

DATE: July 24, 2006

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In re:

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SSN: -----

Applicant for Security Clearance

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ISCR Case No. 05-15224

## **DECISION OF ADMINISTRATIVE JUDGE**

**MARY E. HENRY**

### **APPEARANCES**

#### **FOR GOVERNMENT**

Richard Stevens, Esq., Department Counsel

#### **FOR APPLICANT**

*Pro Se*

### **SYNOPSIS**

During the time she was the sole support of her family, Applicant and her then husband incurred significant debt, primarily related to car purchases. Applicant has made some nominal payments on her outstanding debt, but she has not established a plan to pay her remaining debts. She has not mitigated the government's security concerns regarding her financial situation. Clearance is denied.

### **STATEMENT OF THE CASE**

On January 19, 2006, the Defense Office of Hearings and Appeals (DOHA) issued a Statement of Reasons (SOR) to Applicant, pursuant to Executive Order 10865, *Safeguarding Classified Information Within Industry*, dated February 20, 1960, as amended and modified, and Department of Defense Directive 5220.6, *Defense Industrial Security Clearance Review Program* (Directive), dated January 2, 1992, as amended and modified. The SOR 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. Specifically, the SOR set forth security concerns arising under Guideline F (Financial Considerations) of the Directive. DOHA recommended the case be referred to an administrative judge to determine whether a clearance should be granted, continued, denied, or revoked. On February 6, 2006, Applicant submitted a notarized response to the allegations. She requested a hearing.

This matter was assigned to another administrative judge on February 27, 2006, but reassigned to me on April 24, 2006 because of caseload considerations. A notice of hearing was issued on May 5, 2006, and a hearing was held on May 24, 2006. Four government exhibits and Applicant exhibits A through F were admitted into evidence. The record was held open until June 13, 2006 to allow Applicant time to submit additional evidence. The additional evidence was received. The government did not object to the admission of this evidence, which has been admitted as Applicant Exhibits G through K. <sup>(1)</sup> Applicant and two witnesses testified. The hearing transcript (Tr.) was received on June 2, 2006.

### **FINDINGS OF FACT**

Applicant admitted the allegations in subparagraphs 1.a.-1.c., 1.e.-1.g., and 1.j.-1.m. under Guideline F, of the SOR, but denied the allegations in subparagraphs 1.d., 1.h., 1.i., and 1.n. <sup>(2)</sup> Those admissions are incorporated as findings of fact. After a complete review of the evidence in the record and upon due consideration, I make the following additional findings of fact.

Applicant is a 31-year-old office assistant for a defense contractor. <sup>(3)</sup> She has worked for this contractor for three years. <sup>(4)</sup> She completed her security clearance application in November 2003. <sup>(5)</sup>

Applicant married her first husband in 1992 and divorced him in 1995. She married for a second time in 1996. <sup>(6)</sup> She separated from her husband in October 2004, and their divorce became final in ay 2006. <sup>(7)</sup> She has three children from this marriage, ages 9, 6 and 3, for whom she is the primary support and caretaker. <sup>(8)</sup> She expected to graduate with honors from a U.S. university with a degree in business administration in late June 2006, and is now looking for a higher paying job. <sup>(9)</sup> She plans to begin a masters program in January 2007. <sup>(10)</sup>

Applicant currently earns \$26,500. <sup>(11)</sup> Her net monthly income is \$1,700. <sup>(12)</sup> She also receives \$450 a month in child support. <sup>(13)</sup> Her monthly expenses are: \$723. for rent; \$200 for groceries; \$55 for utilities; \$62 for telephone; \$105 for cable; \$265 for a car payment; \$236 for car insurance and gas; \$206 for day care; and \$50 on a credit card bill. <sup>(14)</sup> These expenses total \$1,902 a month, leaving a balance of \$248 per month for miscellaneous expenses such as clothes, car repairs, and school supplies.

Applicant's debts alleged in the SOR, including current status, are summarized in the following table:

