

Date: \_\_\_ September 4, 1997 \_\_\_

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In re:

Applicant for Security Clearance

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ISCR OSD Case No. 96-0723

**DECISION OF ADMINISTRATIVE JUDGE**

**KATHRYN MOEN BRAEMAN**

**APPEARANCES**

**FOR THE GOVERNMENT**

William S. Fields, Esq.

Department Counsel

**FOR THE APPLICANT**

*Pro se*

**STATEMENT OF THE CASE**

The Defense Office of Hearings and Appeals (DOHA) issued a Statement of Reasons (SOR) to the Applicant on March 24, 1997. (Copy attached.) The SOR detailed reasons why the Government could not make the preliminary affirmative finding that it is clearly consistent with the national interest to grant or continue a security clearance for the Applicant. [\(1\)](#) The SOR alleges Criterion J (pattern of criminal activity) in paragraph 1, Criterion E (personal conduct) in paragraph 2, and Criterion F (financial considerations) in paragraph 3.

Applicant responded to these SOR allegations on April 16, 1997, and requested a decision on the record. On April 21, 1997, Department Counsel prepared a File of Relevant Material (FORM) which Applicant received on May 1, 1997. She had 30 days after receipt of the FORM to object to any exhibits or to submit information on her own behalf, but did not respond; and the record closed.

Subsequently, this matter was assigned to another judge on June 24, 1997, and reassigned to me on June 25, 1997, to determine whether it is clearly consistent with the national interest to grant or continue a security clearance for Applicant.

**FINDINGS OF FACT**

Applicant admitted in her Answer individual factual allegations in the SOR subparagraph 1.a., 1.b., 3.a., 3.b., 3.c., 3.d., and 3.e.; but she denied subparagraph 2.a. I incorporate herein these admissions as findings of fact. After a complete and thorough review of the evidence in the record, and upon due consideration of that evidence, I make the following additional Findings of Fact:

Applicant is a 42-year old (DOB: 05/14/55) production manager of a defense contractor. She has not previously had a security clearance.

**Criminal Conduct**

She has two arrests for shoplifting: first, in State #2 on October 20, 1989, where she attempted to shoplift a sweater, pled guilty and was fined; and second, in State #3 for concealment of merchandise where she was found guilty, fined, sentenced to 30 days in jail, suspended, and required to perform 30 hours of community service. (Statement, May 9, 1996)

### **Personal Conduct**

While she listed the 1989 conviction on her National Agency Questionnaire (NAQ), she did not list the November 21, 1995, arrest as she had prepared it in October before her arrest, but failed to sign it. When she was asked to sign it on November 30, 1995, she did so, but did not think to amend the form. She states she had no intent to omit the information deliberately. (Statement, May 9, 1996) I find her explanation that she completed the form in October, 1995, before the incident but simply failed to sign it a credible explanation; I find no intent to omit the information deliberately.

### **Financial Considerations**

Applicant's financial problems began when her husband was unemployed for two years after he had injured his back. Because he did not go to the doctor immediately, he was not eligible for workman's compensation. (Statement, April 29, 1996)

Applicant filed twice for bankruptcy: one granted in December 1985 in State #1 and one granted on September 2, 1994, in State #3. She is indebted to creditor #1 for an auto loan of \$5,066 which she incurred in December 1994; it was charged off as a bad debt in March 1995. She bought this car with only a 30 day warranty; on the 35th day the transmission blew. While the dealer was willing to switch it for another vehicle, she would not accept that offer. The car was sold at auction, and she was held liable for the balance owing on the debt. She has no intent to repay this loan. (Statement, April 29, 1996) She has a debt to Creditor #2 of \$640 which account was opened in arch 1995 and closed by the creditor in June 1996. (Statement, January 22, 1997) She has a debt to Creditor #3 for past due medical bills which were turned over for collection in December 1996 for \$160. (Statement, January 22, 1997)

In 1997 she reported a net monthly income of \$2,120; expenses of \$1,270; debt payments of \$487; and a monthly remainder of \$363. (Statement, January 22, 1997)

### **POLICIES**

Enclosure 2 of the Directive sets forth adjudicative guidelines to consider in evaluating an individual's security eligibility. They are divided into conditions that could raise a security concern and may be disqualifying and conditions that could mitigate security concerns in deciding whether to grant or continue an individual's access to classified information. But the mere presence or absence of any given adjudication policy condition is not decisive.

Based on a consideration of the evidence as a whole in evaluating this case, I weighed relevant Adjudication Guidelines as set forth below :

#### **Criterion J: Criminal Conduct**

**A history or pattern of criminal activity creates doubt about a person's judgment, reliability and trustworthiness.**

**Conditions that could raise a security concern and may be disqualifying include:**

(2) a single serious crime or multiple lesser offenses.

**Conditions that could mitigate security concerns include:**

None

#### **Criterion E - Personal Conduct**

**Conduct involving questionable judgment, untrustworthiness, unreliability, or unwillingness to comply with rules and regulations could indicate that the person may not properly safeguard classified information.**

**The following will normally result in an unfavorable clearance action or administrative termination of further processing for clearance eligibility:**

- (1) refusal to undergo or cooperate with required security processing, including medical and psychological testing; or
- (2) refusal to complete required security forms, releases, or provide full, frank and truthful answers to lawful questions of investigators, security officials or other official representatives in connection with a personnel security or trustworthiness determination.

