

KEYWORD: Financial Considerations

DIGEST: Applicant has had a long history of financial difficulties and overdue debts. Applicant has been attempting to pay these debts through a credit counselor, and the majority of these debts have now been resolved. Applicant gave less than complete information to the Government concerning her past overdue debts, when she executed a January 2003 Security Clearance Application (SCA). The errors were due to an honest misunderstanding about what was to be included on the SCA, not an intent to deceive the Government. Mitigation has been shown. Clearance is granted.

CASENO: 04-05188.h1

DATE: 09/22/2005

DATE: September 22, 2005

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In Re:

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SSN: -----

Applicant for Security Clearance

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ISCR Case No. 04-05188

**DECISION OF ADMINISTRATIVE JUDGE**

**MARTIN H. MOGUL**

**APPEARANCES**

**FOR GOVERNMENT**

Melvin A. Howry, Esq., Department Counsel

## FOR APPLICANT

*Pro Se*

### SYNOPSIS

Applicant has had a long history of financial difficulties and overdue debts. Applicant has been attempting to pay these debts through a credit counselor, and the majority of these debts have now been resolved. Applicant gave less than complete information to the Government concerning her past overdue debts, when she executed a January 2003 Security Clearance Application (SCA). The errors were due to an honest misunderstanding about what was to be included on the SCA, not an intent to deceive the Government. Mitigation has been shown. Clearance is granted.

### STATEMENT OF THE CASE

On February 14, 2005, the Defense Office of Hearings and Appeals (DOHA), pursuant to Executive Order 10865, *Safeguarding Classified Information Within Industry*, dated February 20, 1960, 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. The SOR detailed reasons under Guideline F (Financial Considerations) and Guideline E (Personal Conduct) 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 conduct proceedings and determine whether clearance should be granted or denied.

In a signed, sworn statement, dated March 5, 2005, Applicant responded to the SOR allegations, and she requested a clearance decision based on a hearing record.

This case was initially assigned to another assigned Administrative Judge on April 21, 2005, but due to scheduling considerations it was reassigned to this Administrative Judge on June 22, 2005, to conduct a hearing and issue a written decision. A Notice of Hearing was issued to the parties on June 22, 2005, and the hearing was held on July 19, 2005.

At the hearing, Department Counsel offered seven documentary exhibits (Exhibits 1-7) and no witnesses were called. Applicant appeared without counsel, offered 10 documentary exhibits (Exhibits A through K) and offered her own testimony. All documentary evidence was entered into evidence without objection. After the hearing, the record was left open for Applicant to offer additional documentary exhibits regarding her alleged payment of other debts. Applicant offered additional timely documents, which have been marked collectively as Exhibit L. This final exhibit was not objected to by Department Counsel and has been entered into evidence. The transcript (TR) was received on August 5, 2005.

### **FINDINGS OF FACT**

In the SOR, the Government alleges that a security risk may exist under Adjudicative Guideline F (Financial Considerations) and Guideline E (Personal Conduct) of the Directive. The SOR contains nineteen allegations, 1.a. through 1.s., under Guideline F and 2 allegations, 2.a. and 2.b., under Guideline E.

After a complete and thorough review of the evidence in the record, including Applicant's Answer to the SOR, the documents and the live testimony, and upon due consideration of that evidence, I make the following Findings of Fact:

Applicant is a 48 year old employee of a defense contractor employee which seeks a security clearance on her behalf. She is married, and she has three sons. Applicant has a tenth grade education.

#### **Paragraph 1 (Guideline F - Financial Considerations)**

The SOR lists eighteen debts that Applicant has allegedly owed, 1.a. through 1.r, under Adjudicative Guideline F., with one additional allegation listed under Guideline F. In her Response to the SOR, and during her testimony, Applicant averred that a number of the debts listed on the SOR are duplicates. The debts will be discussed in the order that they were listed in the SOR.

1.a. This overdue debt to Creditor 1 is cited in the SOR in the amount of \$130. Applicant admitted that this debt was due

and owing (RSOR). Subsequent to the hearing she submitted a copy of a personal money order which established that on July 21, 2005, she made a payment to this creditor in the amount of \$130 (Exhibit L). While this payment was not made until after the hearing, I find that she currently does not owe anything on this debt.

1.b. This overdue debt to Creditor 2 is cited in the SOR in the amount of \$67. Applicant admitted that this debt was due and owing (RSOR). Subsequent to the hearing she submitted a copy of a personal money order which established that on July 21, 2005, she made a payment to this creditor in the amount of \$68 (Exhibit L). While this payment was not made until after the hearing, I find that she currently does not owe anything on this debt.

