

DATE: May 27, 2005

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In Re:

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SSN: -----

Applicant for Security Clearance

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ISCR Case No. 03-10932

## **DECISION OF ADMINISTRATIVE JUDGE**

**MATTHEW E. MALONE**

### **APPEARANCES**

#### **FOR GOVERNMENT**

Juan J. Rivera, Esquire, Department Counsel

#### **FOR APPLICANT**

Pro Se

### **SYNOPSIS**

Applicant accrued almost \$8,000 in delinquent debt through a combination of financial mismanagement and a divorce. A 1997 bankruptcy discharged debts her ex-husband failed to pay as required by their 1996 divorce decree. Thereafter, Applicant accrued new delinquencies when an attempted reconciliation with her ex-husband failed and he abandoned her. Those debts have been discharged through a 2004 bankruptcy. Applicant's circumstances have changed sufficiently to mitigate the resulting Guideline F security concerns. She has also mitigated Guideline E concerns from her alleged falsification of a security clearance questionnaire (SF 86). Clearance is granted.

### **STATEMENT OF THE CASE**

After reviewing the results of Applicant's background investigation, adjudicators for the Defense Office of Hearings and Appeals (DOHA) were unable to make a preliminary affirmative finding<sup>(1)</sup> it is clearly consistent with the national interest to give Applicant a security clearance. On June 8, 2004, DOHA issued to Applicant a Statement of Reasons (SOR) alleging facts that raise security concerns addressed in the Directive under Guideline E (personal conduct) and Guideline F (financial considerations). Applicant timely answered the SOR (Answer), admitted all but two<sup>(2)</sup> of the allegations, and requested a hearing.

The case was assigned to me on September 1, 2004, and I convened a hearing October 7, 2004. The parties appeared as scheduled and the government presented eight exhibits (GE 1 through 8), which were admitted without objection. Applicant testified in her own behalf and presented nine exhibits (AE A through I), which were admitted without objection. I left the record open after hearing to allow Applicant time to submit an additional document I deemed relevant and material to the issues herein. Applicant timely submitted a nine-page exhibit admitted without objection as AE J. DOHA received the transcript (Tr) on October 19, 2004.

### **FINDINGS OF FACT**

After a thorough review of the pleadings, transcript, and exhibits, I make the following essential findings of fact:

Applicant is 58 years old and employed as a security guard by a defense contractor. She is seeking her first security clearance as required by her job description. Applicant has been married twice - from 1979 until 1981, and from 1985 until 1996. She has one child from her first marriage.

Applicant's second marriage ended in divorce in State A, after which Applicant moved to State B. A marital settlement agreement<sup>(3)</sup> executed in May 1996 as part of the divorce left the house to her ex-husband in exchange for the husband assuming all marital debts, and that neither party would be obligated to pay support to the other. It also required the parties to pay on any accounts opened in their respective names individually, and that the Applicant's ex-husband was required to pay certain specified joint accounts the couple had held. Sometime in the next 18 months, Applicant became aware that her ex-husband had failed to pay those debts and that she was being held liable for them as he had filed for bankruptcy protection. Applicant was unable to support herself and satisfy those marital debts. Eventually, she also had to seek bankruptcy protection and obtained a Chapter 7 discharge in July 1997.

Over the next three years, Applicant was either self-employed as a cleaning lady, or worked multiple jobs cleaning houses and selling furniture on commission. In August 2000, she and a co-worker at the furniture store were fired following a dispute over who was entitled to a commission on a mattress each claimed to have sold. Financially, Applicant was barely making ends meet and she had to rely on credit cards more than was prudent. Four such accounts in her name have been charged off as business losses for failure to pay as required. (SOR ¶1.a, ¶1.b, ¶1.c, and ¶1.d). Additionally, Applicant had sporadic health care benefits and accrued at least three delinquent debts from unpaid medical bills. (SOR ¶1.h, ¶1.k, and ¶1.m). She also was unable to keep up with utilities and telephone bills (SOR ¶1.g, ¶1.i, ¶1.j, ¶1.l) and was evicted from one apartment for non-payment of rent (SOR ¶1.e).

