

DATE: October 31, 2007

|                                  |   |                        |
|----------------------------------|---|------------------------|
| In re:                           | ) |                        |
|                                  | ) |                        |
| -----                            | ) | ISCR Case No. 06-23894 |
| SSN: -----                       | ) |                        |
|                                  | ) |                        |
| Applicant for Security Clearance | ) |                        |

**DECISION OF ADMINISTRATIVE JUDGE  
ERIN C. HOGAN**

**APPEARANCES**

**FOR GOVERNMENT**

Gina L. Marine, Esq., Department Counsel

**FOR APPLICANT**

*Pro Se*

**SYNOPSIS**

Applicant has a history of financial irresponsibility resulting in a Chapter 7 bankruptcy filed in December 2003 and discharged on March 18, 2004. He incurred several delinquent debts post-bankruptcy, including a \$13,000 car loan that has been charged off. Although Applicant entered into a repayment agreement with one of his debtors, he has provided insufficient proof that he is making a good faith effort to resolve the car loan debt, even though he still drives the car. He has not mitigated the security concerns raised under financial considerations. Clearance is denied.

## STATEMENT OF CASE

On March 15, 2007, the Defense Office of Hearings and Appeals (DOHA) issued Applicant a Statement of Reasons (SOR) stating they were unable to find that it is clearly consistent with the national interest to grant or continue a security clearance.<sup>1</sup> The SOR, which is in essence the administrative complaint, alleges security concerns 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.

In a sworn statement, dated April 9, 2007, Applicant responded to the SOR allegations and elected to have a hearing before an administrative judge. The case was assigned to another administrative judge on June 21, 2007. The case was transferred to me on August 2, 2007. On August 23, 2007, a notice of hearing was sent scheduling the hearing for September 19, 2007. The hearing was held as scheduled. The government offered five exhibits which were admitted as Government Exhibits (Gov) 1-5 without objection. Applicant offered five exhibits which were marked as Applicant Exhibits (AE) A - E without objection. The record was held open until October 3, 2007, in order to allow Applicant to submit additional documents. Applicant timely submitted a 10-page additional document that was admitted as AE F without objection. On October 3, 2007, it was determined an issue remained pertaining to Applicant having all of the Government's documents. On that date, I mailed Gov 1-5 to Applicant and extended the deadline to submit post-hearing exhibits until October 26, 2007. No additional or additional documents were submitted. The transcript was received on October 1, 2007.

## FINDINGS OF FACT

In his SOR response, Applicant admits SOR ¶¶ 1.a, 1.d, and 1.e, and denies SOR ¶¶ 1.b, 1.c, and 1.f. Applicant's admissions are incorporated herein. In addition, after a thorough and careful review of the pleadings and exhibits, I make the following findings of fact.

Applicant is a 36-year-old man employed with a Department of Defense contractor who is applying for a security clearance. He is single and has a seven-year-old daughter.<sup>2</sup> He has been employed with the same company for the past three years as a material coordinator.<sup>3</sup>

On January 11, 2005, Applicant completed a security clearance application, Standard Form 86.<sup>4</sup> In response to question 33 which asked about filing for bankruptcy within the past seven years,

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<sup>1</sup>This action was taken under Executive Order 10865, dated February 20, 1960, as amended, and DoD Directive 5220.6, dated January 2, 1992, as amended and modified (Directive).

<sup>2</sup> Tr. at 6; Gov 1.

<sup>3</sup> Tr. at 7; Gov 1; AE F at 10.

<sup>4</sup> Gov 1

Applicant listed that he filed for bankruptcy in December 2003.<sup>5</sup> The bankruptcy was discharged on March 18, 2004.<sup>6</sup> Applicant filed for Chapter 7 bankruptcy in order to get out of overwhelming debt. He had approximately \$14,000 in delinquent debt at the time. His full-time job at the time did not pay enough to allow him to get out of debt.<sup>7</sup> In 1992, he injured his back on the job. In 1994, he had back surgery and was off work for approximately eight months. He was only paid two thirds of his salary during the time he was off work which caused him to get behind in his bills.<sup>8</sup>

