

DATE: September 11, 2006

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In Re:

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SSN: -----

Applicant for Security Clearance

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ISCR Case No. 05-05026

**DECISION OF ADMINISTRATIVE JUDGE**

**CHARLES D. ABLARD**

**APPEARANCES**

**FOR GOVERNMENT**

Rita C. O'Brien, Department Counsel

**FOR APPLICANT**

*Pro Se*

**SYNOPSIS**

Applicant mitigated financial considerations security concerns arising over delinquent debts in excess of \$15,000.00 by entering into a consumer credit program in November, 2005, that withholds \$660.00 per month to pay her creditors. While Applicant might have entered into such a program earlier, she has now taken the appropriate steps to mitigate the security concerns. Clearance is granted.

**STATEMENT OF CASE**

On January 6, 2006, the Defense Office of Hearings and Appeals (DOHA), pursuant to Executive Order 10865, *Safeguarding Classified Information Within Industry*, as amended and modified, and Department of Defense Directive 5220.6, *Defense Industrial Personnel Security Clearance Review Program* (Directive), dated January 2, 1992, as amended and modified, 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. DOHA recommended the case be referred to an administrative judge to determine whether a clearance should be granted, continued, denied, or revoked.

On February 7, 2006, Applicant responded to the SOR allegations, and requested a hearing. The matter was assigned to me on May 31, 2006. A notice of hearing was issued on June 12, 2006, for a hearing on June 28, 2006, and held that day. The government offered in evidence six exhibits and Applicant offered twelve. All were admitted. The transcript was received on July 20, 2006. The record was left open until July 28, 2006, for submission of additional material by Applicant which was submitted and admitted without objection (Exh. M).

**FINDINGS OF FACT**

Applicant admitted all the SOR allegations but identified three listed debts that were duplicates. After a complete review of the record, I make the following additional findings of fact:

Applicant is a 65-year-old program manager for a radio engineering project for a defense contractor since mid-2006. For two years between 2004 and 2006 she worked on the same program for another contractor at a military base. She left that job which paid \$65,000.00 per annum and required extensive travel for her present position which pays \$80,000.00 per year with very little travel. Between 1989 and 1999 she was employed by another defense contractor.

Applicant had financial difficulties beginning in 1993 when she was divorced and her husband failed to pay her \$500.00 monthly for accumulated bills in accordance with the divorce decree. She sued him and received a garnishment order but he died before payments could begin. As a result she was unable to pay the debts and feared the loss of her home. She petitioned for bankruptcy under Chapter 7 in 1993 and was discharged from bankruptcy in 1994.

In 1999 Applicant lost her job in a reduction in force. She cashed her 401K with her employer for approximately \$20,000.00 but invested in the stock market on advice of her father as the market went into serious decline. She lost all but \$4,000.00 leaving her with very little financial cushion for the next five years during which time she worked for seven different start-up dot-com companies (Exh. 1). Most of the companies failed when the dot-com bubble burst. This period was one of low income for her and she was between jobs for two periods totaling nine months in 2000 and 2001, working occasionally as a consultant. In 2002 and 2003 she was employed but her total income for the two-year period was under \$4,000.00 (Exh. H). During part of this period she lived with another family to save money. She became fully employed again in April 2004.

The SOR listed 13 delinquent debts totaling \$19,000.00. Three of the listed debts are duplicates (SOR 1.j., k., and l. are duplicates respectively of SOR b., g., and h.) so the total is slightly in excess of \$15,000.00. She has paid her three smallest delinquent debts (SOR 1.a., c., and i.) in full (Exh. B). Applicant has been in consumer credit counseling since November 2005. She currently has \$660.00 per month withheld from her salary which the credit counselor uses to pay the remaining debts (Exh.A). At this rate of payment, all will be paid in 15 months. However, because of an improved financial situation, she plans to add \$300.00 to the payments which will reduce the time to ten months. She is a homeowner and has no current significant debts. She is financially stable and able to continue to resolve her past delinquent debts (Exh. C).

Applicant is highly regarded by managers of the Army offices for whom she has worked (Exhs.D and E). She is regarded by friends and associates as honest, faithful, and of good character (Exhs. F and G). She is self-educated in her field but manages professional engineers. She has one 38-year-old son and is engaged to be married.

### 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.

An evaluation of whether the applicant meets the security guidelines includes consideration of the following factors: (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. Directive, ¶ E2.2.1. Security clearances are granted only when "it is clearly consistent with the national interest to do so." Executive Order No. 10865 § 2. *See* Executive Order No. 12968 § 3.1(b).

Initially, the Government must establish, by something less than a preponderance of the 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. The applicant then bears the burden of demonstrating it is clearly consistent with the national interest to grant or continue a security clearance. "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.

## CONCLUSIONS

Upon consideration of all the facts in evidence, and after application of all appropriate adjudicative factors, I conclude the following with respect to all allegations set forth in the SOR:

Applicant's delinquent debts prompted the allegation of security concerns under Guideline F since an individual who is financially overextended is at risk of having to engage in illegal acts to generate funds. (E2.A6.1.1.) Conditions that could raise a security concern and may be disqualifying include a history of not meeting financial obligations (E2.A6.1.2.1.), and evidence of inability or unwillingness to satisfy debts. (E2.A6.1.2.3.) Mitigating Conditions (MC) might include the fact that the person has initiated a good faith effort to repay overdue creditors or otherwise resolve debts. (E2.A6.1.3.6.), and the person has received or is receiving counseling for the problem and there are clear indications that the problem is being resolved (E2.A6 1.3.4.).

Applicant's periods of employment, unemployment, and under-employment present a complex record. Her bankruptcy occurred over 12 years ago because she encountered a difficult financial situation after the death of her former husband who had obligations to help her pay debts they had accumulated. Bad investments in the stock market, and periods of low-income employment during the period 1999 to 2004 were the cause of her current problems. During that time she attempted to lessen her living expenses but ran up the debts which are the subject of this proceeding. Her actions for the last 10 months in attempting to resolve her delinquent debts and her prospective ability to pay them in full indicates that she will be successful in resolving the problems.

Applicant candidly admits her problems in financial management over several years. While her credit counseling did not begin until questions arose about her security clearance, she has taken action to resolve her debts and, with her present income, there should be no question but that her debts can be resolved in the scheduled fifteen month period or less.

Mitigating conditions apply since she has been and continues to receive counseling and the problems are being resolved with a managed debt repayment program by a professional organization. An applicant is not required to prove that all delinquent debts be resolved to be granted a security clearance but only that efforts are being made to resolve the debts and show that the matters are being diligently pursued with an ability to resolve them. From the documentation and testimony submitted by Applicant, I have no difficulty in making that determination.

In all adjudications the protection of our national security is of paramount concern. Persons who have access to classified information have an overriding responsibility for the security concerns of the nation. The objective of the security clearance process is the fair-minded, commonsense assessment of a person's trustworthiness and fitness for access to classified information. The "whole person" concept recognizes we should view a person by the totality of their acts and omissions. Each case must be judged on its own merits taking into consideration all relevant circumstances, and applying sound judgment, mature thinking, and careful analysis. Based on that analysis, I conclude Applicant's work record for the defense industry, her references, and her career history notwithstanding periods of difficult times and the earlier bankruptcy justifies application of the whole person analysis.

After considering all the evidence in its totality, I conclude that a security clearance should be granted.

## FORMAL FINDINGS

Formal findings as required by the Directive (Par. E3.1.25) are as follows:

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

**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 renew a security clearance for Applicant. Clearance is granted.

Charles D. Ablard

Administrative Judge