

DATE: December 20, 2007

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In re:)	
)	
-----)	ISCR Case No. 07-00552
SSN: -----)	
)	
Applicant for Security Clearance)	
_____)	

**DECISION OF ADMINISTRATIVE JUDGE
ELIZABETH M. MATCHINSKI**

APPEARANCES

FOR GOVERNMENT

Fahryn Hoffman, Esq., Department Counsel

FOR APPLICANT

Pro se

SYNOPSIS

Applicant owes more than \$60,000 in delinquent debt (including \$15,297 in defaulted student loans) incurred due to irresponsible spending, difficulty finding suitable employment after he earned his degree, and his spouse's inability to work at times in the past two years due to medical problems. Recent efforts to resolve the debt are not sufficient to overcome the doubts about his judgment. Clearance is denied.

STATEMENT OF THE CASE

The Defense Office of Hearings and Appeals (DOHA) declined to grant or continue a security clearance for Applicant. As required by ¶ E3.1.2 of Department of Defense Directive 5220.6 (Jan. 2, 1992), as amended, DOHA issued a statement of reasons (SOR) on June 15, 2007, detailing the basis for its decision—security concerns raised under Guideline F (financial considerations) of the revised Adjudicative Guidelines (AG) issued on December 29, 2005, and implemented by the Department of Defense effective September 1, 2006. The guidelines were provided to Applicant when the SOR was issued. Applicant submitted an undated Answer to the SOR and elected to have a hearing before an administrative judge. The case was assigned to me on September 6, 2007.

I convened a hearing on October 17, 2007, to consider whether it is clearly consistent with the national interest to grant or continue a security clearance for Applicant. Four government exhibits (Ex. 1-4) and three Applicant exhibits (Ex. A-C) were admitted, and testimony was taken from Applicant and his spouse. DOHA received the hearing transcript (Tr.) on October 25, 2007.

The record was initially held open until November 14, 2007, for Applicant to submit additional financial records. Applicant forwarded earnings statements for himself and his spouse, and a letter from their childcare provider. Department Counsel did not object to their admission, and the documents were entered into evidence as Exhibits D–I.¹

FINDINGS OF FACT

DOHA alleged under Guideline F, financial considerations, that Applicant owes about \$77,584 in delinquent debt (SOR ¶¶ 1.a–1.q). Applicant admits that he and his spouse wrote a bad check to the postal service (¶ 1.a); he cosigned on a loan for his spouse's car that was repossessed after he got laid off and his spouse became ill (¶ 1.c); he had incurred delinquent credit card debt (¶¶ 1.d 1.l, 1.m, 1.n, 1.o) more than seven years ago; and he had taken out four student loans for college (¶¶ 1.g, 1.h, 1.i., 1.j) that he was repaying at \$500 monthly. Applicant denied the debts alleged in SOR ¶¶ 1.b, 1.e, 1.f, 1.k, 1.p, and 1.q. Applicant's admissions are incorporated as findings of fact. After a thorough consideration of the pleadings, exhibits, and hearing transcript, I make the following additional findings of fact.

Applicant is a 36-year-old senior test engineer who has worked for a defense contractor since April 2005. He seeks a security clearance for his present duties involving test programs for a missile defense system.

From August 1989 to October 1993, Applicant pursued undergraduate study in electrical engineering at a private university. He took on education loans of \$2,625 in August 1989, \$2,625 in October 1990, \$1,483 in September 1991, and \$2,000 in August 1992. At the end of his freshman

¹Applicant mistakenly forwarded documents to the hearing location on November 13, 2007. Applicant resubmitted documents which were received by me on November 27, 2007. The original submission was retrieved from the U.S. Tax Court on December 11, 2007. In that package was a wage statement for Applicant for the week ending November 2, 2007, which was not among the documents received on November 27, 2007. Department Counsel did not object to the admission of any of the documents and they were admitted into evidence.

year, he began to rely on consumer credit. He viewed credit as available cash and spent without regard to what he could afford. Applicant estimates he owed between \$15,000 and \$20,000 in consumer credit card debt when he graduated, which includes about \$1,000 for part of his tuition costs senior year. In retrospect, Applicant realizes he was too immature to have a credit card.

