideline.

Regarding the personal conduct guideline, the Government established by substantial evidence each of the allegations in Paragraph 2 of the SOR. Applicant deliberately failed to disclose her bankruptcy, the two judgments against her, and her delinquent debts. DC 2 applies. When I contrast her written statements in Exhibits 2 through 4 with her testimony at the hearing, I am convinced she deliberately hid from the Government the full extent of her financial delinquencies. I am also convinced she knew she filed bankruptcy and that she had delinquent debts. She testified she helped other employees filling out their SF 86 and that she was familiar with the form. With that knowledge and experience she cannot credibly testify she did not know the correct answer to give to the questions at issue. Therefore, I also conclude no MC applies. Consequently, I conclude this guideline against Applicant.

## **FORMAL FINDINGS**

The following are my conclusions as to each allegation in the SOR:

Paragraph 1. Guideline F: AGAINST APPLICANT

Subparagraph 1.a: Against Applicant

Subparagraph 1.b: Against Applicant

Subparagraph 1.c: Against Applicant

Subparagraph 1.d: Against Applicant

Subparagraph 1.e: Against Applicant

Subparagraph 1.f.: Against Applicant

Subparagraph 1.g.: Against Applicant

Subparagraph 1.h.: Against Applicant

Subparagraph 1.i.: Against Applicant

Subparagraph 1.j.: Against Applicant

Subparagraph 1.k.: Against Applicant

Paragraph 2. Guideline E: AGAINST APPLICANT

Subparagraph 2.a: Against Applicant

Subparagraph 2.b.: Against Applicant

Subparagraph 2.c.: Against Applicant

Subparagraph 2.d.: Against Applicant

### **DECISION**

In light of all of the circumstances presented by the record in this case, it is not clearly consistent with the national interest to grant or continue a security clearance for Applicant. Clearance is denied.

**Philip S. Howe**

**Administrative Judge**

1. Pursuant to Exec. Or. 10865, *Safeguarding Classified Information within Industry* (Feb. 20, 1960), as amended and modified, and Department of Defense Directive 5220.6, *Defense Industrial Personnel Security Clearance Review Program* (Jan. 2, 1992), as amended and modified (Directive).