

DATE: June 20, 1997

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In RE:

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SSN: -----

Applicant for security clearance

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ISCR Case No. 96-0760

DECISION OF ADMINISTRATIVE JUDGE

PAUL J. MASON

Appearances

FOR THE GOVERNMENT

Teresa A. Kolb, Esq.

Department Counsel

FOR THE APPLICANT

*Pro se*

STATEMENT OF CASE

On October 18, 1996, the Defense Office of Hearings and Appeals (DOHA), pursuant to Executive Order 10865 and Department of Defense Directive 5220.6 (Directive), dated January 2, 1992, 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 and recommended referral to an Administrative Judge to determine whether clearance should be denied or revoked. The SOR is attached. Applicant filed his Answer to the SOR on November 13, 1996.

Applicant elected to have his case determined on a written record in lieu of a hearing. Department Counsel submitted the File of Relevant Material (FORM) on December 13, 1996. Applicant was instructed to submit objections or information in rebuttal, extenuation or mitigation within 20 days of receipt. Applicant received a copy on February 21, 1997. Applicant's reply was due by March 21, 1997. No reply was received. The case was assigned for resolution on April 22, 1997.

**FINDINGS OF FACT**

The Following Findings of Fact are based on the documentation and testimony. The SOR alleges financial considerations (Criterion F). Applicant admitted all except one of the factual allegations but denies she has no intentions of repaying the debts. [\(U\)](#) Her admissions shall be incorporated into the Findings of Facts.

Applicant is 42 years old and employed as an ----- for a defense contractor. She seeks a secret level clearance.

Applicant owes \$207 to creditor #1 for a debt that was turned over for collection in November 1989. She owes \$428 to creditor #2 for a debt charged off in July 1990. Creditor #3 charged off a \$222 debt in July 1990. Applicant owes creditor #4 a debt totaling \$2,761 (charged off in July 1991). Applicant's debt of \$562 to creditor #5 was placed in-house collection in February 1991. Creditor #6 charged off a debt of \$5,514 in February 1991. Applicant's next debt of \$1097 was charged off in March 1991. A judgment of \$5,361 was entered against Applicant by her eighth creditor in June 1991 for an unpaid signature loan. A judgment of \$3726 was entered against Applicant in August 1991 by her ninth creditor. Applicant is indebted to creditor #10 in the amount of \$690 for a debt charged off in April 1992. Applicant owes the eleventh creditor \$190 for an account charged off in October 1992. The twelfth creditor is owed \$113 for an account placed in collection in November 1992. Applicant owes creditor #13 an amount of \$425 for an account charged off to profit and loss in November 1993. Applicant owes her fourteenth creditor \$297 for an account placed in collection in June 1995. Applicant is indebted to creditor #15 an amount of \$280, which was placed in collection in December 1993. Applicant's last debt of \$1,927 was placed in collection in December 1995. The total indebtedness is approximately \$23,548. <sup>(2)</sup>

Applicant explained her financial problems began when she terminated employment with her present employer in 1989 to open a ----- business that did not succeed. <sup>(3)</sup> Her financial problems were aggravated when she lost another job in November 1990 because she was spending too much time with her brother in the hospital. <sup>(4)</sup> She was laid off from another job in June 1992 and could not find employment for twelve months. In December 1993, Applicant was rehired by her present employer but her husband was laid off a short time later. Some time in 1993, Applicant used her income and her husband's early retirement pay to purchase a house for \$15,000, and, when she provided her sworn statement in June 1996, was purchasing the land (on an installment basis) where the house is located for \$21,000. (Item #4) Then she was laid off by her present employer in July 1994. In October 1995, her financial situation improved because her husband was rehired by her present employer. Then, she was rehired in November 1995 by her present employer.

Since November 1995, Applicant has been repaying a loan to her parents. She estimated she would be able to complete repayment to her parents by December 1996, and then, would contact a consumer credit service and structure a plan to repay to her creditors.

Although she stated in her November 1996 Answer she would take steps to repay her creditors in January 1997, <sup>(5)</sup> Applicant stated five months earlier in June 1996, she had no plans to resolve the indebtedness. <sup>(6)</sup>

## **POLICIES**

Enclosure 2 of the Directive sets forth policy factors which must be given binding consideration in making security clearance determinations. These factors must be considered in every case according to the pertinent criterion; however, the factors are in no way automatically determinative of the decision in any case nor can they supersede the Administrative Judge's reliance on his own common sense. Because each security case presents its own unique facts and circumstances, it should not be assumed that the factors exhaust the entire realm of human experience or that the factors apply equally in every case. In addition, the Judge, as the trier of fact, must make critical judgments as to the credibility of witnesses. Factors most pertinent to evaluation of the facts in this case are:

### **Financial Considerations (Criterion F)**

#### **Factors Against Clearance:**

1. a history of not meeting financial obligations.
3. inability or unwillingness to satisfy debts.

#### **Factors for Clearance:**

None.

### **General Policy Factors (Whole Person Concept)**

Every security clearance case must also be evaluated under additional policy factors that make up the whole person concept. Those factors (found at page 2-1 of Enclosure 2 of the Directive) include: (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; and, (8) the likelihood of continuation or recurrence.

## **Burden of Proof**

As set forth in the Directive, every personnel security determination must be a fair and impartial overall commonsense decision based upon all available information, both favorable and unfavorable, and must be arrived at by applying the standard that the granting (or continuance) of a security clearance under this Directive may only be done upon a finding that to do so is clearly consistent with the national interest. In reaching determinations under the Directive, careful consideration must be directed to the actual as well as the potential risk involved that an applicant may fail to properly safeguard classified information in the future. The Administrative Judge can only draw those inferences or conclusions that have a reasonable and logical basis in the evidence of record. The Judge cannot draw inferences or conclusions based on evidence which is speculative or conjectural in nature.

