

DATE: October 19, 2007

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In Re: )  
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 ----- ) ISCR Case No. 06-16153  
 SSN: ----- )  
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 Applicant for Security Clearance )  
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**DECISION OF ADMINISTRATIVE JUDGE  
WILFORD H. ROSS**

**APPEARANCES**

**FOR GOVERNMENT**

Jeff Nagel, Esquire, Department Counsel

**FOR APPLICANT**

*Pro Se*

**SYNOPSIS**

The Applicant's debt problems occurred between 2000 and 2004. During that period, he had work and family issues that caused him to fall behind on some of his debts. Of the debts listed in the SOR, seven have been paid off, two are duplicates of paid debts, and four others he denies and disputes. He has satisfactorily resolved his past due indebtedness, and evinces a credible intent not to have similar debt problems in the future. Clearance is granted.

**STATEMENT OF THE CASE**

On August 30, 2006, the Defense Office of Hearings and Appeals (DOHA), pursuant to Executive Order 10865 (as amended) and Department of Defense Directive 5220.6 (Directive), dated January 2, 1992, issued a Statement of Reasons (SOR) to the 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 the Applicant and recommended referral to an Administrative Judge to determine whether a clearance should be denied or revoked.

The Applicant responded to the SOR in writing on October 13, 2006, and requested a hearing. The case was assigned to an Administrative Judge on April 23, 2007. The case was assigned to a second Administrative Judge on May 1, 2007, and reassigned to me on June 11, 2007. A Notice of Hearing was issued on July 19, 2007.

A hearing was held on August 7, 2007, at which the Government presented seven documentary exhibits. Testimony was taken from the Applicant, who also submitted three exhibits. The transcript was received on August 20, 2007. The record in this case closed on September 4, 2007.

### **FINDINGS OF FACT**

The Applicant is 56, married and has a Bachelor's degree. He is employed by a defense contractor as an Engineer, and he seeks to retain a Secret-level DoD security clearance previously granted in connection with his employment in the defense sector.

The Government opposes the Applicant's request for a continued security clearance, based upon the allegations set forth in the Statement of Reasons (SOR). The following findings of fact are entered as to each paragraph and guideline in the SOR. They are based on the Applicant's Answer to the SOR, the exhibits and the live testimony.

Paragraph 1 (Guideline F - Financial concerns). The Government alleges in this paragraph that the Applicant is ineligible for clearance because he is financially overextended and therefore at risk of having to engage in illegal acts to obtain funds.

The majority of the Applicant's past due debts were incurred during the period from 2000 through early 2004. During that time the Applicant worked for five different companies, as well as having several short periods of unemployment. (Government Exhibit 1 at question 6.) The Applicant and his family lived in several different locations, and states, during the same period. (Government Exhibit 1 at question 4.) The Applicant also traveled extensively during this period on projects related to his work. He was not always reimbursed in a timely fashion by his employer for his expenses related to travel. (Applicant's Exhibit A at 2.) All of these facts had an impact on his ability to know and handle his debts. (Transcript at 79-82.)

Turning to the specific debts mentioned in the SOR:

1.a. The Applicant admits owing a past due debt to a utility in the amount of \$252.70. This debt was paid in full as of August 3, 2007. (Transcript at 42-45, Applicant's Exhibit C at 2.)

1.b. The Applicant admits owing a past due debt to a property management company in the amount of \$2,463.00. An agreement was reached with the creditor and the debt was settled on April 2, 2007, by means of a payment of \$1,231.50. (Transcript at 45-46, Government Exhibit 7 at 1, Applicant's Exhibit B at 2.)

1.c. The Applicant admits owing a past due debt to Dish Network in the amount of \$60.00. This debt was paid in full as of August 3, 2007. (Transcript at 46-47, Applicant's Exhibit B at 3.)

1.d. The Applicant admits owing a past due medical debt in the amount of \$182.00. This debt was paid in full as of August 7, 2007. (Transcript at 47-49, Applicant's Exhibit C at 3.)

