

KEYWORD: Financial

DIGEST: Applicant failed to mitigate security concerns over his continuing and ongoing financial problems, including a repossession of his car because of gambling debts. While he consulted two resources to help him develop a plan to resolve his problems, he provided no evidence that he has paid any of his outstanding debts other than an IRS lien being paid through wage garnishments. While he has taken some steps to reform his conduct and stated an intent to resolve his debts, he failed to demonstrate sufficient positive changes in behavior. Consequently, security concerns remain over finances. Clearance is denied.

CASENO: 06-19340.h1

DATE: 07/31/2007

DATE: July 31, 2007

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In Re:	)	
	)	
-----	)	ISCR Case No. 06-19340
SSN: -----	)	
	)	
Applicant for Security Clearance	)	
_____	)	

**DECISION OF ADMINISTRATIVE JUDGE  
KATHRYN MOEN BRAEMAN**

**APPEARANCES**

**FOR GOVERNMENT**

Nichole Noel, Esquire, Department Counsel

**FOR APPLICANT**

*Pro Se*

**SYNOPSIS**

Applicant failed to mitigate security concerns over his continuing and ongoing financial problems, including a repossession of his car because of gambling debts. While he consulted two resources to help him develop a plan to resolve his problems, he provided no evidence that he has paid any of his outstanding debts other than an IRS lien being paid through wage garnishments. While he has taken some steps to reform his conduct and stated an intent to resolve his debts, he failed to demonstrate sufficient positive changes in behavior. Consequently, security concerns remain over finances. Clearance is denied.

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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 December 29, 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 alleged specific concerns over Financial Considerations (Guideline F) in paragraph 1 based on the revised Adjudicative Guidelines<sup>2</sup> issued on December 29, 2005, and implemented by the Department of Defense, to be effective September 1, 2006. Applicant requested and was granted an extension of time to file his Answer; he responded to these SOR allegations in a notarized Answer received on March 7, 2007. He requested a hearing.

Department Counsel on March 21, 2007, indicated the case was ready to proceed. The matter was assigned to me on March 28, 2007. Subsequently, a mutually convenient date for hearing was agreed to; and a Notice of Hearing, issued on March 30, 2007, set the matter for April 17, 2007, at a location near where Applicant works and lives.

At the hearing the Government offered seven exhibits (Exhibit 1-7: TR 10-17) which were admitted<sup>3</sup> into evidence. Applicant testified, but called no witnesses. Applicant requested five to six months to clear up his debts. (TR 30) However, I granted Applicant three weeks to submit additional evidence to which the Government consented; and Department Counsel had one week to review it. (TR 31-33, 41-42, 79, 88)

Applicant submitted Exhibits A, a debt payment schedule on May 3, 2007. On May 9, 2007, Government's counsel indicated no objection; so the document was admitted into evidence and the record closed. The transcript (TR) was received on April 26, 2007.

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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 by Change 4, April 20, 1999.

<sup>2</sup> Applicant did receive a copy of the DoD Directive 5220.6 which was sent with his Statement of Reasons (SOR).

<sup>3</sup> Exhibit 6, a bankruptcy petition and history, including a 1993 Discharge Order, was admitted over his objection. He explained he thought he was taking a legal avenue in filing bankruptcy. As Applicant had admitted this allegation, I overruled his objection and admitted Exhibit 6 into evidence. (Exhibit 6; TR 16-17) He did not object to Exhibit 7, also records from the U.S. Bankruptcy Court from his 2000 filing.

