



financial considerations and personal conduct.<sup>1</sup> Applicant answered the SOR 6 September 2007 (and dates following), and requested a hearing. The case was assigned to me 25 October 2007, and I convened a hearing 29 November 2007. DOHA received the transcript (Tr.) 7 December 2007.

### **PROCEDURAL RULINGS**

At hearing, I granted Department Counsel's previously submitted motion to amend the SOR by adding subparagraph 2.c. (Tr. 13). I also left the record open until the close of business 7 December 2007 to submit documentation of any claimed payments to her creditors or evidence that they were discharged in her bankruptcy (Tr. 125-126). On 6 December 2007, Applicant submitted responsive documents, to which Department Counsel raised no objection. Accordingly, I admitted Applicant's submission as A.E. C.

### **FINDINGS OF FACT**

Applicant admitted the financial allegations of the SOR, except for SOR 1.e. Accordingly, I incorporate her admissions as findings of fact. She denied falsifying her clearance application. She is a 36-year-old systems management technologist for a defense contractor since April 2005. She previously held a clearance with two different employers in the 1990s. Her background was also being investigated for a clearance in 2004, however, the processing stopped when the company she was employed by lost the contract.

When Applicant submitted her clearance application in July 2006 (G.E. 1), she answered "yes" to a question (question 27 b.) asking if she had had any repossessions in the last seven years. She disclosed a June 2005 automobile repossession with an \$18,725 deficiency balance. She also answered "yes" to two questions (questions 28 a. and b.) asking if she had been 180 days delinquent on any accounts within the last seven years, or was currently 90 days delinquent on any account. In the two spaces allotted on the form, she disclosed the debts at SOR 1.h. and 1.j. with the kind of detail (account numbers and business entities) that could only have come from a credit report. Applicant testified credibly that she attached a copy of her credit report to her application, because she knew from past experience the importance of providing complete answers on clearance applications.

Despite the information in the credit report she provided, Applicant is alleged to have falsified her clearance application by failing to disclose the other past due debts alleged in the SOR, as well as a paid judgment at SOR 1.b.

Applicant has a history of financial problems dating back to 2000, the point at which she began to lose control of her finances. She cites no precipitating event for her financial difficulties, except for being a single mother of two, and living beyond her means.

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<sup>1</sup>Required by Executive Order 10865 and Department of Defense Directive 5220.6, as amended and modified—most recently in August 2006 (Directive).

Applicant acknowledges that she incurred each of the debts alleged in the SOR, and at some point stopped payment on each account (Tr. 38-40). It appears that most, if not all, the debts alleged in the SOR—and specifically the automobile repossession deficiency (SOR 1.d.)—were discharged in bankruptcy in June 2007 (G.E. 4, A.E. C). However, Applicant produced no evidence of financial counseling, or a personal budget to demonstrate that it was unlikely that she would continue to have financial difficulties. Between September 2001 and June 2004, Applicant was consistently late with her rent, and her landlord just as consistently reduced the past-due rent to judgment (G.E. 5, 6, 7), which she eventually paid. The credit reports contradict her claim that she always did so within a matter of days or weeks (Tr. 37-41). Around July 2001, Applicant bought a \$22,000 new car at over 21% interest, on a six-year note. Almost immediately, she began to miss payments or make late payments, incurring late fees and additional interest. After three years of payments, she discovered that she had only reduced the principal balance to \$18,725. The car was voluntarily repossessed in September 2004 and sold, resulting in a deficiency balance of \$11,300 that she was unable to pay (A.E. C). Although an earlier background investigation was terminated in 2004 before her clearance was adjudicated, Applicant knew that she had financial problems and that those problems were of security concern to the government (G.E. 8). She is currently on a repayment plan for back taxes, state and federal, that she incurred when she would stop having taxes withheld from her paychecks anytime she need extra cash flow to keep up with day-to-day expenses (Tr. 103-105). Her character references (A.E. C) consider her honest and trustworthy.

### **POLICIES AND BURDEN OF PROOF**

The Revised Adjudicative Guidelines list factors to be considered in evaluating an Applicant's suitability for access to classified information. Administrative Judges must assess both disqualifying and mitigating conditions under each adjudicative issue fairly raised by the facts and circumstances presented. Each decision must also reflect a fair and impartial common sense consideration of the factors listed in Section 6.3. of the Directive. The presence or absence of a disqualifying or mitigating condition is not determinative for or against Applicant. However, specific adjudicative guidelines should be followed whenever a case can be measured against them, as they represent policy guidance governing the grant or denial of access to classified information. Considering the SOR allegations and the evidence as a whole, the relevant, applicable, adjudicative guidelines are Guideline F (Financial Considerations) and Guideline E (Personal Conduct).

