

KEYWORD: Financial; Personal Conduct

DIGEST: Applicant accumulated delinquent debts between about 1997 and 2001. The debts arose largely from circumstances beyond her control, including her divorce, multiple injuries and illnesses resulting in uninsured medical bills, periods of unemployment, renter's default on a rental agreement causing foreclosure of property, and negligent repair work on a van destroying its value and resulting in voluntary repossession. Subsequently, Applicant paid off substantially all her delinquent debts. Applicant mitigated the security concerns arising from her financial difficulties. Applicant did not intend to deceive the government when she mistakenly denied certain delinquent debts on her security clearance application. Clearance is granted.

CASENO: 03-15298.h1

DATE: 10/27/2005

DATE: October 27, 2005

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In re:

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SSN: -----

Applicant for Security Clearance

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ISCR Case No. 03-15298

**DECISION OF ADMINISTRATIVE JUDGE**

**MICHAEL J. BRESLIN**

**APPEARANCES**

## **FOR GOVERNMENT**

Sabrina Redd, Esq., Department Counsel

## **FOR APPLICANT**

Terry Hedden, Personal Representative

## **SYNOPSIS**

Applicant accumulated delinquent debts between about 1997 and 2001. The debts arose largely from circumstances beyond her control, including her divorce, multiple injuries and illnesses resulting in uninsured medical bills, periods of unemployment, renter's default on a rental agreement causing foreclosure of property, and negligent repair work on a van destroying its value and resulting in voluntary repossession. Subsequently, Applicant paid off substantially all her delinquent debts. Applicant mitigated the security concerns arising from her financial difficulties. Applicant did not intend to deceive the government when she mistakenly denied certain delinquent debts on her security clearance application. Clearance is granted.

## **STATEMENT OF THE CASE**

On January 8, 2002, Applicant submitted an application for a security clearance. The Defense Office of Hearings and Appeals (DOHA) declined to grant or continue a security clearance for Applicant under Executive Order 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 (the "Directive"). On March 14, 2005, DOHA issued a Statement of Reasons (SOR) detailing the basis for its decision. The SOR alleges security concerns raised under Guideline F, Financial Considerations, and Guideline E, Personal Conduct, of the Directive.

Applicant answered the SOR in writing on April 6, 2005. She elected to have a hearing before an administrative judge.

This case was originally assigned to another administrative judge but was reassigned to me on August 1, 2005. With the concurrence of Applicant and Department Counsel, I convened the hearing on September 15, 2005. The government

introduced Exhibits 1 through 8. Applicant provided Exhibits A through L and the testimony of two witnesses. Also, Applicant testified on her own behalf. At Applicant's request, I kept the record open to allow additional time to submit documents. Thereafter, Applicant submitted Exhibits M through Q, which were admitted without objection. DOHA received the final transcript of the hearing (Tr.) on September 27, 2005.

### **FINDINGS OF FACT**

Applicant admitted the factual allegations in ¶¶ 1.a, 1.e, 1.f, 1.h, 1.k, and 1.p of the SOR, with explanations. Applicant's Answer to SOR, dated April 6, 2005. Those admissions are incorporated herein as findings of fact. Applicant denied the factual allegations in ¶¶ 1.b, 1.c, 1.d, 1.g, 1.i, 1.j, 1.l, 1.m, 1.n, 1.o, and 2.a of the SOR. *Id.* After a complete and thorough review of the evidence in the record, I make the following additional findings of fact.

Applicant is 42 years old. Ex. 1 at 1. She works as an administrative assistant for a defense contractor. Tr. at 3.

Applicant married for the first time in 1981 and divorced in 1984. Ex. 1 at 7. She married for the second time in 1986; that marriage ended in divorce in 1995. Ex. 1 at 7. Applicant married her current husband in July 1995. Tr. at 26. Applicant's husband had previously served in the U.S. Air Force as a security police officer, from 1981 until 1992. Tr. at 31.

