

DATE: February 27, 2007

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In Re:

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SSN: -----

Applicant for Security Clearance

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CR Case No. 05-07809

## **DECISION OF ADMINISTRATIVE JUDGE**

**PAUL J. MASON**

### **APPEARANCES**

#### **FOR GOVERNMENT**

Daniel F. Crowley, Esq., Department Counsel

#### **FOR APPLICANT**

*Pro Se*

### **SYNOPSIS**

Since 1998, a substantial amount of Applicant's financial debt has been for medical complications developing after the births of her four children. In June 2002, a judgment was filed against her for defaulting on a car loan. Additionally, there have been child support problems. However, during a period of employment between November 2003 and January 2006, Applicant could have taken some steps to repay her creditors. Her inaction grounds a the finding against her under the financial guideline. Clearance is denied.

### **STATEMENT OF THE CASE**

On November 17, 2005, the Defense Office of Hearings and Appeals (DOHA), pursuant to Department of Defense Directive 5220.6, dated January 2, 1992, as reissued through Change 4 thereto, dated April 20, 1999, 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 Applicant. DOHA recommended referral to an Administrative Judge to conduct proceedings and determine whether clearance should be granted, continued, denied or revoked. On December 20, 2005, Applicant responded to the SOR and requested a hearing before an Administrative Judge.

The case was assigned to me on August 17, 2006. On November 14, 2006, this case was set for hearing on December 4, 2006. The Government submitted ten exhibits (GE 1-10), and Applicant submitted 2 exhibits (AE A, AE B) Testimony was taken from Applicant and her project manager. After the hearing, Applicant furnished a one-page document (AE C) that has been admitted in evidence. The transcript was received on December 12, 2006.

### **FINDINGS OF FACT**

The SOR alleges eleven past due debts under Guideline F. SOR 1.a. is duplicated in 1.1. [\(u\)](#) The total amount of indebtedness is \$17,329.00. Five of the debts are for medical services. Applicant is 30 years old. She has four children,

the youngest was born in November 2003. She has been separated since August 2006. She is currently on unemployment status from a defense contractor identified in AE B. She seeks a secret clearance.

In her affidavit (GE 6, January 2005), Applicant discussed most of her delinquent debts. SOR 1.a. is a past due debt that was opened by Applicant and her father as an installment car loan account. She believed the loan became delinquent in 2001 after she developed complications from a pregnancy. She could not make payments on the loan because she was not working. She stated she would make arrangements to pay the debts while she was investigating debt repayment plans to address all debts. The car was repossessed (Tr. 51).

Applicant also explained in GE 6 the reasons for SOR 1.k. falling delinquent. SOR 1.k. is an overdue debt that was opened by Applicant and her cousin as a joint installment loan for a car. Applicant's cousin was the co-signor of the loan. Applicant stopped payments when she became pregnant and could not work. Her cousin subsequently stopped payments also (Tr. 35). According to GE 7 (credit report), the last activity on the loan was November 2001.

Among other bills she discussed in her affidavit (GE 6), Applicant recognized the medical debts (SOR 1.b., 1.c., 1.d., and 1.f.) as being delinquent and would investigate, and then make payments if required. She did not know why she was indebted to her landlord in the amount stated (1.h.), but intended to repay on a payment plan if determined to be liable. SOR 1.j., an internet account, was not paid after she moved. As with the other debts, she indicated in the affidavit that she would establish a payment plan with the internet provider and/or enroll in a consolidation plan to address as many debts as possible. Applicant was fairly certain she paid the utility company identified in SOR 1.g. No corroborative documentation was provided.

At the hearing, Applicant provided more detail about her medical debts. Since 1998, she has always had to take medical leave due to medical complications after giving birth to each one of her four children. The medical leave has been without pay.

Applicant has also had problems getting child support from the father of her two oldest children (Tr. 45). Applicant's current husband stopped paying child support for the other two children in August 2006. Applicant also had a serious medical procedure in October 2006 (Tr. 52).

In January 2005 (GE 6), Applicant was working and had a monthly surplus of approximately \$283.00 a month (GE 5). Applicant has been on an unemployment status with her employer since January 2006 (Tr. 49) because she has no security clearance.

Applicant's aunt was her project manager in three of the last four years (Tr. 56), and participated in performance evaluations covering those years. The manager recalled that Applicant was a dependable, professional and trustworthy employee. According to the project manager, Applicant has always been careful in handling classified information and has never had a security violation (Tr. 67).

Applicant supplied two character statements. On November 21, 2006, a coworker described Applicant as a efficient and trusted employee in handling classified information. On December 7, 2006, the administrative director complimented Applicant's reliability and dependability in performing her duties and in properly handling classified information.

## **POLICIES**

Enclosure 2 of the Directive sets forth guidelines containing disqualifying conditions (DC) and mitigating conditions (MC) that should be given binding consideration in making security clearance determinations. These conditions must be considered in every case along with the general factors of the whole person concept. However, the conditions are not automatically determinative of the decision in any case nor can they supersede the Administrative Judge's reliance on his own common sense.