1.c. This overdue debt to Creditor 3 is cited in the SOR in the amount of \$481. Applicant admitted that this debt was due and owing (RSOR). Subsequent to the hearing she submitted a copy of a letter from the creditor showing that they were willing to accept \$361 to settle this debt. Applicant also submitted a copy of a personal money order which established that on July 21, 2005, she made a payment to this creditor in the amount of \$361 (Exhibit L). While this payment was not made until after the hearing, I find that she currently does not owe anything on this debt.

1.d. This overdue debt to Creditor 4 is cited in the SOR in the amount of \$4,973. Applicant admitted that this debt was due and owing (RSOR). Subsequent to the hearing she contended that the correct amount owed was \$360 and she submitted a copy of a letter from the creditor showing the amount owed was \$360. While the amount owed is significantly less than was alleged, it appears to be the same debt for which only \$360 is owed. Applicant also submitted a copy of a personal money order which established that on July 21, 2005, she made a payment to this creditor in the amount of \$360 (Exhibit L). While this payment was not made until after the hearing, I find that she currently does not owe anything on this debt.

1.e. This overdue debt to Creditor 5 is listed in the SOR in the amount of \$4,973. In her RSOR, Applicant contended that the amount owed was not correct. In her post hearing submission, Applicant contends that this is the same debt as 1.d., above. Since the amount listed for this debt is the same as listed in 1.d., I find this is the same debt, and she has now resolved this debt.

1.f. This overdue debt to Creditor 6 is cited in the SOR in the amount of \$2,883. Applicant admitted that this debt was due and owing (RSOR). Subsequent to the hearing she submitted a copy of a letter from the creditor showing that they were willing to accept \$925 to settle this debt. Applicant also submitted a copy of a personal money order which established that on July 21, 2005, she made a payment to this creditor in the amount of \$925 (Exhibit L). While this payment was not made until after the hearing, I find that she currently does not owe anything on this debt. 1.g. This overdue debt to Creditor 7 is cited in the SOR in the amount of \$587. Applicant admitted that this debt was due and owing (RSOR). Subsequent to the hearing she submitted a copy of a letter from the creditor showing that they were willing to accept \$293 to settle this debt. Applicant also submitted a copy of a personal money order which established that on July 21, 2005, she made a payment to this creditor in the amount of \$293 (Exhibit L). While this payment was not made until after the hearing, I find that she currently does not owe anything on this debt.

1.h. This overdue debt to Creditor 8 is cited in the SOR in the amount of \$6,248. Applicant admitted that this debt was due and owing (RSOR). However, subsequent to the hearing Applicant contended that this is not a debt incurred by either her or her husband and that she had disputed this bill with the credit reporting services in 2004. She also submitted a letter from the credit reporting service, dated March 13, 2004, showing that she had disputed this bill, and

the credit service indicated that the bill would be deleted from its report. I find that Applicant does not owe anything on this debt.

1.i. This overdue debt to Creditor 9 is listed in the SOR in the amount of \$587. In her RSOR, Applicant contended that this bill was a duplicate bill. In her post hearing submission, Applicant contends that this is the same debt as 1.g., above (Exhibit L). Since the amount listed for this debt is the same as listed in 1.g., I find this is the same debt, and she has now resolved this debt.

1.j. and 1.k. These two overdue debts to the same creditor, Creditor 10 are listed in the SOR in the same amount of \$529. I find that there is only one debt. Subsequent to the hearing Applicant contended that these are not debts incurred by either her or her husband and that she had disputed this bill with the credit reporting services in 2004. She submitted a letter from the credit reporting service, dated March 13, 2004, showing that she had disputed this bill. The credit service did not indicate that the result of its investigation, but continues to list this debt, showing that is disputed (Exhibit L). While Applicant contends that she is still disputing this bill, and she testified at the hearing as to the reason for her dispute, I find that Applicant does owe \$529 for one debt.

1.l. This overdue debt to Creditor 11 is listed in the SOR in the amount of \$4,046. At the hearing, Applicant submitted a letter from a management services company, dated June 2, 2004, which showed that the previous balance on this debt was \$4,733, but the current balance was \$0 (Exhibit J). Applicant testified that she believed this debt was resolved because she had been part of a class action lawsuit against this creditor, and this was the settlement (Tr at 61-66). Exhibit B is a Proposed Settlement Agreement from this class action, which established that in the settlement agreement, the creditor would abandon any action against all consumers and the account balance on all loans in the class would be zero. I find that Applicant has now resolved this debt.

1.m. This overdue debt to Creditor 12 is listed in the SOR in the amount of \$6,200. Applicant admitted that this debt was due and owing (RSOR). Subsequent to the hearing Applicant submitted a copy of her wage and earning statement showing that her wages were being garnished in the amount of \$69 a week to pay this debt and that a total of \$1,990 had been garnished (Exhibit L). I find that Applicant is making payments on this debt.

