

KEYWORD: Financial

DIGEST: Applicant is 32 years old, a painter for a defense contractor, and married with three children. Applicant was financially unable to pay some of her debts in the 1990s because she frequently was a single mother with three young children for whom she had to care, was unemployed for two periods of time, when employed had minimum wage jobs, and most of her delinquent debts were for health care for her children or car loans she could not pay from her income alone. Applicant filed Chapter 7 bankruptcy and paid separately two delinquent debts. Applicant successfully mitigated the financial considerations security concern. Clearance is granted.

CASENO: 03-18602.h1

DATE: 07/28/2005

DATE: July 28, 2005

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In re:

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SSN: -----

Applicant for Security Clearance

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ISCR Case No. 03-18602

**DECISION OF ADMINISTRATIVE JUDGE**

**PHILIP S. HOWE**

**APPEARANCES**

## **FOR GOVERNMENT**

Braden M. Murphy, Esq., Department Counsel

## **FOR APPLICANT**

Pro Se

### **SYNOPSIS**

Applicant is 32 years old, a painter for a defense contractor, and married with three children. Applicant was financially unable to pay some of her debts in the 1990s because she frequently was a single mother with three young children for whom she had to care, was unemployed for two periods of time, when employed had minimum wage jobs, and most of her delinquent debts were for health care for her children or car loans she could not pay from her income alone. Applicant filed Chapter 7 bankruptcy and paid separately two delinquent debts. Applicant successfully mitigated the financial considerations security concern. Clearance is granted.

### **STATEMENT OF THE CASE**

The Defense Office of Hearings and Appeals (DOHA) declined to grant or continue a security clearance for Applicant. On July 13, 2004, DOHA issued a Statement of Reasons [\(1\)](#) (SOR) detailing the basis for its decision as security concerns raised under Guideline F (Financial Considerations) of the Directive. Applicant answered the SOR in writing on August 2, 2004 and elected to have a hearing before an administrative judge. The case was assigned to me on January 31, 2005. On May 17, 2005, I convened a hearing to consider whether it is clearly consistent with the national interest to grant or continue a security clearance for Applicant. The Government and the Applicant submitted exhibits that were admitted into evidence. DOHA received the hearing transcript (Tr.) on May 27, 2005.

### **FINDINGS OF FACT**

Applicant's admissions to the SOR allegations are incorporated here as findings of fact. After a complete and thorough review of the evidence in the record, and full consideration of that evidence, I make the following additional findings of fact:

Applicant is 32 years old, married, and has three children, born in 1991, 1994 and 1995. She works as a painter for a defense contractor. Applicant has worked at this job for the past five years. She raised the three children for long periods of time as a single parent, and when employed between 1991 and 2000 had minimum wage jobs. Applicant was unemployed from May 1995 to August 1996, and October 1999 to June 2000, and on welfare for short periods in the 1990s. She found it difficult at times to provide food and housing for her family, and pay all the bills alleged in the SOR. Many of these delinquent debts were incurred for health care for her asthmatic daughter. Many of the jobs Applicant held from 1991 to 2000 did not have health care benefits. During the same period, Applicant and her present husband had two cars repossessed because they could not afford to pay for them after they separated. Applicant's job pays \$15.79 per hour now, which income allows her to provide better for her family. However, Applicant does not have health insurance through her employer, because of its high cost. She is researching less expensive health care plans. Her husband works seasonal construction jobs, so he frequently has little or no income during the winter months. Applicant budgets her money better at present, has no credit cards, and all her bills are current on payments. (Tr. 14-28, 33, 34, 37-41, 46, 53, 62; Exhibits 1, 2, B, and D)

Applicant attempted to pay the delinquent debts listed in the SOR and avoid bankruptcy. The \$11,390 car loan (subparagraphs 1.f. and 1.l.) she attempted to pay on an installment plan, but the creditor wanted a \$4,000 first payment that Applicant could not pay. The hospital debt in subparagraph 1.c. she negotiated to an installment agreement, but the collection agency demanded her first payment before Applicant received a paycheck, in contravention of their agreement, so that debt could not be paid at that time. Applicant did pay the cable television debt for \$83 on July 26, 2004 (subparagraph 1.a.), and the utility company bill for \$66 on April 19, 2004 (subparagraph 1.m.)

Applicant avoided filing bankruptcy thinking it was better for her credit not to do so. Finally, after consulting an attorney, Applicant filed Chapter 7 bankruptcy on June 29, 2004. All the delinquent debts listed in the SOR dated July 13, 2004, were included in the bankruptcy. They were discharged on October 8, 2004. (Tr. 31, 32, 36, 43-45, 63; Exhibits 2, 3, 6, B, and C; Answer)

Applicant's SOR delinquent debts and their dispositions are listed in the table:

