

KEYWORD: Financial

DIGEST: While Applicant's financial problems raised security concerns because of his long-standing debts to several creditors, in 2007 he begin a good-faith effort to resolve debts with a debt consolidator to make payments on several large debts and plans to pay the small debts directly. While he is at the beginning stages of resolving these debts, overall, he demonstrated a plan to systematically resolve his debts. Significantly, he has stable employment and lives prudently. He is highly regarded by his employer as a hard worker who is willing to learn something new to advance his career. Consequently, concerns over financial issues can be mitigated. Clearance is granted.

CASENO: 06-17667.h1

DATE: 05/31/2007

DATE: May 31, 2007

In Re:	)	
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-----	)	ISCR Case No. 06-17667
SSN: -----	)	
	)	
Applicant for Security Clearance	)	
	)	

**DECISION OF ADMINISTRATIVE JUDGE  
KATHRYN MOEN BRAEMAN**

**APPEARANCES**

**FOR GOVERNMENT**

John Bayard Glendon, Esquire, Department Counsel

**FOR APPLICANT**

*Pro Se*

## SYNOPSIS

While Applicant's financial problems raised security concerns because of his long-standing debts to several creditors, in 2007 he began a good-faith effort to resolve debts with a debt consolidator to make payments on several large debts and with plans to pay the small debts directly. While he is at the beginning stages of resolving these debts, overall, he demonstrated a plan to systematically resolve his debts. Significantly, he has stable employment and lives prudently. He is highly regarded by his employer as a hard worker who is willing to learn something new to advance his career. Consequently, concerns over financial issues can be mitigated. Clearance is granted.

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## STATEMENT OF THE CASE

The Defense Office of Hearings and Appeals (DOHA) issued a Statement of Reasons (SOR) to the Applicant on August 31, 2006. The SOR detailed reasons why the Government could not make the preliminary positive finding that it is clearly consistent with the national interest to grant or continue a security clearance for the Applicant.<sup>1</sup> The SOR<sup>2</sup> alleges specific concerns over finances (Guideline F). On September 19, 2006, Applicant requested an extension until October 20, 2006, to submit his response which was granted by a Personnel Security Specialist. Applicant responded to these SOR allegations in an Answer notarized on October 18, 2006, where he admitted all the allegations with explanation and requested a hearing.

Subsequently, Department Counsel filed a ready to proceed memorandum on January 3, 2007. The case was assigned to me for hearing on January 8, 2007. On January 17, 2007, DOHA issued a Notice of Hearing and set this case to be heard on February 6, 2007, in a city near where Applicant works. Department Counsel presented four exhibits (Exhibits 1-4) which were admitted into evidence without objection. Applicant testified and offered three exhibits (Exhibits A-C), which were admitted into evidence without objection. With no objection from Department Counsel, Applicant was given thirty days to submit additional evidence by March 6, 2007; the Government had seven days until March 13, 2007, to review the documents and submit a response. (TR 32-33, 92-93) On March 6, 2007, Applicant submitted Exhibit D, a twenty-six page document which I forwarded to Department Counsel for review on March 11, 2007. Department Counsel stated on March 16, 2007, that he did not object to Exhibit D. Consequently, the Applicant's post-hearing exhibit was admitted; and the record closed on March 16, 2007. The transcript (TR) was received on February 14, 2007.

## FINDINGS OF FACT

After a complete and thorough review of the evidence in the record, and upon due consideration of that evidence, I make the following findings of fact:

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<sup>1</sup> This procedure is required by Executive Order 10865, as amended, and Department of Defense Directive 5220.6, dated January 2, 1992 (Directive), as amended.

<sup>2</sup> The SOR does not include an allegation under subparagraph 1.m.

Applicant, who is 41 years old, has been employed by a defense contractors in State #1 as a emergency operator for since January 2004. He is a U.S. citizen; he completed a Security Clearance Application (SF 86) in October 2005. (Exhibit 1; TR 30-31; 34; 43-44)

Applicant attended community college in 2003. While he did not provide the date of his first marriage, he has two children, ages 19 and 18, born in 1987 and 1988. He has a third daughter born from another relationship in 1995 who is 11 years old. He married Wife #2 in 1999 and separated in January 2001; he was divorced in 2006. He married Wife #3 in May 2006 and has an 11 year old step-daughter who lives with him; he and his wife expect another child in April 2007. His oldest child has had a child born in September 2006. (Exhibit 1; TR 34-41; 75; 80)

### **Finances**

In answer to questions on his financial record on the SF 86, Applicant disclosed that he had his wages garnished for child support in January 1997 for \$400 monthly. (Exhibit 1) Investigation disclosed several adverse credit issues in credit reports. (Exhibits 2, 3, 4) Applicant began having financial problems in 1997-98 when he and his first wife separated and divorced. He was providing child support for two daughters and was also providing support for a third daughter from another relationship. Also, he had medical bills. He was working intermittently in the 2002 to 2004 period as he did not find steady employment until 2004. (TR 47)