SOR ¶	TYPE OF DEBT	AMOUNT	CURRENT STATUS
1.a.	Bank loan <sup>(15)</sup>	\$ 577.00 <sup>(16)</sup>	Unpaid <sup>(17)</sup>
1.b.	Credit debt <sup>(18)</sup>	\$ 140.00 <sup>(19)</sup>	Unpaid <sup>(20)</sup>
1.c.	Medical bill <sup>(21)</sup>	\$ 200.00 <sup>(22)</sup>	Unpaid <sup>(23)</sup>
1.d.	Medical bill <sup>(24)</sup>	\$ 200.00 <sup>(25)</sup>	This is the same as 1.c.
1.e.	Telephone bill <sup>(26)</sup>	\$ 73.00 <sup>(27)</sup>	Unpaid <sup>(28)</sup>
1.f.	Telephone bill <sup>(29)</sup>	\$ 73.00 <sup>(30)</sup>	Unpaid <sup>(31)</sup>
1.g.	Car loan <sup>(32)</sup>	\$9,950.00 <sup>(33)</sup>	Unpaid <sup>(34)</sup>
1.h.	Car Loan <sup>(35)</sup>	\$4,600.00 <sup>(36)</sup>	\$1,464.86 <sup>(37)</sup>
1.i.	Credit card <sup>(38)</sup>	\$ 922.00 <sup>(39)</sup>	Paying <sup>(40)</sup> -current balance \$300
1.j.	Telephone bill <sup>(41)</sup>	\$ 232.00 <sup>(42)</sup>	Unpaid <sup>(43)</sup>
1.k.	Medical bill <sup>(44)</sup>	\$ 374.00 <sup>(45)</sup>	Unpaid <sup>(46)</sup>
1.l.	Medical bill <sup>(47)</sup>	\$ 250.00 <sup>(48)</sup>	Unpaid
1.m.	Medical bill <sup>(49)</sup>	\$ 151.00 <sup>(50)</sup>	Paid <sup>(51)</sup>
1.n.	Cable bill <sup>(52)</sup>	\$ 81.00 <sup>(53)</sup>	Paid

For nearly four years of her second marriage, she provided the sole financial support for her family. <sup>(54)</sup> During this time, she incurred significant debt, particularly car debt. <sup>(55)</sup> When she could not continue with car payments, she twice made arrangements to have the car repossessed. <sup>(56)</sup> In April 2004, she paid \$680 on one car loan. <sup>(57)</sup> Her documentation reflects that she has a remaining balance of \$1,464.86 after this payment. Despite her belief this account is paid in full, her documentation indicates that it is not. <sup>(58)</sup> This account is listed in two places on her 2006 credit <sup>(59)</sup> <sup>(60)</sup>

report. The report does not show any payments by her or reflect the correct balance due.

In November 2005, her credit card had a balance of approximately \$600.<sup>(61)</sup> Her documentation reflects that from April 2005 until November 2005, she regularly made monthly payments on this debt, and occasionally made purchases.<sup>(62)</sup> In a six-month period of time, she reduced this debt by \$300.<sup>(63)</sup> To her knowledge, this card was sold to her current credit company.<sup>(64)</sup> She pays \$50 a month on her current credit card debt, which has a remaining balance of approximately \$300.<sup>(65)</sup> The 2006 credit report shows only one credit card for her.<sup>(66)</sup>

She acknowledges that her financial decisions were often influenced by her husband and not necessarily appropriate.<sup>(67)</sup> She is paying one debt now, which is all she can afford.<sup>(68)</sup> She has tried to work with creditors on a payment plan and plans to pay one debt at a time until her debts are resolved.<sup>(69)</sup> It will take her many years to resolve her debt.

Her supervisor testified. She describes Applicant as a conscientious, hard working individual.<sup>(70)</sup> Applicant is one of her top three performers, and as such, has received two spot awards, which are not given to every employee.<sup>(71)</sup> The security representative for her workplace also testified. He describes Applicant's work habits as "awesome".<sup>(72)</sup> Applicant does not miss time from work; gets along very well with her co-workers; and is a hard worker upon whom he can rely.<sup>(73)</sup> Applicant is very aware of security issues and ensures she does not place herself in a situation which gives her access to unauthorized materials.<sup>(74)</sup> He states that Applicant would not put confidential material at risk.<sup>(75)</sup> As a teenager, Applicant received the gold star award, the highest award in girl scouting.<sup>(76)</sup>

## POLICIES

Enclosure 2 of the Directive sets forth adjudicative guidelines which must be considered in the evaluation of security suitability. An administrative judge need not view the adjudicative guidelines as inflexible ironclad rules of law. Instead, acknowledging the complexities of human behavior, these guidelines, when applied in conjunction with the factors set forth in the adjudicative process provision in Paragraph E2.2., Enclosure 2 of the Directive, are intended to assist the administrative judge in reaching fair and impartial common sense decisions.

