DATE: October 31, 2007

In Re:

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---------------------) ISCR Case No. 05-01497
SSN: -----------)
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Applicant for Security Clearance)
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DECISION OF ADMINISTRATIVE JUDGE
CHARLES D. ABLARD

<u>**APPEARANCES**</u>

FOR GOVERNMENT
Eric H. Borgstrom, Esq., Department Counsel

FOR APPLICANT
Pro Se

<u>**SYNOPSIS**</u>

Applicant, a 40-year-old shipyard worker employed by a government contractor, mitigated security concerns arising from five alleged delinquent debts by establishing that three of the allegations related to one credit card debt that was been paid. The remaining two debts to a bank and a municipal government were also paid. Clearance is granted.

<u>**STATEMENT OF CASE**</u>

On January 20, 2006, the Defense Office of Hearings and Appeals (DOHA), pursuant to

Executive Order 10865, *Safeguarding Classified Information Within Industry,* as amended and modified, and Department of Defense Directive 5220.6, *Defense Industrial Personnel Security Clearance Review Program* (Directive), dated January 2, 1992, as amended and modified, issued a Statement of Reasons (SOR) to Applicant which detailed reasons why DOHA could not make the preliminary affirmative finding under the Directive that it is clearly consistent with the national interest to grant or continue a security clearance for Applicant. DOHA recommended the case be referred to an administrative judge to determine whether a clearance should be granted, continued, denied, or revoked.

On April 21, 2006, Applicant responded to the SOR allegations, and requested a hearing. The matter was assigned to me on March 29, 2007. A notice of hearing was issued on May 8, 2007, for a hearing on May 31, 2007, and held that day. The government offered nine exhibits and Applicant offered seven at the hearing. All were accepted into evidence. The transcript was received on June 20, 2007. The record was left open for 30 days and extended until October 30 for additional exhibits. Documents were offered by Applicant on July 12, 2007, September 17, 2007, October 9, 2007, and October 30, 2007. All were accepted in evidence without objection.

FINDINGS OF FACT

Applicant admitted all but one of the five allegations concerning delinquent debts in the SOR since one was a duplicate. After a complete review of the record, I make the following additional findings of fact:

Applicant is a 40-year-old employee of a defense contractor who works as a painter in a shipyard. He has been employed by the same company for 18 years and requires a security clearance to have access to his work. An analysis of the delinquent debts shows the following:

1. Par. 1.a.: Delinquent debt of $2,500 with $30 costs subject to judgment and order to pay dated November 18, 2005 (Exh. C) based on a 1999 judgment. A aw firm is collection agent for the creditor, a trust.

2. Par. 1.b.: Delinquent debt of $5,200 based on a bank loan accepted by Applicant by cashing a check received in the mail from the bank. The debt was fully paid as of November 22, 2005 (Exh. E).

3. Par. 1.c.: Delinquent debt of $2,500 which the government agreed is for the same debt as Par. 1.a. (Exh. C).

4. Par. 1.d.: Municipal taxes of $2,053 due for local garbage collection fees. This debt arose as a result of purchase of a house by Applicant with an outstanding lien for several years of back taxes assessed against the seller at time of purchase (Tr. 18 and Exh. D). All taxes now have been paid (Exhs. H and J 3).

5. Par. 1.e.: Discover credit card debt of $3,948 was owed (Exh. A). The debt was satisfied as of May 15, 2006 (Exh. F). Applicant established that this debt is also the same debt as alleged in Par. 1.a. and 1.c. since he had only one credit card (Exhs. J 1 and 2, and Tr. 16, 35

and 36).

6. Par. 1.f.: Allegation that Applicant's family income is less than their expenses. Evidence produced at the hearing of current financial resources shows increase in total family income sufficient to pay delinquent debts and current expenses that will not result in additional delinquent debts (Exh. G and Tr. 43).

Applicant is unmarried but has lived with a woman for over 20 years who is the mother of their three sons ages 18, 14 and 13. They concede that they did not budget correctly or manage finances well for several years. She now has two jobs, one as a teacher and a second providing health care for the brain-injured. They sought credit counseling and were advised to refinance their home. They did so and used the money from it to pay debts including the city garbage taxes and the Discover credit card debt which was in collection by a law firm and alleged as three separate debts. The settlement attorney for the home refinancing made most of the distributions directly to creditors (Exh. H 4).

