

DATE: October 26, 2004

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In Re:  
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SSN: -----

Applicant for Security Clearance

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ISCR Case No. 03-12524

**DECISION OF ADMINISTRATIVE JUDGE**

**HENRY LAZZARO**

**APPEARANCES**

**FOR GOVERNMENT**

Juan R. Rivera, Esquire, Department Counsel

**FOR APPLICANT**

*Pro Se*

**SYNOPSIS**

Applicant has more than \$33,000.00 in outstanding debts that either are past due, or have been charged off or submitted for collection. Most of the accounts have been delinquent for many years, and, despite previous assertions by Applicant they would be quickly resolved, nothing has been done to satisfy them. Further, in January 2002, she reported her monthly living expenses exceeded her net family income by \$962.00. Her present stated plan of borrowing money from her retirement account to pay the creditors agreed upon reduced settlement amounts, even if acted upon, is inadequate to return her to a position of financial stability. Clearance is denied.

**STATEMENT OF THE CASE**

On December 31, 2003, the Defense Office of Hearings and Appeals (DOHA) issued a Statement of Reasons (SOR) to Applicant stating they were unable to find it is clearly consistent with the national interest to grant or continue a security clearance for Applicant. [\(1\)](#) The SOR, which is in essence the administrative complaint, alleges a security concern under Guideline F, for financial considerations.

Applicant submitted a sworn answer to the SOR that was received by DOHA on March 1, 2004, and requested a hearing. Applicant admitted all allegations contained in the SOR.

The case was assigned to another administrative judge on June 28, 2004, and a notice of hearing was issued on June 29, 2004, scheduling the hearing for July 15, 2004. The case was reassigned to me on July 2, 2004, to be heard in connection with other cases I had scheduled in the same region. On July 12, 2004, the previously scheduled hearing date was cancelled, and, on July 26, 2004, a new notice of hearing was issued rescheduling the hearing for August 17, 2004. An amended notice of hearing was issued on August 16, 2004, rescheduling the hearing for August 18, 2004 in a different city within the same state, as necessitated by hurricane damage caused to the hearing facility in the original city. The hearing was conducted as rescheduled.

The government submitted five documentary exhibits that were marked as Government Exhibits (GE) 1-5, and admitted into the record without an objection. Applicant testified and submitted ten documentary exhibits that were marked as Applicant's Exhibits (AE) 1-10, and admitted into the record without an objection. The transcript was received on August 27, 2004.

### **FINDINGS OF FACT**

Applicant's admissions to the allegations contained in the SOR are incorporated herein. In addition, after a thorough review of the pleadings, exhibits, and testimony, I make the following findings of fact:

Applicant is 50 years old, has been married since June 1976, and has two children, ages 24 and 16. She has been employed by a defense contractor since July 1986, presently works as a contracts specialist, and is paid \$592.01 per week. Her net pay is \$273.20 per week. Deducted from her pay, in addition to \$108.62 for federal taxes and \$27.26 for insurance coverage, are payments of \$67.45 for an auto/home loan, \$56.06 loan repayment to her retirement account, 18.00 for savings bonds, \$5.92 for charitable contributions, and a savings deposit of \$35.00. The only other reported family income is a monthly \$957.00 social security retirement payment to her husband.

Applicant graduated from high school in 1972, and has earned approximately one year of college credits. She has held a secret security clearance for about 18 years, and there are no reported complaints alleging she has ever mishandled classified information. The exhibits she submitted attest to her being a dependable, organized, and cooperative employee who is considered a strong team member. She is rated as a "successful contributor" to her employer's mission. She has been awarded the President's Volunteer Service Award by the President of the United States in recognition of volunteer service she has provided to the community.

The SOR lists 25 accounts, totaling more than \$33,000.00, that either are past due, or have been charged off or submitted for collection. Many of the accounts have been in a delinquent status since the mid to late 1990s. Applicant attributes the delinquent accounts to a reduction in her husband's income of approximately \$5,000.00 annually that occurred in either 1995 or 1996, his alcoholism, the even greater reduction in his income now that he has retired, and her 16-year-old son's diabetes.

She submitted a security clearance application on February 8, 2000 (GE 1), and in response to question 43 (General Remarks) stated: " I have talked with my creditors, and have worked out payment plans, as of 01/25/00, I will be caught up to date by the summer of 2000."

Applicant was interviewed about her financial problems on January 28, 2002 (GE 2), and stated she had contacted a debt management agency and was in the process of providing them with a credit history in order to arrange repayment plans with each of her creditors. While acknowledging she did not have the ability to satisfy her financial obligations at that time, she indicated she would repay all delinquent accounts within four years with the assistance of the agency. She testified she did not continue with the debt management program because it was not legitimate. However, her testimony concerned an agency different from the one referred to in GE 2. Applicant provided a financial statement in GE 2 in which she disclosed her family net income was \$1,423.00, monthly expenses were \$1,969.00, and monthly debt payments were \$416.00, resulting in a negative net remainder of \$962.00. She also listed her assets as: real estate: \$45,000.00; bank savings: \$5.00; stocks/bonds: \$20,000.00; and car/boat: \$1,000.00.

Applicant submitted documentation showing she has made some payments on a couple of her delinquent accounts, and submitted a statement from herself wherein she claims to have made additional payments, although she did not provide proof the payments were actually made. Her present plan to deal with the delinquent accounts is to borrow \$16,000.00 from her retirement account in October 2004, and satisfy all remaining creditors by payment of reduced sums she claims to have negotiated with them. She estimates the total in her retirement accounts to now be \$39,000.00.

