

DATE: September 29, 2006

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In Re:

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SSN: -----

Applicant for Security Clearance

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CR Case No. 05-14101

## DECISION OF ADMINISTRATIVE JUDGE

JOAN CATON ANTHONY

### APPEARANCES

#### FOR GOVERNMENT

Daniel F. Crowley, Esq., Department Counsel

#### FOR APPLICANT

*Pro Se*

### SYNOPSIS

Applicant has a history of financial delinquencies. In recent years, her income has increased, and her annual salary is now approximately \$80,000. While Applicant satisfied many of her smaller delinquencies, at the time of her hearing she owed approximately \$60,000 in federal and state tax liens. The federal tax liens encompassed the period from 1993 to 2002, and the state tax liens encompassed the period from 1998 through 2002. Although she had offers of compromise pending before federal and state tax authorities, Applicant had no concrete and verifiable plan to satisfy those debts while also meeting her current financial obligations. Applicant failed to mitigate Guideline F financial concerns. 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 June 12, 2006, 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) of the Directive. Applicant answered the SOR in writing on July 24, 2006, and elected to have a hearing before an administrative judge. The case was assigned to me August 16, 2006.

Applicant requested an expedited hearing and waived the 15-day notice rule specified at E3.1.8 of Enclosure 3 of the Directive. On September 11, 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 offered nine exhibits for admission to the record. The Government's exhibits were identified as Exhibits (Ex.) 1 through 9 and were admitted into evidence without objection. Applicant testified on her own behalf and called no other witnesses. She offered ten exhibits for admission to the record. Applicant's exhibits were identified as Ex. A through J and were admitted into evidence without objection. At the conclusion of the hearing, I left the record open for one week so Applicant could, if she wished, supply additional information about her financial situation. Before the record was closed, Applicant submitted three additional exhibits, which were identified as Ex. K, L, and M, and admitted to the record without objection. On September 20, 2006, DOHA received the transcript (Tr.) of the proceeding.

## FINDINGS OF FACT

The SOR to which Applicant filed her answer contained four allegations of disqualifying conduct under Guideline F, Financial Considerations. At the hearing, the Government moved to amend the SOR to include a fifth allegation, which was identified as allegation 1.e. The motion was granted without objection. In her answer to the initial SOR and in her testimony regarding the amended SOR, Applicant admitted three allegations and denied two. Her admissions are incorporated as findings of fact.

Applicant is 42 years old, single, and, beginning in January 2005, was employed as a proposal services manager by a defense contractor. In August 2006, she was promoted by her employer to manager of technical communication. (Ex. 1, Ex. H, Ex. I: Tr. 76.) Applicant is the single mother of two adult daughters, ages 24 and 18.

Applicant has a fiancé who provides her with unspecified financial support and who helps pay the college tuition of Applicant's younger daughter. Applicant and her fiancé are thinking about getting married in the fall of 2007. (Tr. 49-50.)

When Applicant's children were small, she did not receive child support and held low-paying jobs. She had difficulty providing basic necessities for her family. In 2003, she was diagnosed with thyroid cancer and was hospitalized for approximately three weeks. Her medical bills for her cancer diagnosis and treatment totaled \$25,000. Her cancer treatment was successful, and her health is currently stable. (Tr. 46-47.)

Applicant's employment history shows she held a number of positions, working her way steadily toward increased responsibilities and higher salaries. (Ex. 1; Tr. 45-46.) Applicant's current employer recognizes her as an effective leader and manager, and she has received salary increases and performance awards. Her current annual salary is approximately \$80,000. (Tr. 48, 51; Ex. H, Ex. I.)

In August 2005, Applicant estimated her monthly take-home pay to be approximately \$4,860. Her monthly household expenses were \$3,523 and her household debts were \$693, leaving a net remainder of \$644. (Ex. 6.) In March 2006, Applicant estimated monthly take-home pay of \$4,491, total monthly expenses of \$3,460, and household debts of \$493, leaving a net remainder of \$538. <sup>(3)</sup>

In addition to her ordinary household expenses, Applicant helps to care for her sick mother. (Ex. 8 at 2.) <sup>(4)</sup> She provides some support to her older daughter, who has acquired certification in sonography and is working as a medical assistant. Applicant also provides her younger daughter, a college freshman, with financial support for her education. (Ex. G; Tr. 48-49, 60-61.)

Applicant has a history of financial delinquencies. Of particular consequence are delinquencies resulting from her failure to adequately pay her federal and state income taxes over a period of nine years. In March 2003, a federal tax lien totaling \$14,44.08 was entered against Applicant for tax years 1993, 1994, 1995, and 1996. (Ex. 2.) In September 2004, a federal tax lien totaling approximately \$39,581.13 was entered against Applicant for tax years 1997, 1998, 1999, 2000, and 2002. (Ex. 3.) In March 2005, a lien of judgment was entered against Applicant in her state of residence for unpaid state taxes, penalties, and interest totaling \$12,704.08. The state lien of judgment covered the years 1998 through 2002. (Ex. 4.) In 2003, Applicant overpaid her federal taxes by \$2,385, and the overpayment was applied to pay her delinquent 1996 federal tax in full. (Ex. J.) As of the date of her hearing, Applicant had not satisfied any other delinquencies charged against her in the three outstanding tax liens. She provided evidence showing she had obtained tax counsel and had made offers of compromise to the federal and state tax authorities. (Ex. A, Ex. B, Ex. C Ex. F, Ex. G.) Her offer of compromise to the state taxing authority specified she would pay \$4,940 within 90 days of acceptance. (Ex. G.) Applicant's submissions did not specify the nature or the amount of her offer of compromise to the Internal Revenue Service (IRS). Applicant disputed the amount the IRS stated she owed in back taxes. (Tr. 21-22, 38-39.) She provided no evidence that she was setting aside funds to pay her delinquent state and federal taxes pending acceptance of her offers of compromise.