After he earned his bachelor of science degree, Applicant was unable to find work commensurate with his education for more than a year. Applicant worked full-time in maintenance for a warehouse retailer at \$8.00 an hour for a couple of weeks. He did not like the work, and in December 1993, he started full-time as a cashier in a liquor store making \$6.00 an hour. He took on new credit to pay other credit obligations (“the whole situation snowballed from there.” Tr. 47). For about six weeks, from February 1994 to April 1994, Applicant began seasonal employment as a data transcriber for the Internal Revenue Service at \$8.50 per hour in addition to his hours at the liquor store. He worked at the liquor store until August 1994, when he was placed by a temporary agency at a high-end electronics corporation earning \$8.00 an hour initially and then \$15.00 an hour. Social security earnings for 1994 totaled \$12,592.

In July 1995, he became a direct hire of the company as a test engineer II at about \$36,138 annually. With promotions, his salary increased to approximately \$57,000 by the time he left the company in September 2000. He was able to start making payments on his student loans and on some credit cards, but he continued to incur new credit debt.

In November 1996, Applicant got married. They had a daughter in January 1999 and a son in October 1999. Applicant underestimated the costs of raising a child, and the amount of his revolving debt increased (“that sent us over the edge again into just revolving debt and it just kept getting worse and worse.” Tr. 30).

In September 2000, Applicant started a new job as a senior test engineer with a safety products company located closer to his home. His starting annual salary was about \$68,000. He began to receive monthly bills for his student loan. About six months later, the monthly bills stopped, so Applicant assumed that a request to defer repayment had been granted. In about 2002/03, he received a bill for his student loan that he could not repay so he did nothing. His wages amounted to \$68,192 in 2002.

In January 2003, Applicant and his spouse had another daughter. Despite the additional financial stress on the home, Applicant and his spouse put their older daughter in private school at a cost of \$300 per month starting in September 2003. He earned \$75,131 in 2003 and \$71,489 in 2004.

Applicant’s spouse went from a full-time job to a temporary job in about 2004 because she was not feeling well. Her wages for the year totaled \$11,634.49. In April 2005, Applicant left his job as he was about to be laid off, and he began his current employment as an electrical engineer with the defense contractor. His annual pay for 2005 was \$78,326. Applicant made little, if any, progress in resolving his outstanding debt due to the decline in his spouse’s income. For about a year from July 2005, she was hospitalized at least three times and had about 21 emergency room visits. While she was covered under his health insurance, they had co-pay expenses, and she was unable to work from July to September or October 2005. She went to work part-time only to be hospitalized again a couple of months later. Out of work for another month, she worked over the next year whenever

she was physically able. Her annual wage earnings were \$7,873.19 for 2005 and only \$4,791.90 for 2006.

On April 14, 2006, Applicant executed a Questionnaire for Sensitive Positions (SF 86) in application for a clearance. He responded affirmatively to financial delinquencies over 180 days in the last seven years, and any debts over 90 days delinquent currently. Applicant listed unresolved delinquent credit card debt totaling \$49,387.83 (SOR ¶¶ 1.d, 1.m, 1.n, 1.o) and student loan debt of \$16,961.98 (SOR ¶¶ 1.g, 1.h, 1.i, 1.j).

In or before May 2006, Applicant and his spouse received notice that her car (SOR ¶ 1.c, ¶ 1.f same debt) was going to be repossessed. His spouse, who handled the bills, promised to take care of it. She became ill and “it fell through the cracks.” (Tr. 41) Applicant woke up one day to find the vehicle gone. About six months later, he received notice that the debt was going to judgment. Applicant arranged to make payments but missed a payment when his spouse experienced new medical problems. In spring 2007, Applicant contacted the law firm collecting the debt and entered into an agreement to repay the debt at \$150 per month.

In September 2006, Applicant and his spouse transferred their older daughter and enrolled their son in a less expensive parochial school. They stayed only one month when Applicant and his spouse switched them to public school as they realized they could not afford the tuition.

Beginning in late September 2006, Applicant’s wages were attached at the rate of 15% of his salary to repay his student loan debts (¶¶ 1.g, 1.h, 1.i, 1.j). With about \$700 per month less in take-home pay, Applicant fell behind in his monthly expenses. Applicant arranged to make payments of \$500 per month, but the payments were not made as his spouse underwent gastric bypass surgery in April 2007, and was hospitalized following complications in August 2007. The wage garnishment was reinstated in September 2007, but the assignee agreed to accept \$400 per month to rehabilitate the loans on proof of his spouse’s illness. Applicant and his spouse made their first payment under the new agreement in late September 2007.

A history of Applicant’s delinquent accounts is reflected in the following table.

