

KEYWORD: Financial

DIGEST: Applicant is a 41-year-old employee of a defense contractor working as a contract librarian who petitioned for Chapter 7 bankruptcy in 1995 because of extensive debts. The bankruptcy was discharged later the same year. Since the bankruptcy, Applicant has incurred over \$18,000.00 in delinquent debts ranging in amount from \$73 to over \$4,000. In 2003, Applicant again petitioned for Chapter 7 bankruptcy and it was discharged in June, 2004. She helps to support several family members who are employed and could, but do not, contribute to the household expenses. Clearance is denied.

CASENO: 03-10582.h1

DATE: 09/14/2004

DATE: September 14, 2004

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In Re:

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SSN: -----

Applicant for Security Clearance

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ISCR Case No. 03-10582

**DECISION OF ADMINISTRATIVE JUDGE**

**CHARLES D. ABLARD**

**APPEARANCES**

**FOR GOVERNMENT**

Eric Borgstrom, Esq., Department Counsel

## **FOR APPLICANT**

*Pro Se*

### **SYNOPSIS**

Applicant is a 41-year-old employee of a defense contractor working as a contract librarian

who petitioned for Chapter 7 bankruptcy in 1995 because of extensive debts. The bankruptcy was discharged later the same year. Since the bankruptcy, Applicant has incurred over \$18,000.00 in delinquent debts ranging in amount from \$73 to over \$4,000. In 2003, Applicant again petitioned for Chapter 7 bankruptcy and it was discharged in June, 2004. She helps to support several family members who are employed and could, but do not, contribute to the household expenses. Clearance is denied.

### **STATEMENT OF CASE**

On February 4, 2004, the Defense Office of Hearings and Appeals (DOHA) pursuant to Executive Order 10865, *Safeguarding Classified Information Within Industry*, as amended and modified, and Department of Defense Directive 5220.6, *Defense Industrial Personnel Security Clearance Review Program* (Directive), dated January 2, 1992, as amended and modified, issued a Statement of Reasons (SOR) to Applicant which detailed reasons why DOHA could not make the preliminary affirmative finding under the Directive that it is clearly consistent with the national interest to grant or continue a security clearance for Applicant. DOHA recommended the case be referred to an administrative judge to determine whether a clearance should be granted, continued, denied, or revoked.

On March 1, 2004, Applicant, in a sworn written statement, responded to the allegations set forth in the SOR, and requested a hearing. The matter was assigned to me on May 12, 2004. A notice of hearing was issued on June 15, 2004, and a hearing was held on June 23, 2004. The Applicant waived the 15-day notice requirement and testified. The Government introduced 14 exhibits and the Applicant introduced two exhibits. All exhibits were admitted into evidence. The transcript was received on July 9, 2004. Two post-hearing exhibit were introduced by the Applicant on September 1 and 10, 2004 without objection by the government

### **FINDINGS OF FACT**

Applicant is a 41-year-old employee of a defense contractor working as a contract librarian. She admitted all but one of the specific allegations in the SOR. She disagreed with all of the conclusions reached in the SOR based on the allegations. After a complete review of the evidence in the record and upon due consideration of the record, the following additional findings of fact are made:

Applicant left her employment in another state in 1992 to move with her two children to be near her family. She had difficulty finding employment and shared a house with another woman and her child. Applicant took responsibility for the house-mate's child when she was sentenced to prison on a drug charge. Applicant petitioned for Chapter 7 bankruptcy in 1995 because of extensive debts. The bankruptcy was discharged later the same year. Since the bankruptcy, Applicant had further financial difficulties and incurred over \$18,000.00 in delinquent debts ranging in amount from \$73 to over \$4,000 cited in the SOR. Some of the debts resulted in judgments against Applicant. Several of the cited debts in the SOR had either been paid or discharged in the 1995 bankruptcy.

In 2003, Applicant again petitioned for Chapter 7 bankruptcy which was discharged in June 2004, several days prior to the hearing in this matter. That bankruptcy proceeding discharged other debts cited in the SOR.

Applicant's monthly take home pay is \$1,700.00 of which \$700 is paid for rent, \$800 for food, clothing, and medical. Applicant has two children ages 21 and 6 who live with her and the father of the younger child. He contributes to the household expenses when he is employed. Her older child is employed but does not contribute to the household expenses and Applicant pays auto insurance for her. Applicant has also taken into her household a nephew and his daughter who are both employed but contribute nothing to the household expenses. Her income is barely adequate to pay household and living expenses.

