

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. 06-10779

**DECISION OF ADMINISTRATIVE JUDGE**

**CAROL G. RICCIARDELLO**

**APPEARANCES**

**FOR GOVERNMENT**

Braden Murphy, Esq., Department Counsel

**FOR APPLICANT**

Pro Se

**SYNOPSIS**

Applicant is 37 years old and has worked for a federal contractor since 1998. She was recently promoted to assistant manager in her division. Applicant was in an abusive marriage where her husband controlled the finances. She was reluctant to purchase a second house, but acquiesced. They divorced and the house was not addressed in the settlement. Her ex-husband does not plan on paying the defaulted loan. Applicant has attempted to resolve it to no avail. Applicant pays her bills on time, has no other financial issues and is a valued employee. Applicant has mitigated the security concerns raised under Guideline F, financial considerations. Clearance is granted.

**STATEMENT OF THE CASE**

The Defense Office of Hearings and Appeals (DOHA) declined to grant or continue a security clearance for Applicant. As required by Department of Defense Directive 5220.6 ¶ E3.1.2 (Jan. 2, 1992), as amended, DOHA issued a Statement of Reasons (SOR) on October 9, 2006, detailing the basis for its decision-security concerns raised under Guideline F (financial considerations) of the revised Adjudicative Guidelines (AG) issued on December 29, 2005, and implemented by the Department of Defense effective September 1, 2006. The revised guidelines were provided to Applicant when the SOR was issued. Applicant answered the SOR in writing on October 27, 2006, and elected to have a hearing before an administrative judge. The case was assigned to me on December 21, 2006. The Notice of Hearing was dated January 4, 2007, but it was confirmed on the record that Applicant did not receive it within the required 15 day written notice requirement. Applicant waived the 15 day requirement. With the consent of the parties, I convened the hearing on January 25, 2007, to consider whether it is clearly consistent with the national interest to grant or continue a security clearance for Applicant. The Government offered three exhibits that were marked as GE 1-3 and admitted without objection. Applicant testified on her behalf and offered six exhibits that were marked as AE A-I and were admitted without objection. DOHA received the hearing transcript (Tr.) on February 1, 2007.

**FINDINGS OF FACT**

Applicant is 37 years and has worked for a federal contractor since 1998. She recently was promoted to assistant

manager for Customs Border Control. She is twice divorced and remarried. She has an 18 year old daughter and 15 year old son from a previous relationship. She has not received child support for either child. Applicant received her General Equivalency Diploma in 2000 and is currently attending community college.

Applicant and her second husband bought a mobile home in 1997 (House A). They lived there for 18 months and her husband decided he was unhappy and wanted to purchase a new home (House B).<sup>(1)</sup> Applicant was nervous about buying House B before they sold House A. Her husband insisted and they bought House B and rented House A. Neither had any experience in managing rental property. Her husband would merely hand the tenants their mortgage statement when it arrived and have them pay the mortgage, which was their rent, directly to the mortgage company.<sup>(2)</sup> The tenants missed three monthly payments and Applicant and her husband became behind in their mortgage on House A. The tenants moved out and Applicant and her husband could not afford to pay the mortgage on both House A and House B. Subsequently, House A was foreclosed in the fall of 2000.

The financial issues revolving around House A caused major marital strife. Applicant's husband controlled the family money. He was physically and emotionally abusive to Applicant and her children.<sup>(3)</sup> She stated, "It was bad enough to where when his truck came up, everybody ran for their room, including the dog [ran]."<sup>(4)</sup> During the separation and divorce, Applicant's husband wanted to keep House B. Applicant could not afford to pay the mortgage on House A and chose to find other accommodations for her and her children.<sup>(5)</sup>

When the couple divorced, House A was not included in the divorce settlement.<sup>(6)</sup> Applicant questioned her divorce attorney about the property and Applicant stated it "was swept under the rug."<sup>(7)</sup> She advised her attorney numerous time of the problem and he "did nothing."<sup>(8)</sup> Applicant

received her car, clothing, and some personal effects of her children. She also received a \$2,000 settlement for a portion of House B that her husband retained, because they had purchased it with joint earnings.

House A is held jointly by Applicant and her ex-husband. She does not dispute that she owes a portion on the defaulted loan. Applicant has paid all of her bills and completed payments on two vehicles.<sup>(9)</sup> She has not seen nor spoken to her ex-husband since they divorced in 2002. At that time he expressed he was not going to pay the defaulted loan. She has not contacted her ex-husband and believes he has moved from the address she provided on her security clearance application (SCA).