## **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:

Applicant, 48 years old, who has worked for a defense contractor<sup>4</sup> from October 2002 to present, is a systems analyst. He now earns \$76,000 annually. He completed a Security Clearance Application (SF 86) to obtain a security clearance in October 2004. Previously, he worked as a network administrator for another employer from January 2000 to October 2002 in a different geographic location. From February 1996 to January 2001 he was a network administrator at another company; and he earned \$42,000. From January 2002 to January 2003 he took classes at an online university, but received no degree. (Exhibits 1, 2; TR 39-40; 42-47) Applicant has not served in the military. (Exhibit 1) He was married in 1990 but divorced in January 2000; he has three children born in 1975, 1978 and 1980. (Exhibit 1; TR 42-43) He currently has no one financially dependent on him. (TR 47)

### **Finances**

Applicant explained that when he was married and even when he was not married, he “just ran into some tough times.” He explained he was living beyond his means. Things “kept going downhill” for him. He has an intent to take care of his debts. (TR 19; 48-50) He has twice filed for Chapter 7 bankruptcy as he was following the advice of lawyers. In 1993 he had debts of over \$47,000 discharged (SOR ¶1.a.); in 2000 he had debts totaling over \$100,000 discharged after his divorce, including a house purchased for \$70,000 that was foreclosed (SOR ¶1.b.). (Answer; Exhibits 6, 7; TR 20-22; 50-52)

Since his 2000 bankruptcy, Applicant admitted he developed new debts from the misuse of credit cards. (TR 23) He also has gone to casinos, but claims he does not use his credit card at casinos. Nonetheless, he admitted he was unable to pay his car payments because of his losses at the casino of approximately \$5,000 to \$6,000 in 2006 (SOR 1.u.). He lost \$800 in 2007. In November 2006 Applicant consulted a credit repair corporation to address his credit issues as his current indebtedness is over \$23,000 to 25 creditors. Even though he paid them an initial fee of \$150 and subsequently paid them \$300, he did not offer any evidence of how they helped to contest or resolve any of his debts. (Exhibit 2; TR 29-30, 36; 60-61; 67-68; 74-76) While he denied several of his debts, he never documented any of his dispute with the creditors. (TR 23)

Recently, he contacted another individual to help him resolve his debt issues, but he provided no documentation of progress from those efforts except for a plan to make gradual payments to fifteen of those creditors. (TR 28, 36-37; 69-70; Exhibit A) He has never taken any classes on financing or budgeting. (TR 76) He has no savings. (TR 79) While he submitted a plan to pay 15 of the debts in May 2007, he submitted no evidence that, in fact, he had made any payments on the debts in his payment schedule. (Exhibit A) He provided no evidence that he has

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<sup>4</sup> He was allowed additional time to submit letters of reference or evaluations, but did not submit any such evidence. (TR 40-41)

resolved any of the debts alleged in the SOR which are document on three credit reports from 2005, 2006, 2007.

The current status of these debts is as follows:

SOR ¶	TYPE OF DEBT (date)	AMOUNT	CURRENT STATUS
1.c.	Collection account for telephone (2000)	\$19.00	Unpaid. Applicant denied, but said he would pay it in April 2007. He provided no evidence he did so. (Answer; Exhibits 3, 4; TR 23-24)
1.d.	Collection for medical provider (2002)	\$76.00	Unpaid. He believed the insurance should have paid as he paid his co-payments. He said he would pay in April 2007. He provided no evidence he did so. (Answer; Exhibits 3, 4; TR 25-28)
1.e.	Collection for medical account. (2002)	\$71.00	Unpaid. He believed insurance should have paid, but said he would pay in April 2007. He provided no evidence he did so. (Answer; Exhibits 3, 4; TR 25-27)
1.f.	Collection for medical account. (2002)	\$306.00	Unpaid. He believed insurance should have paid, but said he would pay in May 2007. He provided no evidence he did so. (Answer; Exhibits 3; TR 25-27)
1.g.	Collection for medical account. (2000)	\$324.00	Unpaid. He believed insurance should have paid, but said he would pay in April 2007. He provided no evidence he did so. (Answer; Exhibits 4; TR 25-27)

