

DATE: January 4, 2005

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In re:

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SSN: -----

Applicant for Security Clearance

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ISCR Case No. 03-06145

## DECISION OF ADMINISTRATIVE JUDGE

**MICHAEL J. BRESLIN**

### APPEARANCES

#### FOR GOVERNMENT

Jennifer I. Campbell, Esq., Department Counsel

#### FOR APPLICANT

*Pro Se*

### SYNOPSIS

Applicant is a 36-year-old employee of a defense contractor. She has held that position for over 13 years, and has held a security clearance for 8 years. Marital difficulties led to a divorce and unpaid debts. Applicant paid all her delinquent debts except one substantial debt to a bank which remained unresolved for several years. After the initiation of this action, Applicant hired a lawyer who negotiated a repayment plan for the outstanding debt. Applicant has made payments toward the settlement and has assets available to cover the remaining amount due. Applicant has mitigated the security concerns arising from her financial difficulties. Clearance is granted.

### STATEMENT OF THE CASE

On August 30, 2002, Applicant submitted a security clearance application. The Defense Office of Hearings and Appeals (DOHA) declined to grant or continue a security clearance for Applicant under Executive Order 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 (the "Directive"). On April 30, 2004, DOHA issued a Statement of Reasons (SOR) detailing the basis for its decision. The SOR alleges security concerns raised under the Directive, Guideline F, Financial Considerations.

Applicant answered the SOR in writing on May 14, 2004. She elected to have a hearing before an administrative judge.

The case was assigned to me on August 11, 2004. With the concurrence of the parties, I conducted the hearing on September 21, 2004. The government presented five exhibits. Applicant presented five exhibits and the testimony of a witness, and testified on her own behalf. DOHA received the transcript on October 12, 2004.

### FINDINGS OF FACT

Applicant admitted the factual allegations in ¶ 1.a of the SOR. Answer to SOR, dated May 27, 2004, at 1. With regard to ¶ 1.b, she admitted it in part and denied it in part. *Id.* Those admissions are incorporated herein as findings of fact.

After a complete and thorough review of the evidence in the record, I make the following additional findings of fact:

Applicant is 36 years old. Ex. 1 at 1. She has been an engineer analyst for a defense contractor for over 13 years and has held a security clearance for 8 years. Tr. at 14-15.

Applicant got married in 1995. Ex. 1 at 3. Her husband worked but did not contribute toward the household expenses. Tr. at 13. Applicant discovered her spouse had a problem with illegal drugs and ultimately obtained a divorce in 1999. Tr. at 14; Ex. 1 at 3. Applicant was left with a substantial amount of debt; she estimated that it was approximately \$20,000.00. Tr. at 16. Under the terms of the divorce, her ex-husband was required to pay \$300.00 per month toward the marital debts, but he has not made the payments as required. Tr. at 14. At this time, Applicant does not know where he is. Tr. at 30.

Applicant found she could not pay all the debts when due. *Id.* However, she paid off the smaller amounts in full over time. Also, she was able to refinance her home and incorporate some of her outstanding home improvement loans. Tr. at 16-17. She did not seek credit counseling. Tr. at 18.

The last remaining debt was to a bank. Tr. at 17; Answer to SOR, ¶ 1.a., dated May 14, 2004. The debt was originally for about \$8,000.00, but it had grown to about \$16,000.00. Ex. 3 at 11. Applicant had not made a payment on that debt for about six years (Tr. at 46), even though she had a reasonable amount of discretionary income left over at the end of the month and some assets in savings. Tr. at 18-19. Applicant testified that she saved that debt for last because it was the largest single debt. Tr. at 17. Additionally, because the debt was transferred between collection agencies and she had not heard from the bank for some time, she did not know who held the debt. *Id.*; Tr. at 27.

In about August 2004, Applicant contacted a law firm to assist her in settling the debt. Tr. at 17. An associate from the law firm testified that they worked out an agreement to satisfy the debt in full for \$5,000.00, payable in a lump sum of \$3,000.00 with the remaining \$2,000.00 paid in monthly payments of \$50.00 at 9% interest until it is paid in full. Tr. at 35; Exs. B, C. At the time of the hearing, the law firm was holding Applicant's check for \$3,000.00 and a check for the first \$50.00 payment, and would disperse them as soon as they received documentary evidence that the collection agency had assumed the debt in question.

### POLICIES

In Executive Order 12968, *Access to Classified Information*, § 3.1(b) (August 4, 1995), the President provided that eligibility for access to classified information shall be granted only 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." A person granted access to classified information enters into a special relationship with the government. The government must be able to repose a high degree of trust and confidence in those individuals to whom it grants access to classified information. The decision to deny an individual a security clearance is not a determination as to the loyalty of the applicant. Exec. Ord. 10865, § 7. It is merely an indication that the applicant has not met the strict guidelines the President has established for issuing a clearance.

