

KEYWORD: Financial

DIGEST: Applicant owes \$9,894.72 in outstanding delinquent debt that he does not dispute. Financial Considerations concerns are mitigated because the debt was incurred largely because of circumstances beyond his control (several job layoffs, loss of his spouse's income and her unexpected death), and he lives within his means. Clearance is granted.

CASENO: 06-20728.h1

DATE: 08/30/2007

DATE: August 30, 2007

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|----------------------------------|---|------------------------|
| In re:                           | ) |                        |
|                                  | ) |                        |
| -----                            | ) |                        |
| SSN: -----                       | ) | ISCR Case No. 06-20728 |
|                                  | ) |                        |
| Applicant for Security Clearance | ) |                        |
|                                  | ) |                        |

**DECISION OF ADMINISTRATIVE JUDGE  
ELIZABETH M. MATCHINSKI**

**APPEARANCES**

**FOR GOVERNMENT**

Fahryn Hoffman, Esq., Department Counsel

**FOR APPLICANT**

*Pro Se*

**SYNOPSIS**

Applicant owes \$9,894.72 in outstanding delinquent debt that he does not dispute. Financial Considerations concerns are mitigated because the debt was incurred largely because of

circumstances beyond his control (several job layoffs, loss of his spouse's income and her unexpected death), and he lives within his means. Clearance is granted.

### **STATEMENT OF THE CASE**

The Defense Office of Hearings and Appeals (DOHA) declined to grant or continue a security clearance for Applicant. As required by Department of Defense Directive 5220.6 ¶ E3.1.2 (Jan. 2, 1992), as amended, DOHA issued a Statement of Reasons (SOR) on January 30, 2007 detailing the basis for its decision—security concerns raised under Guideline F (Financial Considerations) of the revised Adjudicative Guidelines (AG) issued on December 29, 2005, and implemented by the Department of Defense effective September 1, 2006. The guidelines were provided to Applicant when the SOR was issued. Applicant answered the SOR on February 20, 2007. On April 26, 2007, he elected to have a hearing before an administrative judge. The case was assigned to me on June 1, 2007.

I convened a hearing on June 20, 2007, to consider whether it is clearly consistent with the national interest to grant or continue a security clearance for Applicant. Five government exhibits (Ex. 1-5) and six Applicant exhibits (A-F) were admitted, and testimony was taken from Applicant. The hearing transcript (Tr.) was received on July 2, 2007.

### **FINDINGS OF FACT**

DOHA alleged Applicant owed delinquent debt totaling \$12,529 to 11 creditors (¶¶ 1.a–1.k) following a Chapter 7 bankruptcy discharge in December 1996 (¶ 1.1) despite monthly discretionary income of \$977 (¶ 1.m), and that he had no intention of satisfying the debts (¶ 1.m). Applicant admitted the unpaid debts as alleged in ¶¶ 1.a, 1.b, 1.c,<sup>1</sup> 1.g, and 1.h; corrected the unpaid balances of ¶ 1.d to \$1,046 and of ¶ 1.e to \$1,164; and denied ¶ 1.f, 1.i (duplication of 1.h), 1.j. (not his account), and 1.k (paid). Applicant also admitted the 1996 bankruptcy, and that he had \$977 in discretionary funds each month but had no intention of satisfying his bad debts. Applicant attributed his financial problems to the deaths of his mother, aunt, and spouse within the span of nine months in 1999/00, and to a job layoff in July 2000 ("I just didn't choose to stop paying bills it was forced upon me."). Applicant averred that he regrets not paying the bills, but understands that by the end of the year, they will become uncollectible under state law.

Applicant's admissions are incorporated as findings of fact. After a thorough consideration of the pleadings, exhibits, and transcripts, I make the following additional findings:

Applicant is a 57-year-old janitor who has worked off and on for the same defense contractor since October 1983. He has been laid off five times since September 1996 for periods ranging from four months to three years. Applicant held a confidential-level security clearance for much of his employ and he seeks to regain a clearance necessary for access to areas of the facility.

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<sup>1</sup>At the hearing, the reference to this debt being a medical debt was stricken on the government's motion.

Applicant and his spouse's joint income from employment amounted to \$29,872.23 in 1994. It rose to \$43,102.31 in 1995, largely due to a \$11,152.86 increase in her earnings over the previous year. In 1996, Applicant's spouse was laid off, and they began to experience financial difficulty. On September 10, 1996, Applicant and his spouse filed a joint petition for bankruptcy seeking Chapter 7 liquidation of \$31,710.16 in liabilities, of which \$1,283.83 was tax debt, \$13,050.30 credit card debt, \$10,241.89 personal loan debt, and \$4,300 in deferred student loan debt.<sup>2</sup> One of the loans was for a car that Applicant had bought for his older son. Another was for this son's college expenses. About \$710.47 of the personal loan debt was for a vacation. Applicant and his spouse's net monthly income from his wage earnings and her unemployment compensation amounted to \$2,079.10, which was short of their monthly expenses of \$2,083.00. On December 17, 1996, they were granted a Chapter 7 discharge of all dischargeable debts. The student loan debt was not discharged, but was later paid by insurance when his spouse died in 2000.

Applicant was interviewed by a special agent of the Defense Investigative Service on November 5, 1997, about adverse credit information. Applicant indicated that all of his debts had been discharged in bankruptcy with the exception of a \$74 medical debt that had been delinquent but then paid in full. He averred he was current on all of his financial obligations since the bankruptcy, which he attributed to the loss of his spouse's income and his year-long layoff.

