

KEYWORD: Financial; Personal conduct

DIGEST: Applicant has a history of delinquent debts she accrued following her discharge from the military in 2000 and ensuing divorce that left her as the sole provider for her young son with negligible child support from her ex-husband. Applicant has since discharged all of her debts in bankruptcy and mitigates security concerns associated with her delinquent debts. She successfully refutes allegations of falsification of her security clearance application (SF-86) as well. Clearance is granted.

CASENO: 03-16289.h1

DATE: 04/25/2005

DATE: April 25, 2005

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In re:

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SSN: -----

Applicant for Security Clearance

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ISCR Case No. 03-16289

**DECISION OF ADMINISTRATIVE JUDGE**

**ROGER C. WESLEY**

**APPEARANCES**

**FOR GOVERNMENT**

**FOR APPLICANT**

*Pro Se*

**SYNOPSIS**

Applicant has a history of delinquent debts she accrued following her discharge from the military in 2000 and ensuing divorce that left her as the sole provider for her young son with negligible child support from her ex-husband. Applicant has since discharged all of her debts in bankruptcy and mitigates security concerns associated with her delinquent debts. She successfully refutes allegations of falsification of her security clearance application (SF-86) as well. Clearance is granted.

**STATEMENT OF CASE**

On July 13, 2004, the Defense Office of Hearings and Appeals (DOHA), pursuant to Executive Order 10865 and Department of Defense Directive 5220.6 (Directive), dated January 2, 1992, issued a Statement of Reasons (SOR) to Applicant, which detailed reasons 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 determine whether clearance should be granted, continued, denied or revoked.

Applicant responded to the SOR on August 23, 2004, and requested a hearing. The case was assigned to me on October 8, 2004, and was scheduled for hearing on December 8, 2004. A hearing was convened on December 8, 2004, for the purpose of considering whether it is clearly consistent with the national interest to grant, continue, deny, or revoke Applicant's security clearance. At hearing, the Government's case consisted of four exhibits; Applicant relied on three witnesses (including herself) and two exhibits. The transcript (R.T.) of the proceedings was received on December 16, 2004.

## **PROCEDURAL ISSUES**

Before the close of the hearing, Applicant requested the record be kept open to afford her the opportunity to supplement the record with a copy of her bankruptcy discharge order. There being no objection from the Government, and good cause being demonstrated, Applicant was granted 20 days to supplement the record. The Government was afforded 10 days to respond. Within the permitted time, Applicant furnished a copy of her bankruptcy discharge, which was admitted as Applicant's exhibit C.

## **SUMMARY OF PLEADINGS.**

Under Guideline F, Applicant is alleged to incurred delinquent debts, five in all totaling more than \$8,000.00. Under Guideline E, she is alleged to have falsified her security clearance application (SF-86) of March 2003 by omitting a wage garnishment, as well as debts over 180 and 90 days delinquent, respectively.

For her response to the SOR, Applicant admitted each of the listed debts and claimed they were all included in her bankruptcy petition. She denied falsifying her SF-86. In explanation, she claimed she did not realize seizure of her income tax refund qualified as a wage garnishment when answering question 34 of the questionnaire. She claimed she didn't think she needed to separately list debts 90 days delinquent when responding to question 39 that she previously included in her answers to question 38. And she claimed she was never a member of the Navy but forgot to list the one-half unpaid portion of her enlistee bonus on the questionnaire that she had included in her original paperwork.

## **FINDINGS OF FACT**

Applicant is a 23-year-old part-time security guard for a defense contractor who seeks a security clearance. The allegations covered in the SOR, and admitted to by Applicant, are incorporated herein by reference and adopted as relevant and material findings. Additional findings follow.

Applicant enlisted in the Army following her graduation from high school in June 1999. Her boyfriend from high school enrolled in college during her senior year, but quit school after she joined the Army to be close to her. Shortly after they were married (in January 2000), she gave birth to a son, which her husband (H) helped support for awhile with various construction jobs (R.T., at 65-687). Assured of sufficient income support to support her new family through her military pay and recruitment bonus (around \$4,000.00), she purchased a vehicle for \$6,385.00 in February 2000 through her Army credit union (*see ex. 4; R.T., at 39*). H proved to be financially irresponsible, however, and Applicant soon found difficulty keeping up with her expenses required to support herself and her son. She sought and obtained an early discharge for financial hardship in about April 2001 (*ex. 1; R.T., at 67-68*).