At the hearing Applicant provided documentation of debts he planned to pay. (Exhibits A, B, C) He did not paid any of the debts as he had hoped because he had unexpected expenses with a need to help to support his daughter and her son. (TR 52; 81) After the hearing, he submitted supplemental documentation on his payment arrangements with a debt consolidator which he finalized in March 2007. While that document does not confirm exactly which creditors will be in the plan, earlier documents did identify the creditors which he confirmed by his testimony. (TR 61-63; 79-80; Exhibits A, C, D, pages 7-14) He also asked his pastor for financial advice. (TR 81-82)

- SOR 1.a. Applicant admitted a debt to Creditor #1, for \$323 on an account placed for collection in 2004 for cable service. He had not investigated this bill sufficiently to know what created the debt. He later clarified that he not been able to identify the creditor as it had been sold to a collection agency. (Answer; TR 49-50; 54)
- SOR 1.b. Applicant admitted a debt to Creditor #2, for a cable company turned over to a collection agency in 2005 . He consolidated this debt into a payment plan and will be making regular payments to resolve this debt. (Answer; Exhibit A; TR 50-52)
- SOR 1.c. Applicant admitted a debt to Creditor #3, for \$53 on an account placed for collection in 2002; he has not yet paid this debt. (Answer; TR 52) He did not clarify if Creditor #3, #4, and #5 are the same as the amount owed is identical.
- SOR 1.d. Applicant admitted a debt to Creditor #4, for \$53 on an account placed for collection in 2002; he has not yet paid this debt. (Answer; TR 52)
- SOR 1.e. Applicant admitted a debt to Creditor #5, for \$53 on an account placed for collection in 2002; he has not yet paid this debt. (Answer; TR 52)

- SOR 1.f. Applicant admitted a debt to Creditor #6, for \$179 for a medical debt. He has researched this debt, but has not been able to identify the creditor as it had been sold to a collection agency. (Answer; TR 53-54)
- SOR 1.g. Applicant admitted a debt to Creditor #6, for \$311 for a medical debt. He has researched this debt, but has not been able to identify the creditor as it had been sold to a collection agency. (Answer; TR 53-54)
- SOR 1.h. Applicant admitted a debt to Creditor #7 for \$1,622 for a debt for a credit card; while he has researched this debt, he has not been able to identify the creditor as it had been sold to a collection agency in 2001. He remembered having an interview with an Office of Personnel Management (OPM) investigator in 2006, and remembered saying that he had opened a \$500 credit line limit with this Creditor, but he did not remember what he had said about this debt being turned over to a collection agency. The OPM agent did not show him his credit report. He discussed this debt with his debt consolidation company, but has not been able to reach or identify the creditor. (Answer; Exhibit H; TR 54-58) Arguably, this debt is no longer collectable given a statute of limitations that limits debt collection to three years.
- SOR 1.i., 1.j. Applicant admitted a debt to Creditor #8, for child support; he owes \$923 in one account and \$1,674 in another account. He is now current on his child support as it is taken directly from his salary check; he has been current for three years, but he still owes for the arrears payments which he intends to pay. (Answer; Exhibits B, D, pages 16-26; TR 58-61)
- SOR 1.k. Applicant admitted a debt to Creditor #9, for \$24 on an account charged off in 2003; he has not yet paid nor protested this debt. He paid this creditor by postal money order \$24. (Answer; Exhibits 2, 3; TR 63-64; Exhibit D, page 15)
- SOR 1.l., 1.n. Applicant admitted debts to Creditor #10, for \$2,751 and \$4,293 for student loans which were turned over to a collection agency in 2005. He consolidated this debt into a payment plan and will be making regular payments to resolve this debt. (Answer; Exhibits A, D; TR 64-65)
- SOR 1.o., 1.p. Applicant admitted a debt to Creditor #11 for debts of \$147 and \$1,916. He consolidated this debt into a payment plan and will be making regular payments to resolve these debts. The larger debt is for apartment rent which he could no longer afford the rent after his car was stolen and he was unable to get to his job; he was evicted in 2002. (Answer; Exhibits A, D; TR 66)
- SOR 1.q. Applicant admitted to this debt to Creditor #12 for \$222 placed for collection in 2005 which he intends to pay; however, it is not in his plan. He plans to pay the small debts to the creditor directly. (Answer; Exhibit D; TR 66)
- SOR 1.r. Applicant admitted this 2002 debt for medical services to Creditor #13 for \$208; but he has not been able to identify the creditor as the debt was turned over to collection

in 2004. (Answer, Exhibit D; TR 67-69) Arguably, this debt is no longer collectable given a statute of limitations that limits debt collection to three years.

