

DATE: December 27, 2006

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In re:

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SSN: -----

Applicant for Security Clearance

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CR Case No. 05-13166

## **DECISION OF ADMINISTRATIVE JUDGE**

**LEROY F. FOREMAN**

### **APPEARANCES**

#### **FOR GOVERNMENT**

Emilio Jaksetic, Esq., Department Counsel

#### **FOR APPLICANT**

*Pro Se*

### **SYNOPSIS**

Applicant received a Chapter 7 bankruptcy discharge in October 1999. Thereafter, between July 2002 and September 2005, she accumulated ten delinquent debts that were charged off or placed for collection. After being interviewed by a security investigator in March 2005, she resolved or successfully disputed four debts. In June 2006, she paid off two debts with a loan from her credit union. She claimed to have paid or resolved four other debts, but she presented no documentary evidence to support her claim. She has not mitigated the security concern based on financial considerations. Clearance is denied.

### **STATEMENT OF THE CASE**

On August 1, 2006, the Defense Office of Hearings and Appeals (DOHA) issued a Statement of Reasons (SOR) detailing the basis for its preliminary decision to not grant Applicant a security clearance. This action was taken under Executive Order 10865, *Safeguarding Classified Information within Industry* (Feb. 20, 1960), as amended and modified, and Department of Defense Directive 5220.6, *Defense Industrial Personnel Security Clearance Review Program* (Jan. 2, 1992), as amended and modified (Directive). The SOR alleges security concerns under Guideline F (Financial Considerations).

Applicant answered the SOR in writing on September 11, 2006, and elected to have the case decided on the written record in lieu of a hearing. Department Counsel submitted the Government's written case on November 2, 2006. A complete copy of the file of relevant material (FORM) was provided to Applicant, who was afforded an opportunity to file objections and submit material to refute, extenuate, or mitigate the disqualifying conditions. Applicant received the FORM on November 10, 2006, and she responded on November 17, 2006. The case was assigned to me on December 15, 2006.

### **FINDINGS OF FACT**

Applicant's admissions in her answer to the SOR are incorporated into my findings of fact. I make the following

## findings:

Applicant is a 33-year-old office assistant employed by a defense contractor. She has worked for her current employer since August 2003. She is a single parent of two teenaged children (FORM Item 8 at 19). She has never held a security clearance (FORM Item 6 at 1, 4, 7).

Applicant received a Chapter 7 discharge in bankruptcy on October 13, 1999. In her bankruptcy petition, she listed assets of \$2,737 and liabilities of \$28,084. Her largest liability was the balance due on an automobile loan after her automobile was damaged beyond repair in a storm (FORM Item 8 at 5, 17, 18; FORM Item 9 at 1).

The SOR lists ten delinquent debts totaling about \$10,130 that were charged off or placed for collection between July 2002 and September 2005. Applicant asserted that the four debts in SOR ¶¶ 1.a, 1.b, 1.c, and 1.e, had been paid. She presented no documentary proof of payment. Her credit report dated December 8, 2006, reflected that the debt alleged in SOR ¶ 1.b was paid, but that the debts in SOR ¶¶ 1.c and 1.e were unpaid. It did not list the debt in SOR ¶ 1.a. <sup>(1)</sup>

Applicant asserted that the creditor in SOR ¶ 1.d had agreed to remove the \$83 debt from her credit report. Her assertion is supported by her credit bureau report dated February 21, 2004, and her credit bureau report dated November 15, 2005, both reflecting the debt as disputed (FORM Item 7 at 5; FORM Item 11 at 2), and her credit bureau report dated December 8, 2006, in which the debt does not appear.

Applicant asserted that the debts in SOR ¶¶ 1.f and 1.i, for \$2,257 and \$1,357, were paid in June 2006. In response to DOHA interrogatories in June 2006 (FORM Item 15), she presented documentation of disbursements to these creditors from an unsecured credit union loan. Her most recent credit bureau report reflected that these two debts were resolved and that her payments were current on the credit union loan.