Applicant has researched the mortgage debt to find out the status of the loan. She retrieved a credit report and found the loan had been transferred and sold.<sup>(10)</sup> She attempted to contact the creditor, but could not retrieve a contact number. Applicant does not dispute she owes a portion of the debt, but is reluctant to contact her ex-husband. Based on his previous comments, she fully believes he will not assist her in repaying the loan. Applicant and her present husband are current on all of their bills. Applicant earns approximately \$60,000 a year and her husband also earns a significant income. Applicant is willing to pay half of the defaulted mortgage, but under the circumstances it is very difficult and unlikely it will be completely resolved without her ex-husband's cooperation, which is also unlikely.

Applicant's current husband is a retired Air Force master sergeant (E-7) who currently holds a security clearance. He testified that his wife is a dedicated employee. He was aware of the defaulted mortgage loan when they married. He has assisted her in researching the loan and there does not seem to be anyone that can assist them in resolving it. They attempted to contact the lender twho did not respond.<sup>(11)</sup>

## POLICIES

"[N]o one has a 'right' to a security clearance."<sup>(12)</sup> 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."<sup>(13)</sup> The President 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."<sup>(14)</sup> An applicant "has the ultimate burden of

demonstrating that it is clearly consistent with the national interest to grant or continue his security clearance." (15) "The clearly consistent standard indicates that security clearance determinations should err, if they must, on the side of denials." (16) Any reasonable doubt about whether an applicant should be allowed access to sensitive information must be resolved in favor of protecting such sensitive information. (17) The decision to deny an individual a security clearance is not necessarily a determination as to the loyalty of an applicant. (18) 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. (19)

The revised Adjudicative Guidelines set forth potentially 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. Specifically these are: (1) the nature and seriousness of the conduct and surrounding circumstances; (2) the frequency and recency of the conduct; (3) the age of the applicant; (4) the motivation of the applicant, and the extent to which the conduct was negligent, willful, voluntary, or undertaken with knowledge of the consequences; (5) the absence or presence of rehabilitation; and (6) the probability that the circumstances or conduct will continue or recur in the future. Additionally, each security clearance decision must be a fair and impartial commonsense decision based on the relevant and material facts and circumstances, the whole-person concept, along with the factors listed in the Directive. Although the presence or absence of a particular condition or factor for or against clearance is not outcome determinative, the revised adjudicative guidelines should be followed whenever a case can be measured against this policy guidance.

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

Guideline F- Financial Considerations are a concern because failure or inability to live within one's means, satisfy debts, and meet financial obligations may indicate poor self-control, lack of judgment, or unwillingness to abide by rules and regulations, all of which can raise questions about an individual's reliability, trustworthiness and ability to protect classified information. An individual who is financially overextended is at risk of having to engage in illegal acts to generate funds. Compulsive gambling is a concern as it may lead to financial crimes including espionage. Affluence that cannot be explained by known sources of income is also a security concern. It may indicate proceeds from financially profitable criminal acts.

Conditions that could raise a security concern and may be disqualifying, as well as those which would mitigate security concerns, pertaining to the adjudicative guidelines are set forth and discussed in the conclusions below.

### CONCLUSIONS

I have carefully considered all the facts in evidence and the legal standards.

Based on all the evidence, Financial Considerations Disqualifying Condition (FC DC) 19 (a) (*inability or unwillingness to satisfy debts*) and FC DC 19 (c) (*a history of not meeting financial obligations*), apply in this case. Applicant has a single delinquent debt that she failed to pay. She admits she owes half of the debt which remains delinquent.

I have considered all the Financial Considerations Mitigating Conditions (FC MC), and especially considered FC MC 20 (a) (*the behavior happened so long ago, was so infrequent, or occurred under such circumstances that it is unlikely to recur and does not cast doubt on the individual's current reliability, trustworthiness, or good judgment*); FC MC 20 (b) (*the conditions that resulted in the financial problem 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 the individual acted responsibly under the circumstances*); FC MC 20 (c) (*the person received or is receiving counseling for the problem and/or there are clear indications that the problem is being resolved or is under control*); and FC MC 20 (d) (*the individual initiated a good-faith effort to repay overdue creditors or otherwise resolve debts*).

