

DATE: May 28, 2004

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In re:

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SSN: -----

Applicant for Security Clearance

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ISCR Case No. 03-16011

**DECISION OF ADMINISTRATIVE JUDGE**

**PHILIP S. HOWE**

**APPEARANCES**

**FOR GOVERNMENT**

Marc E. Curry, Esq., Department Counsel

Kristian Miller, Esq., Department Counsel

**FOR APPLICANT**

*Pro Se*

**SYNOPSIS**

Applicant incurred delinquent debts over a several year period. She was unable to repay

them due to her low income. She discharged her delinquent debts in bankruptcy, and paid three judgments entered against her. Applicant mitigated the financial considerations security concern, the criminal conduct concern, and the personal conduct concern. Clearance is granted.

**STATEMENT OF THE CASE**

On September 23, 2003, the Defense Office of Hearings and Appeals (DOHA), under Executive Order 10865, *Safeguarding Classified Information Within Industry*, dated February 20, 1960, 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. The SOR detailed reasons under Guideline F(Financial Considerations), Guideline J (Criminal Conduct), and Guideline E (Personal Conduct) 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, and recommended referral to an Administrative Judge to conduct proceedings and determine whether clearance should be granted, continued, denied, or revoked.

In a signed and sworn statement, dated October 21, 2003, Applicant responded to the SOR allegations. She requested a hearing. This case was assigned to me on January 12, 2004. A Notice of Hearing was issued on January 20, 2004, setting the hearing for February 3, 2004. On that date, I convened the hearing to consider whether it is clearly consistent with the national interest to grant Applicant's security clearance. The Government presented seven exhibits which were admitted into evidence. Applicant submitted three exhibits. I received the transcript on February 11, 2004.

**FINDINGS OF FACT**

Applicant admitted the SOR allegations in paragraph 1, except for subparagraphs 1.e., 1.h., and 1.j. Applicant admits paragraph 2; she denied paragraph 3. Those admissions are incorporated herein as findings of fact. After a complete and thorough review of the evidence in the record, and upon due consideration of the same, I make the following additional findings of fact:

Applicant is a 24-year-old government contractor employee working as a customer service representative. Her work product is acceptable. She served in the Army from 1999 until April 2001. She is unmarried and has two children. (Tr. 19, 20, 51, 62, 63; Exhibit 1 at 5; Exhibit 4 at 1)

Applicant has 18 debts that were unpaid due to her lack of funds to pay them, and her lack of understanding of proper financial planning and the use of credit. One debt (subparagraph 1.h.) is a duplicate of another debt listed in the SOR (subparagraph 1.e.). Applicant's debts are discharged in bankruptcy as of November 12, 2003, by order of the U. S. Bankruptcy Court. Applicant filed her Chapter 7 bankruptcy in May 2003 after discussing that option with an attorney in 2000 while in the Army, and then again in 2002, when she decided to file it and had the money to pay an attorney. Those attorneys told Applicant not to pay on the debts until the bankruptcy was finished. (Exhibit C; Exhibit 5 at 2 Tr. 34, 41)

Applicant's debts and their disposition as shown by Exhibit C, the record, and her Answer, are as follows:

<b>SOR ALLEGATION</b>	<b>NATURE OF DEBT AND CURRENT AMOUNT</b>	<b>CURRENT STATUS</b>
1.a.	Gas station credit card, \$96	Discharged in bankruptcy Tr. 21
1.b.	Credit card, \$1401	Same Tr. 22
1.c.	Store purchases, \$603	Same Tr. 23
1.d.	Store purchases, \$157	Same Tr. 23
1.e.	Student loan, \$2675	Same Tr. 23, 24
1.f.	Collection, \$1631	Same Tr. 26, same as 1.b.
1.g.	Bank loan, \$716	Same Tr. 27
1.h.	Student loan, same as 1.e.	Same
1.i.	Store purchases, \$696	Same Tr. 27
1.j.	store, admits (Tr. 29)	Paid judgment Tr. 28, 55
1.k.	Car repossession balance, voluntary repossession, \$4074	Same Tr. 29
1.l.	Car repossession, cousin's car, Applicant co-signer, \$2569	Same Tr. 30
1.m.	Debt for pager, \$38	Same Tr. 32
1.n.	Bank debt, \$422	Same Tr. 32
1.o.	Cable T.V. debt, \$101	Same Tr. 33, 34
1.p.	Utility bill, \$70	Same Tr. 35
1.q.	Gas station and market debt, \$466.06. The original check was \$25.	Paid judgment Tr. 36, 55; Exhibit 6
1.r.	Restaurant debt, \$449. The original check was \$8.00	Paid judgment Tr. 37, 55; Exhibit 7