A credit report, dated March 1, 2006, was obtained during Applicant's background investigation.<sup>9</sup> The credit report listed his Chapter 7 bankruptcy which was filed in December 2003 and discharged in March 2004 (SOR ¶ 1.a); a Chapter 13 bankruptcy filed in April 2003 (SOR ¶ 1.b); a \$13,528 automobile loan that was charged off in June 2005 (SOR ¶ 1.d); a \$2,214 account that was 120 days past due (SOR ¶ 1.e); a \$365 collection account owed to a university credit union placed for collection in January 2004 (SOR ¶ 1.c); and a jewelry store account was listed as past due but indicating a zero balance (SOR 1.f).<sup>10</sup>

A credit report, dated March 1, 2007, listed the same accounts. The debts alleged in SOR ¶¶ 1.c and 1.e were listed as charged off accounts. A \$214 cell phone collection account was also listed.<sup>11</sup>

In response to interrogatories, dated December 28, 2006, Applicant indicated that the \$214 cell phone account and the \$365 university credit union account was included in his Chapter 7 bankruptcy. Record evidence verifies the \$214 cell phone account was included in his bankruptcy.<sup>12</sup> The university credit union provided a letter verifying the \$365 account was discharged in bankruptcy.<sup>13</sup> Applicant provided proof that the jewelry store (SOR ¶ 1.f) account has been paid in full since April 2002.<sup>14</sup>

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<sup>5</sup> *Id.*

<sup>6</sup> Gov 2 at 9.

<sup>7</sup> Tr. at 55-57; Gov 2 at 8.

<sup>8</sup> Tr. at 68-70.

<sup>9</sup> Gov 4.

<sup>10</sup> *Id.*

<sup>11</sup> Gov 5.

<sup>12</sup> Gov 2 at 7, Schedule F.

<sup>13</sup> AE B.

<sup>14</sup> AE D.

Applicant denies filing for Chapter 13 bankruptcy in April 2003 (SOR ¶ 1.b). He provided a letter from his bankruptcy attorney. The bankruptcy attorney confirms that Applicant filed for bankruptcy on only one occasion in December 2003.<sup>15</sup>

In late 2006, early 2007, Applicant attended two counseling sessions at his church on how to stay debt free and how to pay bills.<sup>16</sup>

On September 13, 2007, Applicant entered into a payment agreement with the creditor in SOR ¶ 1.e. The balance is approximately \$1,547. He agreed to pay \$60 per month until the account is paid in full.<sup>17</sup> The debt in SOR ¶ 1.e was a loan he took out in order to make a down payment for a car he purchased in February 2005. He defaulted on the loan a few months later.<sup>18</sup>

The \$13,528 debt alleged in SOR ¶ 1.d is the balance owed on an automobile loan for the car that he purchased in February 2005. He made regular payments until July/August 2005. After that, he made some sporadic payments towards the loan. His last payment was in August 2006. He had mechanical problems with the car and tried to give the car back but the dealership would not let him return the car. He claims that he contacted the creditor to initiate plans to start making payments again but they told him they were no longer taking payments from him. At the close of the record the car had not been repossessed. Applicant still drove the car even though he was not making payments on the loan. He has had no contact with the lender for over a year.<sup>19</sup>

After the hearing, Applicant consulted a friend who owns a tax service to draft a budget for him. Applicant gets paid twice a month. A pay stub dated September 9, 2007, indicates that his take home pay is \$874.28.<sup>20</sup> His monthly take home pay would be approximately \$1,748.56. The budget lists his total monthly expenses as \$1,612.09.<sup>21</sup> The budget does not include the automobile loan debt alleged in SOR ¶ 1.d. After expenses, Applicant has approximately \$336.07 (Included in the budget was a \$200 deposit towards savings. I included the \$200 in the amount of excess funds that he has left over each month).

Applicant has one open credit card account that has a total credit line of \$450. An account summary from the credit card company, dated September 19, 2007, indicates a balance of \$671.97. A notation indicates that his account was past due \$27. The statement lists a minimum payment of \$331.60. The statement indicates Applicant was charged a late payment charge of \$35 on September

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<sup>15</sup> AE A at 2-3.

<sup>16</sup> Tr. at 58-60.