1.h.	Collection for medical account (2002)	\$ 88.00	Unpaid. Denied as he says it is an unknown debt, but said he would pay in April 2007. He provided no evidence he did so. (Answer; Exhibit 3; TR 27-28)
1.i.	Delinquent account in collection (2002)	\$ 76.00	Unpaid. Denied as he says is an unknown debt, but said he would pay in April 2007. He provided no evidence he did so. (Answer; Exhibits 3, 4, 5; TR 27-28)
1.j.	Debt to university (2002)	\$ 1,138.00	Admitted, but said he was working with credit counselors. He provided no evidence he had made payments on a payment plan. (Answer; Exhibits 3, 4, 5; TR 28-29)
1.k.	Debit to apartment complex for delinquent account (2003)	\$ 256.00	Unpaid; he denies this debt and claims security deposit was returned and any debt owed should have been deducted from deposit. (Answer; Exhibits 3, 4, 5; TR 34-35)
1.l.	Delinquent account (2003)	\$ 68.00	Unpaid - Claimed he owed nothing. (Answer; Exhibits 2, 3, 4)
1.m. 1.n., 1.o	Delinquent accounts referred for collection. (2003)	\$ 711.00, 778.00, & 954.00	Unpaid; admitted; working with credit counselors but provided no evidence that he has made payments . (Answer; Exhibits 3, 4, 5)
1.p.	IRS debt for unpaid taxes, interest, and penalties for 2001 and 2002; federal tax lien filed (2004)	\$ 8,089.00	He reported debt was being satisfied through payroll deduction for the past two years. (Answer; Exhibits 3, 4, 5; TR 52-54)

1.q.	Collection account (2004)	\$81.00	Admitted; no evidence he made a payment. (Answer)
1.r.	Delinquent account referred for collection (2004)	\$424.00	Denied he owes anything. (Answer; Exhibits 3, 4, 5; 54-55)
1.s.	Debt to public library for delinquent account (2004)	\$30.00	Denied he owes anything. (Answer; Exhibits 3, 4; TR 37-38; 55-56)
1.t.	Delinquent account (2005)	\$209.00	Denied he owes anything. (Answer; Exhibits 3, 5; TR 56-57)
1.u.	Delinquent auto loan account charged off as bad debt. (2006)	\$6,477.00	Admitted in process of setting up payment plan; however they will not set up a plan until he sends the first payment. He provided no evidence he made any payments. (Answer; Exhibits 3, 4, 5; TR 34; 71)
1.v.	Delinquent account (2006)	\$531.00	Initially, he denied and stated an unknown debt; later he admitted. (Answer; Exhibits 4, 5; TR 57-59)
1.w.	Account closed after 120 days delinquent (2006)	\$941.00	Initially denies and stated an unknown debt; later he admitted. (Answer; Exhibit 5; TR 59)
1.x.	Debt for unreturned cable box (2006)	\$386.00	Admitted, but said he was working with credit counselors. He provided no evidence he had made a payment. (Answer; Exhibits 3, 4, 5)
1.y.	Debt to rental agency for unpaid rent (2006)	\$1,400.00	Admitted, but provided no evidence he had made a payment. (Answer; Exhibits 3, 4, 5)

Recently, he was evicted from a complex as his rent was in arrears for two months for \$1400. (SOR 1.y.). Applicant's gross monthly pay is \$3,200 per month; his current monthly rent is \$510 and he pays \$50 in utilities. (TR 62-67) He has no car and no cable expenses. (TR 65)

## **POLICIES**

Enclosure 2 of the Directive sets forth adjudicative guidelines to consider in evaluating an individual's security eligibility which are divided into conditions that could raise a security concern and may be disqualifying and conditions that could mitigate security concerns. In deciding whether to grant or continue an individual's access to classified information, the mere presence or absence of any adjudication policy condition is not decisive. Based on a consideration of the evidence as a whole in evaluating this case, I weighed these relevant Revised Adjudication Guidelines:

### **Guideline F: Financial Considerations**

**18. *The Concern.*** Failure or inability to live within one's means, satisfy debts, and meet financial obligations may indicate poor self-control, clack 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. Compulsive gambling is a concern as it may lead to financial crimes including espionage. Affluence that cannot be explained by known sources of income is also a security concern. It may indicate 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.