Debt as alleged in SOR	Delinquency history	Payment status
¶ 1.a \$54 debt in collection Jan 07	Attributed to spouse writing bad check for postal services, placed for collection Jan 07	In Jun 07 promised to satisfy by Sep 07; paid \$54.31 Sep 11, 07 (Ex. A)
¶ 1.b \$770 telephone services debt in collection Jun 06	Opened Sep 98, had service to Jan 07, consolidated cable, telephone, internet in Mar 07; \$770 balance reported due since Jun 06	No payments, disputed until shown credit report at hearing. Plans to contact creditor.

¶ 1.c \$6,946 deficiency balance of car loan after May 06 repossession	Joint auto loan with spouse Jan 02; unable to keep up with payments due to her illness in 2005; \$6,847 past due Nov 06	Summer 2007 arranged to repay debt at \$150 per month until satisfied. No payments made and obligation was raised to \$200 monthly. One or two payments have been made.
¶ 1.d \$4,147 debt in collection Apr 06	Opened Aug 99, \$3,162 high credit; \$4,147 balance for collection, balance \$4,344 as of Apr 07; listed on SF 86 as \$3,989.05	No payments, had not contacted creditor as did not want to promise to make payments he could not afford.
¶ 1.e \$8,439 credit card debt in collection Apr 06	Collection agency for debt in ¶ 1.1, updated balance ²	No payments, had not contacted creditor as did not want to promise to make payments he could not afford.
¶ 1.f \$6,847 debt charged off Mar 06	Collection agency for debt in ¶ 1.c, same debt	See ¶ 1.c
¶¶ 1.g - 1.j \$16,314 in student loan debt in collection	\$7,733 in loans taken out Aug 89-Aug 92, \$17,102 bal for coll as of Apr 04; \$16,314 past due as of Apr 07	Wages attached at 15% starting Sep 29, 06. Total balance of \$15,697.22 as of Sep 12, 07, arranged to repay debt at \$400 per month for nine consecutive months starting Sep 25 to rehabilitate loans; made one payment in late Sep
¶ 1.k \$217 judgment Apr 02 for dental services	Judgment filed Apr 02; May 06 credit report shows satisfied at unknown date	Ex. B shows \$0 balance as of Jul 07; Applicant claims he paid it on the date of judgment in Apr 02
¶ 1.l \$4,601 credit card debt charged off Jul 01	Revolving charge opened Feb 98; \$3,300 high credit; \$4,601 charge off reported Jul 01, last activity May 00	No payments, had not contacted creditor as did not want to promise to make payments he could not afford.

²Applicant testified based solely on the balance amounts that the assignee was probably collecting the debt in ¶ 1.m (Tr. 46), a MasterCard debt owed to the same creditor as the VISA debt in ¶ 1.n. However, the \$4,061 charged off and transferred debt in SOR ¶ 1.1 is the amount of the high credit on the collection debt in SOR ¶ 1.e. He has not contacted the assignee to determine the original lender.

¶ 1.m \$14,100 credit card debt charged off Mar 01	Revolving charge opened May 94, \$10,000 high credit; charge off Dec 00, \$14,100 bal transferred Mar 01; listed as \$30,714 on SF 86	No payments, had not contacted creditor as did not want to promise to make payments he could not afford.
¶ 1.n \$7,014 credit card debt charged off Feb 01	Revolving charge opened Jul 93, \$4,500 high credit, \$7,014 charge off balance as of Feb 01 transferred, reported on SF 86 as \$7,198	No payments, had not contacted creditor as did not want to promise to make payments he could not afford.
¶ 1.o \$2,694 debt charged off Feb 01	Installment debt \$3,636, \$3,900 balance for collection Jul 00, \$4,257 balance Apr 07	No payments, had not contacted creditor as did not want to promise to make payments he could not afford.
¶ 1.p \$4,344 debt for collection Aug 00	Same debt as ¶ 1.d, updated balance	See ¶ 1.d
¶ 1.q \$4,257 credit card debt in collection since Jul 00	Same debt as ¶ 1.o	See ¶ 1.o

As of October 2007, Applicant had not arranged to make any payments on his delinquent credit card debt as he did not want to promise to make payments that he could not afford. His spouse returned to work full-time (32 hours as a receptionist in a medical office and 12-16 as a telephone answering service operator on the weekends) on September 24, 2007. She began paying \$200 weekly for childcare.