Included in the guidelines are disqualifying conditions and mitigating conditions applicable to each specific guideline. Although the presence or absence of a particular condition or factor for or against clearance is not outcome determinative, the adjudicative guidelines should be followed whenever a case can be measured against this policy guidance. In addition, each security clearance decision must be based on the relevant and material facts and circumstances, the whole-person concept, and the factors listed in the Directive. Specifically, these are: (1) the nature, extent, and seriousness of the conduct; (2) the circumstances surrounding the conduct; (3) the frequency and recency of the conduct; (4) the individual's age and maturity at the time of the conduct; (5) the voluntariness of participation; (6) the presence or absence of rehabilitation and other 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.<sup>(77)</sup>

The sole purpose of a security clearance determination is to decide if it is clearly consistent with the national interest to grant or continue a security clearance for an applicant.<sup>(78)</sup> The government has the burden of proving controverted facts.<sup>(79)</sup> The burden of proof is something less than a preponderance of the evidence.<sup>(80)</sup> Once the government has met its burden, the burden shifts to the applicant to present evidence of refutation, extenuation, or mitigation to overcome the case against her.<sup>(81)</sup> Additionally, an applicant has the ultimate burden of persuasion to obtain a favorable clearance decision.<sup>(82)</sup>

No one has a right to a security clearance,<sup>(83)</sup> and "the clearly consistent standard indicates that security clearance determinations should err, if they must, on the side of denials."<sup>(84)</sup> Any reasonable doubt about whether an applicant should be allowed access to sensitive information must be resolved in favor of protecting such sensitive information.<sup>(85)</sup> Section 7 of Executive Order 10865 specifically provides industrial security clearance decisions shall be "in terms of the national interest and shall in no sense be a determination as to the loyalty of the applicant concerned." The decision to

deny an individual a security clearance is not necessarily a determination as to the allegiance, loyalty, and patriotism of an applicant. <sup>(86)</sup> 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.

Based upon a consideration of the evidence as a whole, I find the following adjudicative guideline most pertinent to an evaluation of the facts of this case:

**Financial Considerations - Guideline F: An individual who is financially overextended is at risk of having to engage in illegal acts to generate funds. Unexplained affluence is often linked to proceeds from financially profitable criminal acts.**

### CONCLUSIONS

Upon consideration of all the facts in evidence, and after application of all appropriate adjudicative factors, I conclude the following with respect to the allegations set forth in the SOR:

The government has established its case under Guideline F. Applicant has a history of excessive debt, including medical bills, which have not been paid. Applicant's financial problems clearly fall within the Financial Considerations 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*).

A security concern based on financial problems can be mitigated in several ways. Applicant's debt problems have been ongoing for a number of years, are recent, and are not an isolated incident. Thus, she has not established a mitigating condition under Financial Considerations Mitigating Conditions (FC MC) E2.A6.1.3.1. (*The behavior was not recent*) and E2.A6.1.3.2. (*It was an isolated incident*). Although she has talked with creditors about a payment plan, she has not presented clear indications that her financial problems are being resolved. Thus, 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 resolved or is under control*) does not apply.

Applicant has made recent and nominal efforts towards the resolution of her debt. While she is not required to pay all her debt, she has not yet established a track record for resolving her outstanding debt. She has started on the road to financial health and is managing her current bills. For the government's concerns about her past debt to resolve, she needs to establish that she has worked with her creditors and set up a payment plan, or consolidate her smaller debts into a payment plan which she can manage. Because she has many unpaid debts, most of which are small, FC C E2.A6.1.3.5. (*The individual initiated a good faith effort to repay overdue creditors or otherwise resolve debts*) does not apply. Since her divorce, she has lived within her financial means. She does not over use her credit card nor does she open and use multiple store credit accounts. She understands her financial limitations. Her testimony regarding her goals to resolve her debts over time is credible. However, the Appeal Board has stated that promises to pay one's debts in the future are not a substitute for a clear record of debts actually paid. <sup>(87)</sup> In determining an individual's security worthiness, the Government cannot rely on the possibility that she may resolve her outstanding debts at some future date. <sup>(88)</sup> She has not mitigated the Government's concerns regarding her past debts. Guideline F is found against of Applicant.

### FORMAL FINDINGS

Formal findings For or Against Applicant on the allegations set forth in the SOR, as required by Section E3.1.25 of Enclosure 3 of the Directive, are:

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

Subparagraph 1.a: Against Applicant

Subparagraph 1.b: Against Applicant

Subparagraph 1.c: Against Applicant

Subparagraph 1.d: For Applicant

Subparagraph 1.e: Against Applicant

Subparagraph 1.f: Against Applicant

Subparagraph 1.g: Against Applicant

Subparagraph 1.h: For Applicant

Subparagraph 1.I: For Applicant

Subparagraph 1.j: Against Applicant

Subparagraph 1.k: Against Applicant

Subparagraph 1.l: Against Applicant

Subparagraph 1.m: For Applicant

Subparagraph 1.n: For 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 a security clearance for Applicant. Clearance is denied.

Mary E. Henry

Administrative Judge

1. Applicant Exhibit G is a letter from Applicant, dated June 13, 2006. Applicant Exhibit H is a letter from a creditor, dated June 2, 2006. Applicant Exhibit I is a copy of her credit card statement covering April 11, 2005 through November 2005. Applicant Exhibit J is a second credit card account statement for the period March 2006 through May 2006. Applicant Exhibit K is a copy of a payment made on an account in April 2004.

