



## **STATEMENT OF THE CASE**

On March 23, 2007, the Defense Office of Hearings and Appeals (DOHA) issued a Statement of Reasons (SOR) to Applicant stating that DOHA could not make the preliminary affirmative finding<sup>1</sup> it is clearly consistent with the national interest to grant or continue a security clearance for Applicant due to financial considerations security concerns.

On May 19, 2007, Applicant answered the SOR and requested a hearing. On June 14, 2007, I was assigned the case. On July 5, 2007, a Notice of Hearing was issued for the hearing held on July 26, 2007. At the hearing, Government presented four exhibits (Gov Ex). Applicant testified and submitted six exhibits (App Ex). On August 10, 2007, DOHA received the transcript (Tr.). The record was kept open to allow Applicant to submit additional documents, which were received on August 6, 2007. Department Counsel having no objections, the documents were admitted into evidence.

## **FINDINGS OF FACT**

The SOR alleges security concerns for financial considerations. Applicant is a 51-year-old inside plant technician/telecommunications specialist (Tr. 42) who has worked for a defense contractor since October 2005. He is seeking to obtain a security clearance.

In September 2004, Applicant and his wife decided to move to a different city to be close to their daughter, who was in medical school, and their grandchildren. Applicant took an early retirement after 31 years with his company and his wife left her job and cashed out her retirement. They then sold their home, relocated, and purchased a home. Following the relocation, it took a while to find new employment. Applicant used the money from the sale of the house and from his Individual Retirement Account (IRA) for living expenses and to purchase the new home. (Tr. 49) Because Applicant was not yet 59½ years old he incurred a 10% penalty in addition to the IRA funds used were treated as ordinary income. A \$125,000 tax debt was incurred to the IRS. In July 2006, this debt was paid.

Additionally, in 2005, Applicant's father-in-law became sick and then died, which added to Applicant's financial problems. Applicant had two children in college. In June 2005, he obtained a job as a security guard. Applicant explored the possibility of bankruptcy with an attorney. He then took an online counseling session which helped him review his money management and past bad habits. (Tr. 54)

Applicant initially had difficulty contacting the holders of the debts because the debts had been sold to other collection agencies. (Tr. 28) It took him approximately a year to locate the current debt holders. In January 2007, the collection agency for a credit card debt (SOR 1.a, \$11,171) offered to settle the account for \$8,853. (Gov Ex 2) In July 2007, Applicant made a \$1,164 payment on this debt and arranged with the creditor to make monthly payments of \$218 for 48 months. (App Ex A)

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<sup>1</sup>Required by Executive Order 10865, as amended, and Department of Defense Directive 5220.6 (Directive), dated January 2, 1992, as amended.

Applicant owed another credit card company \$11,635 (SOR 1.b). In May 2007, June 2007, and July 2007, Applicant made \$250 monthly payments on this debt. (App Exs B and G)

Applicant owed \$12,004 on a third debt (SOR 1.c) The collection company holding the obligation has agreed to accept monthly payments of \$630 on this debt. (App Ex C). Applicant made payments in June 2007 and July 2007. In March 2007, the collection company was willing to take a \$4,965 lump-sum payment to settle the debt in full.

The fair market value of Applicant's home is \$250,000 on which \$180,000 is owed. In August 2006, Applicant obtained a \$135,000 home equity loan. (Tr. 47) The IRS was paid \$125,000 and the lending institution required the note on Applicant's 2004 Honda be paid, which was the additional \$10,000 of the equity loan. (Tr. 27) Applicant pays \$1,000 per month on a 30-year home equity mortgage loan at 8% interest.

In April 2007, Applicant sought an additional equity loan with the same company for approximately \$30,000 to pay the three debts listed in the SOR. He has been approved for another equity loan at 8.25 % (Tr. 47), however, state law requires a one year period between refinancing. (App Ex D) In August 2007, the one year waiting period will end and Applicant's is free to refinance the home. Applicant's monthly payments would then be \$1,500.

Applicant has no car loan payments. He is current on his two credit cards on which he owes approximately \$1,600. (Tr. 41) Applicant currently makes approximately \$46,500 a year. (Tr. 52) Applicant's wife currently babysits the two grandchildren while her daughter attends medical school. Applicant acknowledges he should have obtained the assistance of a financial manager when he took early retirement, sold his home, and purchased his current home. Applicant is living within his means and is not being contacted by creditors. Applicant uses on-line banking to track his expenses. (Tr. 60)

### **POLICIES**

The Directive sets forth adjudicative guidelines to be considered when evaluating a person's eligibility to hold a security clearance. Disqualifying Conditions (DC) and Mitigating Conditions (MC) are set forth for each applicable guideline. Additionally, each decision must be a fair and impartial commonsense decision based upon the relevant and material facts and circumstances, the whole person concept, and the factors listed in Section 6.3 of the Directive. The adjudicative guidelines are to be applied by administrative judges on a case-by-case basis with an eye toward making determinations that are clearly consistent with the interests of national security. The presence or absence of a particular condition or factor for or against clearance is not determinative of a conclusion for or against an applicant. However, the adjudicative guidelines should be followed whenever a case can be measured against this policy guidance. Considering the evidence as a whole, I conclude the relevant guideline to be applied here is Guideline F, financial considerations.