1.e. The Applicant admits owing a past due credit card debt to Capital One Bank in the amount of \$1,238.00. This debt was paid in full as of June 11, 2007. (Transcript at 49-52, Applicant's Exhibit B at 4.)

1.f. The Applicant admits owing a past due debt to a utility in the amount of \$271.00. This debt was paid in full as of February 17, 2007. (Transcript at 52-54, Government Exhibit 7 at 2, Applicant's Exhibit B at 5.)

1.g. The Applicant has consistently denied owing a past due debt to Portfolio in the amount of \$671.00. He testified that, using the contact information found on page 9 of Government Exhibit 4, he contacted Portfolio. The company informed the Applicant that they had no knowledge of any current debt owing to them. (Transcript at 54-56.)

1.h. The Applicant admits owing a past due credit card debt to S & P Capital in the amount of \$923.00. An agreement was reached with the creditor and the debt was settled on August 1, 2007, by means of a payment of \$709.00. (Transcript at 56-57, Applicant's Exhibit B at 6.)

1.i. The available evidence indicates that this debt to Citifinancial is the same as that set forth in 1.h., above. The Government's exhibits show these two creditors being owed the same amount of money. This indicates that the debt was transferred, but the credit reporting agency did not have the information. (Transcript at 57-59, Government Exhibit 4 at 4 and 9.)

1.j. The available evidence indicates that this debt to Consumer Collection Services is the same as that set forth in 1.a., above. The Government's exhibits indicate that this is the same creditor. (Transcript at 60, Government Exhibits 4 at 4, and 7 at 1.)

1.k. The Applicant has consistently denied owing a past due debt to Midland Credit Management in the amount of \$10,106.00. He testified that he has contacted the possible creditors, but no one is able to give him a good answer as to what this debt is for and to whom he currently owes it. (Transcript at 60-65.)

1.l. The Applicant has consistently denied owing a past due debt for medical services in the amount of \$438.00. The Applicant won a court case concerning this debt but the plaintiff's lawyer will not remove the entry in the credit reports out of spite. (Transcript at 65-68.) This entry does not appear on his most current credit report. (Government Exhibits 5, 6 and 7.)

1.m. The Applicant has consistently denied owing a past due debt to West Asset Management in the amount of \$727.00 for medical care. He testified that he contacted the original hospital, which informed the Applicant that they had no knowledge of any current debt owing to them. (Transcript at 69-71.) This entry does not appear on his most current credit report. (Government Exhibits 5, 6 and 7.)

1.n. The Applicant has consistently denied owing a past due debt to Omnium in the amount of \$718.00 for medical care. He testified that he contacted the original hospital, which informed the Applicant that they had no knowledge of any current debt owing to them. (Transcript at 69-71.) This entry does not appear on his most current credit report. (Government Exhibits 5, 6 and 7.)

The Applicant testified that he was going to pay some past due medical debts that appeared on his most recent credit report. (Transcript at 71-72, Government Exhibit 7 at 2.) The Applicant paid \$945.00 on August 21, 2007, to resolve these debts. (Applicant's Exhibit C at 4.)

## POLICIES

Security clearance decisions are not made in a vacuum. Accordingly, the Department of Defense, in Enclosure 2 of the 1992 Directive, has set forth policy factors which must be given "binding" consideration in making security clearance determinations. These factors should be followed in every case according to the pertinent guideline. However, the factors are neither automatically determinative of the decision in any case, nor can they supersede the Administrative Judge's reliance on his own common sense, as well as his knowledge of the law, human nature and the ways of the world, in making a reasoned decision. Because each security clearance case presents its own unique facts and circumstances, it cannot be assumed that these factors exhaust the realm of human experience, or apply equally in every case. Based on the Findings of Fact set forth above, the factors most applicable to the evaluation of this case will be set forth under CONCLUSIONS, below.