Applicant asserted that the debts in SOR ¶¶ 1.g and 1.h, for \$195 and \$100, were deleted from her credit bureau report. In her response to DOHA interrogatories in December 2005 (FORM Item 14 at 11), she responded to the inquiry about the debt in SOR ¶ 1.g by stating, "can't find out who this is." She gave no explanation for the bad check in SOR ¶ 1.h. She admitted the bad check in her interview with a security investigator in March 2005 (FORM Item 9 at 2). She denied both debts in her answer to the SOR. Neither debt is reflected on her latest credit bureau report.

Applicant asserted that she had negotiated a payment plan for \$150 per month on the debt for \$5,435 alleged in SOR ¶ 1.j. This is her largest delinquent debt. In her response to DOHA interrogatories in December 2005, she included a personal financial statement reflecting payments of \$150 per month on this debt (FORM Item 14 at 16). In her response to DOHA interrogatories in June 2006, she noted "money order receipt enclosed," but there is no receipt in the file (FORM Item 15 at 6). She included a personal financial statement in her response to the most recent interrogatories, listing net monthly income of \$1,900, expenses of \$843, and a remainder of \$1,057, but she did not list any payments on her delinquent debts (FORM Item 15 at 9). Her latest credit bureau report reflected no change in the status of this debt.

In her response to DOHA interrogatories in December 2005, Applicant answered "no" to two questions asking if she had sought or obtained consumer credit counseling (FORM Item 14 at 16). However, in her answer to the SOR, she stated she had obtained credit counseling. She did not provide any evidence of an agreement with a credit counseling agency or payments made by or through a credit counseling agency.

Applicant admitted that her Chapter 7 bankruptcy was due in part to lack of financial planning. In 2005, she started working on setting her financial house in order (Answer to SOR). Her latest credit bureau report dated December 8, 2006, reflected four credit card accounts on which payments are current, several delinquent accounts that have been resolved, and several judgments satisfied.

### **POLICIES**

"[N]o 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 authorized the Secretary of Defense or his designee to grant

applicants eligibility for access to classified information "only upon a finding that it is clearly consistent with the national interest to do so." Exec. Or. 10865, *Safeguarding Classified Information within Industry* § 2 (Feb. 20, 1960), as amended and modified. Eligibility for a security clearance is predicated upon the applicant meeting the security guidelines contained in the Directive. 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 (App. Bd. Dec. 19, 2002).

The Directive sets forth adjudicative guidelines for determining eligibility for access to classified information, and it lists the disqualifying conditions (DC) and mitigating conditions (MC) for each guideline. Each clearance decision must be a fair, impartial, and commonsense decision based on the relevant and material facts and circumstances, the whole person concept, and the factors listed in the Directive ¶¶ 6.3.1 through 6.3.6.

A person granted access to classified information enters into a special relationship with the government. The government must be able to have a high degree of trust and confidence in persons with access to classified information. However, 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 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 which disqualify, or may disqualify, the applicant from being eligible for access to classified information. *See Egan*, 484 U.S. at 531. "Substantial evidence" is "more than a scintilla but less than a preponderance." *See v. Washington Metro. Area Transit Auth.*, 36 F.3d 375, 380 (4th Cir. 1994). "[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. ISCR Case No. 01-20700 at 3; *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 (App. Bd. Dec. 19, 2002). "[S]ecurity clearance determinations should err, if they must, on the side of denials." *Egan*, 484 U.S. at 531; *see* Directive ¶ E2.2.2.

## CONCLUSIONS

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

Under this guideline, "[a]n individual who is financially overextended is at risk of having to engage in illegal acts to generate funds." Directive ¶ E2.A6.1.1. A person who fails or refuses to pay long-standing debts or is financially irresponsible may also be irresponsible or careless in his or her duty to protect classified information. Two disqualifying conditions (DC) under this guideline could raise a security concern and may be disqualifying in this case. DC 1 applies where an applicant has a history of not meeting his or her financial obligations. Directive ¶ E2.A6.1.2.1. DC 3 applies where an applicant has exhibited inability or unwillingness to satisfy debts. Directive ¶ E2.A6.1.2.3. Applicant's financial history raises DC 1 and DC 3.