SOR DEBT ALLEGATION	CURRENT STATUS	RECORD EVIDENCE
1.a. Cable T.V. \$83	Paid July 26, 2004	Answer, Exhibits C and 6
1.b. Emergency services \$218	Included in 2004 bankruptcy and discharged 10/8/04	Exhibits 2, 3, and B
1.c. Hospital #1, \$282, \$205, \$260	Same	Answer, Exhibits 2, 3, 6, and B
1.d. Cell phone \$1,083	Same	Tr. 36, Exhibits 2, 3, and B
1.e. Car loan \$9,807	Same	Tr. 63, Exhibits 2 and B
1.f. Car loan \$11,390	Same	Tr. 31, 32, Exhibits 2 and B
1.g. Hospital #2, \$432	Same	Exhibits 2, 3, and B
1.h. Dentist, \$103	Same	Same
1.i. Hospital #1, \$151	Same	Same
1.j. Health care system \$145	Same	Same
1.k. Oral surgery, \$120	Same	Exhibits 2 and B

1.l. Bank car loan, same as 1.f., \$11,390	Same	Answer, Tr. 31, 32, Exhibits 2, 3, and B
1.m. Utility company, \$66	Paid on April 19, 2004	Answer, Exhibits 2 and C
1.n. Insurance company premiums, \$418	Included in the 2004 bankruptcy	Exhibits 2 and B
1.o. Inability to pay debts	Paying current debts after bankruptcy relief	Tr. 53, 62, Exhibit B

Applicant is a competent and hardworking employee. She is detailed oriented and conscientious, who seeks to increase her job knowledge and contribute more to her employer's operation. She frequently exceeds expectations in her job performance, according to the employee evaluations Applicant submitted. Her supervisor submitted a favorable recommendation on her behalf. (Tr. 69, 70; Exhibits E and F)

## 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 authorized the Secretary of Defense or his designee to grant applicants eligibility for access to classified information "only upon a finding that it is clearly consistent the national interest to do so." Exec. Or. 10865, *Safeguarding Classified Information with Industry*

§ 2 (Feb. 20, 1960). Eligibility for a security clearance is predicated upon the applicant meeting the security guidelines contained in the Directive. 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.

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 of the Directive sets forth personnel security guidelines, as well as the disqualifying conditions (DC) and mitigating conditions (MC) under each guideline that must be carefully considered in making the overall common sense determination required.

In evaluating the security worthiness of an applicant, the administrative judge must also assess the adjudicative process factors listed in ¶ 6.3 of the Directive. Those assessments include: (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.

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, conditions in the personal or professional history of the applicant that disqualify, or may disqualify, the applicant from being eligible for access to classified information. The Directive presumes a nexus or rational connection between proven conduct under any of the disqualifying conditions listed in the guidelines and an applicant's security suitability. *See* ISCR Case No. 95-0611 at 2 (App. Bd. ay 2, 1996). All that is required is proof of facts and circumstances that indicate an applicant is at risk for mishandling classified information, or that an applicant does not demonstrate the high degree of judgment, reliability, or trustworthiness required of persons handling classified information. ISCR Case No. 00-0277, 2001 DOHA LEXIS 335 at \*\*6-8 (App. Bd. 2001). Once the Government has established a *prima facie* case by substantial evidence, the burden shifts to the applicant to rebut, explain, extenuate, or mitigate the facts. *See* Directive ¶ E3.1.15. An applicant "has the ultimate burden of demonstrating that is clearly consistent with the national interest to grant or continue his security clearance. ISCR Case No. 01-20700 at 3 (App. Bd. 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. "[S]ecurity clearance determinations should err, if they must, on the side of denials." *Egan*, 484 U.S. at 531. *See* Exec. Or. 12968 § 3.1(b).

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: *The Concern: An individual who is financially overextended is at risk of having to engage in illegal acts to generate funds.* E2.A6.1.1

## CONCLUSIONS

The Government established by substantial evidence and Applicant's admissions each of the allegations in the SOR at the time the SOR was issued. At the same time in 2004, and before the SOR was issued, Applicant took legal action and responsible financial action to resolve the delinquent debts alleged by the Government.

The Disqualifying Conditions (DC) applicable here are DC 1 (A history of not meeting financial obligations E2.A6.1.2.1) and DC 3 (Inability or unwillingness to satisfy debts E2.A6.1.2.3). Applicant had delinquent debts incurred for medical expenses and car purchases. She was financially unable to pay them because of her low paying jobs and having to care for three children.

The Mitigating Conditions (MC) applicable here are MC 3 (The conditions that resulted in the behavior were largely beyond the person's control, in this case being divorce, separation, three children born in a four year period, low paying jobs, lack of a college degree E2.A6.1.3.3) and MC 6 (The individual initiated a good-faith effort to repay overdue creditors or otherwise resolve debts E2.A6.1.3.6). Three of Applicant's delinquent debts were not related to transportation issues or health care issues. Before the SOR was issued she paid the cable television and utility company debts, and tried to negotiate settlements on a car loan and hospital debt, but the creditors and she could not come to a realistic installment payment plan for her. Finally, again before the SOR was filed, Applicant filed for Chapter 7 bankruptcy, a legal procedure to resolve her debts. She exerted good-faith efforts on some debts, and then resolved all her debts legally. She never has had credit cards, and pays her current bills regularly. I conclude this guideline for Applicant.

### **FORMAL FINDINGS**

The following are my conclusions as to each allegation in the SOR:

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

### **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.

Philip S. Howe

Administrative Judge

1. Pursuant to Exec. Or. 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 (Directive).