

DATE: January 31, 2006

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In Re:

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SSN: -----

Applicant for Security Clearance

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CR Case No. 05-03537

## DECISION OF ADMINISTRATIVE JUDGE

RICHARD A. CEFOLA

### APPEARANCES

#### FOR GOVERNMENT

Jeff A. Nagel, Esquire, Department Counsel

#### FOR APPLICANT

*Pro Se*

### SYNOPSIS

The Applicant filed for the protection of a Chapter 7 Bankruptcy in 1992, nearly 14 years ago. More recently, in 1999, she signed what was represented to her by her ex-spouse to be debt consolidation paperwork. It was a Chapter 13 Bankruptcy petition, but her ex-spouse failed to follow through on the payment plan; and as a result, it was dismissed. The Applicant has addressed all of her admitted past due debts. As for a vehicle repossession for which she co-signed for a relative, but the Applicant is attempting to verify the validity of this debt before addressing it. When the Applicant executed her January 2004 Security Clearance Application (SCA), she was unaware of any past due debts in excess of 90 or 180 days. Her veracity is testified to by those who know the Applicant. litigation is shown. Clearance is granted.

### STATEMENT OF THE CASE

On July 19, 2005, the Defense Office of Hearings and Appeals (DOHA), pursuant to Executive Order 10865 and Department of Defense Directive 5220.6 (Directive), dated January 2, 1992, issued a Statement of Reasons (SOR) to the Applicant, which detailed the 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 the Applicant and recommended referral to an Administrative Judge to determine whether a clearance should be denied or revoked.

Applicant filed an Answer to the SOR on August 15, 2005.

The case was received by the undersigned on October 18, 2005. A notice of hearing was issued on November 1, 2005, and the case was heard on November 22, 2005. The Government submitted documentary evidence. Testimony was taken from the Applicant, who also submitted documentary evidence, and called one witness to testify on her behalf. The transcript (TR) was received on December 12, 2005. The issues raised here are whether the Applicant's Financial Considerations and alleged Personal Conduct militate against the granting of a security clearance. [The Applicant denies all but four of the allegations; i.e., subparagraphs 1.a., 1.f., 1.h., and 1.j. are admitted.]

### FINDINGS OF FACT

The following Findings of Fact are based on Applicant's Answer to the SOR, the documents and the live testimony. The Applicant is 43 years of age, and is employed by a defense contractor who seeks a security clearance on behalf of the Applicant. After a complete and thorough review of the evidence in the record, and upon due consideration of the same, I make the following additional findings of fact.

#### Guideline F - Financial Considerations

1.1.~1.1n. The Applicant filed for the protection of a Chapter 7 Bankruptcy in 1992, nearly 14 years ago (TR at page 34 lines 2~21). More recently, in 1999, she signed what was represented to her by her ex-spouse to be debt consolidation paperwork (TR at page 32 line 11 to page 33 line 33). It was a Chapter 13 Bankruptcy petition, but her ex-spouse failed to follow through on the payment plan; and as a result, it was dismissed (Government Exhibits (GXs) 6~8, *see also* TR at page 40 line 16 to page 41 line 21). Since her divorce, the Applicant's personal income has increased from \$30,000 to \$45,000; and as a result, she is now able to address her admitted past due debts (TR at page 34 line 22 to page 35 line 13).

1.a. The Applicant is indebted to a financial institution in the amount of about \$12,166 for a vehicle repossession (GX 10 at page 1). The Applicant has contacted this creditor, and has made arrangements to make payments towards this debt (TR at page 18 line 1 to page 19 line 15).

1.b. The Applicant is indebted to a cable television provider in the amount of about \$293 (GX 10 at page 1). The Applicant was unaware of this debt; and as such, initially disputed it, but it has been paid (TR at page 19 line 16 to page 20 line 16, and Applicant's Exhibit (AppX) C at page 5).

1.c. The Applicant is indebted to another cable television provider in the amount of about \$120 (GX 10 at page 1). The Applicant was also unaware of this debt; and as such, initially disputed it, but it has been paid (TR at page 20 line 17 to page 21 line 7, and AppX C at pages 4 and 8).

1.d. The Applicant disputes a debt to a men's clothing store in the amount of about \$889 (TR at page 21 line 8 to page 22 line 5). This is her ex-spouse's debt (*Id.*).

1.e. The Applicant is indebted to a cable television provider for equipment in the amount of about \$1,170 (GX 10 at page 1). The Applicant disputes this debt, as she avers credibly that she has returned the cable television equipment in question (TR at page 22 line 6 to page 23 line 5, *see also* AppX C at page 5).

1.f. The Applicant is indebted to a third cable television provider in the amount of about \$145 (GX 10 at page 1). This has been paid (TR at page 23 lines 6~23, and AppX C at pages 3 and 8).

1.g. The Applicant disputes a debt to a financial institution in the amount of about \$614 (TR at page 23 line 24 to page 25 line 14).

1.h. The Applicant is making monthly payments of \$25 towards a debt to a wireless phone service in the amount of about \$977 (TR at page 24 line 17 to page 25 line 14).

