

DATE: November 8, 2004

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In Re:

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SSN: -----

Applicant for Security Clearance

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ISCR Case No. 03-17935

**ECISION OF ADMINISTRATIVE JUDGE**

**THOMAS M. CREAN**

**APPEARANCES**

**FOR GOVERNMENT**

Francisco J. Mendez, Jr., Esq., Department Counsel

**FOR APPLICANT**

*Pro Se*

**SYNOPSIS**

Applicant is a 38-year-old secretary for a defense contractor. Applicant submitted a security clearance application in January 2001 and was granted an interim clearance. An investigation by the Defense Security Service showed Applicant has a history of significant financial problems as far back as 2001 and has at least 20 accounts considered bad debt or charged off. She has made efforts to pay some small accounts, but has made no efforts to pay the majority of her debts. She has not sought debt counseling to help her with her financial problems. Clearance is denied.

**STATEMENT OF THE CASE**

On June 30, 2004, The Defense Office of Hearing and Appeals (DOHA) issued a Statement of Reasons (SOR) detailing the basis for its decision to not grant a security clearance to Applicant. The action was taken under Executive Order 10865, *Safeguarding Classified Information within Industry* (Feb 20, 1990), 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 (Directive). Applicant acknowledged receipt of the SOR on July 21, 2004. The SOR alleges security concerns under Guideline F (Financial Considerations) of the Directive.

Applicant answered the SOR in writing on July 28, 2004. She admitted most of the allegations in the SOR and provided additional information on some of the allegations. She elected to have the matter decided on the written record in lieu of a hearing.

Department Counsel submitted the government's written case on August 18, 2004. Applicant received a complete file of relevant material (FORM) on September 7, 2004, and was provided the opportunity to file objections and submit material to refute, extenuate, or mitigate the security concerns. Her response was due October 7, 2004. As of October 21, 2004, she had not responded. The case was assigned to me on November 1, 2004.

**FINDINGS OF FACT**

Applicant is a 38-year-old secretary for a defense contractor. She initially submitted a security clearance application in January 2001 and was granted an interim clearance. Applicant re-executed the same security clearance application in March 2004. Investigation of the information provided in January 2001 revealed significant financial concerns for Applicant. Applicant was interviewed by a Defense Security Service (DSS) special agent in October 2002 to expand on and explain some of the financial information on her security clearance application and her credit reports. Applicant also completed in October 2002 a detailed financial interrogatory for DSS. The result of these inquiries into Applicant's finances is she has significant financial problems.

In June 2004, Applicant owed approximately \$31,863 on 20 debts that were either past due, charged off as bad debt, or delinquent as listed on the SOR. The debts included liens by the Internal Revenue Service, garnishment by a county court for child support, and an attachment of salary by a public housing authority for back rent. The majority of these debts were delinquent, past due, or charged off when Applicant submitted her security clearance application in January 2001. Applicant admitted in the October 2002 interview with the DSS special agent she owed the bills and she did not have the financial resources to pay them and did not know when she would pay them. These debts were still in a bad debt status on the latest credit report of March 2004.

Applicant admitted to 15 of the 20 bad debts in the SOR. She provided documentary evidence she had completely satisfied two of these debts. She provided evidence that she was no longer required to pay child support. She provided documentary evidence she has been paying on a car loan and it is current. She provided documentary evidence she is paying off the IRS lien and has paid over 60% of the lien and her payments are current. However, her outstanding bad debts that she is not paying totals \$23,605.

Applicant's husband did not work during much of the period between the submission of the security clearance application in 2001 and the SOR in June 2004. However, he is now employed. Applicant was involved in three automobile accidents in 2002 requiring her to visit a hospital for medical treatment. Some of her outstanding debt was incurred from her failure to pay these hospital and doctor bills. Applicant filed law suits as a result of these accidents but was not awarded compensation for injuries or expenses. Applicant did not lose any significant work time as a result of any injuries received in the accidents.

Applicant's February 2004 response to the financial interrogatories from DOHA shows Applicant and her husband have \$3,783 of monthly income, \$2,597 of monthly expenses, and \$1,185 of monthly required debt payments on the limited bills she is paying. This leaves Applicant very little financial resources to pay down past due debt. Applicant's monthly income and expenses are such that she is living right at her financial means with no financial flexibility.

## POLICIES

"[N]o one has a 'right' to a security clearance." *Department of the Navy v. Egan*, 484 U.S. 518, 528 (1988). As Commander-in-Chief, 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." *Id.* At 527. The President has restricted eligibility for access to classified information to United States citizens "whose personal and professional history affirmatively indicates loyalty to the United States, strength of character, trustworthiness, honesty, reliability, discretion, and sound judgement, as well as freedom from conflicting allegiances and potential for coercion, and willingness and ability to abide by regulations governing the use, handling, and protection of classified information." Exec. Or. 12968, *Access to Classified Information* § 3.1 (b) (Aug. 4, 1995). Eligibility for a security clearance is predicated upon the applicant meeting the security guidelines contained in the Directive.

