

DATE: May 7, 1997

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In Re:

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SSN: -----

Applicant for Security Clearance

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ISCR Case No. 96-0876

DECISION OF ADMINISTRATIVE JUDGE

JOHN R. ERCK

APPEARANCES

FOR THE GOVERNMENT

Barry Sax, Esquire

Department Counsel

FOR THE APPLICANT

*Pro Se*

STATEMENT OF THE CASE

On December 10, 1996, the Defense Office of Hearings and Appeals (DOHA), 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 Personnel Security Clearance Review Program" (Directive) dated January 2, 1992, as amended by Change 3, dated February 13, 1996, issued a Statement of Reasons (SOR) to Applicant which detailed reasons why DOHA could not make a preliminary determination that it was clearly consistent with the national interest to grant or continue a security clearance for her.

A copy of the SOR is attached to this Decision and included herein by reference.

Applicant responded to the SOR in writing on January 6, 1997, and requested that her case be decided without hearing. Applicant received the Government's File of Relevant Material (FORM) consisting of five exhibits on February 26, 1997. She did not respond to the Government's FORM and did not offer any evidence on her own behalf. The case record was closed on March 28, 1997, and on April 3, 1997, the case was assigned to a DOHA Administrative Judge for decision. Because of case load considerations, the case was reassigned to this Administrative Judge on April 16, 1997.

FINDINGS OF FACT

The SOR charges Applicant with being delinquent on obligations totaling \$10,965.81. Except for the \$5523.00 obligation to Creditor D alleged in subparagraph 1.h., and the \$118.00 obligation to Creditor B alleged in subparagraph 1.j., Applicant admits all of the obligations set forth in the SOR. She admits that she is indebted to Creditor D but disputes the amount of her indebtedness. Her challenge to the amount alleged in the SOR is not credible since she had previously acknowledged a substantially larger debt--\$7292.00--to this creditor on the SF 86 (Questionnaire for

National Security Positions) which she completed in April 1996 (Item #3 of Gov. FORM). Without a proffer that she has payed down this obligation, it is reasonable to conclude that she continues to owe an amount equal to--or greater than-- the amount alleged in the SOR. (1) Applicant denies the \$118.00 obligation alleged in subparagraph 1.j. because the debt is owed to a collection agency and she does not know the origin of the obligation. Since there is no evidence to establish the origin of this debt, Applicant is entitled to the benefit of the doubt. Excluding the obligation to Creditor B, Applicant is found to be delinquent on obligations totaling \$10,847.81.

Applicant is 27 years old and has been employed by her current employer since April 1996. The record does not disclose the level of clearance for which she is applying. A preliminary determination on whether to grant or deny her access to classified information could not be made because of financial considerations.

Applicant attributes her indebtedness to periods of unemployment after being "unexpectedly released" from military service (Item 5 of Gov. FORM). She fell behind in her payments on several accounts because she did not have a steady income after being discharged from military service.

The record discloses that Applicant served in the U.S. Marines from January 1989 to November 1990 (Item # 3 of Gov. FORM) when she was "unexpectedly released." For several years after her discharge from the Marines, she was either unemployed, or employed in one of a series of low-paying jobs: -----, -----, -----, -----, "-----," and ----- (Item 3 of Gov. FORM). She was hired by her current employer in April 1996 where she currently (2) earns a gross monthly salary of \$1570.00. In the Personal Financial Statement (PFS) which she completed in July 1996, she reported a remainder of \$217.00 each month after meeting current living expenses and making a \$30.00 payment on utility bill which had become delinquent. (Item 5 of Gov. FORM). Other than this \$30.00 monthly payment to the creditor identified in subparagraph 1.l., Applicant is not currently making payments on any other delinquent obligations. Applicant expressed optimism--in the signed, sworn statement which accompanied her PFS--that her financial situation would improve because she was sharing living expenses with a roommate.

### **POLICIES**

The Adjudicative Guidelines of the Directive are not a set of inflexible rules of procedure. Instead, they are to be applied by Administrative Judges on a case-by-case basis with an eye toward making determinations with reasonable consistency that are clearly consistent with the interests of national security. In making those overall common sense determinations, Administrative Judges must consider, assess, and analyze the evidence of record, both favorable and unfavorable, not only with respect to the relevant Adjudicative Guidelines but in the context of the factors set forth in section F.3. of the Directive as well. In that vein, the government not only has the burden of proving any controverted fact(s) alleged in the SOR, it must also demonstrate that the facts proven have a nexus to an applicant's lack of security worthiness.

