

DATE: August 22, 2006

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In Re:

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SSN: -----

Applicant for Security Clearance

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ISCR Case No. 04-11389

## **DECISION OF ADMINISTRATIVE JUDGE**

**JOAN CATON ANTHONY**

### **APPEARANCES**

#### **FOR GOVERNMENT**

Stephanie Hess, Esq., Department Counsel

#### **FOR APPLICANT**

Michael W. Byrne, Personal Representative

### **SYNOPSIS**

Applicant's history of financial delinquencies began in the late 1990s. She deliberately failed to report her financial delinquencies on a security clearance application she executed in September 2003, and she offered no credible explanation for her failure to do so. Clearance is denied.

### **STATEMENT OF THE CASE**

The Defense Office of Hearings and Appeals (DOHA) declined to grant or continue a security clearance for Applicant. On August 9, 2005, under the applicable Executive Order <sup>(1)</sup> and Department of Defense Directive, <sup>(2)</sup> DOHA issued a Statement of Reasons (SOR), detailing the basis for its decision—security concerns raised under Guideline F (Financial Considerations) and Guideline E (Personal Conduct) of the Directive. Applicant's Answer to the SOR was received by DOHA on September 26, 2005. She requested a hearing before an administrative judge. The case was assigned to me May 8, 2006. On July 12, 2006, 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 called no witnesses and submitted five exhibits for identification and admission to the record. The Government's documents were identified as Exhibits (Ex.) 1 through 5 and were admitted into evidence without objection. Applicant called no witnesses and submitted 2 exhibits for identification and admission to the record. Her documents were identified as Exhibits (Ex.) A and B and were admitted into evidence without objection. At the conclusion of the hearing, I left the administrative record open until close of business, July 19, 2006, so that Applicant could, if she wished, submit additional documents. Applicant did not submit any additional information for inclusion in the record. On July 20, 2006, DOHA received the transcript (Tr.) of the proceeding.

### **FINDINGS OF FACT**

The SOR contains 21 allegations of disqualifying conduct under Guideline F, Financial Considerations, and five allegations of disqualifying conduct under Guideline E, Personal Conduct. Applicant admitted twelve of the Guideline F

allegations. (3) She neither admitted nor denied the Guideline E allegations. She claimed she answered "no" to questions 35, 36, 37, 38, and 39 on her security clearance application because she misunderstood the questions. Applicant's admissions are incorporated as findings of fact.

Applicant is 35 years old and the mother of a 15-year-old son. (4) She is employed as a document control specialist by a government contractor. She has held a security clearance for approximately twelve years. (Ex. 1; Tr. 33.)

Applicant's estimated take-home pay is \$2,400. She pays \$600 a month in rent, and her monthly cell phone bill is approximately \$140. She takes public transportation to her work, and estimated that her monthly transportation expenses were approximately \$60. She estimated she spent

approximately \$150 a month on groceries. She did not know how much of her salary was used to pay her creditors. (Tr. 33-36.) The total amount of the debts alleged in the SOR was approximately \$40,000. In her answer to the SOR, Applicant admitted debts of over \$28,000. (SOR; Answer to SOR.)

Applicant has a history of financial delinquencies occurring over a period of approximately ten years. In her answer to the SOR, she acknowledged responsibility for one bad debt, dating to 1997; one debt, dating to 1996, resulting from writing a check for which she had insufficient funds in her checking account; two automobile repossessions in 1997; five collection accounts, dating from 2000 to 2005; one judgment entered against her in 2000, and one account, dating to December 2004, overdue for over 120 days. (Answer to SOR at ¶¶ 1.b., 1.e., 1.f., 1.g., 1.m., 1.n., 1.p., 1.r., 1.s., 1.t., and 1.u.) She presented evidence she had paid a tax lien placed against her in about November 2001, as alleged in the SOR at ¶ 1.q. (Ex. B.)

