

DATE: October 13, 2005

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In Re:

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SSN: -----

Applicant for Security Clearance

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ISCR Case No. 03-07150

**DECISION OF ADMINISTRATIVE JUDGE**

**CLAUDE R. HEINY**

**APPEARANCES**

**FOR GOVERNMENT**

Robert E. Coacher, Department Counsel

**FOR APPLICANT**

John P. Melot, Esquire

**SYNOPSIS**

The Applicant owed five debts and a judgment totaling approximately \$25,000. Applicant has paid some of the debt and is repaying other debt. The record evidence is sufficient to mitigate or extenuate the negative security implications stemming from her past financial difficulties. Clearance is granted.

**STATEMENT OF THE CASE**

On October 7, 2004, the Defense Office of Hearings and Appeals (DOHA) issued a Statement of Reasons (SOR) to Applicant stating that DOHA could not make the preliminary affirmative finding <sup>(1)</sup> it is clearly consistent with the national interest to grant or continue a security clearance for Applicant. Security concerns were alleged under Guideline F (Financial Considerations). DOHA recommended the case be referred to an administrative judge to determine whether a clearance should be granted, continued, denied, or revoked.

On November 23, 2004, Applicant answered the SOR and requested a hearing. On February 24, 2005, I was assigned the case. On May 2, 2005, a Notice of Hearing was issued scheduling the hearing which was held on May 26, 2005. The record was kept open to allow Applicant to submit additional documents. Several documents were received and admitted into the record. On June 6, 2005, DOHA received a copy of the transcript (Tr.).

**FINDINGS OF FACT**

Applicant is a 46-year-old lead engineer who has worked for a defense contractor since December 2002, and is seeking to obtain a security clearance. Applicant has received numerous appreciation awards and a certificate of recognition for outstanding performance and dedication (App Ex B).

From 1988 to 1990, she worked for a government contractor. In 1990, her current employer took over the contract. Starting in September 1996, Applicant worked for a telecommunication company. In March 2001, she was laid off

along with 5,000 other employees of the company. Her company retirement program went from \$150,000 to nothing.

From March 2001 to February 2002, Applicant was unemployed. After being laid off, she lived off her credit cards. From February 2002 to July 2002, she worked as a systems specialist at a probationary job (Tr. 31). In December 2002, she returned to her present employer. Since obtaining her current job, she has started repaying her debts. She established a debt repayment plan through a debt relief company (Gov Ex 3). She was paying the debt relief company \$400 per month of which \$200 was the company's fee. Unlike some debt consolidation services which make small payments to each creditor, this debt relief company would pay one creditor until that creditor was paid in full and then start paying another creditor. She made payment to the debt relief company for approximately a year, which means approximately \$2,400 in debt was paid.

Since being hired by her current employer, Applicant has attended university and obtained her Master's degree. Most of the tuition and school expenses were paid by her employer, but she paid some school related expenses.

In July 2003, circumstances changed and Applicant could no longer continue with the debt repayment plan. Her child support increased from \$340 to \$745 per month. Additionally, a garnishment of \$700 was commenced for guardian ad litem fees related to the going child custody case. As of May 2004, her wages are no longer being garnished. Applicant believes the garnishment stopped when the debt was paid (Tr. 22, App Ex A)

Applicant is attempting to obtain custody of her daughter and hopes the custody matter will be decided this year. Her daughter lives in another state, which adds to Applicant's visitation costs and attorney fees (tr. 30). Since 1998, Applicant has paid in excess of \$20,000 for child support and custody legal fees (Tr. 32). The child support is automatically deducted from her pay.

Applicant sought the services of a consumer education service. This service charges only \$20 per month for their fee. The service established a payment arrangement with three of the creditors (SOR 1.a, 1.c, and 1.e) whereby she makes \$417 monthly payments. Since June 2004, she has paid the service \$3,314 towards her debts (Tr. 21). The preplan amount owed was \$18,769 (\$976, \$4,300, \$14,493) (App Ex A). The balance as of the hearing was \$16,752 (\$742, \$3,246, \$12,753) (App Ex A). The debt listed in SOR 1.b was transferred to 1.e and the debt listed in 1.f was transferred to 1.c. Therefore, the repayment plan addresses five of the debts listed in the SOR

A \$2,000 debt is alleged in SOR 1.h. In her response to the SOR, Applicant indicated this debt was settled in June 2003 for approximately \$800. At the hearing, Applicant stated this was a credit card debt she had attempted to track down, but she was unable to find any evidence of what she did with it (Tr. 19). Following the hearing, Applicant sent a letter denying the debt is hers and alleges fraud. (See App Ex C) No evidence was presented at the hearing establishing Applicant owes this debt. The debt does not appear on her credit report.

