

DATE: June 30, 2006

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In Re:

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SSN: -----

Applicant for Security Clearance

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CR Case No. 04-09487

**DECISION OF ADMINISTRATIVE JUDGE**

**JOHN GRATTAN METZ, JR**

**APPEARANCES**

**FOR GOVERNMENT**

John T. Hammer, Esquire, Department Counsel

**FOR APPLICANT**

*Pro Se*

**SYNOPSIS**

Applicant's falsification of her clearance application and financial irresponsibility renders her an unsuitable candidate for a security clearance. Clearance denied.

**STATEMENT OF THE CASE**

Applicant challenges the 20 July 2005 Defense Office of Hearings and Appeals (DOHA) Statement of Reasons (SOR) recommending denial or revocation of her clearance because of financial consideration and personal conduct. <sup>(1)</sup> Applicant answered the SOR 7 September 2005 and 3 October 2005, and requested a decision on the record. On 22 February 2006, she responded to DOHA's 12 August 2005 File of Relevant Material (FORM). The record closed on 1 March 2006, when Department Counsel indicated no objection to the response. DOHA assigned the case to me 1 March 2006.

**FINDINGS OF FACT**

Applicant admitted the financial allegations of the SOR, except for the debts at 1.b., 1.f., 1.i., and 1.m--which she denied as being paid. <sup>(2)</sup> Accordingly, I incorporate her admissions as findings of fact. She denied falsifying her clearance application. She is a 53-year-old administrative aide for a defense contractor since May 1978. She appears to have held a clearance since March 1992.

When Applicant submitted her clearance application in May 2003, she answered "no" to five questions (questions 34-38) seeking adverse financial information within the last seven years. She answered "yes" to question 39 (accounts currently 90+ days past due), and reported a single account for \$425. In fact, she had five past due accounts totaling over \$12,000 (1.b.-1.f). Applicant claimed that she did not believe the accounts were past due because she had been paying on each of them from time to time. However, this claim is not credible. The credit reports show the accounts charged off or sent to collection far enough in the past that Applicant had to know they were not current. Further, Applicant knew that she had been receiving collection letter from the creditors, and that she was not paying on each

account every month.

Applicant has a history of financial problems dating back to before March 1994, when she received a Chapter 7 bankruptcy discharge of her dischargeable debts. However, her financial problems continue. She attributes them to her ex-husband's medical problems as well as her own, but it is clear that she has not been a good money manager. The SOR alleges 13 debts totaling over \$13,000, falling past due since her 1994 bankruptcy. But the record evidence shows that these are just the debts that were past due when the SOR was issued. The SOR does not reflect debts that were seriously past due at various points during the background investigation that Applicant struggled to pay, but eventually did pay. Applicant has finally addressed each of the debts in the SOR in some fashion. Some have been paid, some settled in full for amounts substantially lower than the original debt, some have been addressed by repayment schedules or the resumption of regular payments. Tellingly, however, Applicant's response to the FORM contains documentation on two accounts that demonstrate her ongoing difficulties. Applicant provides a monthly statement on an account whose effective interest rate is 28% and whose approximately \$2,200 balance is reduced less than \$20 per month with a \$70 payment. At that rate, it will take her more than nine years to pay off the account, assuming she stays current and adds no charges to the account. The documentation on a second account, alleged at 1.i., shows an interest rate of over 21%, with an account balance that is growing because Applicant is charging more to the account than she is paying off monthly.

There is no evidence that Applicant is receiving credit counseling or other training to help her avoid financial problems in the future.

### **POLICIES AND BURDEN OF PROOF**

The Directive, Enclosure 2 lists adjudicative guidelines to be considered in evaluating an Applicant's suitability for access to classified information. Administrative Judges must assess both disqualifying and mitigating conditions under each adjudicative issue fairly raised by the facts and circumstances presented. Each decision must also reflect a fair and impartial common sense consideration of the factors listed in Section 6.3. of the Directive. The presence or absence of a disqualifying or mitigating condition is not determinative for or against Applicant. However, specific adjudicative guidelines should be followed whenever a case can be measured against them, as they represent policy guidance governing the grant or denial of access to classified information. Considering the SOR allegations and the evidence as a whole, the relevant, applicable, adjudicative guidelines are Guideline F (Financial Considerations) and Guideline E (Personal Conduct).

Security clearance decisions resolve whether it is clearly consistent with the national interest to grant or continue an Applicant's security clearance. The government must prove, by something less than a preponderance of the evidence, controverted facts alleged in the SOR. If it does so, it establishes a *prima facie* case against access to classified information. Applicant must then refute, extenuate, or mitigate the government's case. Because no one has a right to a security clearance, the Applicant bears a heavy burden of persuasion.