Applicant stated she had receipts for several debts listed on the SOR but had forgotten to bring them to the hearing. (Tr. 17.) She asserted she had paid debts alleged at ¶¶ 1.b., 1.c., 1.d., 1.g., 1.h., 1.i., 1.k., 1.l., and 1.m. of the SOR and stated she would provide evidence of payment. (Tr. 26; 28-30.) She asserted that the debt alleged at ¶ 1.e. was the same debt alleged at ¶ 1.o. of the SOR. She also asserted the judgment alleged at ¶ 1.o. was the same as the judgment alleged at ¶ 1.n. of the SOR. She also alleged the debt alleged at ¶ 1.g. was the same as the debt alleged at ¶ 1.p. of the SOR (Tr. 26; 28; 30.) Applicant said she had no recollection of a debt alleged at ¶ 1.a. of the SOR. (Tr. 26.) She acknowledged that a debt alleged at ¶ 1.j., for which she said she had no contact information, might have been owed to a car dealer. (Tr. 29.)

The record indicated Applicant sought credit counseling in 1998 and entered a debt consolidation payment program. (Ex. 5.) She was not participating in credit counseling at the time of her hearing, and she was unable to quantify her total obligations to her creditors or to tell how long it would take for her to satisfy her debts. (Tr. 32.) Although the hearing record was left open for Applicant to supply evidence of payment and duplication of debts in the SOR, she did not do so.

Applicant completed and signed a security clearance application (SF-86) on September 15, 2003. (Ex. 1) She acknowledged she had filled out security clearance applications in the past. She said she found the questions about financial matters confusing but did not ask for help or clarification. (Tr. 39.) Question 35 on the SF-86 asks if an applicant has had any property repossessed for any reason in the last seven years. Applicant answered "no" to Question 35.

Question 36 on the SF-86 asks if, in the last seven years, a lien has been placed on an applicant's property for failing to pay taxes or other debts. Applicant answered "no" to Question 36.

Question 37 on the SF-86 asks an applicant whether, in the last seven years, he or she has had any judgments that have not been paid. Applicant responded "no" to Question 37.

Question 38 on the SF-86 asks an applicant if he or she has been over 180 days delinquent on any debt(s) in the last seven years. Applicant responded "no" to Question 38.

Question 39 on the SF-86 asks an applicant if he or she is currently over 90 days delinquent on any debt(s). Applicant responded "no" to Question 39.

Applicant signed and dated the following certification after she completed her SF-86:

My statements on this form, and any attachments to it, are true, complete, and correct to the best of my knowledge and belief and are made in good faith. I understand that a knowing and willful false statement on this form can be punished by fine or imprisonment or both (See section 1001 of title 18, United States Code.)

## **POLICIES**

"[No 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 restricted eligibility for access to classified information to United States citizens "whose personal and professional history affirmatively indicates loyalty to the United States, strength of character, trustworthiness, honesty, reliability, discretion, and sound judgment, as well as freedom from conflicting allegiances and potential for coercion, and willingness and ability to abide by regulations governing the use, handling, and protection of classified information." Exec. Or. 12968, *Access to Classified Information* § 3.1(b) (Aug. 4, 1995). Eligibility for a security clearance is predicated upon the applicant meeting the security guidelines contained in the Directive.

Enclosure 2 of the Directive sets forth personal security guidelines, as well as the disqualifying conditions (DC) and mitigating conditions (MC) under each guideline. 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. 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. *See Egan*, 484 U.S. at 531. 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. May 2, 1996).

Once the Government establishes a disqualifying condition by substantial evidence, the burden shifts to the applicant to rebut, explain, extenuate, or mitigate the facts. ISCR Case No. 01-20700 at 3 (App. Bd. Dec. 19, 2002); *see* 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 security clearance." ISCR Case No. 01-20700 at 3.