Applicant alleges the \$2,793 debt (SOR 1.g) was transferred to another creditor who claims a \$3,125 debt (SOR 1.d). Applicant denies owing either debt and sent letters to each creditor asserting the debt is fraudulent (App Ex A). Applicant has never resided at the address on the account. Both debts are listed on Applicant's October 2003 credit report (Gov Ex 5). The term "Fraud Victim" is listed in the title of that credit report. The debt listed in SOR paragraph 1.g was also listed on Applicant's earlier credit report of December 2002 (App Ex 6).

At the hearing, Applicant asserted three other debts have been paid. She supplied documentation from only one of these creditors (SOR 1.i) showing the debt was paid. She sent letters to the two other debtors (SOR 1.j and 1.k) stating she believed the debt was paid, but provided nothing from the creditor as to the status of these two debts. In the year and a half since the garnishment stopped, Applicant has not been contacted by the guardian ad litem. In the past, the guardian ad litem was not shy about contacting Applicant when money was owed (Tr. 33). Applicant assert the garnishment ended when the judgment was paid.

Applicant has approximately \$20,000 in her company retirement program (App Ex B). During 2004, her salary was approximately \$100,000 (Tr. 30). Her current monthly gross income is approximately \$7,000. Her monthly surplus (income less expenses) is \$100 (App Ex A). Applicant has a company credit card for travel expenses, but maintains no personal credit cards.

The SOR lists 11 debts totaling approximately \$44,000. Three of the debts were transferred from one creditor to another (SOR 1.b and 1.e; 1.c and 1.f; and 1.d and 1.g). If the duplication is considered, there are eight debts in question totaling approximately \$30,000. A summary of the current status of those debts follows:

	Creditor	Amount Owed	Current Status
1.a	credit card debt sold to a collection service.	\$4,300	Making payments through consumer education service. (See App Ex A)
1.b	same debt as e.	\$825	Making payments through consumer education service. (See App Ex A)
1.c	credit card debt. same debt as f.	\$11,556	Making payments through consumer education service. (See App Ex A)
1.d	same debt as g.	\$3,125	Denies it is her debt. Alleges fraud
1.e	same debt as b.	\$875	Making payments through consumer education service. (See App Ex A)
1.f	credit card debt. same debt as c.	\$9,680	Making payments through consumer education service. (See App Ex A)
1.g	same debt as d.	\$2,793	Applicant disputes this debt alleging fraud. (See App Ex A)
1.h	debt.	\$2,000	Applicant disputes this debt alleging fraud, although in her response to the SOR she indicated this debt was settled for \$800 in June 2003. (See App Ex C)
1.i	mail order company debt.	\$235	Paid. (See App Ex A)
1.j	medical debt.	\$170	Applicant asserts this has been paid.
1.k	judgment by guardian ad litem.	\$8,178.85	Satisfied by garnishment in May 2004.
	Total Debt alleged in SOR	\$43,737.85	

### **POLICIES**

The Directive sets forth adjudicative guidelines to be considered when evaluating a person's eligibility to hold a security clearance. Disqualifying Conditions (DC) and Mitigating Conditions (MC) are set forth for each applicable guideline. Additionally, each 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 Section 6.3 of the Directive. The adjudicative guidelines are to be applied by administrative judges on a case-by-case basis with an eye toward making determinations that are clearly consistent with the interests of national security. The presence or absence of a particular condition or factor for or against clearance is not determinative of a conclusion for or against an applicant. However, the adjudicative guidelines should be followed whenever a case can be measured against this policy guidance. Considering the evidence as a whole, I conclude the relevant guideline to be applied here is Guideline F (Financial Considerations).

### **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. Initially, the Government must establish, by substantial evidence, that conditions exist in the personal or professional history of the applicant which disqualify, or may disqualify, an applicant from being eligible for access to classified information. The burden of proof in a security clearance case is something less than a preponderance of evidence, although the government is required to present substantial evidence to meet its burden of proof. Substantial evidence is more than a scintilla, but less than a preponderance of the evidence. All that is required is proof of facts and circumstances which 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. Additionally, the government must prove controverted facts alleged in the SOR. Once the government has met its burden, the burden shifts to an applicant to present evidence to refute, extenuate or mitigate the government's case. Additionally, an applicant has the ultimate burden of persuasion to obtain a favorable clearance decision. [\(2\)](#)

As noted by the United States Supreme Court in *Department of Navy v. Egan*, 484 U.S. 518, 528 (1988), "no one has a 'right' to a security clearance." A person who has access to classified information enters into a fiduciary relationship with the government based on trust and confidence. The government, therefore, has a compelling interest in ensuring each applicant possesses the requisite judgement, reliability and trustworthiness of one who will protect the national interests. The "clearly consistent with the national interest" standard compels resolution of any reasonable doubt about an applicant's suitability for access to classified information in favor of protecting national security. Security clearance determinations should err, if they must, on the side of denials.

