

DATE: November 30, 2004

---

In Re:

-----

SSN: -----

Applicant for Security Clearance

---

ISCR Case No. 03-16224

**DECISION OF ADMINISTRATIVE JUDGE**

**ROGER E. WILLMETH**

**APPEARANCES**

**FOR GOVERNMENT**

Erin C. Hogan, Deputy Chief Department Counsel

**FOR APPLICANT**

*Pro Se*

**SYNOPSIS**

The record establishes that Applicant has incurred at least five delinquent debts totaling \$14,805.00, including two that resulted in judgments against her for a total of \$12,923.00. Although she filed for bankruptcy the same month she answered the SOR, Applicant failed to provide evidence of what debts are included in her petition. She also failed to provide proof she paid one of the debts or that two of the judgments addressed by the SOR are the same. Even if Applicant is discharged from all the debts addressed by the SOR, she has failed to demonstrate that her ability to meet her financial obligations has improved. Clearance is denied.

**STATEMENT OF THE CASE**

On December 8, 2003, the Defense Office of Hearings and Appeals (DOHA), pursuant to the applicable Executive Order<sup>(1)</sup> and Department of Defense Directive,<sup>(2)</sup> issued a Statement Reasons (SOR) to Applicant. The SOR details security concerns under Guideline F (Financial Considerations). The SOR states that DOHA was unable to find that it is clearly consistent with the national interest to grant her access to classified information and recommends that her case be submitted to an Administrative Judge.

On December 31, 2003, Applicant answered the SOR and requested a hearing. The case was assigned to me on February 3, 2004. A notice of hearing was issued on February 27, 2004 and the hearing was held on March 25, 2004. During the hearing, five Government exhibits (Govt Ex), one Applicant exhibit (Ap Ex), and the testimony of Applicant were received. Without objection by Department Counsel, I granted Applicant until April 1, 2004 to provide a copy of her petition for bankruptcy and any additional supporting evidence. As of this date, I have not received further documentation from Applicant. The transcript (Tr) was received on March 31, 2004.

**FINDINGS OF FACT**

Having thoroughly considered the evidence in the record, I make the following findings of fact:

Applicant is a 24-year-old security officer employed by a defense contractor. Applicant is a single parent with two children, a five-year-old son and a one-year old daughter. She receives no child support and lives with her mother. Applicant was only able to obtain part-time employment in 2001. She has held her current position since January 2002.

Applicant's credit report lists a debt to a debt collector in the amount of \$6,596.00. The debt collector acquired the account in April 2000 (SOR ¶ 1.g).

Applicant incurred a \$434.00 debt to a clothing store that she did not pay. In July 2000, the creditor charged it off as a bad debt (SOR ¶ 1.f).

Applicant incurred a debt on her account with a department store that she did not pay. In January 2001, the creditor charged it off as a bad debt and assigned it to a debt collector. Applicant has not paid this debt in the amount of \$1,117.00 (SOR ¶ 1.e).

In November 2001, a debt collector obtained a judgment against Applicant in the amount of \$7,206.00 that she has not paid (SOR ¶ 1.b). Applicant incurred the original debt on a credit card account. Her credit report lists that judgment and reflects an additional unsatisfied judgment against her in January 2002 in favor of the same debt collector. That judgment is in the amount of \$7,156.00 (SOR ¶ 1.a).

Applicant incurred a phone bill that she did not pay. In May 2002, the telecommunications company assigned it to a debt collector. The debt in the amount of \$311.00 remains unpaid (SOR ¶ 1.d).

A creditor obtained a judgment against Applicant in October 2002 in the amount of \$5,767.00. Applicant has not paid or otherwise satisfied this obligation (SOR ¶ 1.c).

On December 26, 2002, Applicant provided a sworn statement to a special agent for the Defense Security Service (DSS). She stated she would pay off specific debts with her income tax refund, including the debts addressed by SOR ¶ 1.d and f.

On May 12, 2003, Applicant provided a sworn statement to a special agent for DSS. She provided a personal financial statement that reflects a monthly net remainder of \$198.00 after the payment of debts and expenses.

In December 2003, Applicant filed a petition for bankruptcy under Chapter 7 of the Bankruptcy Code. On March 2, 2004, the bankruptcy court granted parties-in-interest an additional 60 days to file complaints objecting to the discharge of Applicant.

