

DATE: June 30, 2006

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In re:

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SSN: -----

Applicant for Security Clearance

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ISCR Case No. 05-05628

## **DECISION OF ADMINISTRATIVE JUDGE**

**SHARI DAM**

### **APPEARANCES**

#### **FOR GOVERNMENT**

Melvin A. Howry, Esq., Department Counsel

#### **FOR APPLICANT**

*Pro Se*

### **SYNOPSIS**

Applicant is 46 years old and works for a federal contractor. Since 1999, she has accumulated a significant amount of debt as a result of marital issues and unemployment. To-date she has not paid or resolved a significant portion of it. When she filed her security clearance application in March 2004, she did not disclose certain delinquent debts. She failed to mitigate the security concerns raised by financial considerations, but did mitigate those raised by her personal conduct. Clearance is denied.

### **STATEMENT OF THE CASE**

On March 6, 2006, the Defense Office of Hearings and Appeals (DOHA) issued a Statement of Reasons (SOR) to Applicant, under Executive Order 10865, *Safeguarding Classified Information Within Industry*, as amended, and Department of Defense Directive 5220.6, *Defense Industrial Security Clearance Review Program* (Directive), dated January 2, 1992, as amended. The SOR detailed reasons under Guidelines F (Financial Considerations) and E (Personal Conduct) why DOHA could not make a preliminary affirmative finding under the Directive that it is clearly consistent with the national interest to grant a security clearance to Applicant. DOHA recommended the case be referred to an administrative judge to determine whether a clearance should be granted.

On March 22 and April 3, 2006, Applicant filed her Answer, and elected to have the case decided on the written record in lieu of a hearing. On April 20, 2006, Department Counsel prepared a File of Relevant Material (FORM) containing 12 Government Exhibits (GX). The FORM was mailed to Applicant on April 25, 2006, and received on May 5, 2006. Applicant was afforded an opportunity to file objections and submit material in refutation, extenuation, or mitigation. On June 14, 2006, the case was assigned to me. On June 20, 2006, Applicant submitted additional materials without objection from Department Counsel. I marked those documents GX 13.

### **FINDINGS OF FACT**

Based on the entire record, including Applicant's admissions in her Answer to the SOR, I make the following findings of fact:

Applicant is 46 years old and works for a federal contractor. In March 2004, she completed a security clearance application (SCA).

When Applicant signed her SCA, she certified his answers were "true, complete, and correct" to the best of her knowledge and belief. In response to Question 38. Your Financial Delinquencies - 180 Days (*In the last 7 years, have you been over 180 days delinquent on any debts(s)?*), she answered "Yes," and listed an outstanding fee for a health club.

During a meeting with a government investigator in December 2004 regarding her answers to the financial questions in the SCA, Applicant acknowledged various debts listed on a September 2004 credit report (GX 6), some of which she was unaware and some that she thought were paid. She attributed her financial problems to a period of unemployment from September 2002 to May 2003 (GX 5 at 4), and her husband who would not work. (GX 7 at 3). She indicated that she was attempting to pay some of the outstanding debts. (*Id.*) According to the credit report, the delinquent debts began in approximately in 1999 and continued into 2006. (GX 11).

In March 2006, the Government filed a SOR. Paragraph 1 of the SOR alleged that Applicant's delinquent debts totaled \$15,336. She admitted that she owed all nine debts listed in SOR ¶¶ 1.a through 1.i, except ¶ 1.f for \$391 that was paid in February 2005. (GX 4). After receiving the SOR, Applicant paid the medical bills alleged in ¶ 1.b for \$71, and in ¶ 1.c for \$75. She contacted the creditors listed in ¶¶ 1. a (\$291), 1.e (\$552), and 1.g (\$468), and would contact all of the other creditors. She indicated that she would begin paying off the smaller debts, and then attempt to pay the cable debt listed in ¶ 1.d for \$148, and the unpaid car loan \$5,5108 alleged in ¶ 1.i. (GX 13). She acknowledged that the \$8,304 debt alleged in ¶ 1.h related to a truck that was repossessed after her payments fell in arrears. (GX 7 at 2). She stated that "I am really trying to get all this taken care of and I want to have good credit again." (GX 13 at 8).

