

DATE: March 28, 2007

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In Re:

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SSN: -----

Applicant for Security Clearance

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ISCR Case No. 06-11608

**ECISION OF ADMINISTRATIVE JUDGE**

**CHARLES D. ABLARD**

**APPEARANCES**

**FOR GOVERNMENT**

Eric Borgstrom, Esq. , Department Counsel

**FOR APPLICANT**

Richard Haggerty, Personal Representative

**SYNOPSIS**

Applicant failed to mitigate security concerns arising from delinquent debts incurred during a period of unemployment occasioned by need to resign her job and care for a terminally ill mother. While these circumstances were beyond her control, little was done to resolve the matters during the two and a half years of employment before the issuance of the SOR. Personal conduct issues relating to the failure to report all the debts on her SF 86 were mitigated by the fact that some were reported, the government was alerted to her problems, and her unfamiliarity with the process. Clearance is denied.

**STATEMENT OF CASE**

On September 29, 2006, the Defense Office of Hearings and Appeals (DOHA), pursuant to Executive Order 10865, *Safeguarding Classified Information Within Industry*, as amended and modified, and Department of Defense Directive 5220.6, *Defense Industrial Personnel Security Clearance Review Program* (Directive), dated January 2, 1992, as amended and modified, issued a Statement of Reasons (SOR) to 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 the case be referred to an administrative judge to determine whether a clearance should be granted, continued, denied, or revoked.

On October 26, 2006, Applicant responded to the SOR allegations and requested a hearing. The matter was assigned to me on January 8, 2007. A notice of hearing was issued on January 12, 2007, for a hearing on January 25, 2007, and held that day. The government and Applicant each offered seven exhibits into evidence. All were accepted. The government amended the SOR to conform it to the revised Adjudicative Guidelines (AG) effective for SORs dated September 1, 2006, and later. A security investigator testified for the government and Applicant testified. The record was left open for the submission of additional material and the request was granted to allow additional material until February 25, 2007. Nothing was received. The transcript was received on February 6, 2007.

## FINDINGS OF FACT

Applicant admitted nine of the 13 SOR allegations relating to delinquent debts and denied four with explanation. She denied the three allegations of falsification of her security clearance application relating to delinquent debts. After a complete review of the record, I make the following additional findings of fact:

Applicant is a 37-year-old employee of a defense contractor who has worked as a supply technician for the company since June 2004. She incurred delinquent debts totaling approximately \$25,000 during a period between November 2002 and December 2003 when she resigned her job to care for her mother. She was the only member of the family who was in a position to be available for her mother. Her father is a long distance trucker and her two brothers have full time family or military responsibilities. During the period of her mother's illness she held a few weekend and short term jobs but was very under-employed. Her auto payments could not be made and she turned in her car to the loan company. Her mother died at the end of 2003 but her unemployment and underemployment continued into the first eight months of 2004 before she was hired by her present employer.

The debts include two automobile repossessions for over \$6,000 each (SOR 1.d. and e.). One occurred in 1999 and the second during her mother's illness. The second was a voluntary repossession. The smallest are four debts ranging between \$186 and \$33 and totaling approximately

\$400 (SOR 1.h., i., j., and m.) have been paid (Exhs. E, F, and G). None of the other debts alleged in the SOR have been paid. She did not seriously consider bankruptcy since she preferred to continue to work and pay off the delinquent debts. She briefly started credit counseling but believed it would be detrimental to her interests based on the experience of a friend.

The following is an analysis of the type of debt and the current status of the 13 delinquent debts alleged in the SOR:

1. SOR 1.a.: \$280. Medical account owed a former employer hospital.
2. SOR 1.b.: \$2,124. Credit card debt that could have been settled for \$1,500 but creditor demanded lump sum payment which Applicant could not pay.
3. SOR 1.c.: \$387 Cell phone debt reported at Question 39 of SF 86.
4. SOR 1.d.: \$6,746 First auto repossession in 1999 and reported at Question 35 of SF 86.
5. SOR 1.e.: \$6,882 Second auto repossession in 2003 (voluntary) not reported on SF 86.
6. SOR 1.f.: \$5,036 Home furnishings but Applicant does not know what the debt is for and is investigating source but remains unresolved.
7. SOR 1.g.: \$934 Dental bill from 2002.
8. SOR 1.h.: \$177 Telephone bill-Paid.
9. SOR 1.i.: \$186 Telephone bill-Paid.
10. SOR 1.j.: \$68 Insurance bill-Paid.
11. SOR 1.k.: \$1,000 Legal services but contingent on outcome of a personal injury lawsuit resulting in a settlement of \$75,000 still uncollected.
12. SOR 1.l.: \$2,162 Credit card that creditor would not settle.
13. SOR 1.m.: \$33 Collection account-Paid.

Applicant is an hourly employee whose pay was \$21.23 per hour. She is married but separated from her husband who is

in prison on drug related conviction and a probation violation. She served on active duty with the Navy leaving the service as an E 4 in 1994 on a medical discharge. It was during her military service that she learned the skills for her employment. She now lives with a friend and a boyfriend with whom she shares rent in an effort to lessen her expenses. She owns an automobile which is not working so she has taken over payments of an auto of a friend and pays the loan payments for use of the car. She is well regarded in her employment but has been terminated from her job pending the outcome of this matter. In the meantime she works for another company and is paid \$8 per hour.