After being discharged from the Army, Applicant encountered difficulty finding good paying jobs and accumulated considerable debts which she could not pay in a timely way. Most of these debts were medically-related to the care of her son and treatment of her damaged knee (R.T., at 39-40, 51-53). Without sufficient resources of her own to keep up with her car payments, her car was repossessed in September 2001 (*see exs. 2 and 4; R.T., at 55-56*). Citing she no longer possessed the car when asked about her repayment intentions in an ensuing DSS interview (*see ex. 2*), she indicated no intention to take care of the remaining balance at the time of the repossession. However, she was not asked about any notice from the creditor of any proceeds from resale of the vehicle or amount of the remaining deficiency. For lack of information in the record as to what her repossessed vehicle was sold for at auction by the repossessing seller, it is unclear how much of the unpaid carried balance reflected in her credit report represents the owed deficiency. Quite possibly, the deficiency (if any) was small. Assessed in this context, her expressed declination to pay off the loan balance is not unreasonable.

Applicant's other listed debts comprise medical debts for the most part. They are covered by creditors 1.b and 1.c and are associated with the medical needs of her son and herself, respectively, that were not covered by medical insurance. The only other accumulated debt of Applicant's is a phone bill owed to creditor 1.d in the amount of \$139.00.

Since her military discharge, Applicant received no financial support from H, and they divorced in December 2002 (*ex. 1*). Although H was ordered to pay child support, he has never payed more than \$500.00 and currently is \$12,000.00 in arrearage (R.T., at 48-49). Wage garnishment of H's wages has proven to be unsuccessful due to his constant moving and cash basis for getting compensated. Without either help from H or adequate income sources of her own to take care of her monthly needs, Applicant's debts became delinquent.

Unable to address her delinquent debts with her available resources from her part time security guard position, Applicant petitioned for Chapter 7 bankruptcy relief in August 2004. All of her listed delinquent debts were included in her bankruptcy petition (*see ex. A*). She received her discharge in January 2005 (*ex. B*). Applicant is currently up to date with all of her existing debts and expects to stay current.

Asked to complete an SF-86 in March 2003, Applicant omitted two debts on which her wages had been garnished when answering question 34 of her questionnaire. She attributes her garnishment omission to a misunderstanding over whether the garnishment as used in the question encompassed attachment of her tax refund to satisfy recoupment of one-half of her Army bonus returnable due to her early discharge (R.T., at 41-45, 57-58). She attributes the omissions of

her delinquent debts over 90 days delinquent when answering question 39 to confusion at the time whether she needed to separately list the delinquent debts she had included in her answer to question 38 (R.T., at 42-43). And she attributes her failure to list the Navy debt when answering question 38 to her inadvertent failure to transfer the debt information she had included in her work up paperwork to her SF-86 (R.T., at 43). Applicant's omissions, while not knowing and wilful, do reflect some due diligence lapses on her part in thoroughly reading question 39 and tracing her Army bonus debt from her preliminary paperwork to her SF-86. When asked about her debts in an ensuing DSS interview a month later, she made the necessary corrections. Whether her answers were influenced by anything shown her by the interviewing agent is unclear from both her signed, sworn statement and her hearing testimony (*see ex. 2*).

Applicant is well regarded by her supervisor who characterizes her as a model employee. She is credited with meritorious work performance in her part time security guard duties.

## **POLICIES**

The Adjudicative Guidelines of the Directive (Change 4) list Guidelines to be considered by judges in the decision making process covering DOHA cases. These Guidelines require the judge to consider all of the "Conditions that could raise a security concern and may be disqualifying" (Disqualifying Conditions), if any, and all of the "Mitigating Conditions," if any, before deciding whether or not a security clearance should be granted, continued or denied. The Guidelines do not require the judge to assess these factors exclusively in arriving at a decision. In addition to the relevant Adjudicative Guidelines, judges must take into account the pertinent considerations for assessing extenuation and mitigation set forth in E.2.2 of the Adjudicative Process of Enclosure 2

of the Directive, which are intended to assist the judges in reaching a fair and impartial common sense decision.

Viewing the issues raised and evidence as a whole, the following adjudication policy factors are pertinent herein:

### **Financial Considerations**

*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.

## **Personal Conduct**

*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.

## **Burden of Proof**

By virtue of the precepts framed by the Directive, a decision to grant or continue an Applicant's for security clearance may be made only upon a threshold finding that to do so is clearly consistent with the national interest. Because the Directive requires Administrative Judges to make a common sense appraisal of the evidence accumulated in the record, the ultimate determination of an applicant's eligibility for a security clearance depends, in large part, on the relevance and materiality of that evidence. As with all adversary proceedings, the Judge may draw only those inferences which have a reasonable and logical basis from the evidence of record. Conversely, the Judge cannot draw factual inferences that are grounded on speculation or conjecture.