Section 7 of Executive Order 10865 specifically provides industrial security clearance decisions shall be "in terms of the national interest and shall in no sense be a determination as to the loyalty of the applicant concerned." The decision to deny an individual a security clearance is not necessarily a determination as to the allegiance, loyalty, and patriotism of an applicant.<sup>5</sup> It is merely an indication that the applicant has not met the strict guidelines the President and the Secretary of Defense have established for issuing a security clearance.

## **CONCLUSIONS**

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<sup>5</sup>Executive Order No. 10865 § 7.

## Financial Considerations

The government provided substantial evidence of Applicant's financial problems reflected not only by his having discharged substantial debts under Chapter 7 bankruptcy filings in 1993 and in 2000, but also by his continuing pattern of accumulating substantial debts that has persisted. He admitted his gambling debts of \$5,000 to \$6,000 contributed to his car being repossessed. In 2007 he had lost an estimated \$800 through gambling. Consequently, Financial Considerations Disqualifying Condition (DC), AG ¶ 19(a), (*inability or unwillingness to satisfy debts*), DC, AG ¶ 19(c), (*a history of not meeting financial obligations*), and AG ¶ 19(i), (*compulsive or addictive gambling as indicated by unsuccessful attempt to stop gambling. . . . borrowing money to fund gambling or pay gambling debts, family conflict or other problems caused by gambling*) apply.

With the government's case established, the burden shifted to Applicant to present evidence of refutation, extenuation, or mitigation to overcome the case against him. While he has a good income and limited expenses, he has made no demonstrable efforts to resolve his credit problems which continue to raise security concerns. While he consulted two different sources for help with credit counseling, he has not utilized their expertise to document either that he has contested or paid any of these numerous debts. The only debt being paid is an IRS lien through wage garnishment where he still owes the IRS money. Consequently, Applicant has not established a case in mitigation. For example, he provided no evidence under Mitigating Condition (MC) AG ¶ 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*). Neither was there substantial mitigating evidence under AG ¶ 20(b), (*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) and the individual acted responsibly under the circumstances*). While his divorce might be a mitigating factor in the 2000 bankruptcy, he has been single since then and continued to accumulate debt. Since, he continues to gamble in 2007 and sustain losses, AG ¶ 20(a)<sup>6</sup> cannot apply as the financially irresponsible behavior continues.

While he stated an intent to pay some debts and developed a plan for how he might pay certain debts over the next six months, Applicant has not demonstrated that he has paid even one debt, large or small, except for his IRS garnishment payments. Thus, he fails to meet AG ¶ 20(d), (*the individual initiated a good-faith effort to repay overdue creditors or otherwise resolve debts*). While he has a professional position with a good income, his failure to resolve his debts and his continuing to gamble creates an ongoing security concern.

## Whole Person Analysis

Having considered both the record and Applicant in light of the "whole person" concept, I conclude he is an earnest person who has struggled with reforming his financial practices; but he

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<sup>6</sup> 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.*



has not made sufficient progress even after he has stated an intent to do so. While the 1993 and 2000 bankruptcies were a legal method of dealing with the financial delinquencies, he subsequently failed to change his practices and since 2000 has accumulated over \$20,000 in debt to over two dozen creditors despite a current income of \$76,000 and a current monthly rental of \$510. He has developed no budget and does not understand where his money goes. His failure to address the ongoing debt, in part created from gambling, continues to raise security concerns. The potential for pressure, coercion, exploitation, or duress is high even though he has an employment history since 2002. In sum, the likelihood of new debts and related problems is high.

After weighing the disqualifying and mitigating conditions, and all the facts and circumstances, in the context of the whole person, I conclude he has failed to mitigate the security concerns pertaining to financial considerations. I rule against Applicant on subparagraphs 1.a. through 1.y. under SOR Paragraph 1.

### **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:

AGAINST APPLICANT

Subparagraph 1.a through 1.y.

Against Applicant

### **DECISION**

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

Kathryn Moen Braeman  
Administrative Judge