The Government must establish all the factual allegations under Criterion F (financial considerations) which establishes doubt about a person's judgment, reliability and trustworthiness. While a rational connection, or nexus, must be shown between an applicant's adverse conduct and his ability to effectively safeguard classified information, objective or direct evidence is not required.

Then, the applicant must remove that doubt with substantial evidence in refutation, explanation, mitigation or extenuation which demonstrates that the past adverse conduct is unlikely to repeat itself and Applicant presently qualifies for a security clearance.

## **CONCLUSIONS**

The Government has clearly established a case of financial problems under Criterion F. The debts which total approximately \$23,548, represent accounts placed for collection, business-related debts charged to profit and loss, or judgments. When Applicant provided her sworn statement in June 1996, she unequivocally stated she was not in a position to repay her creditors and was not certain what steps she would take in the future. Her representations, coupled with her and her husband's reinstatement by November 1995, definitely establish indifference to her creditors and also raise a strong suggestion she is unwilling to take responsibility for her legally incurred debts.

Mitigating factor #1 is inapplicable to the circumstances of this case because Applicant's indebtedness began in approximately 1989 and increased throughout the 90's. The indebtedness was not isolated as called for under mitigating factor #2; rather, the aggregate debt totals more than \$23,540 to 16 creditors, including petroleum companies, department stores, automobile manufacturers, and other creditors.

Mitigating factor #3 mitigates security concerns when the conditions that resulted in the indebtedness were largely beyond the applicant's control. Having weighed and balanced the job instability from 1989 until November 1995 when Applicant regained her job, and the family tragedy in November 1990, I conclude that Applicant's financial problems were not beyond her control. First, Applicant knew even before she took the early buy out in 1989 she was living beyond her means. Knowing she was overextended, she should have waited longer before taking the buy-out and instead, given more attention to her rising financial debt which she knew was mounting. Although she clearly had trouble landing and keeping a good paying job over the next five years, she provided no evidence demonstrating what measures, if any, she took to establish a more thrifty lifestyle or to repay any of her debts. On the contrary, she and her husband pooled their money to purchase a house in 1993 for \$15,000 cash, and were paying \$21,000 under installment terms, to purchase the land where the house is located. <sup>(7)</sup>

Mitigating factor #4 calls for evidence of counseling along with indications the financial problems are under control. Again, Applicant has presented no evidence to conclude she has the debts under control. Without evidence of financial

counseling, it is reasonable to infer that Applicant presently does not have the debt problem under control and will not have the problem under control inab the future.

Given the aggregate of her debts, which total more than \$23,548 to 16 creditors, and the absence of any evidence showing contact with the creditors to set up a repayment plan, contact with a credit service to consolidate debts and work out a payment plan, contact with a financial counselor for instruction on how to maintain control over debts and credit, Applicant's negligible evidence in rehabilitation is insufficient to overcome the Government's strong case under Criterion F.

## **FORMAL FINDINGS**

After a review of the Financial Consideration factors and the general policy factors (whole person concept) identified in POLICIES, Formal Findings required by Paragraph 25 of Enclosure 3 of the Directive are:

Paragraph 1 (Criterion F): AGAINST THE APPLICANT.

- a. Against the Applicant.
- b. Against the Applicant.
- c. Against the Applicant.
- d. Against the Applicant.
- e. Against the Applicant.
- f. Against the Applicant.
- g. Against the Applicant.
- h. Against the Applicant.
- i. Against the Applicant.
- j. Against the Applicant.
- k. Against the Applicant.
- l. Against the Applicant.
- m. Against the Applicant.
- n. Against the Applicant.
- o. Against the Applicant.
- p. Against the Applicant.
- q. Against the Applicant.

Factual support and reasons for the foregoing findings are set forth in FINDINGS OF FACT and CONCLUSIONS above.

## **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 Applicant.

Paul J. Mason

Administrative Judge

1. Applicant did not provide a formal answer to subparagraph 1q. Her omission shall be deemed a denial to the allegation. Her sworn statement (Item #4), dated June 26, 1996, contains a personal financial statement (PFS) showing her total monthly income, monthly expenses and debt payments. The PFS also shows the total monthly remainder of \$1,084. In view of Applicant's sworn statement in Item #4 reflecting she was not going to take any action on the debts, I find against Applicant under subparagraph 1q.
2. The credit bureau report (CBR-Item #6) confirms the debts and judgments.
3. The ----- business started in August 1989 and ended in November 1990 when Applicant discovered she was not making any money. Even though unemployment and underemployment impeded their efforts to recover, Applicant realized they were living beyond their financial means before she accepted the company buy out in 1989. (Item 4)
4. Her brother was shot and died nine days later.
5. See, Answer.
6. She stated, "I have no intention of making any payments on the above accounts at this time and am not certain what actions I will take regarding these accounts in the future." (Item #4)
7. An applicant has the burden of presenting evidence to support any mitigatory claim in establishing their ultimate burden of persuasion on a particular issue. The Applicant has implied in her Answer that she intends to repay her creditors. However, she had offered no evidence to support her stated intention of contacting the credit service in January 1997 and begin a repayment plan. Without evidence demonstrating concrete steps taken to repay creditors, Applicant's stated intention is nothing more than empty words that do not satisfy her ultimate burden of persuasion under any of the mitigating factors.