

DATE: June 21, 2006

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In Re:

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SSN: -----

Applicant for Security Clearance

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CR Case No. 05-04172

**DECISION OF ADMINISTRATIVE JUDGE**

**WILFORD H. ROSS**

**APPEARANCES**

**FOR GOVERNMENT**

Edward W. Loughran, Esquire, Department Counsel

**FOR APPLICANT**

*Pro Se*

**SYNOPSIS**

The Applicant's financial difficulties were caused, in large part, by two difficult pregnancies which resulted in one year of no income and two years of greatly reduced income. She has resolved several of her debts, and evinces a credible intent to resolve the remainder as soon as possible. The Applicant did not falsify a Security Clearance Application as alleged in the Statement of Reasons. Adverse inference is overcome. Clearance is granted.

**STATEMENT OF THE CASE**

On August 4, 2005, the Defense Office of Hearings and Appeals (DOHA), pursuant to Executive Order 10865 (as amended) and Department of Defense Directive 5220.6 (Directive), dated January 2, 1992, issued a Statement of Reasons (SOR) to the 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 the Applicant and recommended referral to an Administrative Judge to determine whether a clearance should be denied or revoked.

The Applicant responded to the SOR in writing on August 24, 2005, and requested a hearing. The case was received by the undersigned on September 27, 2005, and a Notice of Hearing was issued on October 26, 2005.

A hearing was held on November 21, 2005, at which the Government presented five documentary exhibits. Testimony was taken from the Applicant, who also submitted eleven exhibits. The transcript was received on December 12, 2005.

**FINDINGS OF FACT**

The Applicant is 38, single and has a high school diploma. She is employed by a defense contractor as a Security Officer, and she seeks to obtain a DoD security clearance in connection with her employment in the defense sector.

The Government opposes the Applicant's request for a security clearance, based upon the allegations set forth in the

Statement of Reasons (SOR). The following findings of fact are entered as to each paragraph and guideline in the SOR. They are based on the Applicant's Answer to the SOR, the exhibits and the live testimony.

Paragraph 1 (Guideline F - Financial Considerations). The Government alleges in this paragraph that the Applicant is ineligible for clearance because she is financially overextended and therefore at risk of having to engage in illegal acts to generate funds. Such conduct can also show poor judgment and unreliability on the Applicant's part.

1.a. The Applicant admits that she was indebted to this ambulance service in the amount of \$529.00. The Applicant paid this debt in full on October 17, 2005. (Applicant's Exhibits C and I, Transcript at 25-27.)

1.b. The Applicant admits that she was indebted to this Medical Provider in the amount of \$54.00. The Applicant paid this debt in full on October 17, 2005. (Applicant's Exhibits D and I, Transcript at 27-28.)

1.c. The Applicant admits that she was indebted to this Medical Provider in the amount of \$60.00. The Applicant paid this debt in full on October 17, 2005. (Applicant's Exhibits D and I, Transcript at 27-28.)

1.d. The Applicant maintains that she should not owe this creditor any back rent for an apartment she rented with her sister from June 1998 until August 1999. Her sister left unexpectedly, submitting 30 days notice without telling the Applicant. The Applicant then lived with her other sister in another apartment in the same complex for several months before moving. (Government Exhibit 1 at question 4, Applicant's Exhibit K at 5-6.) She submitted a cancelled check from August 1999, which was her last month in residence at that address. (Applicant's Exhibit E.) The Applicant admits that this debt is on her credit report and she intends to address it. (Transcript at 28-29, 43-50.)

1.e. The Applicant stated that she did not have long distance service on her home telephone. She believes that a guest or friend ran up these long distance charges without her permission. However, in order to resolve this situation, the Applicant paid the debt on November 3, 2005. (Applicant's Exhibit F, Transcript at 29.)

1.f. The Applicant admits that she was indebted to this telephone company in the amount of \$292.72. Applicant paid the debt on November 7, 2005. (Applicant's Exhibit I, Transcript at 30-31.)