## **CONCLUSIONS**

### **Guideline F-Financial Considerations**

The Government's concern under Guideline F, Financial Considerations, is that individuals who are financially overextended and unable or unwilling to pay their just debts may try to generate funds by engaging in illegal acts. Applicant has a history of not meeting her financial obligations, and her financial history suggests an inability or unwillingness to satisfy her debts, conditions which raise security concerns under subparagraphs E2.A6.1.2.1. and E2.A6.1.2.3. of Guideline F. DOHA's Appeal Board has concluded that "[a] person who is unwilling to fulfill his legal obligations does not demonstrate the high degree of good judgment and reliability required of persons granted access to classified information." ISCR Case No. 98-0810 at 4 (App. Bd. Jun. 8, 2000).

In the SOR, DOHA alleged that Applicant was responsible to creditors for two bad debts (¶¶ 1.a. and 1.f.); two debts for checks returned for insufficient funds which remained unpaid (¶¶ 1.b. and 1.d.); eleven accounts in collection status (¶¶ 1.c., 1.h., 1.i., 1.j., 1.k., 1.l., 1.m., 1.p., 1.s., 1.t., and 1.u.); two automobile repossessions (¶¶ 1.e. and 1.g.); one tax lien (¶ 1.q.) one account overdue for 120 days (¶ 1.r.); and two judgments (1.n. and 1.o.). An applicant who is financially overextended is at risk of having to engage in illegal acts to generate funds. Directive ¶ E2.A6.1.1.

The Government has established, through Applicant's admissions and the record evidence, a *prima facie* case that Applicant is financially overextended. Applicant provided no persuasive evidence to rebut the financial concerns specified in the SOR and identified as disqualifying conditions under ¶¶ E2.A6.1.2.1. and E2.A6.1.2.3. of Guideline F.

We turn to a review of the several conditions that could mitigate the security concerns raised by Applicant's financial delinquencies. Applicant's acknowledged delinquencies date to at least 1996. Her financial delinquencies involve long-standing debts, and her inability or unwillingness to pay them is recent. Thus, neither mitigating condition E2.A.6.1.3.1. nor mitigating condition E2.A6.1.3.2. applies.

If a person's financial delinquencies were largely caused by conditions beyond his or her control, then mitigating condition E2.A6.1.3.3 might apply. Applicant failed to present evidence to show that her financial problems were the result of conditions beyond her control. Thus, mitigating condition E2.A6.1.3.3. is inapplicable.

Applicant sought financial counseling in 1998, but she denied current participation in financial counseling and was unable to present clear indications that her financial problems were being resolved or were under control. Therefore, mitigating condition E2.A6.1.3.4. is inapplicable. Applicant provided credible evidence to show she satisfied a tax lien levied against her in 2001, and, accordingly, allegation 1.q. is concluded for Applicant. All other Guideline F allegations in the SOR are concluded against Applicant.

### **Guideline E - Personal Conduct**

In the SOR, DOHA alleged Applicant deliberately falsified her answers on her SF-86 to Questions 35, 36, 37, 38 and 39 (¶¶ 2.a. through 2.e.). In her answer to the SOR, Applicant denied the falsifications were deliberate and asserted she was confused by the questions. Applicant's assertions lack credibility. She was not a stranger to security clearance applications, since she had held a security clearance for approximately twelve years and had completed security clearance applications in the past. After completing her SF-86 in September 2003, she signed a certification attesting that her answers to the security clearance application were true, complete, correct, and made in good faith. Her misrepresentations cause serious security concerns. Conduct involving questionable judgment, untrustworthiness, unreliability, lack of candor, dishonesty, or unwillingness to comply with rules and regulations could indicate that an applicant may not properly safeguard classified information. Directive ¶ E2.A5.1.1.

An applicant's responsibility to provide truthful and complete responses to questions on his or her SF-86 cannot be set aside or ignored. An applicant's financial history is material to a determination of his or her security worthiness. With respect to the Guideline E conduct alleged in SOR subparagraphs 2.a. through 2.e., I conclude Applicant's falsifications were deliberate. She falsified her SF-86 by omitting and concealing relevant and material information about her financial delinquencies in response to questions 35, 36, 37, 38, and 39, bringing her conduct under Disqualifying Condition (DC) E2.A5.1.2.2. She did not make a prompt, good-faith effort to correct the falsifications before being confronted with the facts, and thus Mitigating Condition (MC) E2.A5.1.3.3. does not apply. Applicant's falsifications were recent and not isolated incidents, and she did not supply the correct information voluntarily. Thus MC E2.A5.1.3.2. does not apply.