1.i. The Applicant's \$112,000 debt as a result of a home foreclosure has been satisfied with the sale of the house (TR at page 25 line 15 to page 28 line 23, and AppX C at page 7).

1.j. There is an alleged \$13,000 debt as the result of a vehicle repossession for which she co-signed for a relative. The Applicant is attempting to verify the validity of this debt before addressing it (TR at page 28 line 24 to page 31 line 14). This debt does not appear on the Government's most recent credit report (GX 10).

1.k. An automobile debt in the amount of about \$8,013 has been paid off (TR at page 31 line 15 to page 32 line 10, and AppX A).

#### Personal Conduct

2.a. and 2.b. When the Applicant executed her January 2004 SCA, she answered "No" to questions 38 and 39 (GX 2 at page 9). She was unaware of any past due debts in excess of 90 or 180 days (TR at page 36 line 23 to page 40 line 6). Her veracity is testified to by her supervisor, and averred to by those who know the Applicant at her work place and in her community (TR at page 43 line 21 to page 47 line 11, and AppX B).

## POLICIES

Enclosure 2 and Section E.2.2. of the 1992 Directive set forth both policy factors, and conditions that could raise or mitigate a security concern. Furthermore, as set forth in the Directive, each clearance decision must be a fair and impartial common sense determination based upon consideration of all the relevant and material information and the pertinent criteria and adjudication policy in enclosure 2, including as appropriate:

- a. Nature, extent, and seriousness of the conduct, and surrounding circumstances.
- b. Frequency and recency of the conduct.
- c. Age and maturity of the applicant.
- d. Motivation of the applicant, and the extent to which the conduct was negligent, willful, voluntary, or undertaken with knowledge of the consequence involved.
- e. Absence or presence of rehabilitation.
- f. Probability that circumstances or conduct will continue or recur in the future."

The Administrative Judge, however, can only draw those inferences or conclusions that have a reasonable and logical basis in the evidence of record. The Judge cannot draw inferences or conclusions based on evidence that is speculative or conjectural in nature.

The Government must make out a case under Guidelines E (Personal Conduct), and F (Financial Considerations); which establishes doubt about a person's judgment, reliability and trustworthiness. While a rational connection, or nexus, must be shown between an applicant's adverse conduct and his ability to effectively safeguard classified information, with respect to sufficiency of proof of a rational connection, objective or direct evidence is not required.

Then, the Applicant must remove that doubt with substantial evidence in refutation, explanation, mitigation or extenuation, which demonstrates that the past adverse conduct is unlikely to be repeated, and that the Applicant presently qualifies for a security clearance.

Unacceptable Personal Conduct is conduct involving questionable judgment, untrustworthiness, unreliability, or unwillingness to comply with rules and regulations. The Government must be able to place a high degree of confidence in a security clearance holder to abide by all security rules and regulations at all times and in all places.

## CONCLUSIONS

Considering first the Applicant's Financial Considerations, the first and arguably the third disqualifying conditions are applicable as the Applicant had a "history of not meeting [her] financial obligations," and there was an "[i]nability or unwillingness to satisfy [her] debts." However, the Applicant's financial difficulties can be directly attributed to circumstances "largely beyond . . . [her] control (e.g., . . . a divorce or separation)." The third mitigating condition is therefore applicable. Furthermore, the Applicant has addressed all of her admitted past due debts. The last mitigating condition is therefore applicable, as she has "initiated a good-faith effort to repay overdue creditors or **otherwise resolve debts**" (Emphasis supplied). Mitigation is shown. Guideline F is found for the Applicant.

As to her alleged wilful falsification, I can find no intent to keep information from the Government. When the Applicant filled out her SCA, she was unaware of any past due debts in excess of 90 or 180 days. The Applicant's veracity and trustworthiness is attested to by those with whom she works and know her in the community. She therefore answered

the posited questions truthfully and to the best of her ability. Guideline E is also found for the Applicant.

Considering all the evidence, the Applicant has rebutted the Government's case regarding her Financial Considerations, and her Personal Conduct. The Applicant has thus met the mitigating conditions of Guidelines E and F, and of Section E.2.2. of the Directive. Accordingly, she has met her ultimate burden of persuasion under Guidelines E and F.

### FORMAL FINDINGS

Formal Findings required by paragraph 25 of Enclosure 3 of the Directive are:

#### Paragraph 1: FOR THE APPLICANT

- a. For the Applicant.
- b. For the Applicant.
- c. For the Applicant.
- d. For the Applicant.
- e. For the Applicant.
- f. For the Applicant.
- g. For the Applicant.
- h. For the Applicant.
- i. For the Applicant.
- j. For the Applicant.
- k. For the Applicant.
- l. For the Applicant.
- m. For the Applicant.
- n. For the Applicant.

#### Paragraph 2: FOR THE APPLICANT

- a. For the Applicant.
- b. For the Applicant.

Factual support and reasons for the foregoing are set forth in **FINDINGS OF FACT** and **CONCLUSIONS**, supra.

### DECISION

In light of 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 the Applicant.

Richard A. Cefola

Administrative Judge