1.g. The Applicant admits that she is indebted to this credit card company. She does not believe that the amount she owes is \$11,020.00. At one time she had three different credit cards with this company. (Transcript at 30-38.) Two were sold to the creditor in subparagraph 1.h., and will be discussed below. The Applicant's ability to pay this credit card off was seriously effected by two difficult pregnancies, in 2000 and 2004-2005. The Applicant had no income in the year 2000, and minimal income in 2001. (Applicant's Exhibit H at 1.) She was off work the first half of 2005 due to another difficult pregnancy. (Applicant's Exhibit H at 2.) The Applicant intends to contact this creditor and work out a solution to pay this credit card debt. (Transcript at 52.)

1.h. The Applicant admits that she is indebted to this bank in the amount of about \$2,000.00. She was able to pay off one of the two accounts held by this creditor. (Government Exhibit 5.) She had begun making payments on this account when she had to stop working because of her pregnancy. (Transcript at 38-39.)

The Applicant testified that her current financial situation is stable. She has some money at the end of the month, and should be able to make payment arrangements with the companies she still owes money to. (Transcript at 57-58, 70.)

Paragraph 2 (Guideline E - Personal Conduct). The Government alleges in this paragraph that the Applicant is ineligible for clearance because she falsified material aspects of her personal background during the clearance screening process.

On February 9, 2004, the Applicant completed an official DoD questionnaire in which she stated that she was not currently 90 days delinquent on any of her debts. (Government Exhibit 1, question 39.) In fact, the Applicant was delinquent on a number of debts, as set forth under Paragraph 1, above.

The Applicant maintains that this entry on her questionnaire was an error that she did not catch when she signed the form. She submitted her original, hand-written, work sheet that was submitted to her security office. (Applicant's Exhibit K.) From that worksheet the Electronic Personnel Security Questionnaire (Government Exhibit 1) was prepared.

That worksheet, under question 39, shows a debt to the creditor set forth under subparagraph 1.h., above. (Applicant's Exhibit K at 27.) It further showed that in "Module 43: General Remarks" the Applicant stated, "I don't know the exact date I received those credit cards. Also my credit report has a lot of miscellaneous stuff on it. I don't know what's on it exactly, because I haven't seen it. I also have to repay a student loan. As of April 4, 2003, I've made arrangements to pay off my credit cards." (Applicant's Exhibit K at 28.)

The Applicant testified that it took several months for her to prepare this worksheet in a way that was acceptable to the security office. (Transcript at 40-42.) She states that her failure to catch the changes on the application that she signed was a simple mistake and not an intentional falsification. (Transcript at 58-62, 67-68.)

### POLICIES

Security clearance decisions are not made in a vacuum. Accordingly, the Department of Defense, in Enclosure 2 of the 1992 Directive, has set forth policy factors which must be given "binding" consideration in making security clearance determinations. These factors should be followed in every case according to the pertinent guideline. However, the factors are neither automatically determinative of the decision in any case, nor can they supersede the Administrative Judge's reliance on his own common sense, as well as his knowledge of the law, human nature and the ways of the world, in making a reasoned decision. Because each security clearance case presents its own unique facts and circumstances, it cannot be assumed that these factors exhaust the realm of human experience, or apply equally in every case. Based on the Findings of Fact set forth above, the factors most applicable to the evaluation of this case will be set forth under CONCLUSIONS, below.

In addition, as set forth in Enclosure 2 of the Directive at pages 16-17, "In evaluating the relevance of an individual's conduct, the [Administrative Judge] should consider the following factors [General Factors]:

- a. The nature, extent and seriousness of the conduct
- b. The circumstances surrounding the conduct, to include knowledgeable participation
- c. The frequency and recency of the conduct
- d. The individual's age and maturity at the time of the conduct
- e. The voluntariness of participation
- f. The presence or absence of rehabilitation and other pertinent behavior changes
- g. The motivation for the conduct
- h. The potential for pressure, coercion, exploitation or duress
- i. The likelihood of continuation or recurrence."

The eligibility guidelines established in the DoD Directive identify personal characteristics and conduct which are reasonably related to the ultimate question of whether it is "clearly consistent with the national interest" to grant an Applicant's request for access to classified information.

In the defense industry, the security of classified industrial secrets is entrusted to civilian workers who must be counted upon to safeguard such sensitive information twenty-four hours a day. The Government is therefore appropriately concerned where available information indicates that an Applicant for clearance may have financial problems and falsified an official questionnaire that demonstrates poor judgement, untrustworthiness or unreliability on the Applicant's part.