Applicant's deliberate concealment of her financial delinquencies increased her vulnerability to coercion, exploitation, or duress, and thus DC E2.A5.1.2.4. applies. She has not taken positive steps to reduce or eliminate her vulnerability to coercion, exploitation, or duress, and thus MC E2.A5.1.3.5. does not apply. With respect to the Guideline E conduct alleged in the SOR, the Government has established its case. After weighing the disqualifying and mitigating conditions of Guideline E and after evaluating Applicant's conduct in light of the whole person concept identified at ¶ E2.2 of Enclosure 2 of the Directive, I conclude the Guideline E allegations in subparagraphs 2.a., 2.b., 2.c., 2.d., and 2.e. of the SOR against Applicant.

In all adjudications, the protection of our national security is the paramount concern. Security clearance decisions are not intended to assign guilt or to impose further punishment for past transgressions. Rather, the objective of the security clearance process is the fair-minded, common sense assessment of a person's trustworthiness and fitness for access to classified information. Indeed, the "whole person" concept recognizes we should view a person by the totality of his or her acts and omissions, including all disqualifying and mitigating conduct. Having done so, I conclude Applicant should not be entrusted with a security clearance. In reaching my decision, I have considered the evidence as a whole, including

the appropriate factors and guidelines in Department of Defense Directive, 5220.6., as amended.

**FORMAL FINDINGS**

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

Paragraph 1.: Guideline F: AGAINST APPLICANT

Subparagraph 1.a.: Against Applicant

Subparagraph 1.b.: Against Applicant

Subparagraph 1.c.: Against Applicant

Subparagraph 1.d.: Against Applicant

Subparagraph 1.e.: Against Applicant

Subparagraph 1.f.: Against Applicant

Subparagraph 1.g.: Against Applicant

Subparagraph 1.h.: Against Applicant

Subparagraph 1.i.: Against Applicant

Subparagraph 1.j.: Against Applicant

Subparagraph 1.k.: Against Applicant

Subparagraph 1.l.: Against Applicant

Subparagraph 1.m.: Against Applicant

Subparagraph 1.n.: Against Applicant

Subparagraph 1.o.: Against Applicant

Subparagraph 1.p.: Against Applicant

Subparagraph 1.q.: For Applicant

Subparagraph 1.r.: Against Applicant

Subparagraph 1.s.: Against Applicant

Subparagraph 1.t.: Against Applicant

Subparagraph 1.u.: Against Applicant

Paragraph 2.: Guideline E: AGAINST APPLICANT

Subparagraph 2.a.: Against Applicant

Subparagraph 2.b.: Against Applicant

Subparagraph 2.c.: Against Applicant

Subparagraph 2.d.: Against Applicant

Subparagraph 2.e.: Against Applicant

**DECISION**

In light of all of 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 is denied.

Joan Caton Anthony

Administrative Judge

1. Exec. Or. 10865, *Safeguarding Classified Information within Industry* (Feb. 20, 1960), as amended and modified.
2. Department of Defense Directive 5220.6, *Defense Industrial Personnel Security Clearance Review Program* (Jan. 2, 1992), as amended and modified.
3. At her hearing she admitted responsibility for a thirteenth delinquency, a collection account, alleged at ¶ 1.j. (Tr. 29.)
4. Applicant's SF-86 identified two children, one who is currently 15 years old, and another who is approximately 10 years old. The address of the 10-year-old child is the same as the address listed for Applicant's sisters. The SF-86 indicates that Applicant and the 15-year-old son share an address with Applicant's parents. (Ex. 1 at 3-4.)