1.n. This overdue debt to Creditor 13 is listed in the SOR in the amount of \$130. In her RSOR, Applicant contended that this bill was a duplicate bill. At the hearing, Applicant testified that

this is the same debt as 1.a., above. Since the amount listed for this debt is the same as listed in 1.a., I find this is the same debt, and she has now resolved this debt.

1.o. This overdue debt to Creditor 14 is listed in the SOR in the amount of \$587. In her RSOR, Applicant contended that this bill was a duplicate bill. At the hearing, Applicant testified that this is the same debt as 1.g., above. Since the amount listed for this debt is the same as listed in 1.g., I find this is the same debt, and she has now resolved this debt.

1.p. This overdue debt to Creditor 15 is listed in the SOR in the amount of \$380. In her RSOR, Applicant admitted that this debt is due and owing. In her post hearing submission, Applicant contends that this is the same debt as 1.c., above, and she contends that she has verified this with the creditor. Since the name of the creditors listed on both debts is basically the same, I find this is the same debt, and she has now resolved this debt.

1.q. This overdue debt to Creditor 16 is cited in the SOR in the amount of \$263. Applicant admitted that this debt was due and owing (RSOR). Subsequent to the hearing she submitted a copy of a personal money order which established that on July 21, 2005, she made a payment to this creditor in the amount of \$263 (Exhibit L). While this payment was not made until after the hearing, I find that she currently does not owe anything on this debt.

1.r. This overdue debt to Creditor 17 is listed in the SOR in the amount of \$297. Applicant admitted that this debt was due and owing (RSOR). Subsequent to the hearing she submitted a copy of a personal money order which established that on July 21, 2005, she made a payment to this creditor in the amount of \$297 (Exhibit L). While this payment was not made until after the hearing, I find that she currently does not owe anything on this debt.

1.s. The Government alleges that Applicant's monthly expenses exceed her monthly income.

At the hearing Applicant denied this allegation. Subsequent to the hearing she submitted a copy of her husband's wage and earning statement showing that as of April 30, 2005, his year to date earnings were \$5,238 (Exhibit L). He was unemployed when Applicant's had previously determined the family income on Applicant's financial statement (Exhibit 2).

## **Paragraph 2 (Guideline E - Personal Conduct)**

Applicant completed a signed, sworn Security Clearance Application (SCA) on January 24, 2003:

Question #38 asks, "In the last 7 years, have you been over 180 days delinquent on any debt(s)?" Applicant answered "Yes" to this question, and she listed one debt. At the time she completed the SCA, Applicant was delinquent on all of the debts discussed above, and she should have included the debts listed in the SOR which were overdue, as discussed above.

Question #39 asks, "Are you currently over 90 days delinquent on any debt(S)?" Applicant answered "Yes" to this question, and she listed one additional debt. At the time she completed the SCA, Applicant was delinquent on all of the debts discussed above, and she should have included the debts listed in the SOR which were overdue, as discussed above.

Applicant testified that she when she completed the SCA, she was not aware that she was to list all of her debts. She only believed there was space for one debt for each question so she only listed one debt each. She contended that she was not trying to give incorrect answers or mislead the Government (Tr at 95-104).

Applicant did begin using the services of a credit counselor as of January 27, 2005. It was her understanding that she would initially pay this company \$1,391, and they would pay her creditors (Exhibits C and D). However, she could not get the company to inform her as to which creditors it had paid and the amount it had paid to each. In her post hearing submission, Applicant informed me that since she could still not get information from this company, she terminated their services (Exhibit L). I find that Applicant did begin making a good faith effort to resolve her debts in January 2005.

Applicant explained that the primary reason for her financial difficulties was because her husband had not been employed since 1997, and she was on disability due to a back injury from 1989 to 1998 and sometime in 2002 (Exhibit 2).

Finally, Applicant submitted four letters of reference from individual who spoke highly of Applicant as a good worker and a person of high character (Exhibits E-H).

### **POLICIES**

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 to the Directive sets forth adjudicative guidelines that must be carefully considered according to the pertinent Guideline in making the overall common sense determination required.

Each adjudicative decision must also include an assessment of: (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 Enclosure 2 of the Directive sets forth adjudicative guidelines to be considered in evaluating an individual's security eligibility. The Administrative Judge must take into account the conditions raising or mitigating security concerns in each area applicable to the facts and circumstances presented.. Although the presence or absence of a particular condition for or against clearance is not determinative, the specific adjudicative guidelines should be followed whenever a case can be measured against this policy guidance, as the guidelines reflect consideration of those factors of seriousness, recency, motivation, *etc.*

### **Burden of Proof**

Initially, the Government must prove controverted facts alleged in the Statement of Reasons. If the Government meets that burden, the burden of persuasion then shifts to the applicant to establish his security suitability through evidence of refutation, extenuation or mitigation sufficient to demonstrate that, despite the existence of disqualifying conduct, it is nevertheless clearly consistent with the national interest to grant or continue the security clearance.