SOR1.s., 1.t. Applicant has \$154 and \$88 in debts to Creditor #13 placed for collection in 2005 which he intends to pay. (Answer, Exhibit H; TR 53)

In 2007 Applicant reported he made \$12.79 per hour and worked a 12-hour day. (TR 30; 69-71) His wife earns \$4,000 per month as a recruiter for defense contractors. (TR 46) Previously, he told an OPM investigator that his net income was \$1,760; his expenses included rent \$525, groceries \$200, automobile costs \$180, and child support of \$408. He does not currently have any credit cards nor a cell phone. He drives a 1985 truck. His wife has a 2002 car with payments of \$355 which will be paid off in July 2007. (TR 72-77) He and his wife have a balance of \$5,000 in a savings account. (TR 78; 80) His monthly household net income is \$5,000 and Applicant's debt payments with the debt consolidator will be \$205 per month; he also owes his former wife \$200 per month; he will also pay the \$500 monthly rent. His current wife stated she will pay the remainder of the household expenses. (Exhibit D, page 2)

### **References**

Applicant's team manager stated in March 2007 that Applicant "is a hard worker and is very ambitious. He is always looking to learn something new that will help him advance in his career." (Exhibit D, page 3)

### **POLICIES**

Enclosure 2 of the Directive sets forth adjudicative guidelines to consider in evaluating an individual's security eligibility. The mere presence or absence of any given adjudication policy condition is not decisive. Based on a consideration of the evidence as a whole in evaluating this case, I weighed relevant Adjudication Guidelines as set forth below:

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

***The Concern: An individual who is financially overextended is at risk of having to engage in illegal acts to generate funds. Unexplained affluence is often linked to proceeds from financially profitable criminal acts.***

The responsibility for producing evidence initially falls on the Government to demonstrate that it is not clearly consistent with the national interest to grant or continue Applicant's access to classified information. Then the Applicant presents evidence to refute, explain, extenuate, or mitigate in order to overcome the doubts raised by the Government, and to demonstrate persuasively that it is clearly consistent with the national interest to grant or continue the clearance. Under the provisions of Executive Order 10865, as amended, and the Directive, a decision to grant or continue an applicant's security clearance may be made only after an affirmative finding that to do so is clearly consistent with the national interest. In reaching the fair and impartial overall common sense determination, the Administrative Judge may draw only those inferences and conclusions that have a reasonable and logical basis in the evidence of record.

## CONCLUSIONS

### **Financial Considerations**

Because of Applicant's (1) history of financial problems from 2001 to 2005 and his (3) inability or unwillingness to satisfy all of his debts, the Government established disqualifying conditions<sup>3</sup> that could raise a security concern and may be disqualifying. At the time of the investigation and at the time of the hearing, he had several unresolved debts that stemmed from consumer debts, child support, student loans, and medical bills. Applicant delayed finalizing his plans to consolidate and pay these debts. On March 5, 2007, he signed a legal services retainer agreement with a debt management firm to negotiate and consolidate his payments for his debts. Earlier he had submitted documentation as to which creditors would be included in the consolidation plan. He submitted a copy of a money order paying a \$24 debt to one creditor along with a statement that he planned to pay off the remaining small creditors incrementally. He also forwarded the child support records provided him by the state child support division.

Since the delinquent debts have persisted, I cannot conclude that under MC1, the behavior that led to his debts was not recent as he developed new delinquent debts as recently as 2005. Under MC 2, the debts are not isolated as he developed multiple delinquent debts. In evaluating whether or not MC 3 applies, I note the some of the conditions that resulted in the behavior were largely beyond his control (e.g., he did have uneven employment until 2004, and he did experience separation and divorce during the 2001 to 2006 period with responsibility to pay child support for three children.) To his credit, Applicant has recently begun to make a systematic effort to resolve these debts where he has been able to reach the creditor or identify the debt collector. Thus, Applicant falls within several mitigating<sup>4</sup> conditions. First, he has developed an overall plan: he provided evidence he will address a majority of the larger debts by the credit consolidation plan and will pay the smaller debts in full one by one. To show his progress he submitted the consolidation agreement and a money order where he had paid one of the smaller debts. He has had difficulty identifying some debtors or the collection agency which seems endemic to dated debts.

