

DATE: December 13, 2007

In re:)	
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)	
-----)	ISCR Case No. 06-14538
SSN: -----)	
)	
Applicant for Security Clearance)	

**DECISION OF ADMINISTRATIVE JUDGE
CLAUDE R. HEINY**

APPEARANCES

FOR GOVERNMENT

Robert E. Coacher, Esq., Department Counsel

FOR APPLICANT

Pro Se

SYNOPSIS

Applicant accumulated delinquent debts while deployed overseas. Additionally, his financial problems were contributed to by his divorce in 2000 and retirement from the military in 2005. The delinquent debts have been paid, brought current, or are not his debts. Applicant mitigated the security concerns arising from his financial difficulties. Clearance is granted.

STATEMENT OF THE CASE

On May 2, 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

finding¹ it is clearly consistent with the national interest to grant or continue a security clearance for Applicant. The SOR set forth reasons why a security clearance could not be granted or continued due to financial considerations security concerns.

On June 11, 2007, Applicant answered the SOR and requested a hearing. On August 23, 2007, I was assigned the case. On August 29, 2007, a Notice of Hearing was issued for the hearing held on September 20, 2007. At the hearing, the Government presented eight exhibits (Gov Ex). Applicant testified and submitted five exhibits (App Ex). The record was kept open to allow Applicant to submit additional documents, which were received on September 24, 2007. Department Counsel having no objections to the three sets of documents, the documents were admitted as App Ex F. On September 28, 2007, DOHA received the transcript (Tr.).

FINDINGS OF FACT

The SOR alleges security concerns for financial considerations. Applicant admits owing eleven of the debts and denies the remainder. The admissions are incorporated herein as findings of fact. After a thorough review of the entire record, I make the following findings of fact.

Applicant is a 44-year-old who has worked overseas for a defense contractor since October 2005, and is seeking to obtain a security clearance. Applicant's supervisor indicates Applicant is a self-motivated individual who performs tasks flawlessly. Applicant displays a "can do" attitude that puts him a cut above his peers. (App Ex F 9)

Applicant enlisted in the U.S. Army in June 1982 and was discharged in November 2005 as an E-7 with a 50% medical disability. Copies of his DD 214 and other military documents are found at App Ex F 13. He receives \$2,200 per month in retirement. (Tr. 42, App Ex F-12) Applicant was deployed overseas 15 months as a soldier and 15 months as a government contractor. (App Ex F 14) After returning from overseas, while in the Army, Applicant learned his mortgage payments were not received for four months. Applicant sent the mortgage company a \$55,000 money order. (App Ex B, Tr. 57) The money order was lost and Applicant required to wait 90 days before another money order would be issued. In May 12006, Applicant and his wife filed for Chapter 13 bankruptcy protection to prevent foreclosure of the home during the 90-day wait. (Tr. 59-60)

Applicant married in November 1989, separated in 1998, and divorced in October 2000. Applicant was obligated to pay child support and his ex-wife was responsible for the mortgage payments on the house. (Tr. 54) He pays \$400 per month over and above the required \$800 per month child support. (Tr. 76) In November 2000, he married his current wife, who earns \$23,000 per year. His salary at his overseas location is \$8,000 per month. (Tr. 81, Gov Ex 2, App Exs E and F 12) He will continue at his oversea location until February 2008. His home is valued at \$140,000 on which he has a \$90,000 mortgage. His monthly first mortgage is \$1,100 and his second is \$330. (Tr. 75, 76) He has approximately \$11,000 in his 401(k) retirement plan.

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

In 1994, there was a voluntary repossession of a vehicle. (SOR 1.w) Fees related to that repossession were generated. Applicant included the debt in his Chapter 13. He is still investigating this obligation.

At one time Applicant's expenses exceeded his income (SOR 1.aa), this is no longer the case. Applicant does not have any credit cards. He is current on his mortgage payments, utility bills, and vehicle debt. (Tr. 91) He is not receiving any calls or letters from creditors. (Tr. 79) In his first marriage, his wife handled the finances. In his current marriage he now handles the finances. (Tr. 79)

	Creditor	Amount	Current Status
a	IRS federal tax lien.	\$8,567	\$4,200 was paid. \$700 is owed. (Tr. 45) Same debt as 23. (App Ex F-5)
b	Cable bill.	\$313	Paid. (Gov Ex 2) Does not appear on current credit report.
c	Telephone bill. Same debt as 5.	\$698	Paid. (Gov Ex 2) Listed as paid on credit report.
d	Telephone bill.	\$458	Paid. (Gov Ex 2) Listed as paid on credit report.
e	Telephone bill. Same debt as 3.	\$697	Paid. (Gov Ex 2)
f	Home mortgage.	\$63,546	Paid \$61,771 in September 2002, \$61,771 in December 2002, and \$55,000 in January 2003. Debt was included in Chapter 13. (App Exs A, B, F 4)
g	Chapter 13 May 30, 2006. (Gov Exs 2 and 6)		Dismissed. The debts listed in h through z were included in the Chapter 13. (Gov Ex 2 App Ex F 15)
h	County Appraisal District property tax lien. (Gov Ex 7)	\$1,839	Paid. No property tax is owed. (App Ex F 10)
i	Certificate of title lien on his wife's vehicle.	\$17,292	This debt is current. His wife is paying this debt, which is in her name. (App Ex F 12) Monthly payments are \$500. (Tr. 77)
j	Automotive Finance certificate on title of his vehicle.	\$25,114	He is current on his \$635 monthly vehicle payments. (Tr. 77)
k	Mortgage fee simple lien 2005.	\$29,351	At one time he was behind on this obligation, but has since become current. (App Ex F-4)