In addition, as set forth in Enclosure 2 of the Directive at pages 18-19, "In evaluating the relevance of an individual's conduct, the [Administrative Judge] should consider the following factors [General 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 voluntariness of participation
- (6) The presence or absence of rehabilitation and other pertinent behavior changes
- (7) The motivation for the conduct
- (8) The potential for pressure, coercion, exploitation or duress
- (9) The likelihood of continuation or recurrence."

The eligibility guidelines established in the DoD Directive identify personal characteristics and conduct which are reasonably related to the ultimate question of whether it is "clearly consistent with the national interest" to grant an Applicant's request for access to classified information.

In the defense industry, the security of classified industrial secrets is entrusted to civilian workers who must be counted upon to safeguard such sensitive information twenty-four hours a day. The Government is therefore appropriately concerned where available information indicates that an Applicant for clearance may be involved in acts of financial irresponsibility that demonstrates poor judgement, untrustworthiness or unreliability on the Applicant's part.

The DoD Directive states, "Each adjudication is to be an overall common sense determination based upon consideration and assessment of all available information, both favorable and unfavorable, with particular emphasis placed on the seriousness, recency, frequency, and motivation for the individual's conduct; the extent to which conduct was negligent, willful, voluntary, or undertaken with the knowledge of the circumstances or consequences involved; and, to the extent that it can be estimated, the probability that conduct will or will not continue in the future." The Administrative Judge can only draw those inferences or conclusions that have a reasonable and logical basis in the evidence of record. The Judge cannot draw inferences or conclusions based on evidence which is speculative or conjectural in nature. Finally, as emphasized by President Eisenhower in Executive Order 10865, "Any determination under this order...shall be a determination in terms of the national interest and shall in no sense be a determination as to the loyalty of the applicant concerned."

## CONCLUSIONS

It is the Government's responsibility to present substantial evidence to support the finding of a nexus, or rational connection, between the Applicant's conduct and the continued holding of a security clearance. If such a case has been established, the burden then shifts to the Applicant to go forward with evidence in rebuttal, explanation or mitigation which is sufficient to overcome or

outweigh the Government's case. The Applicant bears the ultimate burden of persuasion in proving that it is clearly consistent with the national interest to grant him or her a security clearance.

In this case the Government has met its initial burden of proving by substantial evidence that the Applicant has past due debts (Guideline F). The Applicant, on the other hand, has successfully mitigated the Government's case.

The evidence shows that the Applicant has had financial difficulties in the past. Accordingly, Disqualifying Conditions 19.a. (*Inability or unwillingness to satisfy debts*), and 19.c. (*A history of not meeting financial obligations*) apply.

The evidence also shows, however, that the Applicant's inability to pay his debts was in large part related to his family and work situation between 2000 and 2004. Almost all of the past due debts date from this time. The Applicant previously indicated his concerns to the Government concerning the efficacy of credit reports. (Applicant's Answer to SOR.) However, once he obtained the Government's exhibits, he worked hard to resolve his indebtedness. Of the debts listed in the SOR, seven have been paid off, two are duplicates of paid debts, and four others he denies and disputes.

The Applicant testified that he is able to maintain a budget and pay his current indebtedness. This testimony is credible and worthy of belief. His credit reports show that he does not abuse credit. The following Mitigating Conditions apply: 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*), 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*) and 20.d. (*The individual initiated a good-faith effort to repay overdue creditors or otherwise resolve debts*).

I have also examined this case under the Whole Person concept as described in the General Factors, and as set out at length above. They also support a finding for the Applicant. Paragraph 1 is found for the Applicant. He is eligible for a security clearance.

On balance, it is concluded that the Applicant has successfully overcome the Government's case opposing his request for a DoD security clearance. Accordingly, the evidence supports a finding for the Applicant as to the factual and conclusionary allegations expressed in Paragraph 1 of the Government's Statement of Reasons.

### **FORMAL FINDINGS**

Formal findings For or Against the Applicant on the allegations in the SOR, as required by Paragraph 25 of Enclosure 3 of the Directive, are:

Paragraph 1: For the Applicant.

Subparagraphs 1.a. through 1.n.: For the 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 the Applicant.

Wilford H. Ross  
Administrative Judge