Since the government produced substantial evidence to raise DC 1 and DC 3, the burden shifted to Applicant to produce evidence to rebut, explain, extenuate, or mitigate the facts. Directive ¶ E3.1.15. Applicant has the burden of proving a mitigating condition, and the burden of disproving it is never shifted to the government. *See* ISCR Case No. 02-31154 at 5 (App. Bd. Sep. 22, 2005).

A security concern based on financial problems can be mitigated by showing the delinquent debts were not recent (MC 1) or was an isolated incident (MC 2). Directive ¶¶ E2.A6.1.3.1, E2.A6.1.3.2. Applicant has multiple delinquent debts that are not yet fully resolved. I conclude MC 1 and MC 2 are not established.

Security concerns arising from financial problems can be mitigated by showing they are the result of conditions "largely beyond the person's control" (MC 3). Directive ¶ E2.A6.1.3.3. The destruction of Applicant's automobile in 1998 was a

circumstance beyond her control and resulted in considerable financial hardship. However, that event predated her Chapter 7 bankruptcy discharge. I conclude MC 3 is not established.

A mitigating condition (MC 4) applies when an applicant "has received or is receiving counseling for the problem and there are clear indications that the problem is being resolved or is under control." Directive ¶ E2.A6.1.3.4. There is conflicting evidence regarding credit counseling. Although Applicant asserted in her response to the FORM that she had received credit counseling, she answered "no" when asked in the December 2005 interrogatories if she had obtained counseling. She did not explain the discrepancy between her answer to the interrogatories and her response to the FORM, nor did she provide documentary evidence of credit counseling. Applicant has the burden of establishing a mitigating condition, and she has not established MC 4.

A security concern arising from financial problems can be mitigated by showing a good-faith effort to resolve debts (MC 6). Directive ¶ E2.A6.1.3.6. The concept of good faith "requires a showing that a person acts in a way that shows reasonableness, prudence, honesty, and adherence to duty or obligation." ISCR Case No. 99-0201, 1999 WL 1442346 at \*4 (App. Bd. Oct. 12, 1999). Evidence of past irresponsibility is not mitigated by payment of debts only under pressure of qualifying for a security clearance.

The record reflects that Applicant began taking significant steps to resolve her financial problems in mid-2006, after she was interviewed by a security investigator but before the SOR was issued. Her most recent credit bureau report reflected that the debt alleged in SOR ¶ 1.b was paid. She obtained a loan from her credit union and presented documentary evidence showing she used the proceeds of that loan to resolve the two large debts alleged in SOR ¶¶ 1.f and 1.i. I conclude MC 6 is established for those three debts, and I resolve the allegations in SOR ¶¶ 1.b, 1.f, and 1.i in her favor.

Applicant asserted that the debts alleged in SOR ¶¶ 1.a, 1.c, and 1.e were paid in full, but she produced no documentary evidence of payment. She also stated she had arranged to pay off the debt of \$5,435, alleged in SOR ¶ 1.j, in monthly installments of \$150, but she produced no evidence of a payment agreement or payments made pursuant to the agreement. *See* ISCR Case No. 02-22163 at 5 (App. Bd. Mar. 12, 2005) (administrative judge may consider an applicant's failure to corroborate statements with documentary evidence). Because she did not request a hearing, I have not had the opportunity to observe her demeanor and assess her credibility. Based on the documentary evidence in the file, I conclude MC 6 is not established for these four debts.

The debts alleged in SOR ¶¶ 1.d, 1.g and 1.h were deleted from Applicant's most recent credit bureau report. Her credit report dated February 21, 2004 listed the debt alleged in SOR ¶ 1.d as disputed (FORM Item 7 at 6). In response to DOHA interrogatories, Applicant disclaimed any knowledge of the debt alleged in SOR ¶ 1.g, and she denied this debt in her response to the SOR. She admitted the bad check alleged in SOR ¶ 1.h. These three debts were less than seven years old and do not appear to fall within the categories of information that should be excluded from credit reports under the Section 605 of the Fair Credit Report Act, 15 U.S.C. § 1681c. I conclude that these debts were successfully disputed or resolved. I resolve SOR ¶¶ 1.d, 1.g, and 1.h in her favor.