The following Adjudicative Guidelines are deemed applicable to the instant matter.

### **FINANCIAL CONSIDERATIONS**

(Criterion F)

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

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

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

None Applicable.

### **Burden of Proof**

The Government has the burden of proving any controverted fact(s) alleged in the Statement of Reasons. If the Government establishes its case, the burden of persuasion shifts to the applicant to establish his security suitability through evidence which refutes, mitigates, or extenuates the disqualifying conduct and demonstrates that it is clearly consistent with the national interest to grant or continue his security clearance.

A person who seeks access to classified information enters into a fiduciary relationship with the Government predicated upon trust and confidence. Where the facts proven by the Government raise doubts about an applicant's judgment, reliability or trustworthiness, the applicant has a heavy burden of persuasion to demonstrate that he is nonetheless security worthy. As noted by the United States Supreme Court in *Department of Navy v. Egan*, 484 U.S. 518, 531 (1988), "the clearly consistent standard indicates that security clearance determinations should err, if they must, on the side of denials." As this Administrative Judge understands that Court's rationale, doubts are to be resolved against an applicant.

### **CONCLUSIONS**

Having considered the record evidence in accordance with the appropriate legal precepts and factors, this Administrative Judge concludes that the Government has established its case with regard to Criterion F. In reaching my decision, I have considered the evidence as a whole, including each of the factors enumerated in Section F.3, as well as those referred to in the section dealing with the Adjudicative Process, both in the Directive.

The Government has met its burden with respect to Criterion F. The evidence establishes that Applicant has been unable to meet her financial obligations for at least seven years. She is currently delinquent on obligations totaling \$10,847.00. While she has expressed an intent to eventually satisfy all of the obligations alleged in the SOR, she has made minimal progress toward that objective in the past twelve months. She has been paying only \$30.00 each month on a delinquent utility bill.

There is little in Applicant's personal circumstances to mitigate the security concern raised by her current financial predicament. There is no evidence of demanding family responsibilities--caring for infant children or elderly and infirm parents, of medical emergencies, of a catastrophic loss, of divorce or separation. Applicant appears to be in her current situation because she has consistently spent more than she has earned.

Consideration has been given to Applicant's explanation that her current financial predicament has been caused by an abrupt loss of employment. However, Applicant's "unexpected" discharge from military service nearly seven years ago, after only 23 months on active duty at a lower--if not the lowest--enlisted pay grade does not provide a convincing explanation for much of her current indebtedness, especially since some of the delinquent obligations concern utility expenses which were incurred at locations where Applicant has lived since November 1990. The information in the record does not disclose when each of the other obligations was incurred, however many of the debts became delinquent as recently as 1992 and 1993. It seems implausible that all of these obligations were incurred during the 23 months Applicant was on active duty prior to November 1990.

While Applicant is credited with making a monthly payment of \$30.00 on one delinquent account, this payment hardly constitutes a good-faith effort to resolve her indebtedness problem. When she completed her Personal Financial Statement in July 1996, she indicated a remainder of \$217.00 each month after meeting all of her living expenses. She was not then applying any of this amount toward the satisfaction of delinquent obligations, and that situation had not changed when she answered the SOR on January 6, 1997. She continued to state her intention to satisfy all of her delinquent obligations, but was unable to provide evidence that she is making progress toward that objective. Criterion F is concluded against Applicant.

### **FORMAL FINDINGS**

Formal Findings as required by Section 3, Paragraph 7, of Enclosure 1 of the Directive are hereby rendered as follows:

Paragraph 1 (Criterion F) AGAINST THE APPLICANT

Subparagraph 1.a. Against the Applicant

Subparagraph 1.b. Against the Applicant

Subparagraph 1.c. Against the Applicant

Subparagraph 1.d. Against the Applicant

Subparagraph 1.e. Against the Applicant

Subparagraph 1.f. Against the Applicant

Subparagraph 1.g. Against the Applicant

Subparagraph 1.h. Against the Applicant

Subparagraph 1.i. Against the Applicant

Subparagraph 1.j. For the Applicant

Subparagraph 1.k. Against the Applicant

Subparagraph 1.l. Against the 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 continue Applicant's security clearance.

**John R. Erck**

**Administrative Judge**

1. In the signed, sworn statement which Applicant completed in July 1996, she indicated that she was making payments of \$30.00 monthly to creditor F, but did not indicate any payments to Creditor D, or to other delinquent accounts.
2. This is the amount which Applicant reported on her Personal Financial Statement in July 1996-- three months after starting work with this employer. It is not known whether she has received a raise in the past ten months.