Applicant testified she was unable to borrow from her retirement account earlier to satisfy these debts because she had taken a \$10,000.00 loan from the account four years ago, and could not obtain another until 30 days after that loan was paid off in September 2004. She did not explain how she intended to deal with the negative cash flow outlined in the financial statement she provided with GE 2 that will most likely increase if she actually does again obtain a loan from her retirement account.

## POLICIES

The Directive sets forth adjudicative guidelines to consider when evaluating a person's eligibility to hold a security clearance. Chief among them are the Disqualifying Conditions (DC) and Mitigating Conditions (MC) for each applicable guideline. Additionally, each clearance 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 ¶ 6.3.1 through ¶ 6.3.6 of the Directive. Although the presence or absence of a particular condition or factor for or against clearance is not outcome determinative, the adjudicative guidelines should be followed whenever a case can be measured against this policy guidance. Considering the evidence as a whole, Guideline

F, pertaining to financial considerations, with its respective DC and MC, is most relevant in this case.

## 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.<sup>(2)</sup> The government has the burden of proving controverted facts.<sup>(3)</sup> The burden of proof in a security clearance case is something less than a preponderance of evidence<sup>(4)</sup>, although the government is required to present substantial evidence to meet its burden of proof.<sup>(5)</sup> "Substantial evidence is more than a scintilla, but less than a preponderance of the evidence."<sup>(6)</sup> Once the government has met its burden, the burden shifts to an applicant to present evidence of refutation, extenuation, or mitigation to overcome the case against him.<sup>(7)</sup> Additionally, an applicant has the ultimate burden of persuasion to obtain a favorable clearance decision.<sup>(8)</sup>

No one has a right to a security clearance<sup>(9)</sup> and "the clearly consistent standard indicates that security clearance determinations should err, if they must, on the side of denials."<sup>(10)</sup> Any reasonable doubt about whether an applicant should be allowed access to classified information must be resolved in favor of protecting national security.<sup>(11)</sup>

## CONCLUSIONS

Under Guideline F, a security concern exists when a person has significant unpaid debts. An individual who is financially overextended is at risk of having to engage in illegal or unethical acts to generate funds to meet financial obligations. Similarly, an individual who is financially irresponsible may also be irresponsible, unconcerned, or careless in their obligation to protect classified information. Behaving responsibly or irresponsibly in one aspect of life provides an indication of how a person may behave in other aspects of life.

The government has established its case under Guideline F. Applicant has 25 accounts that have been delinquent for years. She has exhibited neither the ability nor the willingness to rectify her poor financial condition despite having twice made representations the debts would be satisfied in relatively short order. Disqualifying Conditions (DC) 1: *A history of not meeting financial obligations*; and DC 3: *Inability or unwillingness to satisfy debts* apply in this case.

Applicant has recently made documented modest payments on a couple of the accounts. She has failed to provide documentation in support of her claim that other payments have been made. Considering her previous false representations about plans to pay off her debts, Applicant's claims to have made payments without supporting documentation are not acceptable proof. Finally, her plan to satisfy the delinquent debts by obtaining a loan from her retirement plan does nothing to provide long-term financial stability in view of the continued high negative cash flow she will experience.

She has a track record of financial irresponsibility that spans almost a decade. She attributes her financial problems to the loss of income her family sustained beginning in the mid-90s and long term medical expenses, entitling her to some consideration under Mitigating Condition (MC) 3: *The conditions that resulted in the behavior were largely beyond the person's control* . . . . However, that consideration is more than offset by the facts she has done little or nothing to bring her expenses within her income, and has taken no action to resolve the accounts until recently.

Considering all relevant and material facts and circumstances present in this case, including Applicant's employment and community performance, the circumstances she attributes as the cause of her becoming severely delinquent on various accounts, the recent minimal actions she has taken to return her finances to order, the whole person concept, the factors listed in ¶ 6.3.1 through ¶ 6.3.6 of the Directive, and the applicable disqualifying and mitigating conditions, I find Applicant has failed to mitigate this security concern. It is impossible to reconcile her demonstrated irresponsibility with the degree of trust and confidence that must be placed in one who is granted access to the nation's secrets. Applicant has failed to overcome the case against her or satisfy her ultimate burden of persuasion. Guideline F is decided against Applicant.

### **FORMAL FINDINGS**

SOR ¶ 1-Guideline F: Against the Applicant

Subparagraphs a-z Against the Applicant

### **DECISION**

In light of all 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.

Henry Lazzaro

Administrative Judge

1. This action was taken under Executive Order 10865 and DoD Directive 5220.6, dated January 2, 1992, as amended and modified (Directive).
2. ISCR Case No. 96-0277 (July 11, 1997) at p. 2.
3. ISCR Case No. 97-0016 (December 31, 1997) at p. 3; Directive, Enclosure 3, Item E3.1.14.
4. *Department of the Navy v. Egan* 484 U.S. 518, 531 (1988).
5. ISCR Case No. 01-20700 (December 19, 2002) at p. 3 (citations omitted).
6. ISCR Case No. 98-0761 (December 27, 1999) at p. 2.
7. ISCR Case No. 94-1075 (August 10, 1995) at pp. 3-4; Directive, Enclosure 3, Item E3.1.15.
8. ISCR Case No. 93-1390 (January 27, 1995) at pp. 7-8; Directive, Enclosure 3, Item E3.1.15
9. *Egan*, 484 U.S. at 528, 531.
10. *Id* at 531.
11. *Egan*, Executive Order 10865, and the Directive.