To be eligible for a security clearance, an applicant must meet the security guidelines contained in the Directive. Enclosure 2 of the Directive sets forth personnel security guidelines, as well as the disqualifying conditions and mitigating conditions under each guideline. The adjudicative guidelines at issue in this case are:

Guideline F - 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, as well as those which could mitigate security concerns pertaining to these adjudicative guidelines, are set forth and discussed in the conclusions below.

"The adjudicative process is an examination of a sufficient period of a person's life to make an affirmative determination that the person is eligible for a security clearance." Directive, ¶ E2.2.1. An administrative judge must apply the "whole

person concept," and consider and carefully weigh the available, reliable information about the person. *Id.* An administrative judge should consider 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. *Id.*

Initially, the Government must present evidence to establish controverted facts in the SOR that disqualify or may disqualify the applicant from being eligible for access to classified information. Directive, ¶ E3.1.14. Thereafter, the applicant is responsible for presenting evidence to rebut, explain, extenuate, or mitigate the facts. Directive, ¶ E3.1.15. An applicant "has the ultimate burden of demonstrating that it is clearly consistent with the national interest to grant or continue his security clearance." ISCR Case No. 01-20700 at 3 (App. Bd. Dec. 19, 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.

## CONCLUSIONS

I considered carefully all the facts in evidence and the legal standards discussed above. I reach the following conclusions regarding the allegations in the SOR:

Paragraph E2.A6.1.2.1 of the Directive provides that it may be a disqualifying condition if the evidence reveals "[a] history of not meeting financial obligations." Similarly, ¶ E2.A6.1.2.3 indicates that an "[i]nability or unwillingness to satisfy debts" may be disqualifying. Applicant admitted being unable to pay her debt after her divorce, and she acknowledged that it remained unpaid for many years. I find Applicant has shown both a history of failing to meet her financial obligations and an inability and unwillingness to satisfy her debts. I conclude both these potentially disqualifying conditions apply.

The security concerns arising from Applicant's financial difficulties can be mitigated under certain circumstances. Under the Directive, ¶ E2.A6.1.3.1, it may be mitigating where "the behavior was not recent." Applicant's delinquent debt arose many years ago, after her divorce and her ex-husband's refusal to make court-ordered payments toward the marital debts. However, Applicant's inability or unwillingness to pay or otherwise resolve the delinquent debt continued up to shortly before the date of the hearing. I conclude this mitigating condition does not apply.

Paragraph E2.A6.1.3.2 of the Directive provides that it may be mitigating where the financial difficulty "was an isolated incident." The available information indicates Applicant had good credit before her unfortunate marriage and the eventual divorce. If one were to focus on the specific behavior of amassing a substantial delinquent debt, this was an isolated incident. However, the specific behavior in question was the inability or unwillingness to pay the delinquent debt, and that was continuing conduct spanning many years. I conclude this mitigating condition does not apply.

Under ¶ E2.A6.1.3.3, it may be mitigating where, "[t]he 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 testified that the debt which formed the basis of this action was the largest of several debts remaining after her divorce in 1999. It is understandable that the termination of a marriage may result in financial strain for a period of time, therefore this mitigating condition applies in part. However, as noted above, Applicant allowed this debt to remain unpaid for an unreasonably long time.

Proof that "[t]he person has received or is receiving counseling for the problem and there are clear indications that the problem is being resolved or is under control," may be mitigating, under ¶ E2.A6.1.3.4 of the Directive. Applicant denied receiving any credit counseling. Tr. at 18. She consulted an attorney, but only to effect the settlement of a single debt. I find this mitigating condition does not apply.

Finally, it may be mitigating where "[t]he individual initiated a good-faith effort to repay overdue creditors or otherwise resolve debts." Directive, ¶ E2.A6.1.3.6. Applicant has paid off the debts remaining after her divorce, and arranged a settlement of the single, large, delinquent debt that formed the basis for this action. Also, she has the assets to make sure the debt settlement is satisfied. I conclude this mitigating condition applies.

It is also important to consider all the evidence in light of the "whole person" concept. Applicant is a mature adult, with experience in handling her financial affairs. She has worked for a defense contractor for over 13 years and has held a security clearance without adverse incident for 8 years. Her delinquent debts arose from conditions largely beyond her control, and she paid off most of the debts diligently. Finally, Applicant negotiated a settlement of the delinquent debt, albeit only after the initiation of this action.

I considered the potentially disqualifying and mitigating circumstances in light of the "whole person" concept. I conclude Applicant has mitigated the security concerns arising from her financial difficulties.

### **FORMAL FINDINGS**

My conclusions as to each allegation in the SOR are:

Paragraph 1, Guideline F: FOR APPLICANT

Subparagraph 1.a: For Applicant

Subparagraph 1.b: For Applicant

### **DECISION**

In light of all of 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.

Michael J. Breslin

Administrative Judge