In March 1996, Applicant's father-in-law passed away, and Applicant and her husband moved to an adjacent state to help take care of her mother-in-law. *Id.* Applicant's mother-in-law conveyed to them about three acres of land where they placed a manufactured home. Tr. at 26.

Applicant worked different jobs, teaching gymnastics in the afternoon and working for the school board. Tr. at 35. Applicant's husband was employed by a retail furniture store and worked nights and weekends. Tr. at 34. He became depressed because he could not spend time with his family. *Id.*

Applicant was burdened by debts from her previous marriage. Tr. at 70. The family's limited income made it impossible to pay the old debts, and she fell farther and farther behind on the payments. *Id.* In May 1997, Applicant filed for bankruptcy under Chapter 7. Ex. 7 at 1. Her debts were discharged in bankruptcy on September 12, 1997. *Id.* at 43.

Applicant and her husband purchased a used van. Applicant's father co-signed the loan. Tr. at 49. After about one year, the transmission malfunctioned. Tr. at 47. Applicant took the van to a transmission shop for repair. The shop had the vehicle for about three months but did not fix it. *Id.* They disassembled the transmission, but never reassembled it. Tr. at 47-48. Applicant took the shop to small claims court and obtained a judgment for \$2,662.75, but was unable to collect on it. *Id.*; Ex. 8 at 82. The dealer that sold them the van estimated the cost of repair as being greater than its value. Tr. at 48. Applicant left the van with the dealer as a voluntary repossession. Applicant's credit report reflects a default on the vehicle loan.

In 1997, Applicant was diagnosed as having suffered a type of stroke and spent a week in the hospital. Tr. at 36, 49. Most of the medical bills were covered by insurance, but some appeared as unpaid on her credit report nonetheless. *Id.* She also had nasal surgery, an operation on her vocal chords, and surgery on her foot. Tr. at 37, 49-50. That same year, Applicant's husband dislocated his shoulder, resulting in lost wages and medical expenses. Tr. at 37. Additionally, Applicant's minor children required medical services. *Id.* As a result, Applicant incurred medical expenses not covered by insurance and was unable to pay them when due. Tr. at 50.

In early 2001, Applicant and her husband moved back to their present location to get a fresh start. Applicant's father and step-mother allowed them to live in a rental property rent-free for about three or four months. Tr. at 42, 45. Applicant began working as a gymnastics instructor. Tr. at 39. Applicant's husband was suffering from depression and pneumonia, and did not work from early January until about 25 February 2001. Tr. at 29.

After they moved, Applicant and her husband rented their former home near Applicant's mother-in-law's house. Tr. at 27. Unfortunately, the renters did not pay the rent. *Id.* Ultimately, Applicant and his wife took action to evict them from the premises. *Id.* Because they received no rent payments, Applicant fell behind on the mortgage. The mortgage company foreclosed on the property, including the land from Applicant's mother-in-law. *Id.*

Applicant's husband began working as a general manager for a building supply company earning about \$500.00 per week. Tr. at 29. He now earns about \$850.00 to \$900.00 each week. *Id.*

Applicant began working in her present position in January 2002. Ex. 1 at 3. On January 8, 2002, she completed an SF 86, Security Clearance Application. Ex. 1 at 1. She did so by first filing out a worksheet. Tr. at 83; Ex. F at 2. Apparently, the employer provided Applicant with a blank questionnaire for the SF 85P-S (not the SF 86 required for Applicant's position). Module 20 of the blank form inquired whether Applicant was then over 180 days delinquent on any financial obligation. Ex. F at 2. Applicant answered "Yes." She listed the foreclosed mortgage in the sole space provided. *Id.*

Applicant then entered the information into an electronic version of the SF 86 on the computer in the employer's office.