2. Applicant's response to the SOR, dated February 6, 2006, at 1-2.

3. Government Exhibit 1 (Applicant's security clearance application, dated November 5, 2003) at 1, 3.

4. *Id.* at 3; Tr. at 17-18, 46.

5. Government Exhibit 1, *supra* note 3, at 1.

6. *Id.* at 5; Tr. at 18, 36-37.

7. *Id.*

8. Government Exhibit 1, *supra* note 3, at 6; Tr. at 15, 20.

9. Tr. at 17, 38.

10. *Id.* at 37-38.

11. *Id.* at 21.

12. *Id.*

13. *Id.*

14. *Id.* at 21-23.

15. *Id.* at 23-24; Government Exhibit 3 (Credit Report, dated December 15, 2005) at 1; Government Exhibit 4 (Credit report, dated February 23, 2006) at 1.

16. *Id.*

17. *Id.*

18. *Id.*

19. *Id.*

20. *Id.*

21. Tr. at 25; Government Exhibit 3, *supra* note 15, at 1; Government Exhibit 4, *supra* note 15, at 1.

22. *Id.*

23. *Id.*

24. *Id.*

25. *Id.*

26. Tr. at 25; Government Exhibit 4, *supra* note 15, at 2.

27. *Id.*

28. *Id.*

29. Tr. at 26; Government Exhibit 4, *supra* note 15, at 2.

30. *Id.*

31. *Id.*

32. Tr. at 26; Government Exhibit 3, *supra* note 15, at 2; Government Exhibit 4, *supra* note 15, at 3.

33. *Id.*

34. *Id.*

35. Tr. at 26-27; Government Exhibit 3, *supra* note 15, at 2; Government Exhibit 4, *supra* note 15, at 2.

36. *Id.*

37. Applicant Exhibit K, *supra* note 1, at 1.

38. Tr. at 27-28, 30-31; Government Exhibit 2 (Credit Report, dated May 11, 2004) at 4-5; Government Exhibit 3, *supra* note 15, at 1; Government Exhibit 4, *supra* note 15, at 2.

39. *Id.*

40. Applicant Exhibit I, *supra* note 1, at 2-7; Applicant Exhibit J, *supra* note 1, at 1.

41. Tr. at 29; Government Exhibit 2, *supra* note 38, at 7.

42. *Id.*

43. *Id.*

44. Tr. at 29.

45. *Id.*

46. *Id.*

47. Response to SOR, *supra* note 2, at 2.

48. *Id.*

49. Tr. at 29-30.

50. *Id.*

51. Applicant Exhibit H, *supra* note 1, at 1.

52. *Id.*

53. *Id.*

54. *Id.* at 34-35.

55. *Id.*

56. *Id.* at 33-34, 36.

57. Applicant Exhibit K, *supra* note 1, at 1.

58. *Id.*

59. Government Exhibit 4, *supra* note 15, at 3.

60. *Id.*

61. Applicant Exhibit K, *supra* note 1, at 7.

62. *Id.* at 2-7.

63. *Id.* at 7.

64. Tr. at 27-28, 30-31.

65. *Id.*; Applicant Exhibit K, *supra* note 1, at 1.

66. Government Exhibit 4, *supra* note 15, at 3.

67. Tr. at 33-34.

68. *Id.* at 24.

69. *Id.*
70. *Id.* at 46.
71. *Id.* at 47-49.
72. *Id.* at 52.
73. *Id.*
74. *Id.* at 54.
75. *Id.* at 53.
76. *Id.* at 16.
77. Directive, Enclosure 2, ¶ E2.2.1.1. through E2.2.1.9.
78. ISCR Case No. 96-0277 at 2 (App. Bd., July 11, 1997).
79. ISCR Case No. 97-0016 at 3 (App. Bd., December 31, 1997); Directive, Enclosure 3, ¶ E3.1.14.
80. *Department of the Navy v. Egan*, 484 U.S. 518, 528 (1988).
81. ISCR Case No. 94-1075 at 3-4 (App. Bd., August 10, 1995); Directive, Enclosure 3, ¶ E3.1.15.
82. ISCR Case No. 93-1390 at 7-8 (App. Bd. Decision and Reversal Order, January 27, 1995); Directive, Enclosure 3, ¶ E3.1.15.
83. *Egan*, 484 U.S. at 531.
84. *Id.*
85. *Id.*; Directive, Enclosure 2, ¶ E2.2.2.
86. Executive Order No. 10865 § 7.
87. ISCR Case No.98-0188 at 3 (App. Bd., April 29, 1999).
88. ISCR Case No. 98-0614 at 5 (App. Bd., July 12, 1999).