l	fee simple lien.	\$1,764	At one time he was behind on this obligation, but has since become current. (App Ex F-4)
m	Mortgage lien.	\$112,697	He is current on his mortgage
n	fee simple lien.	\$2,498	Paid. (App Ex F-4)
o	IRS 2001 taxes.	\$578	Paid. (App Ex F-5)
p	Law firm attorney fees in 2006.	\$2,100	Paid. This was his bankruptcy attorney. Settled for \$1,637. (App Exs A, F 8, F 15)
q	Deferred payment plan with military store.	\$5,892	He is current on his account. Account paid directly from Applicant's retirement check. (App Exs F 2 and F 12)
r	Telephone bill.	\$144	Paid. No longer appears on credit report. (App Ex f 12)
s	Wife's credit card debt.	\$531	Current wife's debt incurred prior their marriage. (App Ex F 6)
t	Credit card debt.	\$1,038	Paid. See September 2007 credit report. (Gov ex 2, App Exs F 1 and F 11)
u	Credit card debt.	\$531	Willing to pay. Applicant is still investigating his debt which was on his bankruptcy. (App Ex F 3)
v	Bank debt.	\$412	Paid. See September 2007 credit report. (App Ex F 1 and F 3)
w	Vehicle loan from 1994.	\$1,041	Listed in the bankruptcy. (Tr. 71) Applicant is still investigating his debt.
x	IRS.	\$11,512	Same debt as 1. (Tr. 47) Currently owes \$700. (App Ex F 5)
y	Student loans.	\$7,580	Not his debt. Present wife's student loan incurred 13 years prior their marriage. Debt incurred prior to his marriage. (App Ex F 12)
z	Social Security Administration.	\$1,000	Not his debt. Debt owed by his wife to her ex husband. Paid.
	Total debt listed in SOR	\$297,193	
		-246,262	Less \$42,406 vehicle debt (9 and 10) and \$203,856 mortgage debt. (6, 11, 12, 13 and 14)
		\$50,931	Debt other than mortgage and vehicles.

POLICIES

The Adjudicative Guidelines for Determining Eligibility for Access to Classified Information, dated August 2006, sets forth Disqualifying Conditions (DC) and Mitigating Conditions (MC) 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 guidelines to be applied here is Guideline F, financial considerations.

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.²

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 her creditors is a private matter until evidence is

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

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 owed approximately \$300,000 on 25 delinquent debts. The debt, less vehicles and mortgages, was approximately \$51,000. Disqualifying Conditions (DC) 19(a) "inability or unwillingness to satisfy debts" and 19(c) "a history of not meeting financial obligations" apply.

Some of the debts (SOR 1.i, 1.y, 1.z) are not his debts but are his current wife's debts. Two of them were incurred before they were married and are not his obligation. When Applicant returned from an overseas deployment, he discovered his mortgage had not been paid for four months. He filed Chapter 13 bankruptcy to prevent foreclosure. On his return, Applicant realized he had to take control of his finances and could no longer allow his wife to manage their financial affairs.

Applicant paid the balance due on the home where his ex-wife lives. He is current on his mortgage on the home he lives in with his current wife. They are current on their vehicle payments. He is current on his monthly utilities. He has no credit cards and is not being contacted by creditors about delinquent debts. There is a clear indication the problem is being resolved or under control. Mitigating Conditions (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" applies. Since Applicant took control of the family's finances, the debts have been paid. Additionally, the delinquencies occurred under such circumstances that they are not likely to recur. 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.

All of the debts listed in the SOR, but one, have been paid or are current or are not his debt. Mitigating Condition (MC) 20(d) "the individual initiated a good-faith effort to repay overdue creditors or otherwise resolve debts," applies to these debts. In 1994, there was a voluntary repossession of a vehicle (SOR 1.w) resulting in a \$1,000 debt. Applicant is investigating this obligation. Having paid all of his other debts, I feel confident he will satisfy this debt.

While the record contains information addressed in multiple adjudicative guidelines, consideration should also be given to information bearing on the whole person. The adjudicative process must include examination of a sufficient period of a person's life to make an affirmative determination that the person is an acceptable security risk. Therefore, 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.

On balance, the record before me support a conclusion Applicant has mitigated the security concerns.

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-aa: 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