Security clearance decisions resolve whether it is clearly consistent with the national interest to grant or continue an Applicant's security clearance. The government must prove, by something less than a preponderance of the evidence, controverted facts alleged in the SOR. If it does so, it establishes a *prima facie* case against access to classified information. Applicant must then refute, extenuate, or mitigate the government's case. Because no one has a right to a security clearance, the Applicant bears a heavy burden of persuasion.

Persons with access to classified information enter into a fiduciary relationship with the government based on trust and confidence. Therefore, the government has a compelling interest in ensuring each Applicant possesses the requisite judgement, reliability, and trustworthiness of those who must protect national interests as their own. The "clearly consistent with the national interest"

standard compels resolution of any reasonable doubt about an Applicant's suitability for access in favor of the government.<sup>2</sup>

## CONCLUSIONS

The government established a case for disqualification under Guideline F, and Applicant did not mitigate the security concerns. The government alleged nearly \$25,000 of delinquent debt, as well as \$6,000 in paid judgments. Her June 2007 bankruptcy discharge was for over \$43,000 in unsecured claims. Applicant acquired those debts since 2000, because she could not or would not live within her means.<sup>3</sup> She also owed over \$6,000 in past due state and federal taxes that could not be discharged.

Applicant meets none of the mitigating factors for financial considerations. Her financial difficulties are both recent and multiple;<sup>4</sup> indeed there is no clear evidence that they have ended. Applicant has not established that her debts were due to circumstances beyond her control, or that she has acted responsibly in addressing her debts.<sup>5</sup> There is no evidence that she has sought credit counseling or otherwise brought the problem under control.<sup>6</sup> Applicant's bankruptcy discharge gives her a clean financial slate as of June 2007, but she produced no evidence to demonstrate that she was capable of handling her finances, and it is too early to tell whether the fresh start afforded her by her bankruptcy discharge will be successful.<sup>7</sup> There is nothing in the record to suggest that Applicant will be able to remain financially stable in the future. I conclude Guideline F against Applicant.

The government failed to establish a case for disqualification under Guideline E. The judgment at SOR 1.b. was paid at the time Applicant completed her clearance application, and I accept her testimony that she attached a copy of her credit report to her application, as permitted by the application. That report would have disclosed essentially the same debts as appear on the August 2006 credit report used by the government (G.E. 7).<sup>8</sup> Further consideration of the Guideline E mitigating conditions is unnecessary. I conclude Guideline E for Applicant.

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<sup>2</sup>See, *Department of the Navy v. Egan*, 484 U.S. 518 (1988).

<sup>3</sup>¶19.(a) inability or unwillingness to satisfy debts; (b) indebtedness caused by frivolous or irresponsible spending and the absence of any evidence of willingness or intent to pay the debt or establish a realistic plan to pay the debt; (c) a history of not meeting financial obligations;

<sup>4</sup>¶20 (a) the behavior happened so long ago, was so infrequent, or occurred under such circumstances that it is unlikely to recur . . .

<sup>5</sup>¶20.(b) the conditions that resulted in the financial problem were largely beyond the person's control . . . and the individual acted responsibly under the circumstances;

<sup>6</sup>¶20.(c) 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;

<sup>7</sup>¶20.(d) the individual initiated a good-faith effort to repay overdue creditors or otherwise resolve debts.

<sup>8</sup>¶16.(a) 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, . . . [or] determine security clearance eligibility or trustworthiness. . . ;

**FORMAL FINDINGS**

Paragraph 1. Guideline F:      **AGAINST APPLICANT**

- Subparagraph a:      Against Applicant
- Subparagraph b:      For Applicant
- Subparagraph c:      Against Applicant
- Subparagraph d:      Against Applicant
- Subparagraph e:      Against Applicant
- Subparagraph f:      Against Applicant
- Subparagraph g:      Against Applicant
- Subparagraph h:      Against Applicant
- Subparagraph i:      Against Applicant
- Subparagraph j:      Against Applicant
- Subparagraph k:      Against Applicant
- Subparagraph l:      Against Applicant
- Subparagraph m:      Against Applicant
- Subparagraph n:      Against Applicant
- Subparagraph o:      Against Applicant
- Subparagraph p:      Against Applicant

Paragraph 2. Guideline E:      **FOR APPLICANT**

- Subparagraph a:      For Applicant
- Subparagraph b:      For Applicant
- Subparagraph c:      For 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 Applicant. Clearance denied.

**John G. Metz, Jr.  
Administrative Judge**