Applicant incurred the majority of her debts before January 1, 2002, and before entering the Army. She let those bills languish unpaid because of her financial situation when she discovered she was pregnant the first time. She had medical and day care expenses for her son that did not allow her to pay back those debts. She incurred other debts, for cable television, repossessed cars, and bounced checks, while in the Army. Applicant could not pay her debts after she was discharged from the Army because she had two sons to care for, and could find only short term and low-paying jobs.

(Tr. 29, 32, 33, 47; Exhibit 4 at 2)

Applicant wrote three insufficiently funded checks to three of these creditors. The shoe store (subparagraph 1.j.), the gas station and food market (subparagraph 1.q.), and the restaurant (subparagraph 1.r.) were the recipients of Applicant's checks. The latter two creditors sued Applicant in March 2001, served her with the appropriate summons, and obtained judgments against her in May 2001. Meanwhile, in April 2001 Applicant was discharged from the Army, and departed that area. She never received copies of the judgments until notified of their existence in her security interview in 2002. The local prosecutor charged Applicant with a violation of law for writing these checks, and a warrant was issued for Applicant on November 26, 2001. This prosecutor is located in the state where Applicant served in the Army. Applicant notified the prosecutor when told of the warrant in March 2001 that she was moving after leaving the Army, and he could contact her at her mother's home. Applicant received no documents or other notification concerning this action until her security clearance interview. Applicant, when notified in her interview for her security clearance of this warrant, immediately contacted the prosecutor and paid the three checks and the warrant was withdrawn. Paying these checks cost Applicant \$670 because of the fees and court costs. Applicant received the money from her mother to pay these debts. (Tr. 38, 55, 56; Exhibit 5 at 3, Exhibits 6 and 7)

Applicant did not disclose all of her debts on her security clearance application because she was unaware of them because the creditors were not seeking collection. She knew she had debts that were unpaid because she incurred them before entering the Army. However, she listed the one creditor who had sought collection from her. Applicant was unaware that a written off debt continued to be delinquent and collectible. Applicant was unaware of the two judgments against her (set forth in subparagraphs 1.q. and 1.r. of the SOR) until she prepared to file her bankruptcy in January 2003 when she found them listed on her credit report. (Tr. 17, 47, 48, 57)

Applicant is currently enrolled in a college studying computer technology. Her tuition of \$3550 is paid by student loans and grants. (Tr. 52)

Applicant currently has one credit card with a balance of \$300 and pays the minimum amount monthly. Her other debt is her car loan. She also has monthly rent, car insurance, grocery, and child care costs. Her expenses and debts result in a \$200 monthly net income over expenses. (Tr. 50, 53, 54)

Applicant sought and received financial management advice in 2000. She also contacted consumer credit counseling services in late 2001 to help her with her debt problems. They could not arrange installment payments on all her debts, only some of them, and she did not pursue that avenue to resolve her debts. She returned to consideration of bankruptcy to resolve her debts. (Tr. 41, 42)

## **POLICIES**

The adjudication process is based on the whole person concept. All available, reliable information about the person, past and present, is to be taken into account in reaching a decision as to whether a person is an acceptable security risk. Enclosure 2 to the Directive sets forth adjudicative guidelines that must be carefully considered according to the pertinent Guideline in making the overall common sense determination required.

Each adjudicative decision must also include an assessment of: (1) the nature, extent, and seriousness of the conduct; (2) the circumstances surrounding the conduct, and the extent of knowledgeable participation; (3) how recent and frequent the behavior was; (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 (See Directive, Section E2.2.1. of Enclosure 2). Because each security case presents its own unique facts and circumstances, it should not be assumed that the factors exhaust the realm of human experience or that the factors apply equally in every case. Moreover, although adverse information concerning a single condition may not be sufficient for an unfavorable determination, the individual may be disqualified if available information reflects a recent or recurring pattern of questionable judgment, irresponsibility, or other behavior specified in the Guidelines.