The Government's initial burden is twofold: (1) It must prove any controverted fact[s] alleged in the Statement of Reasons and (2) it must demonstrate that the facts proven have a material bearing to the applicant's eligibility to obtain or maintain a security clearance. The required showing of material bearing, however, does not require the Government to affirmatively demonstrate that the applicant has actually mishandled or abused classified information before it can deny or revoke a security clearance. Rather, consideration must take account of cognizable risks that an applicant may deliberately or inadvertently failed to safeguard classified information.

Once the Government meets its initial burden of proof of establishing admitted or controverted facts, the burden of persuasion shifts to the applicant for the purpose of establishing his or her security worthiness through evidence of refutation, extenuation or mitigation of the Government's case.

## **CONCLUSIONS**

Applicant accrued a number of delinquent debts during a strained marriage that ended in divorce with court-ordered

child support. With inadequate income to match her expenses as a single mother with virtually no child support from her ex-husband, Applicant settled on discharging her debts in 2004 through Chapter 7 bankruptcy relief and obtained her discharge in January 2005. Omissions of wage garnishment and debts over 90 and 180 days delinquent, respectively, raise additional potential security concerns about Applicant's reliability and trustworthiness that are addressed favorably.

Applicant and her husband accrued a number of delinquent debts before their divorce in 2002: mostly the result of a repossessed vehicle Applicant could no longer afford following her divorce and numerous medical debts associated with herself and her young son, for whom she was the sole provider, sans child support for the most part. Without either child support or insurance to cover her son's medical bills, she could not pay them in a timely way. Because the deficiency from her repossessed car was not developed enough in the record to be able to pin point just what was owed following the seller's assumed disposal of the vehicle at auction, her liability to creditor 1.a is not fully assessable. Still, Applicant listed the owed amount on her bankruptcy schedule of unsecured creditors, and any debt owing to creditor 1.a was fully discharged in Applicant's Chapter 7 bankruptcy. On the strength of the evidence presented, the Government may invoke two Disqualifying Conditions (DC) of the Adjudicative Guidelines for financial considerations: E2.A6.1.2.1 (*A history of not meeting financial obligations*) and E2.A6.1.2.3 (*Inability or unwillingness to satisfy debts*).

Clearly, Applicant's debts can be traced to extenuating circumstances associated with her poor marriage that left her with child rearing responsibilities with negligible support from her ex-husband and little income of her own. Mitigation is present, too, as demonstrated by her bankruptcy discharge and ensuing stabilization of her personal finances. Applicant may take advantage of E2.A.6.1.3.3 (*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)*) of the Adjudicative Guidelines to extenuate her debt delinquencies. She may also avail herself of the mitigation benefits of E2.A6.1.3.6 (*The individual initiated good-faith efforts to repay overdue creditors or otherwise resolve debts*) based on her successful resolution of her debt through federally sanctioned bankruptcy relief.

Taking into account all of the circumstances of Applicant's accumulated debts and the good- faith efforts she demonstrated in resolving her delinquent debts resulting from extenuating conditions, favorable conclusions warrant with respect to subparagraphs 1.a through 1.e as to the allegations governed by the Adjudicative Guidelines pertinent to Guideline F.

Posing potential security concerns, too, are Applicant's documented omissions of her covered delinquent debts from the SF-86 she completed in March 2003. Her omissions are, however, attributable to both her mistaken understanding of questions 34 and 39 and her inadvertent failure to list her credit union debt among her listed debts covered by question 38. Applicant's explanations of her omissions (misreading the question) were persuasive enough to avert inferences of knowing and wilful omission and enable her to refute the allegations of falsification of her SF-86 covered in subparagraphs 2.a through 2.c (governed by Guideline E).

In reaching my decision, I have considered the evidence as a whole, including each of the E 2.2.1 factors enumerated in the Adjudicative Guidelines of the Directive.

## **FORMAL FINDINGS**

In reviewing the allegations of the SOR and ensuing conclusions reached in the context of the FINDINGS OF FACT, CONCLUSIONS, CONDITIONS, and the factors listed above, this Administrative Judge makes the following FORMAL FINDINGS:

**GUIDELINE F (FINANCIAL): FOR APPLICANT**

Sub-para. 1.a: FOR APPLICANT

Sub-para. 1.b: FOR APPLICANT

Sub-para. 1.c: FOR APPLICANT

Sub-para. 1.d: FOR APPLICANT

Sub-para. 1.e: FOR APPLICANT

**GUIDELINE E (PERSONAL CONDUCT): FOR APPLICANT**

Sub-para. 2.a: FOR APPLICANT

Sub-para. 2.b: FOR APPLICANT

Sub-para. 2.c: FOR 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 Applicant's security clearance. Clearance is granted.

Roger C. Wesley

Administrative Judge