In 2000, Applicant and her ex-husband attempted a reconciliation. He agreed to leave his job in State A and move to State B with her. She funded the move mainly on credit, and supported him while he looked for work. Not long after he moved in with Applicant, he left her, taking her money and some personal property. Applicant has been trying to pay off the debts accrued through these events ever since; however, because she had to rely on credit to effect this reconciliation in the first place, the net effect was to set her further back financially than she already was. In June 2000, Applicant sought help from a consumer credit counseling service, but the payment plan they proposed to establish with her creditors was more than she could afford each month.

Applicant found work as a security officer in March 2001 and hired on with her current employer in August 2001. After the September 11 attacks, Applicant was tasked with working double shifts at every opportunity, resulting in 16 to 20-hour days for several months. Applicant was asked to submit an SF 86 for a clearance in December 2001. From that form, she omitted information about her debts and about her termination from the aforementioned furniture sales job. Applicant disclosed her 1997 bankruptcy and claims she forgot about the furniture job. She also avers she was unsure about the status of her more recent debts when she filled out the SF 86. The process of completing her SF 86 was disjointed and difficult owing to her long hours, and she barely reviewed the document as it was presented to her when she came in to pick up her paycheck.

Applicant does not live extravagantly as she owns a used car and rents a small studio apartment. She has not missed or been late in paying her rent or other current obligations in nearly three years and is well-regarded by her employer for her honesty, reliability, and professionalism.

## POLICIES

The Directive sets forth adjudicative guidelines<sup>(4)</sup> for consideration when evaluating an Applicant's suitability for access to classified information. Security clearance decisions must reflect consideration of both disqualifying and mitigating conditions under each adjudicative issue applicable to the facts and circumstances of each case. Each decision must also reflect a fair and impartial common sense consideration of the factors listed in Section 6.3 of the Directive. The presence or absence of a disqualifying or mitigating condition is not determinative of a conclusion for or against an Applicant. However, specific applicable guidelines should be followed whenever a case can be measured against them as they represent policy guidance governing the grant or denial of access to classified information. Having considered the record evidence as a whole, I conclude the relevant adjudicative guidelines to be applied here are

Guideline E (personal conduct) and Guideline F (financial considerations).

### BURDEN OF PROOF

A security clearance decision is intended to resolve whether it is clearly consistent with the national interest<sup>(5)</sup> for an Applicant to either receive or continue to have access to classified information. The government bears the initial burden of proving, by something less than a preponderance of the evidence, controverted facts alleged in the SOR. If the government meets its burden it establishes a *prima facie* case that it is not clearly consistent with the national interest for the Applicant to have access to classified information. The burden then shifts to the Applicant to refute, extenuate or mitigate the government's case. Because no one has a "right" to a security clearance, the Applicant bears a heavy burden of persuasion.<sup>(6)</sup> 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 as his or her own. The "clearly consistent with the national interest" standard compels resolution of any reasonable doubt about an Applicant's suitability for access in favor of the government.<sup>(7)</sup>

### CONCLUSIONS

The security concern under Guideline F is that someone who is financially overextended through delinquent debt and poor personal financial management may be at risk of engaging in illegal acts to generate funds to resolve their fiscal difficulties. Here, the government's concerns about Applicant's suitability to hold a clearance are based on her record of delinquent debts totaling approximately \$8,000. The government has presented sufficient information to support these allegations, thereby establishing a *prima facie* case for disqualification under Guideline F. Applicant generated unpaid debts between 1995 and 1997, which were discharged in bankruptcy. She again accrued delinquent debts until another discharge in bankruptcy in 2004. These facts support application of Guideline F disqualifying condition (DC) 1<sup>(8)</sup> and DC 3.<sup>(9)</sup>

By contrast, Applicant's debts in both bankruptcies were due in large measure to the actions of her ex-husband. His failure to live up to the divorce decree and settlement in 1997 left Applicant no choice but to seek a fresh start herself through bankruptcy. As she was trying to start a new life in another state, she was hampered by her own financial mismanagement; however, when her attempted reconciliation with her ex-husband failed and he absconded with her money, Applicant found herself in a financial hole from which she was never able to climb. None of the debts listed are for extravagant spending or unnecessary purchases, and Applicant realized she needed help but was unsure how to proceed. Unable to afford a credit consolidation plan payment, Applicant continued to live a frugal lifestyle and has at least kept pace with her current obligations. Applicant has only recently been able to earn a steady income, which, combined with her recent discharge in bankruptcy, and the unlikely reappearance of her ex-husband, will allow her to avoid such financial distress in the future. Guideline F mitigating condition (MC) 1<sup>(10)</sup> and MC 3<sup>(11)</sup> apply. On balance, I conclude Guideline F for the Applicant.