<sup>17</sup> AE C and AE E.

<sup>18</sup> Tr. at 52-53.

<sup>19</sup> Tr. at 31, 36-51; Gov 2 at 2.

<sup>20</sup> AE F at 5.

<sup>21</sup> AE F at 7.

17, 2007 and a \$35 over limit fee on September 19, 2007. A handwritten note indicates that a \$57 payment was made on 9-28-07 and that the current balance is \$666.<sup>22</sup>

Applicant's February 2007 performance evaluation was satisfactory. It was noted that he consistently meets expectations. His evaluator noted that Applicant is one of his more seasoned veteran receivers. He states that Applicant demonstrates complete job knowledge of the receiving process, has mentored new employees and has a good rapport with other departments.<sup>23</sup>

## POLICIES

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.”<sup>24</sup> In Executive Order 10865, *Safeguarding Classified Information Within Industry* (Feb. 20, 1960), the President set out guidelines and procedures for safeguarding classified information within the executive branch.

To be eligible for a security clearance, an applicant must meet the security guidelines contained in the Directive. The revised Adjudicative Guidelines, approved by the President on December 29, 2005 and implemented by the Department of Defense, effective September 1, 2006, sets forth personnel security guidelines, as well as the disqualifying conditions and mitigating conditions under each guideline. The adjudicative guideline at issue in this case is:

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.<sup>25</sup>

Conditions that could raise a security concern and may be disqualifying, as well as those which could mitigate security concerns pertaining to this adjudicative guideline, is set forth and discussed in the conclusions below.

“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.”<sup>26</sup> An administrative judge must apply the “whole person concept,” and consider and carefully weigh the available, reliable information about the person. An administrative judge should consider the following

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<sup>22</sup> AE F at 6.

<sup>23</sup> AE F at 8-10.

<sup>24</sup> *Department of the Navy v. Egan*, 484 U.S. 518, 527 (1988).

<sup>25</sup> Revised AG, dated August 2006, ¶ 18.

<sup>26</sup> Revised AG, dated August 2006, ¶ 2(a).

factors: (1) the nature, extent, and seriousness of the conduct; (2) the circumstances surrounding the conduct, to include knowledgeable participation; (3) the frequency and recency of the conduct; (4) the individual's age and maturity at the time of the conduct; (5) the extent to which participation is voluntary; (6) the presence or absence of rehabilitation and other permanent behavioral changes; (7) the motivation for the conduct; (8) the potential for pressure, coercion, exploitation, or duress; and (9) the likelihood of continuation or recurrence.<sup>27</sup>

Initially, the Government must present evidence to establish controverted facts in the SOR that disqualify or may disqualify the applicant from being eligible for access to classified information.<sup>28</sup> Thereafter, the applicant is responsible for presenting evidence to rebut, explain, extenuate, or mitigate the facts admitted by the applicant or proven by Department Counsel. The applicant has the ultimate burden of persuasion as to obtaining a favorable clearance decision.<sup>29</sup> "Any doubt concerning personnel being considered for access to classified information will be resolved in favor of the national security."<sup>30</sup>

A person granted access to classified information enters into a special relationship with the government. The government must be able to repose a high degree of trust and confidence in those individuals to whom it grants access to classified information. The decision to deny an individual a security clearance is not a determination as to the loyalty of the applicant. It is merely an indication that the applicant has not met the strict guidelines the President has established for issuing a clearance.

## CONCLUSIONS

I have carefully considered all the facts in evidence and the legal standards. I make the following conclusions.

### **Guideline F - Financial Considerations**

Applicant's poor financial history raises a security concern. He encountered financial problems over the past several years, accumulating approximately \$14,000 in delinquent accounts which were discharged in bankruptcy in March 2004. After the bankruptcy, he continued to have difficulty meeting his financial obligations. Two loans related to the purchase of a car in February 2005 have been charged off, totaling approximately \$15,075. Financial Considerations Disqualifying Condition (FC DC) ¶19(a) (*inability or unwillingness to satisfy debts*) and FC DC ¶19(c) (*a history of not meeting financial obligations*) apply to Applicant's case. I find for Applicant with respect to SOR ¶ 1.b because he did not file a second bankruptcy. I find for Applicant with respect to SOR ¶¶ 1.c and 1.f because SOR ¶ 1.c was discharged in his bankruptcy and SOR ¶ 1.f was resolved. Financial issues remain pertaining the debts alleged in SOR ¶¶ 1.d and 1.e.