Applicant's take-home pay is about \$4,300 monthly. His spouse's take-home pay now averages \$1,400 monthly, up from \$400 monthly. Applicant has a savings account, but he closed his checking account because it kept getting overdrawn. Applicant pays his bills by money order with funds out of his savings account, which had a balance of about \$5.00 as of his hearing. The monies earned by his spouse since she returned to work full-time went to catch up on obligations that had become delinquent. Applicant has no retirement assets. Retirement savings from his previous job went to pay bills.

Applicant and his spouse and children live with his father. Applicant pays rent of \$500 a month plus all the utility costs, which average about \$600 a month. They are still paying on last year's gas heating and electric utility costs that for two months in the winter exceeded \$1,100 a month. Applicant owns a 1989 model-year automobile that cost him \$1,000 in December 2005. In the last month, since his spouse began working full-time, they began renting a car at \$200 per month from his father. Applicant estimates his monthly expenses to be about \$3,430 per month not counting the promised payments on his student loan and car debts. This figure includes \$254 per month in cable, phone, and internet services. Before her recent return to work full-time, they had about \$220 per month remaining after payment of household expenses.

Applicant has no active credit card accounts with the exception of a corporate credit card that he uses to travel for work. His spouse has one credit card with a balance owed of \$300 as of October 2007. They have new medical debts totaling almost \$1,000. They have received some informal financial advice but no in-depth counseling concerning the best way to deal with their delinquent debt.

POLICIES

“[N]o one has a ‘right’ to a security clearance.” *Department of the Navy v. Egan*, 484 U.S. 518, 528 (1988). As Commander in Chief, the President has “the authority to . . . control access to information bearing on national security and to determine whether an individual is sufficiently trustworthy to occupy a position . . . that will give that person access to such information.” *Id.* at 527. The President authorized the Secretary of Defense or his designee to grant applicants eligibility for access to classified information “only upon a finding that it is clearly consistent with the national interest to do so.” Exec. Or. 10865, *Safeguarding Classified Information within Industry* § 2 (Feb. 20, 1960). An applicant “has the ultimate burden of demonstrating that it is clearly consistent with the national interest to grant or continue his security clearance.” ISCR Case No. 01-20700 at 3 (App. Bd. Dec. 19, 2002).

The revised Adjudicative Guidelines set forth potentially disqualifying conditions (DC) and mitigating conditions (MC) under each guideline. In evaluating the security worthiness of an applicant, the administrative judge must also assess the adjudicative process factors listed in ¶ 6.3 of the Directive. The decision to deny an individual a security clearance is not necessarily a determination as to the loyalty of the applicant. *See* Exec. Or. 10865 § 7. It is merely an indication the applicant has not met the strict guidelines the President and the Secretary of Defense have established for issuing a clearance.

CONCLUSIONS

Guideline F—Financial Considerations

Failure or inability to live within one’s means, satisfy debts, and meet financial obligations may indicate poor self-control, lack of judgment, or unwillingness to abide by rules and regulations, all of which can raise questions about an individual’s reliability, trustworthiness and ability to protect classified information. An individual who is financially overextended is at risk of having to engage in illegal acts to generate funds. (AG ¶ 18). While his use of credit to pay for tuition can be excused as a justifiable expense likely to pay future dividends, he spent irresponsibly in college. Applicant testified he was between \$15,000 and \$20,000 in debt when he graduated. The record shows that Applicant continued to abuse credit after college, as most of the delinquent accounts alleged were opened after he earned his degree. Applicant testified that it was the birth of his first two children that sent them over the edge financially. With interest continuing to accrue, and little if any payments, his total credit card debt had burgeoned to about \$45,000 by 2007. He also defaulted on his student loan obligations, which totaled \$16,314 as of April 2007. Guideline F disqualifying conditions ¶ 19(a) (*inability or unwillingness to satisfy debts*) and ¶ 19(c) (*a history of not meeting financial obligations*) apply.

Applicant is in a difficult financial situation at present in part because of factors outside of his control. Already saddled with debt when he graduated, Applicant did not find permanent, full-time employment commensurate with his qualifications until July 1995. Paid from \$6 to \$8.50 per hour from his jobs during that year and a half, Applicant opened new credit card accounts, most notably ¶ 1.m, just to meet his expenses. More recently, his ability to repay his debts was compromised by his spouse's inability to work because of illness. His spouse went from a full-time job to a temporary job in about 2004 because she was not feeling well. In about June 2005, she started having serious medical issues that eventually led to her repeated hospitalization and to several emergency room visits. She was unemployed until October 2005 and went back to work only part-time until September 24, 2007. During part of that time, 15% of Applicant's wages were being taken toward repaying his student loan debt. Underemployment and unexpected medical emergency are factors that implicate mitigating condition ¶ 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*), but Applicant has a mixed record of late with respect to responsible handling of his financial matters.