Tr. at 85. Applicant had considerable difficulty entering the data into the electronic form. Tr. at 82. The questions on the handwritten questionnaire for the SF 85P-S did not match the questions on the SF 86. Tr. at 93; *compare* Ex. P and Ex. Q. The computer locked up several times, requiring Applicant to start over. Tr. at 82. The employer's representative who assisted her with the electronic form recalls her difficulty in getting the information entered into the program. Ex. B at 2. He also remembered Applicant indicating that she "had experienced a Bankruptcy and had late payments." *Id.*; Tr. at 97.

In answer to question 33 on the form, Applicant indicated that she filed for bankruptcy in 1997. Ex. 1 at 13. In response to question 35, she reported a repossession of a home in 2001. *Id.* Question 38 inquired whether Applicant had been over 180 days delinquent on any debts within the preceding seven years. The answer entered into the electronic database was, "No." *Id.* Applicant signed the electronic version of the SF 86 on January 18, 2002. Ex. 1 at 14. She recalled looking over the electronic version of the application before she signed it, but did not notice the error in response to question 38. Tr. at 98-99.

After beginning her present employment, Applicant began addressing some of her unpaid bills. Tr. at 87, 90. She is also current on her ordinary living expenses. Tr. at 91. Applicant did not obtain financial counseling after her bankruptcy in 1997. Tr. at 99.

During the security investigation, Applicant learned the full extent of the alleged debts appearing on her credit report. She provided proof of payment for some accounts and challenged others. She borrowed \$4,000.00 from her father and stepmother and used it to pay off several debts. Tr. at 91. The current status of the debts listed in the SOR is shown below.

#	Account	Status	Evidence
1.a	Collection Co. \$328.00 (medical bill)	Paid.	Ex. J; Tr. at 56.
1.b	Collection Co. 954.00 (medical bill)	Disputed.	Tr. at 57-59; Ex. 4 at 1 (believes paid by insurance).
1.c	Collection Co. 228.00 (medical bill)	Paid.	Tr. at 59-60; Ex. J at 6.
1.d	Collection Co. 153.00 (medical bill)	Paid.	Tr. at 60; Ex. J at 2.
1.e	Collection Co. 1,579.00	Paid.	Tr. at 61; Ex. J at 4.
1.f	Auto Dealer 15,257.00	Open.	Tr. at 61-64.
1.g	Medical bill 10,729.00	Paid.	Tr. at 65; Ex. D at 8.
1.h	Medical bills 30.00	Paid.	Tr. at 65-66.
1.i	Medical bill 954.00	Disputed.	Tr. at 57 (same as 1.b, above).
1.j	Medical bill 20.00	Paid.	Tr. at 66-67; Ex. J at 5.

1.k	Medical bills 87.00	Open.	Tr. at 67-68.
1.l	Medical bills 1,019.00 (7 accts)	Paid.	Tr. at 68-69; Ex. K at 2.
1.m	Medical bill 200.00	Paid.	Tr. at 66-67; Ex. J at 5.
1.n	Medical bill 328.00	Paid.	Ex. J; Tr. at 56, 69 (same as 1.a, above).
1.o	Medical bill 228.00	Paid.	Tr. at 59 (same as 1.c, above).

Applicant's supervisors praise her duty performance, honesty and integrity. Exs. A, B, and C. She was recently promoted to a supervisory position. Tr. at 51-52.

### POLICIES

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." *Department of the Navy v. Egan*, 484 U.S. 518, 527 (1988). In Executive Order 10865, *Safeguarding Classified Information Within Industry* (Feb. 20, 1960), the President set out guidelines and procedures for safeguarding classified information within the executive branch.

To be eligible for a security clearance, an applicant must meet the security guidelines contained in the Directive. Enclosure 2 of the Directive sets forth personnel security guidelines, as well as the disqualifying conditions and mitigating conditions under each guideline. The adjudicative guidelines at issue in this case are:

Guideline F, Financial Considerations. An individual who is financially overextended is at risk of having to engage in illegal acts to generate funds. Directive ¶ E2.A6.1.1.