In her March 2006 Answer, Applicant reiterated that the reason she could not pay her debts was because her former husband could not keep a job. After he moved out of their home in April 2004, her daughter moved in with her. The daughter subsequently lost her job, and Applicant supported both of them on \$1,332 a month. She filed for a divorce in December 2004. Subsequently, her husband failed to pay her \$500 bimonthly, as agreed in their divorce decree. (GX 3).

Paragraph 2 of the SOR alleged that she falsified her SCA because she did not list under Question 38 the four debts, alleged in ¶¶ 1.f, 1.g, 1.h and 1.i, as 180 days delinquent. She stated she did not disclose the debt alleged in ¶ 1.h under that question, because she disclosed it under Question 35. Your Financial Record - Repossessions. She admitted she did not list the other three debts because she had forgotten about them while completing the SCA on the computer. She claimed that she "did not intentionally hide information." (GX 3 at 3). Her explanations are reasonable.

Applicant submitted three letters from people who work with her. All of the people recommend that she be granted a security clearance. One of them from the Human Resources Department stated that over the two-year period of time that she has known Applicant, she has found her to be a "well-balanced person with an abundance of positive qualities who can be trusted with confidence." (GX at 4).

### POLICIES

Enclosure 2 of the Directive, *Adjudicative Guidelines for Determining Eligibility for Access to Classified Information*, sets forth criteria, which must be evaluated when determining security clearance eligibility. Within those adjudicative guidelines are factors to consider in denying or revoking an individual's request for access to classified information (Disqualifying Conditions), and factors to consider in granting an individual's request for access to classified information (Mitigating Conditions). By recognizing that individual circumstances of each case are different, the guidelines provide substantive standards to assist an administrative judge in weighing the evidence in order to reach a fair, impartial and common sense decision.

The adjudicative process requires thorough consideration and review of all available, reliable information about the applicant, past and present, favorable and unfavorable, to arrive at a balanced decision. Section E2.2. of Enclosure 2 of

the Directive describes the essence of scrutinizing all appropriate variables in a case as the "whole person concept." In evaluating the disqualifying and mitigating conduct an administrative judge should consider: (1) the nature, extent, and seriousness of the conduct; (2) the circumstances surrounding the conduct; (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 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.

Granting an applicant's clearance for access to classified information is based on a high degree of trust and confidence in the individual. Accordingly, decisions under the Directive must

include consideration of not only the *actual* risk of disclosure of classified information, but also consideration of any *possible* risk an applicant may deliberately or inadvertently compromise classified information. Any doubt about whether an applicant should be allowed access to classified information must be resolved in favor of protecting classified information. Directive ¶ E2.2.2. The decision to deny an individual a security clearance is not necessarily a judgment about an applicant's loyalty. Exec. Or. 10865, § 7. Instead, it is a determination that an applicant has not met the strict guidelines established by the Department of Defense 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. *Departments of the Navy v. Egan*, 484 U.S. 518, 531 (1988). The Directive presumes a rational connection between past proven conduct under any disqualifying conditions and an applicant's present security suitability. ISCR Case No. 95-0611 at 2 (App. Bd. May 2, 1996).

Once the Government establishes a disqualifying condition by substantial evidence, the corresponding burden of rebuttal shifts to the applicant to present evidence in refutation, extenuation, or mitigation sufficient to overcome the position of the government. ISCR Case No. 01-20700 at 3 (App. Bd. Dec. 19, 2002); 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 clearance." *Id.*

Based upon the allegations contained in the SOR and a consideration of the evidence as a whole, the following adjudicative guidelines are pertinent to an evaluation of the facts of this case:

**Guideline F - Financial Considerations:** A security concern may exist when 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.

**Guideline E - Personal Conduct:** A security concern may exist when 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 disqualifying and mitigating conditions, raising either security concerns or mitigating security concerns applicable to this case, are set forth and discussed in the Conclusions section below.

## CONCLUSIONS

I considered all facts in evidence and legal standards, including the "whole person" concept, and concluded the following with respect to the allegations set forth in the SOR.

### Guideline F: Financial Considerations

The Government established a potential case for disqualification under this guideline. Based on the evidence, Financial Considerations Disqualifying Condition (FC DC) E2.A6.1.2.1 (*A history of not meeting financial obligations*), and FC DC E2.A6.1.2.3 (*Inability or unwillingness to satisfy debts*), apply to this case. Since 1999, Applicant has a history of failing to meet her financial obligations as evidenced by her admissions and credit reports. To-date they majority of the debts remain outstanding because she is unable to pay them.