### CONCLUSIONS

A person's relationship with his creditors is a private matter until evidence is uncovered demonstrating an inability or unwillingness to repay debts under agreed upon terms. Absent evidence of strong extenuating or mitigating circumstances, an applicant with a history of serious or recurring financial difficulties is in a position of risk that is inconsistent with the holding of a security clearance. An applicant is not required to be debt free, but is required to manage her finances so as to meet her financial obligations. An applicant who is financially overextended is at risk of having to engage in illegal acts to generate funds. Directive E.2.A.6.1.1.

The Government has satisfied its initial burden of proof under Guideline F (Financial Considerations). The Applicant owed five debts and a judgment totaling approximately \$25,000. Disqualifying Conditions (DC) 1 (E2.A6.1.2.1 *A history of not meeting financial obligations*) and 3 (E2.A6.1.2.3 *Inability or unwillingness to satisfy debts*) apply.

The judgment (SOR 1.j) has been satisfied by garnishment. The garnishment ended in May 2004, if additional money were owed I am confident the guardian ad litem would have contacted Applicant or obtained another garnishment. The \$235 debt (SOR 1.i) has been paid. Applicant is making \$417 monthly payments to pay three additional creditors (SOR 1.a, 1.c, and 1.e). Because two of the debts were transferred to other creditors, the repayment plan also addresses the debts listed in SOR 1.b and 1.f. Mitigating Conditions (MC) 6 (E2.A6.1.3.6 *The individual initiated a good-faith effort to repay overdue creditors or otherwise resolve debts*) applies to these five debts.

In March 2001, Applicant, along with 5,000 other employees of a telecommunication company were laid off from work. She was unemployed from March 2001 to February 2002 and from July 2002 to December 2002. Additionally, she incurred child support fees, guardian ad litem fees, and legal fees related to a custody battle which exceeded \$20,000. Each of these events are conditions beyond her control. MC3 (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)*) applies.

Since December 2002, when she started her current employment, she has been repaying her debts. First through a debt relief company and then through a consumer education service. Much more of her monthly payment goes to debt relief thought her current service than through the prior debt relief company. The important thing is that as soon as she was reemployed, she started to repay her debts.

Applicant disputes three debts. There is no evidence Applicant owes the \$2,000 debt (SOR 1.h). She indicated the debt had been paid and it does not appear on her credit reports. She also disputes the two other debts as fraud. The debt appears on her credit reports, but one of those reports is entitled fraud victim. In evaluating security worthiness the government does not act as a debt collector. A person should pay their just debts. But a person is not required to pay debts they have a reasonable basis to dispute. I find Applicant's dispute of these three debts reasonable and justified.

Applicant states the final \$170 medical bill (SOR 1.j) has been paid. However, she provided no documentation supporting her assertion. Even if the debt is unpaid it is so small (\$170) when compared to her \$100,000 annual salary that it does not establish Applicant is financially overextended or at risk of having to engage in illegal acts to generate

funds. I find for Applicant as to financial considerations.

In reaching my conclusions I have also considered: the nature, extent, and seriousness of the conduct; Applicant's age and maturity at the time of the conduct; the circumstances surrounding the conduct; Applicant's voluntary and knowledgeable participation; the motivation for the conduct; the frequency and recency of the conduct; presence or absence of rehabilitation; potential for pressure, coercion, exploitation, or duress; and the probability that the circumstance or conduct will continue or recur in the future.

### **FORMAL FINDINGS**

Formal Findings as required by Section 3, Paragraph 7, of Enclosure 1 of the Directive are hereby rendered as follows:

Paragraph 1 Guideline F (Financial Considerations): FOR THE APPLICANT

Subparagraph 1.a: For the Applicant

Subparagraph 1.b: For the Applicant

Subparagraph 1.c: For the Applicant

Subparagraph 1.d: For the Applicant

Subparagraph 1.e: For the Applicant

Subparagraph 1.f: For the Applicant

Subparagraph 1.g: For the Applicant

Subparagraph 1.h: For the Applicant

Subparagraph 1.i: For the Applicant

Subparagraph 1.j: For the Applicant

Subparagraph 1.k: For the 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.

**Claude R. Heiny**

**Administrative Judge**

1. Required by Executive Order 10865, *Safeguarding Classified Information Within Industry*, as amended, and Department of Defense Directive 5220.6, *Defense Industrial Personnel Security Clearance Review Program* (Directive), dated January 2, 1992, as amended.
2. ISCR Case No. 93-1390 (January 27, 1995) at pp. 7-8; Directive, Enclosure 3, Item E3.1.15.