**Conditions that could raise a security concern and may be disqualifying also include:**

- (2) the deliberate omission, concealment, or falsification of relevant and material facts from any personnel security questionnaire, personal history statement, or similar form used to conduct investigations, determine employment qualifications, award benefits or status, determine security clearance eligibility or trustworthiness, or award fiduciary responsibilities;

**Conditions that could mitigate security concerns include:**

- (2) the falsification was an isolated incident, was not recent, and the individual has subsequently provided correct information voluntarily;

### **Criterion F - Financial Considerations**

**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.**

**Conditions that could raise a security concern and may be disqualifying include:**

- (1) a history of not meeting financial obligations;
- (3) inability or unwillingness to satisfy debts;

**Conditions that could mitigate security concerns include:**

None

The responsibility for producing evidence initially falls on the Government to demonstrate that it is not clearly consistent with the national interest to grant or continue access to classified information. Then the Applicant presents evidence to refute, explain, extenuate, or mitigate in order to overcome the doubts raised by the Government, and to demonstrate persuasively that it is clearly consistent with the national interest to grant or continue the clearance.

Under the provisions of Executive Order 10865, as amended, and the Directive, a decision to grant or continue an applicant's security clearance may be made only after an affirmative finding that to do so is clearly consistent with the national interest. In reaching the fair and impartial overall common sense determination, the Administrative Judge may only draw those inferences and conclusions that have a reasonable and logical basis in the evidence of record.

## **CONCLUSIONS**

### **Criterion J - Criminal Conduct**

The government established its case with regard to criminal conduct, Criterion J. Conditions that can raise a security concern and may be disqualifying include: (2) a single serious crime or multiple lesser offenses. Applicant had a shoplifting conviction in 1989 and a similar conviction for concealment of merchandise on November 21, 1995. While

she offers in mitigation the fact that her father had recently died in August 1995, she was distraught and attempted to shoplift bed sheets. That evidence was not sufficient to mitigate the criminal charges where she was given a suspended 30 day jail sentence, fined \$109, and required to perform 40 hours of community service. In response to the FORM she offered no additional evidence in mitigation such as would meet the test of Mitigation Factors (MF): (3) the person was pressured or coerced into committing the act and those pressures are no longer present in that person's life, or (4) the person did not voluntarily commit the act and/or the factors leading to the violation are not likely to recur, or (5) there is clear evidence of successful rehabilitation. Without evidence to support mitigation, I am unable to find that these two offenses can be tempered. Consequently, after considering the Appendix I Adjudicative Process factors and the Adjudicative Guidelines, I rule against Applicant under subparagraph 1.a. and 1.b. under Paragraph 1.

### **Criterion E - Personal Conduct**

On the other hand, while the government has alleged conduct that constitutes a concern under Personal Conduct (Criterion E), Applicant has denied this allegation. While she clearly did omit the second, recent conviction on her NAQ, there is no evidence that she did so intentionally to deceive the government. Indeed, her Statement of May 9, 1996, clearly says, "I did not intentionally omit the information in order to falsify an official document and/or to misrepresent myself to the U.S. Department of Defense." Other than the omission itself, there is no evidence that she had the intent to falsify. I find her explanation that she completed the form in October, 1995, before the incident but simply failed to sign it a credible explanation. Consequently, I find that she did not omit the arrest deliberately. Also, I conclude that this conduct falls within MF(2): the falsification was an isolated incident, was not recent, and the individual has subsequently provided correct information voluntarily. Thus, after considering the Adjudicative Process factors and the Adjudicative Guidelines, I decide for Applicant under subparagraph 2.a. under Paragraph 2.

### **Criterion F - Financial Considerations**

The government established its case with regard to financial considerations, Criterion F. An individual who is financially overextended is at risk of having to engage in illegal acts to generate funds. Applicant's conduct falls within the following conditions that could raise a security concern and may be disqualifying: (1) a history of not meeting financial obligations. She has two bankruptcies on her record. Still she has not met fully her financial obligations, even though her financial statement shows an excess of income over obligations of \$363 per month as of January 22, 1997. While she owes a relatively small amount to creditors # 2 (\$640) and #3 (\$160), which she does not dispute, she, nevertheless, submitted no evidence that she has paid these creditor or intends to pay them. Further, with respect to creditor #1(\$5,066), she does not intend to pay which is a separate disqualifying factor [(3)inability or unwillingness to satisfy debts]. Further, in response to the FORM she offered no additional evidence in mitigation such as MF (3) 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); (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; or (6) the individual initiated a good-faith effort to repay overdue creditors or otherwise resolve debts. Although she indicates her husband's back injury was a factor, she did not give the dates of that injury or link it to the outstanding debts. Thus, without evidence to support mitigation, I conclude that these past bankruptcies and debts do raise a security concern. Consequently, after considering the Adjudicative Process factors and the Adjudicative Guidelines, I decide against Applicant under subparagraphs 3.a. 3.b., 3.c., 3.d., and 3.e. under Paragraph 3.

### **FORMAL FINDINGS**

After reviewing the allegations of the SOR in the context of the Adjudicative Guidelines in Enclosure 2 and the factors set forth under the Adjudicative Process section, I make the following formal findings:

Paragraph 1. Criterion J: AGAINST APPLICANT

Subparagraph 1.a.: Against Applicant

Subparagraph 1.b.: Against Applicant

Paragraph 2. Criterion E: FOR APPLICANT

Subparagraph 2.a.: For Applicant

Paragraph 3. Criterion F: AGAINST APPLICANT

Subparagraph 3.a.: Against Applicant

Subparagraph 3.b.: Against Applicant

Subparagraph 3.c.: Against Applicant

Subparagraph 3.d.: Against Applicant

Subparagraph 3.e.: Against Applicant

**DECISION**

In light of all 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 the Applicant.

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Kathryn Moen Braeman

Administrative Judge

1. This procedure is required by Executive Order 10865, as amended, and Department of Defense Directive 5220.6, dated January 2, 1992 (Directive), and as amended by Change 3 dated February 16, 1996.