## **Burden of Proof**

Initially, the government must establish, by substantial evidence, that conditions exist in the personal or professional history of the applicant which disqualifies, or may disqualify, the applicant from being eligible for access to classified

information. *See Department of the Navy v. Egan*, 484 U.S. 518, 531 (1988) "[T]he Directive presumes there is a nexus or rational connection between proven conduct under any of the Criteria listed therein and an applicant's security suitability." ISCR

Case No. 95-0611 at 2 (App. Bd. May 2, 1996) (quoting DISCR Case No. 92-1106 (App. Bd. Oct. 7, 1993)).

Once the government establishes a disqualifying condition by substantial evidence, the burden shifts to the applicant to rebut, explain, extenuate, or mitigate the facts. "[S]ecurity clearance determinations should err, if they must, on the side of denials." *See Egan*, 481 U.S. at 531; *see* Directive E2.2.2.

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

The security concerns of this guideline are triggered by an individual not paying his debts in a timely fashion. This situation is usually caused by the debtor overextending himself.

### **CONCLUSIONS**

The SOR lists eleven debts totaling \$17,329.00. Some of the debts became delinquent in 2001. One debt resulted in a judgment filed against Applicant in June 2002. Financial Considerations (FC) disqualifying condition (MC) E2.A6.1.2.1. (*a history of not meeting financial obligations*) has been established. FC DC E2.A6.1.2.2. (*inability or unwillingness to satisfy debts*) applies due to the inability of Applicant to repay the debts.

The first mitigating condition under the FC guideline is FC mitigating condition (MC) E2.A6.1.3.1. (*the behavior was not recent*). Even though the debts are at least four years old, Applicant has done nothing to address them. FC MC E2.A6.1.3.2. (*it was an isolated incident*) cannot apply to eleven delinquent debts.

FC MC E2.A6.1.3.3. (*the conditions that resulted in the behavior were largely beyond the person's control*) applies based on Applicant's medical problems associated with (1) her pregnancies and (2) her lack of child support. Applicant credibly testified about the complications relating to the births of each of her four children. Because of the medical problems, Applicant had to extend her leave after giving birth. Compounding the extended leave she had to take was the fact that the leave was without pay. Adding to those problems has been the lack of child support from first the father of her two oldest sons, and now her husband since August 2006.

Weighing against Applicant's medical and child support problems is the inaction by Applicant in addressing her debts between November 2003 and January 2006, when she went on unemployment status. The record reflects Applicant gave birth to her youngest child in November 2003. In January 2005, Applicant identified and explained the background of some of the SOR debts, and at least identified others, before stating her intention to satisfy them individually or in a debt consolidation plan. There is no testimony by Applicant that she had any other illnesses or other problems between November 2003 and January 2006. She had enough money to address at least two of the smaller delinquent debts identified in 1.e. and 1.f. On balance, the lack of evidence to address any of the debts while she was working reduces the extenuation she receives under FC MC E2.A6.1.3.3.

Neither FC MC 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 resolve or under control*) nor FC MC E2.A6.1.3.5. (*the affluence resulted from a legal source*) apply here as there is no evidence of financial counseling to teach Applicant how to address the past due matters while avoiding similar problems in the future. With no counseling, there is no way to confidently say the problems are under control. FC MC E2.A.5. 1.3.5. is inapplicable.

FC MC E2.A6.1.3.6. (*the individual initiated a good-faith effort to repay creditors or otherwise resolve debts*) refers to a true essential effort to repay creditors. The condition is not applicable as there has been no attempt to repay her creditors. When an individual's economic or medical status prevents them from handling their debts in a timely manner, they should search out some kind of course of action with or without the assistance of the bankruptcy courts. Regardless of how they decide to resolve their indebtedness under FC MC E2.A6.1.3.6., they should take some documented action to demonstrate they are financially responsible. Applicant has done nothing to reduce or eliminate her indebtedness.

Applicant's former product manager (and relative) provided a laudable picture of a person who has exhibited a good job performance in the last three years. In two character statements, Applicant's coworker and the administrative director confirmed the opinion of the project manager. However, neither the character evidence nor the extenuating medical problems are sufficient to overcome the negative evidence presented under FC DC E2.A6.1.2.1. and FC MC E2.A6.1.2.3.

Applicant's medical problems have contributed a large part to her overall indebtedness. However, there was a significant period of time between November 2003 and January 2006, when she was employed and could have taken some action to confirm her desire to handle her debts in a financially responsible manner. In January 2005, she stated she was going to investigate and pay the debts. After evaluating the evidence under the FC guideline and the general factors of the whole person concept, Applicant's favorable character evidence does not sufficiently eliminate the high probability her financial problems will persist in the future.

### **FORMAL FINDINGS**

Formal Findings required by Paragraph 25 of Enclosure 3 are:

Paragraph 1 (Financial Considerations, Guideline F): AGAINST THE APPLICANT.

Subparagraph 1.a. Against the Applicant.

Subparagraph 1.b. Against the Applicant.

Subparagraph 1.c. Against the Applicant.

Subparagraph 1.d. Against the Applicant.

Subparagraph 1.e. Against the Applicant.

Subparagraph 1.f. Against the Applicant.

Subparagraph 1.g. Against the Applicant.

Subparagraph 1.h. Against the Applicant.

Subparagraph 1.i. Against the Applicant.

Subparagraph 1.j. Against the Applicant.

Subparagraph 1.k. Against the Applicant.

Subparagraph 1.l. For the 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 is denied.

Paul J. Mason

Administrative Judge

1. This subparagraph is found in Applicant's favor (GE 4, GE 7).