Several of Applicant's family members have worked on the installation where she is employed and she takes pride in that fact. Her brother is a sergeant in the Army who has just returned from Iraq.

## **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.

An evaluation of whether the applicant meets the security guidelines includes consideration of the following factors: (1) the nature, extent, and seriousness of the conduct; (2) the circumstances surrounding the conduct; (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 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. Directive, ¶ E2.2.1. Security clearances are granted only when "it is clearly consistent with the national interest to do so." Executive Order No. 10865 § 2. *See* Executive Order No. 12968 § 3.1(b).

Initially, the Government must establish, by something less than a preponderance of the evidence, that conditions exist in the personal or professional history of the applicant which disqualify, or may disqualify, the applicant from being eligible for access to classified information *See Egan*, 484 U.S. at 531. The applicant then bears the burden of demonstrating that it is clearly consistent with the national interest to grant or continue the applicant's clearance. "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* Executive Order No. 12968 § 3.1(b)

## CONCLUSIONS

Upon consideration of all the facts in evidence, and after application of all appropriate legal precepts, factors, and conditions above, I conclude the following with respect to all allegations set forth in the SOR.

Applicant's extensive delinquent debts prompted the allegations under Guideline F in that an individual who is financially overextended is at risk of having to engage in illegal acts to generate funds. (E2.A6.1.1.) Conditions that could raise a security concern and may be disqualifying include a history of not meeting financial obligations (E2.A6.1.2.1.) and evidence of inability or unwillingness to satisfy debts. (E2.A6.1.2.3.) Mitigating Conditions (MC) include the fact that the

person has initiated a good faith effort to repay overdue creditors or otherwise resolve debts. (E2.A6.1.3.6.). Petitioning for a second bankruptcy does not mitigate the allegations in the SOR. Discharge in bankruptcy gives a fresh start but

does not relieve the Applicant of responsibility for insuring sound financial practices in the future.

Applicant has not shown the proper response for resolution of her financial obligations. Having once undertaken bankruptcy for good reason, she was obliged to fulfill her financial responsibilities thereafter. She failed to do so and has again petitioned for bankruptcy a second time. While there were some circumstances that occurred which were beyond her control between the first and second bankruptcies, Applicant has failed to take adequate remedial steps to insure that similar problems might not arise in the future.

Her salary is inadequate to provide sufficient assets to pay her costs of living and this has been the principal cause of extensive indebtedness. While her willingness to help relatives and friends who live in her home is commendable from a social standpoint, it has not served her well in providing sufficient financial assets to pay her debts. Although the second bankruptcy has apparently taken care of many of the debts cited in the SOR, the fact that she has taken bankruptcy, not just once but twice in the last ten years, militates against the grant of a security clearance. Some of the circumstances that led to the bankruptcies no longer exist but the totality of Applicant's adverse financial situation continues and shows few signs of improvement.

As the policy prescribes, the burden shifted to the Applicant to show that Mitigating Conditions (MC) are applicable. She has failed to meet the burden of proof requirement to mitigate the allegations.

In all adjudications the protection of our national security is of paramount concern. Persons who have access to classified information have an overriding responsibility for the security concerns of the nation. The objective of the security clearance process is the fair-minded, commonsense assessment of a person's trustworthiness and fitness for access to classified information. The "whole person" concept recognizes that we should view a person by the totality of their acts and omissions. Each case must be judged on its own merits taking into consideration all relevant circumstances, and applying sound judgment, mature thinking, and careful analysis. While Applicant is a well-meaning person who has taken care of friends and family, the requirements in security clearance proceedings for good fiscal management precludes the grant of a clearance.

After considering all the evidence in its totality and as an integrated whole to focus on the whole person of Applicant, I conclude that Applicant has not been successful in resolving her financial difficulties and it is premature to grant her a clearance.

## **FORMAL FINDINGS**

Formal findings as required by the Directive (Par. E3.1.25) are as follows:

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

Subparagraph 1.l.: Against Applicant

Subparagraph 1.m.: Against Applicant

Subparagraph 1.n.: For Applicant

Subparagraph 1.o.: Against Applicant

Subparagraph 1.p.: Against Applicant

Subparagraph 1.q.: Against Applicant

Subparagraph 1.r.: Against Applicant

Subparagraph 1.s.: Against Applicant

Subparagraph 1.t.: 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 renew a security clearance for Applicant. Clearance is denied.

Charles D. Ablard

Administrative Judge