Guideline E, Personal Conduct. Conduct involving questionable judgment, untrustworthiness, unreliability, lack of candor, dishonesty, or unwillingness to comply with rules and regulations could indicate that the applicant may not properly safeguard classified information. Directive, ¶ E2.A5.1.1.

Conditions that could raise a security concern and may be disqualifying, as well as those which could mitigate security

concerns pertaining to these adjudicative guidelines, are set forth and discussed in the conclusions below.

"The adjudicative process is an examination of a sufficient period of a person's life to make an affirmative determination that the person is eligible for a security clearance." Directive, ¶ E2.2.1. An administrative judge must apply the "whole person concept," and consider and carefully weigh the available, reliable information about the person. *Id.* An administrative judge should consider the following factors: (1) the nature, extent, and seriousness of the conduct; (2) the circumstances surrounding the conduct, to include knowledgeable participation; (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 pertinent 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. *Id.*

Initially, the Government must present evidence to establish controverted facts in the SOR that disqualify or may disqualify the applicant from being eligible for access to classified information. Directive, ¶ E3.1.14. Thereafter, the applicant is responsible for presenting evidence to rebut, explain, extenuate, or mitigate the facts. 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 (App. Bd. Dec. 19, 2002). "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.

A person granted access to classified information enters into a special relationship with the government. The government must be able to repose a high degree of trust and confidence in those individuals to whom it grants access to classified information. The decision to deny an individual a security clearance is not a determination as to the loyalty of the applicant. Exec. Ord. 10865, § 7. It is merely an indication that the applicant has not met the strict guidelines the President has established for issuing a clearance.

## CONCLUSIONS

I considered carefully all the facts in evidence and the legal standards discussed above. I reach the following conclusions regarding the allegations in the SOR.

### **Guideline F, Financial Considerations**

Paragraph E2.A6.1.2.1 of the Directive provides that it may be a disqualifying condition if the evidence reveals "[a] history of not meeting financial obligations." Similarly, ¶ E2.A6.1.2.3 indicates that an "[i]nability or unwillingness to satisfy debts" may be disqualifying. Applicant has a history of not meeting her financial obligations. She had numerous

debts that remained unpaid for many years. I find Applicant has shown both a history of failing to meet her financial obligations and an inability to satisfy her debts. I conclude both these potentially disqualifying conditions apply.

The security concerns arising from Applicant's financial difficulties can be mitigated under certain circumstances. Under the Directive, ¶ E2.A6.1.3.1, it may be mitigating where "the behavior was not recent." Applicant's delinquent debts arose between about 1997 and 2001. However, many remained unpaid until recent times, and some are still not completely resolved. I find Applicant's financial problems are recent. This mitigating condition does not apply.

Paragraph E2.A6.1.3.2 of the Directive provides that it may be mitigating where the financial difficulty "was an isolated incident." Applicant's numerous delinquent debts arose over many years because of a variety of reasons. I conclude this mitigating condition does not apply.

Under ¶ E2.A6.1.3.3, it may be mitigating where, "[t]he 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)." Several circumstances beyond her control caused or exacerbated Applicant's financial problems. Applicant's second divorce precipitated her bankruptcy in 1997. The repair shop's failure to properly repair her transmission effectively destroyed the value of the van resulting in its voluntary repossession and the ensuing loan default. Applicant and her husband also experienced several periods of unemployment, which contributed to their inability to meet their financial obligations. Most significantly, they both had numerous medical problems generating multiple medical bills not covered by insurance. I find this mitigating condition applies.

Proof that "[t]he person has received or is receiving counseling for the problem and there are clear indications that the problem is being resolved or is under control," may be mitigating under ¶ E2.A6.1.3.4 of the Directive. Applicant has not obtained financial counseling since her bankruptcy in 1997. This potentially mitigating condition does not apply.