## POLICIES

Department Counsel is responsible for presenting witnesses and other evidence to establish facts alleged in the SOR that have been controverted. Directive E3.1.14. The applicant is responsible for presenting witnesses and other evidence to rebut, explain, extenuate, or mitigate facts admitted by the applicant or proven by Department Counsel, and has the ultimate burden of persuasion as to obtaining a favorable clearance decision. Directive E3.1.15.

Eligibility for access to classified information is predicated upon an individual meeting adjudicative guidelines discussed in Enclosure 2 of the Directive. An evaluation of whether an applicant meets these guidelines includes the consideration of a number of variables known as the "whole person concept." Available, reliable information about the person, past and present, favorable and unfavorable, should be considered in reaching a decision. This assessment should include 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. Any doubt as to whether access to classified information is clearly consistent with national security will be resolved in favor of national security. Directive E2.2.2.

Enclosure 2 provides conditions for each guideline that could raise a concern and may be disqualifying, as well as further conditions that could mitigate a concern and support granting a clearance. The following guideline is applicable to this case.

#### Guideline F: Financial Considerations

The concern is that an individual who is financially overextended is at risk of having to engage in illegal acts to generate funds. Conditions that could raise a security concern and may be disqualifying include E2.A6.1.2.1, a history of not meeting financial obligations (Disqualifying Condition 1). They also include E2.A6.1.2.3, inability or unwillingness to satisfy debts (Disqualifying Condition 3).

Conditions that could mitigate security concerns include E2.A6.1.3.1, the behavior was not recent (Mitigating Condition 1), and 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) (Mitigating Condition 3). They also include E2.A6.1.3.6, the individual initiated a good-faith effort to repay overdue creditors or otherwise resolve debts (Mitigating Condition 6).

### CONCLUSIONS

The record documents that Applicant has incurred at least five delinquent debts totaling \$14,805.00 that were assigned to debt collectors. At least two of these debts have resulted in judgments against Applicant for a total of \$12,923.00. This establishes a history of Applicant not meeting her financial obligations as well as an inability or unwillingness to satisfy debts. It raises both Disqualifying Condition 1 and Disqualifying Condition 3.

Applicant's financial situation appears to resulted, at least in part, from her struggling to make a living and support her first child on a part-time income. However, her continuing financial problems cannot be excused as the result of conditions beyond her control. She has held her current full-time position for more than two years. More than a year ago, Applicant told a DSS agent she would pay off the least of these debts (1.d and f) with her tax refund. After admitting both debts in answering the SOR, she testified she had paid off one of them (1.f). However, Applicant has not provided proof that any of the debts addressed by the SOR have been satisfied.

In the same month she filed her answer to the SOR, Applicant filed a petition in bankruptcy under Chapter 7 of the bankruptcy code. However, she failed to submit documentation to establish what debts are included in the bankruptcy. Therefore, it cannot be determined from the record what debts Applicant will be discharged from if her petition in bankruptcy is granted.

Although Applicant has alleged a duplication of judgments addressed by the SOR (1.a and 1.b), she has not provided evidence to corroborate it. Based on a review of her credit report, it appears that one of the judgments against her may be duplicated in the SOR as a delinquent debt (1.c and 1.g). However, Applicant has not provided anything to confirm this but has merely denied any knowledge of the delinquent debt.

Even if Applicant was discharged from all of the debts addressed by the SOR by the bankruptcy court, she has failed to demonstrate her ability to meet her financial responsibilities has improved. Based on her testimony, her monthly income has increased by \$100.00 but her monthly expenses have increased by \$480.00 for child care. Although she claimed a monthly net remainder of "\$1000.00 or maybe \$500.00," the changes she identified would appear to result in a negative remainder. Although Applicant testified she is pursuing child support, it cannot be determined from the record how much child support she is likely to receive or when she is likely to receive it.

Based on the record, Applicant has failed to rebut, explain, extenuate or mitigate the financial concerns. Therefore, I find against Applicant.

### FORMAL FINDINGS

Formal findings, as required by section E3.1.25 of Enclosure 3 of the Directive, are as follows:

Paragraph 1. Guideline F: AGAINST APPLICANT

Subparagraph 1.a: Against 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: Against Applicant

## DECISION

In light of the evidence of record in this case, it is not clearly consistent with the national interest to grant or continue a security clearance for Applicant.

*Signed*

**Roger E. Willmeth**

**Administrative Judge**

1. Executive Order 10865, *Safeguarding Classified Information Within Industry*, dated February 20, 1960, as amended.
2. Department of Defense Directive 5220.6, *Defense Industrial Personnel Security Clearance Review Program* (Directive), dated January 2, 1992, as amended and modified.