Applicant was in an abusive marriage where she had little, if any, control over the family finances. Despite her apprehension to buy a second house, she succumbed to her husband's wishes. This issue and his physical and emotional abuse caused her to separate and later divorce. The issue of the property was not resolved in the divorce settlement. Her

ex-husband will not pay his half of the defaulted loan. Applicant is stuck in an untenable situation. All of her other debts are paid and her expenses are paid on time. She does well at work and recently was promoted. However, this lingering debt is not resolved. She has attempted to contact the lending institution, but the loan has been sold and splitting payment of the debt does not appear to be an option. I find FC MC 20 (a) and (b) applies. Although the debt still exists, it occurred under circumstances that were beyond her control. She was in an abusive situation and did not have control over the family finances. She eventually took control, by separating, but not before she was required to co-sign for House B. Her actions were responsible under this set of facts. She did not receive proper legal representation and the debt was not resolved in her divorce settlement. Her actions with regard to this particular debt and the circumstances under which they occurred are likely not to recur in the future and do not cast doubt on her reliability, trustworthiness or good judgment. Applicant has not sought financial counseling. However, other than this one debt, she has no other delinquent debts. I find FC MC 20 (c) does not apply.

Applicant has done the best she can do with regard to this debt, under the difficult circumstances. Although the debt remains unpaid, she has initiated a good-faith effort to resolve it by attempting to contact the creditor and inquire how to pay half of the debt. I find FC MC 20 (d) applies. This one unpaid debt does not reflect an unwillingness on Applicant's part to satisfy it. She is not financially overextended or living beyond her means. To the contrary, she pays her bills on time, saves her money and works hard. Her difficulty is in trying to resolve a debt with an ex-husband who refuses to take his share of the responsibility, thereby limiting Applicant's ability to resolve it. This unpaid debt does not raise questions about Applicant's ability to follow rules and regulations and safeguard classified information.

### **The Whole Person Analysis**

In all adjudications, the protection of our national security is the paramount concern. The objective of the security-clearance process is the fair-minded, commonsense assessment of a person's life to make an affirmative determination that the person is eligible for a security clearance. Indeed, the adjudicative process is a careful weighing of a number of variables in considering the "whole person" concept. It recognizes that we should view a person by the totality of their acts, omissions, motivations and other variables. Each case must be adjudged on its own merits, taking into consideration all relevant circumstances, and applying sound judgment, mature thinking, and careful analysis.

I considered the whole person in evaluating the case. I considered Applicant's credibility, demeanor and responsiveness when testifying. I found Applicant to be very credible, forthright and honest about her situation. I considered that based on events beyond Applicant's control she incurred a defaulted mortgage loan. Her other bills are all paid timely. This debt was part of the marital strife between Applicant and her ex-husband. She lives within his means and has never received child support for her. I took into account the financial considerations security concern raised under Guideline F and find Applicant was not living beyond her means, acting irresponsibly; nor is there anything to indicate she lacks self-control in her spending habits or exercises poor judgment. I do not find her finances pose a security concern. Therefore, I am persuaded by the totality of the evidence in this case, that it is clearly consistent with the national interest to grant Applicant a security clearance. Accordingly, Guideline F is decided for Applicant.

### **FORMAL FINDINGS**

The following are my conclusions as to each allegation in the SOR:

Paragraph 1. Guideline F: FOR APPLICANT

Subparagraph 1.a: For Applicant

### **DECISION**

In light of all of the circumstances in this case, it is clearly consistent with the national interest to grant or continue a security clearance for Applicant. Clearance is granted.

Carol G. Ricciardello

Administrative Judge

1. Tr. 35.
2. Tr. 36.
3. Tr. 51.
4. Tr. 52.
5. *Id.*
6. *Id.*
7. Tr. 37.
8. *Id.*
9. AE D and E; Tr. 44.
10. Tr. 56.
11. Tr. 30-31.
12. *Department of the Navy v. Egan*, 484 U.S. 518, 528 (1988).
13. *Id.* at 527.
14. Exec. Or. 10865, *Safeguarding Classified Information within Industry* § 2 (Feb. 20, 1960).
15. ISCR Case No. 01-20700 at 3 (App. Bd. Dec. 19, 2002).
16. *Id.*
17. *Id.*; Directive, Enclosure 2, ¶ E2.2.2.
18. Executive Order 10865 § 7.
19. *See* Exec. Or. 10865 § 7.