Based upon a consideration of the evidence as a whole, I find the following adjudicative guidelines most pertinent to an evaluation of the facts of this case:

**Guideline F: Financial Considerations**

(A) *The Concern:* An individual who is financially overextended is at risk of having to engage in illegal acts to generate funds. Unexplained affluence is often linked to proceeds from financially profitable criminal acts.

(B) Conditions that could raise a security concern and may be disqualifying include:

- (1) A history of not meeting financial obligations. E2.A6.1.2.1.
- (2) Deceptive or illegal financial practices such as check fraud. E2.A6.1.2.2.
- (3) Inability or unwillingness to satisfy debts. E2.A6.1.2.3.

(C) Conditions that could mitigate security concerns include:

- (1) The behavior was not recent. E2.A6.1.3.1.
- (4) The person has received counseling for the problem and there is clear indication the problem is being resolved or is under control. E2.A6.1.3.4.
- (6) The individual initiated good-faith efforts to repay overdue creditors or otherwise resolve debts. E2.A6.1.3.6.

**Guideline J - Criminal Conduct**

*The Concern:* A history or pattern of criminal activity creates doubt about a person's judgment, reliability and trustworthiness. E2.A10.1.1.

(A) Conditions that could raise a security concern and may be disqualifying include:

- (1) Allegations or admissions of criminal conduct, regardless of whether the person was formally charged. E2.A10.1.2.1.
- (2) A single serious crime or multiple lesser offenses. E2.A10.1.2.2.

(B) Conditions that could mitigate security concerns include: E2.A10.1.3.

- (1) The criminal behavior was not recent. E2.A10.1.3.1.
- (6) There is clear evidence of successful rehabilitation. E2.A10.1.3.6.

**Guideline E - Personal Conduct:**

(A) *The Concern:* Conduct involving questionable judgment, untrustworthiness, unreliability, lack of candor, dishonesty, or unwillingness to comply with rules and regulations could indicate that the person may not properly safeguard classified information. The following will normally result in an unfavorable clearance action or administrative termination of further processing for clearance eligibility:

Refusal to provide full, frank and truthful answers to lawful questions of investigators, security officials or other official representatives in connection with a personal security or trustworthiness determination.

(B) Conditions that could raise a security concern and may be disqualifying also include:

(2) The deliberate omission, concealment, falsification or misrepresentation 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; E2.A5.1.2.2.

(4) Personal conduct or concealment of information that increases an individual's vulnerability to coercion, exploitation or duress, such as engaging in activities which,

if known, may affect the person's personal, professional, or community standing

or render the person susceptible to blackmail. E2.A5.1.2.4.

(5) A pattern of dishonesty. E2.A5.1.2.5.

(C) Conditions that could mitigate security concerns include:

(1) The falsification was an isolated incident, was not recent, and the individual

has subsequently provided correct information voluntarily. E2.A5.1.3.2.

(5) The individual has taken positive steps to significantly reduce or eliminate

vulnerability to coercion, exploitation, or duress. E2.A5.1.3.5.

Under Executive Order 10865, as amended, and the Directive, a decision to grant or continue an applicant's clearance may be made only upon an affirmative finding that to do so is clearly consistent with the national interest. In reaching the fair and impartial overall common sense determination required, I draw those inferences and conclusions which have a reasonable and logical basis in the evidence of record.

### 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 each allegation set forth in the SOR:

Considering Guideline F (Financial Considerations), I conclude Disqualifying Conditions (DC) 1 (history of not meeting financial obligations), 2 (deceptive practices by check fraud), and 3 (an inability to satisfy debts) apply here. Applicant has not paid her credit card bills, and other bills, for a period of seven years in some cases. She never explained how she thought a credit card bill was to be paid if not by the card holder. She also had a low income, so she was unable to pay her bills. But she should not have spent money she did not have. Finally, she wrote three checks for which she had insufficient funds. One check was for \$8, and another for \$25. These are small amounts, and it is difficult to believe Applicant at any one time did not have \$8 to buy Chinese food at a restaurant. Applicant deliberately did not pay her long-term debts, while paying her current rent and utility bills, while thinking about how she was going to resolve her debt problem. The choices are limited. Finally she made one.

