

DATE: June 24, 2004

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In re:

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SSN: -----

Applicant for Security Clearance

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ISCR Case No. 03-10645

**DECISION OF ADMINISTRATIVE JUDGE**

**JAMES A. YOUNG**

**APPEARANCES**

**FOR GOVERNMENT**

Francisco J. Mendez, Esq., Department Counsel

**FOR APPLICANT**

*Pro Se*

**SYNOPSIS**

Applicant has delinquent debts totaling more than \$6,400. Although some of the debts resulted from conditions beyond her control, Applicant failed to demonstrate the likelihood that the delinquencies would be resolved in the near future. 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 30 December 2003, DOHA issued a Statement of Reasons<sup>(1)</sup> (SOR) detailing the basis for its decision-security concerns raised under Guideline F (Financial Considerations) of the Directive. Applicant answered the SOR in writing on 9 February 2004 and elected to have a hearing before an administrative judge. The case was assigned to me on 22 arch 2004. On 13 April 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. DOHA received the hearing transcript (Tr.) on 21 April 2004.

**FINDINGS OF FACT**

Applicant is a 50-year-old administrative assistant and technical librarian for a defense contractor. Her family has a long and distinguished record of service to the U.S. Supervisors and fellow employees find Applicant to be trustworthy and of high moral character.

Applicant was married for 15 years, the last eight of which she spent at home caring for the couple's son. After her divorce in 1989, Applicant was reduced to living on the funds granted by the divorce decree and child support for her son. When her ex-husband went bankrupt, he greatly reduced the amount of child support he paid. On the advice of her attorney, Applicant filed bankruptcy. At about the same time, the mortgage company foreclosed on her house and a vehicle was repossessed.<sup>(2)</sup> Ex. 9 at 7. Applicant was married to her second husband from 1993-95.

Between 1991 and July 2002, when she completed her security clearance application, Applicant held 17 jobs. In 2000, she started work as an instructor for a computer manufacturer, but was laid off in the information technology slump of 2001. It took her 15 months to find a "good full time job" But Applicant now earns \$3,000 less than she did in her previous position.

Applicant admitted all of the debts listed in the SOR. But she paid the medical debt alleged in ¶ 1.g. and the telephone company told her the debt alleged in ¶ 1.a. is not hers. That leaves her with more than \$6,400 in delinquent debts.

Applicant consulted a consumer credit service in 2001. The service set up a payment plan, but Applicant was unable to make the necessary payments after she was laid off. Applicant consulted another credit counseling service in 2003. Applicant was unable to agree to a plan because the service wanted her to pay \$785 a month, which she felt she could not afford. So, the service advised her to file for bankruptcy. Applicant does not wish to do that again and has "chosen to work through this debt problem." Answer at 2. Applicant's son is now 22-years-old, lives with his mother, recently found full-time employment, and helps Applicant with the bills. Ex. 1 at 8; Tr. 27.

### 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.

Enclosure 2 of the Directive sets forth personal security guidelines, as well as the disqualifying conditions (DC) and mitigating conditions (MC) under each guideline. 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. 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).

Once the Government establishes a disqualifying condition by substantial evidence, the burden shifts to the applicant to rebut, explain, extenuate, or mitigate the facts. ISCR Case No. 01-20700 at 3 (App. Bd. Dec. 19, 2002); *see* 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.

### CONCLUSIONS

In the SOR, DOHA alleged Applicant had nine delinquent debts (¶¶ 1.a.-1.i.), was unable or unwilling to satisfy her delinquent debts (¶ 1.j.), and had declared bankruptcy in 1990. An applicant who is financially overextended is at risk of having to engage in illegal acts to generate funds. Directive ¶ E2.A6.1.1.

The Government established by substantial evidence each of the allegations in the SOR. Applicant has a history of not meeting her financial obligations (DC E2.A6.1.2.1.) and is unable to satisfy her debts (DC E2.A6.1.2.3.). Much of Applicant's financial difficulties resulted from conditions beyond her control-her divorce, loss of jobs and inability to

find full-time employment, and the expense of her surgery. (3) MC E2.A6.1.3.3. Although she has received credit counseling, there are no clear indications that her problem is resolved or under control. Therefore, MC E2.A6.1.3.4. does not apply. Applicant made a good faith-effort to resolve the debts in ¶¶ 1.a. and 1.g., but she has not produced evidence that she is working with the other creditors to resolve her liabilities to them. Thus, MC E2.A6.1.3.6. does not apply. I find against Applicant on all but ¶¶ 1.a. and 1.g.

### **FORMAL FINDINGS**

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

Paragraph 1. Guideline F: AGAINST APPLICANT

Subparagraph 1.a.: For 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.: For Applicant

Subparagraph 1.h.: Against Applicant

Subparagraph 1.i.: Against Applicant

Subparagraph 1.j.: Against Applicant

Subparagraph 1.k.: 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.

**James A. Young**

**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.
2. It appears this was a voluntary repossession. Ex. A at 2. The SOR did not allege either the repossession or the foreclosure.
3. The surgical debts do not appear to be delinquent.