Persons with access to classified information enter into a fiduciary relationship with the government based on trust and confidence. Therefore, the government has a compelling interest in ensuring each Applicant possesses the requisite judgement, reliability, and trustworthiness of those who must protect national interests as their own. The "clearly consistent with the national interest" standard compels resolution of any reasonable doubt about an Applicant's suitability for access in favor of the government.<sup>(3)</sup>

### **CONCLUSIONS**

The Government established a case for disqualification under Guideline F, and Applicant did not mitigate the security concerns. Government records reflect over \$13,000 of delinquent debt acquired after Applicant's bankruptcy discharge in 1994.<sup>(4)</sup> The SOR allegations do not reflect a number of delinquent debts that Applicant was able to address during the course of her background investigation.

Applicant meets none of the mitigating factors for financial considerations. Her financial difficulties are both recent<sup>(5)</sup> and not isolated;<sup>(6)</sup> indeed they appear to be ongoing. Applicant's health issues and her ex-husband's health issues are

circumstances beyond her control,<sup>(7)</sup> but her financial problems also include consequences of choices she has made in the past. There is no evidence that she has sought credit counseling or otherwise brought the problem under control.<sup>(8)</sup> While many of the debts in the SOR have been satisfied in some fashion after the SOR was issued and several others are under a repayment schedule, Applicant has been slow to address her debts, and has not demonstrated that she will be able to avoid financial difficulties in the future.<sup>(9)</sup> I conclude Guideline F against Applicant.

The government established a case for disqualification under Guideline E, and Applicant did not mitigate the security concerns. She deliberately concealed the nature and extent of her financial problems, disclosing only one past due debt when there were at least five.<sup>(10)</sup> The one account she did disclose does not contain any information to suggest the extent of her financial problems. Further, none of the Guideline E mitigating conditions apply. The concealed information was relevant to a clearance decision.<sup>(11)</sup> Although the falsifications were isolated, they were recent, and there is no evidence demonstrating that Applicant provided the correct information voluntarily.<sup>(12)</sup> There is no evidence demonstrating that she corrected the falsification before being asked about it.<sup>(13)</sup> There is no evidence to suggest that Applicant receive bad advice about what she was required to disclose on her clearance application.<sup>(14)</sup> I conclude Guideline E against Applicant.

### **FORMAL FINDINGS**

#### Paragraph 1. Guideline F: AGAINST APPLICANT

Subparagraph a: Against Applicant

Subparagraph b: Against Applicant

Subparagraph c: Against Applicant

Subparagraph d: Against Applicant

Subparagraph e: Against Applicant

Subparagraph f: Against Applicant

Subparagraph g: Against Applicant

Subparagraph h: Against Applicant

Subparagraph i: Against Applicant

Subparagraph j: Against Applicant

Subparagraph k: Against Applicant

Subparagraph l: Against Applicant

Subparagraph m: Against Applicant

Subparagraph n: Against Applicant

#### Paragraph 2. Guideline E: AGAINST APPLICANT

Subparagraph a: Against Applicant

Subparagraph b: Against Applicant

**DECISION**

In light of all 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 denied.

**John G. Metz, Jr.**

**Administrative Judge**

1. Required by Executive Order 10865 and Department of Defense Directive 5220.6, as amended (Directive).
2. She attached corroborating documents to her answer, showing these accounts were indeed paid--after the SOR was issued.
3. *See, Department of the Navy v. Egan*, 484 U.S. 518 (1988).
4. E2.A6.1.2.1 A history of not meeting financial obligations; E2.A6.1.2.3 Inability or unwillingness to satisfy debts;
5. E2.A6.1.3.1 The behavior was not recent;
6. E2.A6.1.3.2 It was an isolated incident;
7. E2.A6.1.3.3 The conditions that resulted n the behavior were largely beyond the person's control. . .;
8. 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 is under control;
9. E2.A6.1.3.6 The individual initiated a good-faith effort to repay overdue creditors or otherwise resolve debts.
10. 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, . . . [or] determine security clearance eligibility or trustworthiness. . .;
11. E2.A5.1.3.1. The information was unsubstantiated or not pertinent to a determination of judgment, trustworthiness, or reliability;
12. E2.A5.1.3.2. The falsification was an isolated incident, was not recent, and the individual has subsequently provided correct information voluntarily;
13. E2.A5.1.3.3. The individual made prompt, good-faith efforts to correct the falsification before being confronted with the facts;
14. E2.A5.1.3.4. Omission of material facts was caused or significantly contributed by improper or inadequate advice of authorized personnel, and the previously omitted information was promptly and fully provided;