A person who seeks access to classified information enters into a fiduciary relationship with the Government predicated upon trust and confidence. Where facts proven by the Government raise doubts about an applicant's judgment, reliability or trustworthiness, the applicant has a heavy burden of persuasion to demonstrate that he or she is nonetheless security worthy. As noted by the United States Supreme Court in *Department of the Navy v. Egan*, 484 U.S. 518, 531 (1988), "the clearly consistent standard indicates that security-clearance determinations should err, if they must, on the side of denials."

### **CONCLUSIONS**

It is the Government's responsibility to present substantial evidence to support the finding of a nexus, or rational connection, between the Applicant's conduct and the continued holding of a security clearance. If such a case has been established, the burden then shifts to the Applicant to go forward with evidence in rebuttal, explanation or mitigation which is sufficient to overcome or outweigh the Government's case. The Applicant bears the ultimate burden of persuasion in proving that it is clearly consistent with the national interest to grant him or her a security clearance. This the Applicant has done.

Having considered the evidence of record in light of the appropriate legal precepts and factors, I conclude the following with respect to Guidelines F and E:

### **(Guideline F - Financial Considerations)**

The Government has initially established its case under Guideline F. The record evidence clearly establishes Applicant's indebtedness. It shows Applicant has had a long history of financial difficulties.

Applicant's overall conduct pertaining to her financial obligations falls within Financial Considerations Disqualifying Condition (DC) E2.A6.1.2.1., a history of not meeting financial obligations. However, I can not now find that DC E2.A6.1.2.3. an inability or unwillingness to satisfy debts, applies since Applicant has now satisfied almost all of her debts, and she is paying her last remaining large debt through a garnishment. She still has one unpaid debt that she is disputing, and unless she can establish that this debt is in error, she must pay this debt as well.

Regarding Mitigating Conditions (MC) E2.A6.1.3.3., which regards debts that result from circumstances beyond the person's control, I find it applicable to this case. A major contributor to Applicant's indebtedness is her husband's unemployment and her own long-term unemployment due to disability.

MC E2.A6.1.3.4. applies because Applicant has also sought the aid of a credit counseling service. The fact that the service did not appear to help her to resolve her overdue debts, should not be considered adversely against Applicant.

Applicant has now made a good-faith effort to resolve her debts. While it has taken Applicant more time than it should, she has been making an attempt since at least January 2005, when she employed the services of the credit counseling service. I resolve Guideline F for Applicant.

### **(Guideline E - Personal Conduct)**

The Government relies heavily on the honesty and integrity of individuals seeking access to our nation's secrets. When such an individual intentionally falsifies material facts on a security clearance application, it is extremely difficult to conclude that she nevertheless possesses the judgment, reliability and trustworthiness required of clearance holders.

With respect to Guideline E, the evidence establishes that Applicant provided less than complete information to the

Government in response to questions # 38, and #39 on the SCA that she executed on January 24, 2003. Applicant was delinquent on the debts discussed above. She did answer "Yes" to these questions, indicating that she had overdue debts, but she should have included on her SCA all of the debts listed in the SOR.

However, based on Applicant's testimony, I conclude that Applicant did have a good-faith belief that she only had to list one debt after each question, and that it was not her intention to deceive the Government when she completed the SCA.

In reviewing the Disqualifying Conditions (DC) under Guideline E, I cannot conclude that DC E2.A5.1.2.2. applies because Applicant did not knowingly provide false information in her SCA, regarding her past debts. I resolve Guideline E for Applicant.

### **FORMAL FINDINGS**

#### **Paragraph 1. Guideline F: FOR APPLICANT**

Subparagraph a: For Applicant

Subparagraph b: For Applicant

Subparagraph c: For Applicant

Subparagraph d: For Applicant

Subparagraph e: For Applicant

Subparagraph f: For Applicant

Subparagraph g: For Applicant Subparagraph h: For Applicant

Subparagraph i: For Applicant

Subparagraph j: For Applicant

Subparagraph k: For Applicant

Subparagraph l: For Applicant

Subparagraph m: For Applicant

Subparagraph n: For Applicant

Subparagraph o: For Applicant

Subparagraph p: For Applicant

Subparagraph q: For Applicant

Subparagraph r: For Applicant

Subparagraph s: For Applicant

**Paragraph 2. Guideline E: FOR APPLICANT**

Subparagraph a: For Applicant.

Subparagraph b: 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 a security clearance for Applicant.

Martin H. Mogul

Administrative Judge