The Mitigating Conditions (MC) 1 (the behavior was not recent) applies here. Applicant's last debt incurred and unpaid seemed to be in 2001. That is three years ago. MC 4 (the person received counseling and the problem is resolved) applies also. She did seek and receive some counseling for her debt, but not enough counseling in quantity and variety. Applicant tried a counselor to get all her debts on installment payment plans, but that plan could not be effectuated. She also consulted with two attorneys over a two-year time span about bankruptcy. At present she has one credit card with a \$300 balance and on which she pays the minimum monthly amount (she should double the payment to reduce interest costs and get rid of the debt), one auto loan, her monthly expenses, and seems to be handling her finances in a responsible manner. Her student loans are deferred until she graduates, and obtains a better-paying job than she has now. C 6 (the person initiated a good-faith effort to repay overdue creditors or otherwise resolve debts) applies too. While Applicant did not make any great effort over the years since she incurred many of these debts to pay them, she did try to do something about the debts, and she finally availed herself of a legitimate way to resolve the debts. She filed

bankruptcy and listed all the debts. Also, she paid a heavy price for passing three bad checks, because the attorneys fees, court costs, and statutory damage amount of \$100 included in each judgment bought the total cost to over \$670. I conclude that Applicant has mitigated the Financial Considerations security concerns by the payment and bankruptcy methods, and hold for Applicant under this Guideline F.

Guideline J is conceded by the Government (Tr. 63, 64) for Applicant. Applicant's problems are not criminal, but financial and civil in nature. The three bounced checks Applicant wrote were reduced to civil judgments and she paid them in 2002 after she obtained money from her mother to send to the creditors. Applicant was not prosecuted criminally for these checks. No DC apply here. Therefore, I conclude for Applicant under this guideline.

With respect to Guideline E, I conclude the Government proved its case. Applicant did not reveal all of her outstanding debts. She knew they were there. She should have listed them on the security clearance application. DC 2 (the deliberate omission or concealment of relevant and material facts from any personal security questionnaire) applies. Also, DC 4 (conduct that increase vulnerability to coercion, duress or exploitation) applies. She has a pattern of dishonesty by not repaying her debts, and writing insufficient checks, so DC 5 applies likewise. Applicant's conduct of incurring debts and not repaying them could open her to coercion by persons who could offer to relieve her financial burden in return for classified information.

The MC 2 (falsification was an isolated incident, not recent, and the individual has provided correct information voluntarily) applies. The falsification occurred in May 2002 when the personnel security questionnaire (SCA) was completed. Applicant' subsequent statements reveal all the pertinent information. MC 5 (steps were taken to reduce vulnerability to coercion, exploitation, or duress) applies because Applicant disclosed her financial situation, and then resolved it by filing bankruptcy and paying the bounced checks. Applicant is obviously unsophisticated about finances, but it does not take much to know that a debt has to be repaid. Applicant did not disclose her aged debts on the SCA because she thought if the creditors were not dunning her, and the debts were written off, then they were not current debts. This belief in someone young and unsophisticated is credible. I find Applicant did not deliberately fail to disclose the totality of her debts. She did disclose the two major debts concerning the repossessed automobiles, which were large enough and recent enough to be memorable.

Furthermore, Applicant did not list the judgments against her because she was not aware of them. Those lawsuits started as she was being discharged from the Army. She moved (April 2001) between the time she was served (March 2001) at her Army post to her family's home state and the time when the judgments were rendered by the state courts in another state from her current residence (May 2001). She had no thought or reason to give those lawyers her forwarding address. Nor did she have the money to resolve them at that time because she knew she had to move herself and children to a new location after her Army discharge. She was not focused on that problem I find Applicant did not move to avoid the jurisdiction of those courts, because she moved after her administrative discharge from the Army to return to her mother's home. Also, she had two children and their care consumed her time, leaving her little to contemplate the debts and legal processes in which she was immersed. I find she did not deliberately fail to disclose the judgments because she did not know about them. I conclude Guideline E for the Applicant.

### **FORMAL FINDINGS**

Formal Findings as required by Section E3.1.25 of Enclosure 3 of the Directive are hereby rendered as follows:

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

Subparagraph 1.q.: For Applicant

Subparagraph 1.r.: For Applicant

Subparagraph 1.s.: For Applicant

Paragraph 2 Guideline J: For Applicant

Subparagraph 2.a.: For Applicant

Subparagraph 2.b.: For Applicant

Paragraph 3 Guideline E: For Applicant

Subparagraph 3.a.: For Applicant

Subparagraph 3.b.: For Applicant

### **DECISION**

In light of all the circumstances and facts 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.

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Philip S. Howe

Administrative Judge