Under Guideline E, a security concern arises where it is shown an applicant has exhibited questionable judgment, untrustworthiness, unreliability, lack of candor, dishonesty, or unwillingness to comply with rules and regulations. Such conduct may indicate the person may not properly safeguard classified information.<sup>(12)</sup> Here, the government questions Applicant's trustworthiness because it appears she has deliberately omitted from her SF 86 facts about her financial difficulties and the fact she was fired from a job. Applicant was credible in her testimony<sup>(13)</sup> when, consistent with her previous statements to government investigators and in her Answer, she stated she forgot about her job termination. As to her financial responses, Applicant reasonably thought that she had provided enough information by disclosing the fact of her 1997 bankruptcy. Further, with that disclosure, Applicant fairly put the government on notice there may be some concerns about her financial background. Given that Applicant may have deliberated as to whether or not to disclose specific credit card debts, and elected not to, Guideline E DC 2<sup>(14)</sup> applies. However, there was no intent to falsify her answer regarding her employment history. Additionally, as to her responses about financial problems, Guideline E MC 2<sup>(15)</sup> has some application here, although the SF 86 in question must be considered as recent. Nonetheless, Applicant provided all of the information during the ensuing investigation and has been forthcoming on this issue throughout this

process. Having carefully weighed all of the available evidence, and having tried to make a fair and commonsense assessment of the record before me as required by Directive Section E2.2.3, I conclude Guideline E in favor of the Applicant.

Based on available information about Applicant's financial difficulties and her trustworthiness, this record initially raises reasonable doubts about Applicant's ability to protect classified information and to exercise the requisite good judgment and discretion expected of one in whom the government entrusts its interests. However, the record also supports a conclusion those doubts are extenuated by current circumstances and have been resolved to the government's satisfaction.

### **FORMAL FINDINGS**

Formal findings regarding each SOR allegation are as follows:

Paragraph 1, Guideline F (Financial): 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

Subparagraph 1.l: For the Applicant

Subparagraph 1.m: For the Applicant

Subparagraph 1.n: For the Applicant

Paragraph 2, Guideline E (Personal Conduct): FOR THE APPLICANT

Subparagraph 2.a: For the Applicant

Subparagraph 2.b: 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 the Applicant. Clearance is granted.

Matthew E. Malone

## Administrative Judge

1. Required by Executive Order 10865, as amended, and by DoD Directive 5220.6 (Directive), as amended.
2. Applicant denied the allegations of deliberate falsification under SOR ¶2.a and ¶2.b.
3. AE J.
4. Directive, Enclosure 2.
5. *See Department of the Navy v. Egan*, 484 U.S. 518 (1988).
6. *See Egan*, 484 U.S. at 528, 531.
7. *See Egan*; Directive E2.2.2.
8. Directive, E2.A6.1.2.1. A history of not meeting financial obligations;
9. Directive, E2.A6.1.2.3. Inability or unwillingness to satisfy debts;
10. Directive, E2.A6.1.3.1. The behavior was not recent;
11. Directive, 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);
12. Directive, E2.A5.1.1.
13. Having had the opportunity to assess Applicant's testimony firsthand and consider her personal demeanor in response to cross examination by Department Counsel and questions from the bench, I found her to be sincere, fully appreciative of the gravity of this process, and wholly devoid of any purpose of evasion.
14. Directive, E2.A5.1.2.2. The deliberate omission, concealment, or falsification 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;
15. Directive, E2.A5.1.3.2. The falsification was an isolated incident, was not recent, and the individual has subsequently provided correct information voluntarily;