## 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.

An evaluation of whether the applicant meets the security guidelines includes consideration of the following factors: (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. Directive, ¶ E2.2.1. Security clearances are granted only when "it is clearly consistent with the national interest to do so." Executive Order No. 10865 § 2. *See* Executive Order No. 12968 § 3.1(b).

Initially, the Government must establish, by something less than a preponderance of the evidence, that conditions exist 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. The applicant then bears the burden of demonstrating it is clearly consistent with the national interest to grant or continue a security clearance. "Any doubt as to whether access to classified information is clearly consistent with national security will be resolved in favor of the national security." Directive, ¶ E2.2.2. "[S]ecurity clearance determinations should err, if they must, on the side of denials." *Egan*, 484 U.S. at 531. *See* Executive Order No. 12968 § 3.1(b).

## CONCLUSIONS

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

The first security concern applicable to this case is under Guideline F (AG ¶ 18) relating to Applicant's 13 delinquent debts which prompted the allegation of security concern since an individual who is financially over-extended is at risk of having to engage in illegal acts to generate funds. Conditions that could raise a security concern and may be disqualifying include a history of not meeting financial obligations (AG ¶ 19 c) and evidence of inability or unwillingness to satisfy debts (AG ¶ 19 a).

Mitigating Conditions (MC) might include the fact that the conditions that resulted in the behavior were largely beyond the person's control (AG ¶ 20 b), 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 (AG ¶ 20 c), and the person has initiated a good-faith effort to repay overdue creditors or otherwise resolve debt (AG ¶ 20 d). She decided not to engage in credit counseling when it would have been helpful based on questionable advice.

The circumstances that caused the debts to arise resulted from conditions beyond her control and by the fulfillment of family responsibility for the care of her mother. While this showed her responsibility and character, the lack of attention to the problems arising from the debts during the past two and a half years when she was employed in a well paying job defeats the mitigating condition in the guideline. Applicant has given attention to many of the debts only since the issuance of the SOR despite the fact that many of the debts were relatively small and could have been settled or paid earlier. While two credit card companies declined to settle or demanded full payment of the settlement figure, if efforts

had been made earlier a better solution might have been possible. She did settle the four smallest debts but some of those were paid only in the last few months.

Applicant's failure to report all of her repossessions and financial delinquencies at Questions 35, 38, and 39 on her SF 86 raises security concerns under Guideline E that might indicate questionable judgment, dishonesty, or unwillingness to comply with rules and regulations and could indicate that the person may not properly safeguard classified information (AG ¶ 15). Specifically, the deliberate omission, concealment, or falsification of relevant facts from a personnel security application could raise a security concern and be disqualifying (AG ¶ 16 a).

Mitigating conditions that might be applicable include if the offense is so minor, or so much time has passed, or happened under such unique circumstances that it is unlikely to recur and does not cast doubt on the individual's reliability, trustworthiness, or good judgment (AG ¶ 17 c). Applicant did report the first auto repossession (SOR 1.e.) at Question 35 concerning repossessions but not the second one since she did not regard it as a repossession as she voluntarily turned in the car and had not received collection notices. She also reported a delinquent cell phone bill (SOR 1.c.) at Question 39 relating to 90 day delinquent debts. She added a statement at the end of the SF 86 at Question 43 acknowledging that she had bad credit and stated her intention to resolve her financial problems. She offered explanation of the circumstances of the first time preparation and filing of this application and her lack of knowledge of the process. I find the explanation to be believable. Thus, I cannot conclude that the omission of other debts on the form was deliberate as is required.

In all adjudications the protection of our national security is of paramount concern. Persons who have access to classified information have an overriding responsibility for the security concerns of the nation. The objective of the security clearance process is the fair-minded, commonsense assessment of a person's trustworthiness and fitness for access to classified information.

The "whole person" concept recognizes we should view a person by the totality of their acts and omissions. Each case must be judged on its own merits taking into consideration all relevant circumstances, and applying sound judgment, mature thinking, and careful analysis. Applicant impressed me at the hearing as a hard-working person who showed strong family responsibility in providing parental care to the detriment of her own financial well-being. However, once that situation ended she was insufficiently motivated to resolve her financial problems during her employment during the past two and half years. She was unfamiliar with the SF 86 process and omitted some required information but was sufficiently forthcoming to show that there was no deliberate concealment.

After considering all the evidence in its totality, and as an integrated whole to focus on the whole person of Applicant, I conclude that a security clearance should not be granted.

### **FORMAL FINDINGS**

Formal findings as required by the Directive (Par. E3.1.25) are as follows:

Paragraph 1. Guideline F: AGAINST APPLICANT

Subparagraph 1.a.: Against Applicant

Subparagraph 1.b.: Against Applicant

Subparagraph 1.c.: Against Applicant

Subparagraph 1.d.: Against 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.: For Applicant

Subparagraph 1.k.: Against Applicant

Subparagraph 1.l.: Against Applicant

Subparagraph 1.m.: For Applicant

Paragraph 2. Guideline E: FOR APPLICANT

Subparagraph 2.a.: For Applicant

Subparagraph 2.b.: For Applicant

Subparagraph 2.c.: For Applicant

**DECISION**

In light of all of the circumstances presented by the record in her case, it is not clearly consistent with the national interest to grant or renew a security clearance for Applicant. Clearance is denied.

Charles D. Ablard

Administrative Judge