Applicant also provided credible evidence showing that in June 2006, she had satisfied a judgment entered against her in

October 2000 in the approximate amount of \$2,659. (Ex. D.) Additionally, she presented credible evidence showing settlement in full as of June 27, 2006 of a charged-off account in the approximate amount of \$593. (Ex. E.) Applicant acknowledged attending occasional lunchtime workshops given by her employer on financial management subjects. (Tr. 56-57.)

## **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. Directive ¶ E2.A6.1.1. 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. June 8, 2000).

In the amended SOR, DOHA alleged that in about September 2004, a federal tax lien was entered against Applicant for outstanding federal income taxes owed for tax years 1997 through 2002 in the approximate amount of \$39,581.13, and, as of March 10, 2006, the debt had not been satisfied (¶ 1.a.). DOHA also alleged that in March 2003, a federal tax lien was entered against Applicant for outstanding federal income taxes owed for tax years 1993 through 1996 in the approximate amount of \$14,044.88, and, as of March 10, 2006, the debt had not been satisfied (¶ 1.b.).

The amended SOR also alleged that Applicant was indebted to a creditor for a judgment entered against her in about

October 2000 in the amount of \$2,659, and, as of March 10, 2006, the judgment had not been satisfied (§ 1.c.); that Applicant was indebted to a creditor for a charged-off account in the amount of approximately \$593, and, as of April 2, 2005, the debt had not been paid (§ 1.d.); and that on or about April 4, 2005, a state tax lien was filed against Applicant for outstanding state income taxes owed for the tax years 1998 through 2002 in the approximate amount of \$12,704.08, and, as of August 11, 2006, this debt had not been satisfied (§ 1.e.).

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. (5) While Applicant provided evidence she had made offers of compromise to federal and state tax authorities, she failed to identify the current specific amounts of her several tax obligations and to show she had a plan in place and sufficient resources to systematically repay her tax delinquencies.

Applicant provided evidence that she had satisfied two of the five debts alleged in the amended SOR. Those debts were identified at §§ 1.c. and 1.d. of the amended SOR and are concluded for the Applicant.

We turn to a review of the several conditions that could mitigate the security concerns raised by Applicant's financial delinquencies. Applicant's acknowledged 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. (6) applies.

Applicant attributed her financial delinquencies in part to a low income and no child support while her children were young and to medical expenses resulting from her diagnosis and treatment of thyroid cancer in 2003.

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. (7) The record shows that Applicant's tax delinquency problems dated to at least 1993 and seemed to predate her health concerns in 2003. Applicant's illness, while unfortunate, does not explain or mitigate her long-standing financial difficulties and her unwillingness to set aside and save the necessary resources to pay her federal and state taxes. While Applicant's parental responsibilities were no doubt heavy when she was raising two children on her own, her long-standing tax delinquencies which have continued to the present do not appear to be the result of conditions beyond her control. Thus, mitigating condition E2.A6.1.3.3. does not apply.

Applicant has attended occasional workshops on financial subjects offered at her workplace. However, she has not sought individual counseling in managing her financial situation, although she has engaged a firm to help her satisfy and resolve her federal and state liens. Despite attending the workshops and hiring a firm to represent her with federal and state tax authorities, Applicant failed to present clear indications that her financial problems are being resolved or are under control. Therefore, mitigating condition E2.A6.1.3.4. (8) is applicable only in part. Additionally, while Applicant resolved, before the hearing, two long-standing debts alleged in the SOR, and deserves some credit for paying her debts, she failed to demonstrate that she had in place a good-faith plan to pay or resolve approximately \$60,000 in long-standing tax liens or had saved the money needed to act upon her offers of compromise. Accordingly, I conclude that mitigating condition E2.A6.1.3.6. (9) does not apply. The possibility that Applicant might achieve resolution of outstanding debt at some future time does not constitute evidence of financial reform or rehabilitation in the present. ISCR Case No. 98-0614 (July 12, 1999) at 5. The Guideline F allegations at §§ 1.a., 1.b., and 1.e. in the amended SOR are concluded against the 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 amended SOR:

Paragraph 1.: Guideline F: AGAINST APPLICANT

Subparagraph 1.a.: Against Applicant

Subparagraph 1.b.: Against Applicant

Subparagraph 1.c.: For Applicant

Subparagraph 1.d.: For Applicant

Subparagraph 1.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. Applicant acknowledged that, as the result of a transcription error, the financial statement, which is dated March 6, 2005, was actually prepared on March 6, 2006. (Tr. 50.)
- 4.
5. Disqualifying Condition (DC) E2.A6.1.2.1 reads: A history of not meeting financial obligations. DC E2.A6.1.2.3. reads: Inability or unwillingness to satisfy debts.
6. Mitigating Condition (MC) E2.A6.1.3.1 reads: The behavior was not recent. MC E2.A6.1.3.2. reads: It was an isolated incident.
7. MC E2.A6.1.3.3. reads: 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.).
8. MC E2.A6.1.3.4. reads: The person has received or is receiving counseling for the problem and there are clear indications that the problem is being resolved or is under control.
9. MC E2.A6.1.3.6. reads: The individual initiated a good-faith effort to repay overdue creditors or otherwise resolve debts.