Paragraph E2.A6.1.3.6 of the Directive provides it may be mitigating where "[t]he individual initiated a good-faith effort to repay overdue creditors or otherwise resolve debts." Applicant paid most of the delinquent debts listed in the SOR. Significantly, she began paying some unpaid accounts before the initiation of this action. The only substantial debt that remains unpaid is the amount due after Applicant's voluntary repossession of the van. This is a substantial sum and has remained unpaid for many years. I also note it is an old debt that has not been reduced to a judgment, greatly diminishing its enforceability and its weight as a potential basis for coercion, pressure, or duress. It also appears Applicant and her husband are in a position to make regular payments against such a debt, if required. The other unresolved medical bill is so minor it does not raise security concerns. Considering all the evidence, I find Applicant's financial problems are under control or are being resolved. I conclude this mitigating condition applies.

I considered the potentially disqualifying and mitigating circumstances in light of the "whole person" concept. Applicant is a mature individual with an extensive personal support system. The financial problems at issue arose largely from

circumstances beyond her control, rather than her own negligence or misconduct. Significantly, she took action to begin to resolve these debts before the initiation of this action. Most of the debts have been paid, and the remaining debts do not raise security concerns. Under Applicant's current circumstances the likelihood of a continuation or recurrence of her previous financial problems is remote. I conclude Applicant has mitigated the security concerns arising from her history of failing to meet her financial obligations and her inability to pay her debts.

### **Guideline E, Personal Conduct**

The Directive sets out various factors relevant to an applicant's personal conduct that may be potentially disqualifying. Under ¶ E2.A5.1.2.2 of the Directive, "[t]he deliberate omission, concealment, or falsification of relevant and material facts from any personnel security questionnaire" may be disqualifying. Paragraph 2.a of the SOR alleges Applicant deliberately falsified her response to question 38 of the SF 86 when she denied being over 180 days delinquent on any debts within the preceding seven years. Applicant admitted her answer on the SF 86 was incorrect, but denied that she intended to deceive the government. She asserted she misunderstood the question, or missed it as she struggled to complete the form electronically.

It is apparent Applicant had difficulty completing the electronic version of the SF 86; her employer's representative confirms that fact. Her employer gave her the worksheet for the SF 85P-S rather than the SF 86, so the questions did not match, no doubt adding to the confusion. Significantly, on the handwritten worksheet, Applicant answered "Yes" to a question about debts over 180 days delinquent. The employer's representative recalls Applicant mentioning her history of late payments. Finally, Applicant properly reported a bankruptcy and a repossession, both within the preceding seven years. This is inconsistent with a deliberate attempt to conceal past financial problems. Considering all the evidence, including the demeanor of the witness at the hearing, I find Applicant did not intentionally conceal or falsify facts when she mistakenly answered "No" to question 38 on the SF 86. This potentially disqualifying condition does not apply.

### **FORMAL FINDINGS**

My conclusions as to each allegation in the SOR are:

Paragraph 1, Guideline F: FOR APPLICANT

Subparagraph 1.a: For Applicant

Subparagraph 1.b: For Applicant  
Subparagraph 1.c: For Applicant  
Subparagraph 1.d: For Applicant  
Subparagraph 1.e: For Applicant  
Subparagraph 1.f: For Applicant  
Subparagraph 1.g: For Applicant  
Subparagraph 1.h: For Applicant  
Subparagraph 1.i: For Applicant  
Subparagraph 1.j: For Applicant  
Subparagraph 1.k: For Applicant  
Subparagraph 1.l: For Applicant  
Subparagraph 1.m: For Applicant  
Subparagraph 1.n: For Applicant  
Subparagraph 1.o: For Applicant  
Subparagraph 1.p: For Applicant

Paragraph 2, Guideline E: FOR APPLICANT

Subparagraph 2.a: For Applicant

### **DECISION**

In light of all of 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.

Michael J. Breslin  
Administrative Judge