The monthly income for the family from three employers is over $7,000 (Exh. G). They have owned a home since 1994 and are current on mortgage payments of $1,300 per month. They have $1,300 in their checking account and have one 401(k) account. Their most recent auto purchase was for a three year old car and they are current on their auto payments.

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.

An evaluation of whether the applicant meets the security guidelines includes consideration of the following factors: (1) the nature, extent, and seriousness of the conduct; (2) the circumstances surrounding the conduct; (3) the frequency and recency of the conduct; (4) the individual's age and maturity at the time of the conduct; (5) the voluntariness of participation; (6) the presence or absence of rehabilitation and other 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. Directive, ¶ E2.2.1. Security clearances are granted only when "it is clearly consistent with the national interest to do so." Executive Order No. 10865 § 2. *See* Executive Order No. 12968 § 3.1(b).

Initially, the Government must establish, by something less than a preponderance of the evidence, that conditions exist in the personal or professional history of the applicant which disqualify, or may disqualify, the applicant from being eligible for access to classified information *See Egan*, 484 U.S. at 531. The applicant then bears the burden of demonstrating it is clearly consistent with the national interest to grant or continue a security clearance. "Any doubt as to whether access to classified information is clearly consistent with national security will be resolved in favor of the national security." Directive, ¶ E2.2.2. "[S]ecurity clearance determinations should err, if they must, on the side of denials." *Egan*, 484 U.S. at 531. *See* Executive Order No. 12968 § 3.1(b).

CONCLUSIONS

Upon consideration of all the facts in evidence, and after application of all appropriate adjudicative factors, I conclude the following with respect to all allegations set forth in the SOR:

Applicant's delinquent debts prompted the allegation of financial security concern under Guideline F since an individual who is financially overextended is at risk of having to engage in illegal acts to generate funds. (E2.A6.1.1.) Conditions that could raise a security concern and may be disqualifying include a history of not meeting financial obligations (E2.A6.1.2.1.) and evidence of inability or unwillingness to satisfy debts. (E2.A6.1.2.3.) Mitigating Conditions (MC) might include the fact that the person has initiated a good-faith effort to repay overdue creditors or otherwise resolve debts. (E2.A6.1.3.6.).

The government conceded at the hearing that the two debts alleged at SOR ¶ 1.a. and c.;were duplicates, Applicant testified at the hearing that he also believed the allegation at SOR ¶ 1.e. was the same as the other two. The testimony from both family members was persuasive that there was only one credit card debt and that it was paid. Applicant was able to establish this fact in his latest post-hearing submission (Exh. J). He has settled the remainder of the debts to my satisfaction. The cited mitigating condition is applicable.

In all adjudications the protection of our national security is of paramount concern. Persons who have access to classified information have an overriding responsibility for the security concerns of the nation. The objective of the security clearance process is the fair-minded, commonsense assessment of a person's trustworthiness and fitness for access to classified information.

The "whole person" concept recognizes we should view a person by the totality of their acts and omissions. Each case must be judged on its own merits taking into consideration all relevant circumstances, and applying sound judgment, mature thinking, and careful analysis. Applicant has sufficient family income to insure that there is little likelihood of a recurrence of financial problems. He is assisted by his companion of 20 years, the mother of their children, who has two responsible jobs and is fully involved in the financial management of the family. They candidly admitted their financial over-extensions in the past and now have learned to live within their means.

After considering all the evidence in its totality, and as an integrated whole to focus on the whole person of Applicant, I conclude that a security clearance should be granted.

FORMAL FINDINGS

Formal findings as required by the Directive (Par. E3.1.25) are as follows:

Paragraph 1. Guideline F: FOR APPLICANT

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

Subparagraph 1.d.:   For Applicant
Subparagraph 1.e.:   For Applicant
Subparagraph 1.f.:   For Applicant

DECISION

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

Charles D. Ablard
Administrative Judge