The Government having established a potential disqualification, the burden shifted to Applicant to mitigate or rebut the allegations. After reviewing all of the mitigating conditions, I conclude Financial Consideration Mitigating Condition (FC MC), E2/A6.1.3.1 (*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)*) applies. Applicant's financial difficulties are the result of unexpected marital problems and unemployment, which were factors beyond her control.

As that mitigating condition standing alone is insufficient to overcome the Government's present concern, I also considered FC MC E2.A6.1.3.4 (*The person has received or is receiving counseling for the problem and there are clear indications that the problem is being resolved or under control*), and, FC MC E2.A6.1.3.6 (*The individual initiated a good-faith effort to repay overdue creditors or otherwise resolve debts*), and conclude neither applies. There is no evidence in the record to indicate that Applicant has consulted with a credit counselor, such that her problems are under control, as required by FC MC E2.A6.1.3.4. Although she exhibited some effort to honor her obligations when she paid \$537 to resolve three debts, and contacted other creditors to explore a repayment plan for the remaining \$14,799, she has not established a solid plan or monthly budget to demonstrate that she is able to financially rehabilitate herself, as contemplated under the good-faith provision of FC MC E2.A6.1.3.6. Hence, SOR ¶¶ 1.b, 1.d, 1.e, 1.g, 1.h, and 1.i, are found against her. SOR ¶¶ 1.b, 1.c and 1.f are found in her favor.

#### Guideline E: Personal Conduct

The Government alleged that Applicant falsified her SCA by failing to disclose four debts, which constituted a disqualification under Personal Conduct Disqualifying Condition (PC DC) E2.A5.1.2.2 (*The deliberate omission, concealment, or falsification 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*). Applicant denied those allegations.

When a falsification allegation is controverted or denied, the government has the burden of proving it. Proof of an omission, standing alone, does not establish or prove an applicant's state of mind when the omission occurred. An administrative judge must consider the record evidence as a whole to determine whether there is direct or circumstantial evidence concerning an applicant's state of mind at the time the omission occurred. *See* ISCR Case No. 03-09483 at 4 (App. Bd. Nov. 17, 2004) (explaining holding in ISCR Case No. 02-23133 at 5(App. Bd. Jun. 9, 2004).

Applicant stated that she did not intentionally omit information about four of her delinquent debts on the SCA. She did not disclose one of the debts (¶ 1.h) under Question 38 because she listed in another section of the SCA. She forgot about the other three debts (¶¶ 1.f, 1.g. and 1.i) while she was completing the application on the computer, which is credible, given that she disclosed a delinquent health club fee under the question, and in her subsequent interview and review of her credit report, she readily acknowledged them. The failure to disclose the four debts was not intentional. Hence, the allegation contained in SOR ¶ 2.a is decided in her favor.

I further considered the totality of the evidence in this case, including Applicant's age and her present good work record in my evaluation of Applicant's risk and vulnerability in protecting our national interests. Although she has made some progress in resolving her financial problems and expressed her commitment to continue, she has not yet established that she is solvent or has a current track record of financial management and responsibility sufficient to warrant a security clearance. For the reasons stated, I conclude Applicant is not eligible for access to classified information. Accordingly, Applicant did not mitigate the security concerns raised by financial considerations, but did mitigate those raised by her personal conduct. Guideline F is decided against her, and Guideline E is decided for her.

### **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 as follows:

Paragraph 1: Guideline F (Financial Considerations) AGAINST APPLICANT

Subparagraph 1.a: Against Applicant

Subparagraph 1.b: For Applicant

Subparagraph 1.c: For Applicant

Subparagraph 1.d: Against Applicant

Subparagraph 1.e: Against Applicant

Subparagraph 1.f: For Applicant

Subparagraph 1.g: Against Applicant

Subparagraph 1.h: Against Applicant

Subparagraph 1.i: Against Applicant

Paragraph 2: Guideline E (Personal Conduct) FOR APPLICANT

Subparagraph 2.a: For Applicant

**DECISION**

In light of all the circumstances and evidence presented in this case, it is not clearly consistent with the national interest to grant a security clearance to Applicant. Clearance is denied.

Shari Dam

Administrative Judge