The DoD Directive states, "Each adjudication is to be an overall common sense determination based upon consideration and assessment of all available information, both favorable and unfavorable, with particular emphasis placed on the

seriousness, recency, frequency, and motivation for the individual's conduct; the extent to which conduct was negligent, willful, voluntary, or undertaken with the knowledge of the circumstances or consequences involved; and, to the extent that it can be estimated, the probability that conduct will or will not continue in the future." The Administrative Judge 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 which is speculative or conjectural in nature. Finally, as emphasized by President Eisenhower in Executive Order 10865, "Any determination under this order...shall be a determination in terms of the national interest and shall in no sense be a determination as to the loyalty of the applicant concerned."

### 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 granting 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.

In this case the Government has met its initial burden of proving by substantial evidence that the Applicant has past due debts, some of which she has paid off (Guideline F); and that there was an incorrect answer on her Security Clearance Application (Guideline E).

The Applicant, on the other hand, has successfully mitigated the Government's case. The evidence shows that the Applicant has had financial difficulties in the past. Accordingly, Disqualifying Conditions E2.A6.1.2.1. (*A history of not meeting financial obligations*) and E2.A6.1.2.3. (*Inability or unwillingness to satisfy debts*) apply.

The evidence also shows, however, that the Applicant's inability to pay her debts was in large part related to her two difficult pregnancies. This resulted in one year of no income at all, and another two years with severely reduced income. Every time she is able to maintain employment over a prolonged period, the Applicant works diligently to pay off her just debts. Five of the debts alleged in the SOR have been paid, and the Government's evidence also shows another debt that the Applicant paid off at an earlier time. The Applicant testified that she intends to resolve the remaining debts as soon as possible. This testimony is credible and worthy of belief based on her conduct in paying her other debts. Her credit reports show that she does not abuse credit. The following mitigating Conditions apply: E2.A6.1.3.3. (*The conditions that resulted in the behavior were largely beyond the person's control (e.g., loss of employment, a business downturn, unexpected medical emergency, or a death, divorce or separation)*) and E2.A6.1.3.6. (*The individual initiated a good-faith effort to repay overdue creditors or otherwise resolve debts*). Paragraph 1 is found for the Applicant.

The Applicant denied Paragraph 2 of the SOR. The burden, therefore, was on the Government to show that the false statement on her Security Clearance Application was an intentional falsehood. They did not do so. The Applicant submitted the worksheet which she completed and submitted to her company. In the worksheet the Applicant not only answered "Yes" to question 39, she stated under "General Remarks" that there may be other debts that she was unaware of. Other employees of her company actually completed the electronic version of the questionnaire. (Government Exhibit 1.) The Applicant freely admits that she should have completely reviewed the completed questionnaire before signing it. However, considering all the available information, including her credible testimony on this point, I find that the Applicant did not falsify her Security Clearance Application. Accordingly, no Disqualifying or Mitigating Conditions apply. Paragraph 2 is found for the Applicant.

In addition, application of the General Factors is appropriate and supports a decision in the Applicant's favor. The Applicant is motivated to continue to pay off her past due debts (Factor g.), she shows considerable evidence of rehabilitation (Factor f.), and, under the circumstances of this case, the probability that the Applicant will allow her financial condition to deteriorate again are very low (Factor i.).

On balance, it is concluded that the Applicant has successfully overcome the Government's case opposing her request for a DoD security clearance. Accordingly, the evidence supports a finding for the Applicant as to the factual and conclusionary allegations expressed in Paragraphs 1 and 2 of the Government's Statement of Reasons.

## **FORMAL FINDINGS**

Formal findings For or Against the Applicant on the allegations in the SOR, as required by Paragraph 25 of Enclosure 3 of the Directive, are:

Paragraph 1: For the Applicant.

Subparagraph 1.a.: For the Applicant.

Subparagraph 1.b.: For the Applicant.

Subparagraph 1.c.: For the Applicant.

Subparagraph 1.d.: For the Applicant.

Subparagraph 1.e.: For the Applicant.

Subparagraph 1.f.: For the Applicant.

Subparagraph 1.g.: For the Applicant.

Subparagraph 1.h.: For the Applicant.

Paragraph 2: For the Applicant.

Subparagraph 2.a.: For the 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 the Applicant.

Wilford H. Ross

Administrative Judge