

DATE: February 15, 2006

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In Re:

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SSN: -----

Applicant for Security Clearance

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ISCR Case No. 04-02928

## APPEAL BOARD DECISION

### APPEARANCES

#### FOR GOVERNMENT

Jason R. Perry, Esq., Department Counsel

#### FOR APPLICANT

#### *Pro Se*

The Defense Office of Hearings and Appeals (DOHA) declined to grant Applicant a security clearance. On December 7, 2004, DOHA issued a Statement of Reasons (SOR) advising Applicant of the basis for that decision—security concerns raised under Guideline F (Financial Considerations) of Department of Defense Directive 5220.6 (January 2, 1992, as amended (Directive)). Applicant requested a hearing. On May 31, 2005, after the hearing, Administrative Judge Jacqueline T. Williams granted Applicant's request for a security clearance. Department Counsel timely appealed pursuant to Directive ¶¶ E3.1.28 and E3.1.30.

Department Counsel raised the following issues on appeal: (1) whether the Administrative Judge's application of three Guideline F mitigating conditions was supported by the record evidence; and (2) whether the Administrative Judge's overall decision was arbitrary, capricious or contrary to law. In his reply brief, Applicant argued that the Judge's application of the mitigating conditions was sustainable based on the record evidence. Applicant also argued that the Judge's ultimate conclusion in favor of granting him a security clearance was sustainable under the "whole person" concept referencing the totality of the record evidence.

The Administrative Judge made the following findings of fact: (a) Applicant had eight outstanding debts totaling \$71,200 which started accumulating in 1993; (b) the fact that Applicant lived beyond his means was a contributing factor in the debt delinquencies; (c) problems with automobile and health insurance coverage as well as medical problems encountered by his wife during her second pregnancy also contributed to Applicant's debt delinquencies; (d) Applicant's mother-in-law, who owns a portion of Applicant's house, took out a home equity loan and loaned Applicant (and his wife) \$50,000 to repay his overdue debts; (e) Applicant used the loan to pay off all but two of his creditors; (f) Applicant's wife now manages the family finances; (g) Applicant no longer has credit cards, but maintains one debit card that deducts funds for purchases directly from his bank account; (h) Applicant has received guidance in financial matters from his boss and friend; and (i) Applicant did not accumulate any new debts outside those listed in the SOR.

The Administrative Judge concluded that: (i) the government established a case for disqualification under Guideline F; (ii) Guideline F Mitigating Conditions 3, (1) 4, (2) and 6-(3) apply to the case; (iii) Applicant has learned the value of managing his money and is now more successful in managing his finances; (iv) Applicant now has someone to guide

him with his finances and he will make better financial choices in the future; and (v) the noble gesture of his mother-in-law's assistance and his acceptance of it should not be held against Applicant as there were limited venues open to him to borrow money and pay off his debts.

After a review of the Administrative Judge's decision and the evidentiary record, the Board concludes that the Judge's application of Guideline F Mitigating Conditions 3, 4, and 6 is sustainable. Given the record evidence in this case, it was not error for the Judge to conclude that Applicant's financial difficulties were contributed to significantly by factors outside his control and that Applicant has taken good-faith, tangible steps to deal with his financial difficulties. The Judge's conclusion reflects a plausible, albeit not the only possible, interpretation of the record evidence. Department Counsel's ability to argue for alternate interpretations of the record evidence does not demonstrate the Judge's conclusions regarding the mitigating factors are unsustainable. Moreover, Applicant argues that the Judge's favorable decision is sustainable under the "whole person" concept. A review of the decision as a whole persuades the Board that the Judge considered the record evidence as a whole and evaluated Applicant's case in light of the factors listed in Section E2.2.1 of the Directive as well as the pertinent provisions of the Adjudicative Guidelines. Furthermore, the Judge's favorable security clearance decision rationally follows from her findings of fact and is supported by the record evidence.

Department Counsel has failed to meet its burden of demonstrating error below. Thus, the Administrative Judge did not err in granting Applicant a clearance.

### **Order**

The decision of the Administrative Judge granting Applicant a clearance is **AFFIRMED**.

Signed: Jeffrey D. Billett

Jeffrey D. Billett

Administrative Judge

Member, Appeal Board

Signed: Jean E. Smallin

Jean E. Smallin

Administrative Judge

Member, Appeal Board

Signed: William S. Fields

William S. Fields

Administrative Judge

Member, Appeal Board

1. "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)."
2. "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."
3. "The individual initiated a good-faith effort to repay overdue creditors or otherwise resolve debts."