In September 2000, Applicant's annual salary went from \$52,000 to \$68,000. He earned \$75,131 in 2003 and \$71,489 in 2004. He chose to ignore his delinquent obligations for years while at the same time he enrolled his daughter in private school. He allowed his spouse's car to be repossessed in May 2006 despite an annual salary of about \$73,273. That September, he enrolled his children in public school as he and his spouse realized they could not afford the tuition. In about March 2007, he consolidated his telephone/internet/cable television service apparently to lower costs. However, as of October 2007 he was paying for premium cable television channels when he had only about \$5 in financial deposits and was saving nothing for retirement. He had closed his checking account due to fees associated with overdrafts. In summer 2007, he arranged to pay \$150 monthly on his delinquent auto loan debt (SOR ¶ 1.c) but did not make the payments. As a consequence, his repayment obligation was raised to \$200 monthly.

In the month before his hearing, Applicant made one or two payments on his auto loan (SOR ¶ 1.c), satisfied the bad check to the post office (SOR ¶ 1.a) and made the first payment toward rehabilitating his student loans (SOR ¶¶ 1.g, 1.h, 1.i, 1.j) (*see MC ¶ 20(d) (the individual initiated a good-faith effort to repay overdue creditors or otherwise resolve debts)*). Applicant was also not incurring any new credit card debt. With his spouse now working full-time, Applicant may well be in position to meaningfully address his outstanding debt. Yet, given the delinquent debt totals more than \$60,000, there is little guarantee that he will be able to get out of financial difficulty in the near future. Applicant indicated that he and his spouse were still living paycheck to paycheck, and they had nothing in reserve for emergencies. Discretionary funds were going toward repaying a utility debt incurred last winter. Applicant has not received any formal budget or debt counseling that could help him deal with his extensive debt.

Under the "whole-person" evaluation required by AG ¶ 2(a) (*The adjudicative process is an examination of a sufficient period of a person's life to make an affirmative determination that the person is an acceptable security risk*), Applicant's candor about his financial problems and about his mismanagement of credit are factors in his favor. Applicant also shows some improvement in his handling of his financial matters (*see ¶2(a)(6) (the presence or absence of rehabilitation and other permanent behavioral changes)*) in that he pays his obligations by money order, does not rely

on consumer credit, and is no longer incurring overdraft fees on a checking account. He has shown himself to be a good provider for his family, but sound financial judgment sometimes requires tough decisions that Applicant has only recently been willing to make (*e.g.*, private versus public school). He remains under the burden of heavy debt and does not have a reasonable plan in place to cope with any unexpected costs should they occur (*see* ¶ 2(a)(8) (*the potential for pressure, coercion, exploitation, or duress*)). Based on the evidence presented, I am unable to conclude at this time that it is clearly consistent with the national interest to grant Applicant access to classified information.

FORMAL FINDINGS

Paragraph 1. Guideline F:	AGAINST APPLICANT
Subparagraph 1.a:	For Applicant
Subparagraph 1.b:	Against Applicant
Subparagraph 1.c:	Against Applicant
Subparagraph 1.d:	Against Applicant
Subparagraph 1.e:	Against Applicant
Subparagraph 1.f:	Duplicate of ¶ 1.c
Subparagraph 1.g:	Against Applicant
Subparagraph 1.h:	Against Applicant
Subparagraph 1.i:	Against Applicant
Subparagraph 1.j:	Against Applicant
Subparagraph 1.k:	For Applicant
Subparagraph 1.l:	Against Applicant
Subparagraph 1.m:	Against Applicant
Subparagraph 1.n:	Against Applicant
Subparagraph 1.o:	Against Applicant
Subparagraph 1.p:	Duplicate of ¶ 1.d
Subparagraph 1.q:	Duplicate of ¶ 1.o

DECISION

In light of all of the circumstances in this case, it is not clearly consistent with the national interest to grant or continue a security clearance for Applicant. Clearance is denied.

Elizabeth M. Matchinski
Administrative Judge