Applicant's bankruptcy discharge, alleged in SOR ¶ 1.k, was a legally permissible means of resolving her debts. Unfortunately, she did not avail herself of the fresh start offered by her discharge in bankruptcy, but instead she continued her pattern of financial indiscipline. I resolve SOR ¶ 1.k against her.

### **The Whole Person**

"The adjudicative process is an examination of a sufficient period of a person's life to make an affirmative determination that the person is eligible for a security clearance." Directive E2.2.1. "Available, reliable information about the person, past and present, favorable and unfavorable, should be considered in reaching a determination." *Id.*

In addition to considering the specific disqualifying and mitigating conditions under each guideline, I have also considered: (1) the nature, extent, and seriousness of the conduct; (2) the circumstances surrounding the conduct, to include knowledgeable participation; (3) the frequency and recency of the conduct; (4) the applicant's age and maturity at the time of the conduct; (5) the voluntariness of participation; (6) the presence or absence of rehabilitation and other pertinent behavioral changes; (7) the motivation for the conduct; (8) the potential for pressure, coercion, exploitation, or duress; and (9) the likelihood of continuation or recurrence. *See* Directive ¶¶ E2.2.1.1 through E2.2.1.9. Several of these

factors are incorporated in the above discussion of Guideline F, but some merit additional comment.

Applicant's financial problems have persisted for several years and, by her own admission, were partly due to her lack of financial discipline. She has matured and has taken positive steps to better manage her finances. Unfortunately, she has not presented documentary proof that three debts (SOR ¶¶ 1.a, 1.c, and 1.e) have been resolved.

Applicant also has not documented her payment plan for the large debt alleged in SOR ¶ 1.j. Her failure to resolve all her delinquent debts is not necessarily fatal to her case. *See* ISCR Case No. 04-10671 at 3 (App. Bd. May 1, 2006) ("Applicant was not required, as a matter of law, to establish that [she] had paid off every debt in its original full amount."). However, even assuming that she has contracted to resolve some delinquent obligations by installment payments, it is too soon to determine if she will follow through with her payment plans.

Furthermore, one potentially troublesome aspect of her current financial plan is that she has borrowed money to pay off delinquent debts, thereby incurring a significant new obligation. In light of her long track record of financial indiscipline, it is too soon to determine if she will meet this new obligation.

In the absence of a track record of responsible financial management, her likelihood of recurrence weighs against her. "Only with the passage of time will there be a track record that shows whether a person, through actions and conduct, is willing and able to adhere to a stated intention to refrain from acting in a way that the person has acted in the past." ISCR Case No. 97-0727, 1998 DOHA LEXIS 302 at \*7 (App. Bd. Aug. 3, 1998). If she continues her efforts at financial responsibility, she may well qualify for a clearance in the future. *See* Directive ¶¶ E3.1.37, E3.1.38 (reconsideration after one year). However, based on her record to date, she has not mitigated the security concern based on financial considerations.

### **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: For Applicant

Subparagraph 1.c: Against Applicant

Subparagraph 1.d: For Applicant

Subparagraph 1.e: Against Applicant

Subparagraph 1.f: For Applicant

Subparagraph 1.g: For Applicant

Subparagraph 1.h: For Applicant

Subparagraph 1.i: For Applicant

Subparagraph 1.j: Against Applicant

Subparagraph 1.k: Against Applicant

### **DECISION**

In light of all of the circumstances in this case, it is not clearly consistent with the national interest to grant Applicant a security clearance. Clearance is denied.

LeRoy F. Foreman

Administrative Judge

1. In her response to the FORM, Applicant requested that DOHA obtain an updated credit bureau report. Department Counsel obtained the credit bureau report dated December 8, 2006, and attached it to his reply to Applicant's response to the FORM.