While his take home pay is less than \$2,000 per month, his wife's take home pay is \$4,000 per month, so they have sufficient disposable income to resolve these debts as she has stated she will help with their financial obligations. They live prudently and have limited expenses. While under

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<sup>3</sup> **Conditions that could raise a security concern and may be disqualifying include:** E2.A6.1.2.1. A history of not meeting financial obligations; E2.A6.1.2.2. Deceptive or illegal financial practices such as embezzlement, employee theft, check fraud, income tax evasion, expense account fraud, filing deceptive loan statements, and other intentional financial breaches of trust; E2.A6.1.2.3. Inability or unwillingness to satisfy debts; E2.A6.1.2.4. Unexplained affluence; E2.A6.1.2.5. Financial problems that are linked to gambling, drug abuse, alcoholism, or other issues of security concern.

<sup>4</sup> **Conditions that could mitigate security concerns include:** E2.A6.1.3.1. The behavior was not recent; E2.A6.1.3.2. It was an isolated incident; E2.A6.1.3.3. The conditions that resulted in the behavior were largely beyond the person's control (e.g., loss of employment, a business downturn, unexpected medical emergency, or a death, divorce or separation); E2.A6.1.3.4. The person has received or is receiving counseling for the problem and there are clear indications that the problem is being resolved or is under control; E2.A6.1.3.5. The affluence resulted from a legal source; and E2.A6.1.3.6. The individual initiated a good-faith effort to repay overdue creditors or otherwise resolve debts.

MC 4, Applicant has not sought formal financial counseling for the problem, he did seek advice from his pastor and assistance and advice from a debt consolidator. He has authorized them to automatically deduct the monthly debt payments directly from his checking account. Also, he pays his multiple child support payments directly from his salary. So he has demonstrated his willingness to demonstrate his financial responsibility.

Thus, in March 2007 he provided evidence of clear steps that he was taking to begin to resolve his debts and to bring his finances under control. Under MC 6, an individual needs to have initiated a good-faith effort to repay overdue creditors or otherwise resolve debts. To mitigate Applicant does not have to have eliminated every debt, especially those debts for which he would not be held responsible under the statute of limitations. Overall, Applicant has demonstrated that he is now taking substantial steps to become financially responsible as he is following through on a plan to resolve these debts. Thus, Applicant has mitigated these financial concerns as he has provided evidence that he has a orderly plan to resolve the identifiable debts.

### **“Whole Person” Analysis**

In addition to the enumerated disqualifying and mitigating conditions, I have considered the general adjudicative guidelines related to the whole person concept under the Regulation, Appendix 8. While Applicant’s debt problems resulted in part from voluntary decisions to purchase items and from other debts when he was underemployed before 2004, Applicant provided evidence of rehabilitation, positive behavior changes, and improved circumstances as indicated by self-discipline and the complete absence of new delinquent, unpaid debt since 2005. The potential for pressure, coercion, exploitation, or duress is low. Applicant has no mortgage payments as he rents, and has refrained from using any personal credit cards. He has demonstrated his greater awareness of financial responsibilities and this steps will lead to an improving trend of financial circumstances. Moreover, he has stability in his employment which should increase his net worth and establish a financial foundation for his future. In sum, the likelihood of recurrent debt problems is low. At his place of employment, he is viewed as a hard worker who is always looking to learn something new to advance his career. Applicant now has sufficient resources to resolve these delinquent debts and has developed a plan to do so.

After weighing the disqualifying and mitigating conditions, and all the facts and circumstances, in the context of the whole person, I conclude he has mitigated the concerns pertaining to financial considerations. Substantial evidence supports Applicant’s eligibility and suitability. I take this position based on the law, my “careful consideration of the whole person factors”<sup>5</sup> and supporting evidence, as well as my application of the pertinent factors under the Adjudicative Process.

Thus, after looking at the whole person, including his history of responsible conduct on the job since 2004, and also considering the Adjudicative Process factors and the Adjudicative Guidelines, I rule for Applicant under SOR Paragraph 1 as he mitigated the allegations in SOR subparagraphs 1.a. through 1.t.

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<sup>5</sup> See ISCR Case No. 04-06242 at 2 (App. Bd. June 28, 2006).

## FORMAL FINDINGS

After reviewing the allegations of the SOR in the context of the Adjudicative Guidelines in Enclosure 2 and the factors set forth under the Adjudicative Process section, I make the following formal findings:

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
Subparagraph 1.g.:	For Applicant
Subparagraph 1.h.:	For Applicant
Subparagraph 1.i.:	For Applicant
Subparagraph 1.j.:	For Applicant
Subparagraph 1.k.:	For Applicant
Subparagraph 1.l.:	For Applicant
Subparagraph 1.m.:	No allegation
Subparagraph 1.n.:	For Applicant
Subparagraph 1.o.:	For Applicant
Subparagraph 1.p.:	For Applicant
Subparagraph 1.q.:	For Applicant
Subparagraph 1.r.:	For Applicant
Subparagraph 1.s.:	For Applicant
Subparagraph 1.t.:	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 the Applicant. Clearance is granted.

Kathryn Moen Braeman  
Administrative Judge