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### **BURDEN OF PROOF**

The sole purpose of a security clearance decision is to decide if it is clearly consistent with the national interest to grant or continue a security clearance for an applicant. Initially, the Government must establish, by substantial evidence, that conditions exist in the personal or

professional history of the applicant which disqualify, or may disqualify, an applicant from being eligible for access to classified information. The burden of proof in a security clearance case is something less than a preponderance of evidence, although the government is required to present substantial evidence to meet its burden of proof. Substantial evidence is more than a scintilla, but less than a preponderance of the evidence. All that is required is proof of facts and circumstances which indicate an applicant is at risk for mishandling classified information, or that an applicant does not demonstrate the high degree of judgment, reliability, or trustworthiness required of persons handling classified information. Additionally, the government must prove controverted facts alleged in the SOR. Once the government has met its burden, the burden shifts to an applicant to present evidence to refute, extenuate or mitigate the government's case. Additionally, an applicant has the ultimate burden of persuasion to obtain a favorable clearance decision.<sup>2</sup>

As noted by the United States Supreme Court in *Department of Navy v. Egan*, 484 U.S. 518, 528 (1988), “no one has a ‘right’ to a security clearance.” A person who has access to classified information enters into a fiduciary relationship with the government based on trust and confidence. The government, therefore, has a compelling interest in ensuring each applicant possesses the requisite judgment, reliability and trustworthiness of one who will protect the national interests. The “clearly consistent with the national interest” standard compels resolution of any reasonable doubt about an applicant’s suitability for access to classified information in favor of protecting national security. Security clearance determinations should err, if they must, on the side of denials.

## CONCLUSIONS

The Government has satisfied its initial burden of proof under Guideline F, financial considerations. A person’s relationship with his creditors is a private matter until evidence is uncovered demonstrating an inability or unwillingness to repay debts under agreed upon terms. Absent evidence of strong extenuating or mitigating circumstances, an applicant with a history of serious or recurring financial difficulties is in a position of risk that is inconsistent with the holding of a security clearance. An applicant is not required to be debt free, but is required to manage his finances so as to meet his financial obligations.

Financial considerations become a security concern when a person has significant delinquent debts. An individual who is financially overextended is at risk of having to engage in illegal or unethical acts to generate funds to meet financial obligations. Additionally, an individual who is financially irresponsible may also be irresponsible, unconcerned, or careless in their obligations to protect classified information. Behaving responsibly or irresponsibly in one aspect of life provides an indication of how a person may behave in other aspects of life.

Applicant owes approximately \$30,000 on three debts. Disqualifying Conditions (DC) 19 (a) inability or unwillingness to satisfy debts and 19 (c) a history of not meeting financial obligations apply.

Mitigating Conditions (MC) 20 (a) the behavior happened so long ago, was so infrequent, or occurred under such circumstances that it is unlikely to recur and does not cast doubt on the individual’s current reliability, trustworthiness, or good judgment, applies. There are only three

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<sup>2</sup> ISCR Case No. 93-1390 (January 27, 1995) at pp. 7-8; Directive, Enclosure 3, Item E3.1.15

debts and the events leading to the debts are unlikely to recur. The large tax bill was the result of cashing out a retirement program and selling a home. Applicant has no retirement program to cash out. Since relocating and purchasing his home, Applicant is unlikely to change houses in the future. Applicant's 2004 car is paid for and is not likely to need replacing in the near future.

I find MC 20 (b) the conditions that resulted in the financial problem were largely beyond the person's control (e.g., loss of employment, a business downturn, unexpected medical emergency, or a death, divorce or separation), and the individual acted responsibly under the circumstances, has some applicability. Applicant took an early retirement and his wife cashed out her retirement program. These are not unforeseen events, but the tax ramifications were. Applicant, acting without the advice of a financial advisor, incurred a sizable tax debt. This has been paid through a home equity loan. Applicant has acted responsibly under the circumstances.

Applicant sought financial counseling and has demonstrated a change in his financial management. There is a clear indication the problem is being resolved or under control. MC 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, applies as does MC 20 (d) the individual initiated a good-faith effort to repay overdue creditors or otherwise resolve debts. For MC 20 (d) to apply there must be an "ability" to repay the debts, the "desire" to repay, and evidence of a good-faith effort to repay. A systematic, concrete method of handling his debts is needed, which is present here.

Applicant has made three payments on the first debt. He paid \$1,164 and is now making monthly payments of \$218. On the second debt he has made three monthly payments of \$250 each. On the third debt he has made two monthly payments of \$630 each. When the one year bar prohibiting refinancing his home is over, Applicant anticipates obtaining a home equity loan to pay off the three debts listed in the SOR. The loan has already been approved, is with the same lender, raises his interest rate a quarter of a percent, and raises his monthly payment by \$500. Applicant has no car loan and owes only \$1,600 on two credit cards. Applicant can afford the additional \$500 per month in loan payment. If the equity loan does not go through, Applicant will continue making his \$1,100 monthly payments on the three debts. Applicant has made sufficient payments to show that he will continue making his payments.

In reaching my conclusions I have also considered: the nature, extent, and seriousness of the conduct; Applicant's age and maturity at the time of the conduct; the circumstances surrounding the conduct; Applicant's voluntary and knowledgeable participation; the motivation for the conduct; the frequency and recency of the conduct; presence or absence of rehabilitation; potential for pressure, coercion, exploitation, or duress; and the probability that the circumstance or conduct will continue or recur in the future. I find for Applicant as to financial considerations.

### **FORMAL FINDINGS**

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

Paragraph 1 Financial Considerations:           FOR APPLICANT

Subparagraph 1.a:	For Applicant
Subparagraph 1.b:	For Applicant
Subparagraph 1.c:	For Applicant

**DECISION**

In light of all the circumstances presented by the record in this case, it is clearly consistent with the national interest to grant or continue a security clearance for Applicant. Clearance is granted.

**Claude R. Heiny  
Administrative Judge**