The Directive sets out the adjudicative guidelines for making decisions on security clearances. Enclosure 2 of the Directive sets forth adjudicative guidelines for determining eligibility for access to classified information, and it lists the disqualifying conditions (DC) and mitigating conditions (MC) for each guideline. Each clearance decision must be fair, impartial, and a commonsense decision based on the relevant and material facts and circumstances, the whole person concept, and the factors listed in the Directive ¶ 6.3.1 through ¶ 6.3.6

"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: (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 applicant'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 of recurrence. Directive ¶¶ E2.2.1.1 through E2.2.1.9.

The decision to deny an individual a security clearance is not necessarily a determination as to the loyalty of the applicant. *See* Exec. Or. 10865 § 7. It is merely an indication that the applicant has not met the strict guidelines the President and the Secretary of Defense have established for issuing a clearance.

Initially, the Government must establish, by substantial evidence, that conditions exist in the personal or professional history of the applicant which disqualify, or may disqualify, the applicant from being eligible for access to classified information. *See Egan*, 484 U.S. at 531. "[T]he Directive presumes there is a nexus or rational connection between proven conduct under any of the Criteria listed therein and an applicant's security suitability." ISCR Case No. 95-0611 at 2 (App. Bd. May 2, 1996) (quoting DISCR Case No. 92-1106 (App. Bd. Oct. 7, 1993)).

Once the Government establishes a disqualifying condition by substantial evidence, the burden shifts to the applicant to rebut, explain, extenuate, or mitigate the facts. ISCR Case No. 01-20700 at 3 (App. Bd. Dec. 19, 2002); *see* 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). "[S]ecurity clearance determination should err, if they must, on the side of denials." *Egan*, 484 U.S. at 531; *see* Directive ¶ E2.2.2.

## CONCLUSIONS

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

Under Guideline F (Financial Considerations (FC)), a security concern exists for an individual who is financially irresponsible. An individual who is financial irresponsibility may also be irresponsible, unconcerned, or careless in their obligations 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. Directive ¶ E2.A6.1.1.

Applicant's financial situation brings the matter within Financial Consideration Disqualifying Conditions (FC DC) Directive ¶ E2.A6.1.2.1 (*a history of not meeting financial obligations*), and Directive ¶ E2.A6.1.2.3 (*inability or unwillingness to satisfy debts*). The credit report dated April 26, 2001, (FORM, Item 10); the credit report dated May 20, 2003, (FORM, Item 9); the credit report dated March 2, 2004, (FORM, Item 8); Applicant's February 23, 2004 response to the DOHA Financial Interrogatory (FORM, Item 7); and Applicant's October 23, 2002 statement to the DSS special agent (FORM, Item 6) clearly establish Applicant has a history of not meeting her financial obligations. This documentary evidence, particularly her own October 23, 2002 statement, clearly shows she has an inability and an unwillingness to satisfy her debts. I conclude these disqualifying conditions have been established.

The Financial Considerations Mitigating Conditions (FC MC) that are relevant to this Applicant are Directive ¶ E2.A6.1.3.1 (*the behavior was not recent*); Directive ¶ E2.1.3.2 (*it was an isolated incident*); Directive ¶ E2.A6.1.3.3 (*conditions that resulted in the behavior were largely beyond the person's control (e.g., loss of employment, ... unexpected medical emergency ...)*); Directive ¶ E2.A6.1.3.4 (*person has received or is receiving counseling for the problems and there are clear indications that the problem is being resolved or is under control*); and Directive ¶ E2.A6.1.3.6 (*individual initiated a good-faith effort to repay overdue creditors or otherwise resolve debts*). Applicant has a long standing history of debt starting in at least 2001. Applicant had some automobile accidents that kept her from working for a short time and her husband was out of work for a time, but these conditions were not so large or extensive as to require that she did not pay her debts. Applicant has presented no information, nor is there any in the file, to indicate she has or is receiving counseling for her financial problems. She has made some effort to pay a small number of her bills but has not shown a good-faith effort to pay the majority of them. In fact, she has shown an effort not to pay the bills. I conclude there are no mitigating conditions established by Applicant.

I carefully considered all of the circumstances in light of the "whole person" concept. I conclude Applicant is not eligible for access to classified information.

**FORMAL FINDINGS**

Formal findings For or Against Applicant on the allegations set forth in the SOR, as required by section E3.1.25 of Enclosure 3 of the Directive, are:

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

Subparagraph 1.h.: Against Applicant

Subparagraph 1.i.: Against Applicant

Subparagraph 1.j.: Against Applicant

Subparagraph 1.k.: Against Applicant

Subparagraph 1.l.: Against Applicant

Subparagraph 1.m.: For Applicant

Subparagraph 1.n.: For Applicant

Subparagraph 1.o.: Against Applicant

Subparagraph 1.p.: Against Applicant

Subparagraph 1.q.: Against Applicant

Subparagraph 1.r.: Against Applicant

Subparagraph 1.s.: For Applicant

Subparagraph 1.t.: For Applicant

Subparagraph 1.u.: For Applicant

**DECISION**

In light of all of 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.

Thomas M. Crean  
Administrative Judge