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<sup>27</sup> *Id.*

<sup>28</sup> Directive ¶ E3.1.14.

<sup>29</sup> Directive ¶ E3.1.15.

<sup>30</sup> Revised AG, dated August 2006, ¶ 2(b).

The concern under Financial Considerations can be mitigated. Applicant has a history of financial irresponsibility spanning several years. He still has financial problems. Therefore, I cannot apply Financial Considerations Mitigating Condition (FC 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*). Applicant continues to have difficulty meeting his financial obligations even after his bankruptcy discharge in March 2004.

FC 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*) does not apply. Although Applicant states that he was only paid 2/3s of his income during the eight month period that he was off work after his back surgery, this occurred at least nine years prior to his bankruptcy. I cannot conclude that there were recent conditions beyond Applicant's control which contributed to his financial situation. FC MC ¶ 20(b) does not apply.

FC MC ¶ 20(c) (*the person has received or is receiving counseling for the problem and/or there are clear indications that the problem is being resolved or is under control*) does not apply. Applicant has received financial counseling and recently had a budget prepared for him. He recently entered into a repayment plan with the creditor in SOR ¶ 1.e. However, it is too soon to determine that he will be able to maintain the monthly payments. In addition, he has not made a sufficient effort to resolve the \$13,000 debt alleged in SOR ¶ 1.d. It is unlikely that Applicant's financial situation will be resolved in the near future.

FC MC ¶ 20(d) (*the individual initiated a good-faith effort to repay overdue creditors or otherwise resolve debts*) applies with respect to SOR ¶¶ 1.a, 1.c, and 1.f. It does not apply with respect to SOR ¶¶ 1.d and 1.e. Applicant has done nothing for over a year with respect to resolving the debt alleged in SOR ¶ 1.d, even though he still has the car that he purchased with this loan. With respect to the debt alleged in SOR ¶ 1.e, he entered into a payment plan on September 13, 2007, one week prior to his hearing. Not enough time has passed to determine that he will follow through with his repayment agreement. He has not demonstrated that he made a good-faith effort to resolve the debts alleged in SOR ¶¶ 1.d and 1.e.

In all adjudications, the protection of our national security is the paramount concern. The objective of the security clearance process is the fair-minded, commonsense assessment of a person's life to make an affirmative determination that the person is eligible for assignment to sensitive duties. Indeed, the adjudicative process is a careful weighing of a number of variables in considering the "whole person" concept. It recognizes that we should view a person by the totality of their acts, omissions, motivations and other variables. Each case must be adjudged on its own merits, taking into consideration all relevant circumstances, and applying sound judgment, mature thinking, and careful analysis.

I have considered all the evidence and the "whole person" in evaluating Applicant's security worthiness. I considered Applicant's favorable performance report. However, he still struggles to meet his financial obligations and has provided insufficient proof to mitigate the delinquent accounts in

SOR ¶¶ 1.d and 1.e. Based on the evidence in the record, it is not clearly consistent with the national interest to grant Applicant a security clearance. Clearance is denied.

**FORMAL FINDINGS**

Formal Findings for or against Applicant on the allegations set forth in the SOR, as required by Section E3.1.25 of Enclosure 3 of the Directive, are:

|                           |                   |
|---------------------------|-------------------|
| Paragraph 1. Guideline F: | AGAINST APPLICANT |
| Subparagraph 1.a:         | For Applicant     |
| Subparagraph 1.b:         | For Applicant     |
| Subparagraph 1.c:         | For Applicant     |
| Subparagraph 1.d:         | Against Applicant |
| Subparagraph 1.e:         | Against Applicant |
| Subparagraph 1.f:         | For Applicant     |

**DECISION**

In light of all of the evidence presented by the record in this case, it is not clearly consistent with the national interest to grant Applicant a security clearance. Clearance is denied.

Erin C. Hogan  
Administrative Judge