Applicant was unemployed from September 1996 to September 1997, his spouse from about January 1996 to early 1998. Applicant earned \$21,236 in 1996 (down from \$28,781 the previous year), and only \$12,721 in 1997. He collected unemployment at about \$500 per week. Applicant worked the entire year in 1998, and earned \$30,441. Applicant's spouse worked for only four months part-time, and then went to school to become a medical transcriber at a tuition cost of about \$1,200, which they paid. Applicant was again laid off in 1999, and his total earnings were only \$13,387.<sup>3</sup> His spouse started working as a medical transcriber, and she earned about \$19,065.92.

At the time of his layoff in about October 1999, Applicant was undergoing chemotherapy treatment for bladder cancer. His initial surgery was covered by his medical insurance, and while he was out of work, it cost him about \$527 per month to continue his coverage. In September 1999, his mother died of cancer. In December 1999, Applicant came home one day to discover that his aunt had died in her apartment upstairs from Applicant. Later in the month, his 19-year-old daughter quit college and moved back home. His youngest son was 13 at the time, and Applicant compensated for the lost generosity of his aunt and mother by spending more on holiday gifts for his children.

In January 2000, Applicant's daughter began working at the same company as her mother. In March 2000, Applicant was recalled to work, but his spouse died after emergency surgery the following month. He incurred unexpected funeral expenses and lost her income. In June 2000, he was again laid off for another six months. His daughter, upset at seeing someone else in what had been her mother's position at work, quit her job. Applicant earned \$17,467 in 2000, and found it

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<sup>2</sup>SOR ¶ 1.1 was amended at the hearing to note the correct date of the bankruptcy filing.

<sup>3</sup>Applicant indicated on his security clearance application (e-QIP) that he was consistently employed from August 1997 to October 1999. His earnings for 1999 were only \$13,387 (Ex. A), which suggests he was laid off earlier in that year based on his income for the previous year.

difficult to meet his financial obligations as he also paid for his daughter to attend schooling to become a certified nurse assistant.

Applicant returned to work in 2001 and earned \$31,720 that year. Yet, he was again laid off from his defense contractor job, in about late January 2002 so earned only \$4,081 in 2002. Applicant worked for a discount warehouse retailer as a cashier in 2003, starting at \$7.75 per hour. His total earnings for 2003 were only \$9,656. Applicant supported his family, in part, on his younger son's social security survivor's benefit of \$300 per month. Several accounts were charged off and/or placed for collection:

- A MasterCard account opened in August 1997 was charged off in the amount of \$1,457 in March 2002 after there had been no activity on the account since July 2001 (SOR ¶ 1.e).
- A VISA card account, opened in November 1999, with a credit limit of \$1,500, was charged off in February 2002 in the amount of \$1,645.26 (SOR ¶ 1.h and ¶ 1.i, same debt).
- A VISA card account opened in November 1999 with the same lender as the MasterCard account above was charged off in May 2002 in the amount of \$1,079 due to nonpayment since sometime in 2000 (SOR ¶ 1.d). Applicant stopped paying anything on the account when the creditor was not willing to waive the interest charges and other late fees.
- In August 2000, Applicant took out an installment loan of \$6,000 to be repaid at \$149 per month for five years. The loan was to pay for the headstone on his spouse's grave. He made no payments after October 2001, and a \$5,205.72 debt balance was charged off in May 2002 (SOR ¶ 1.g)
- A \$54 cellular telephone debt was placed for collection in or about December 2000 (SOR ¶ 1.c). Applicant disputes the legitimacy of the debt as he had cancelled his service before the charges were applied.
- As of December 2001, Applicant had an automobile loan that was seriously delinquent in the amount of \$225. He had given the vehicle to his daughter on her promise that she would pay the remaining balance of the loan. When he learned that she had not paid it and the account had been charged off, he satisfied the debt (SOR ¶ 1.k).

In December 2004, Applicant was laid off from his job with the wholesale retailer. He collected \$62 per week in unemployment compensation until about February 2005, when he began working for another retailer. In June 2005, he was recalled to his defense contractor employment. He continued working for the retailer on the weekends until sometime in spring 2006, earning extra money to get caught up on his bills (utilities, car insurance). He made no effort to repay his old delinquencies because "they were too far gone." (Tr. 124).

On September 13, 2005, Applicant executed an Electronic Questionnaires for Investigations Processing (e-QIP). Applicant responded affirmatively to 28 a. "In the last 7 years, have you been over 180 days delinquent on any debt(s)?" and 28 b. "Are you currently over 90 days delinquent on any debt(s)?" and listed a balance due of \$6,700 on a personal loan with a credit union since about January 2001 (aggregate balance of SOR ¶ 1.g and ¶ 1.h).

A check of Applicant's credit on September 2005 revealed that Applicant also owed delinquent credit card balances of \$1,457 (SOR ¶ 1.e) and \$1,079 (SOR ¶ 1.d), a \$54 telephone debt in collection (SOR ¶ 1.c), and two unpaid medical debts of \$54 (SOR ¶ 1.a) and \$80 (SOR ¶ 1.b) in collection. He owed an aggregate debt balance of \$2,824 on four consumer credit accounts opened in or after March 2003 and rated "pays as agreed." Applicant's son's had a retail charge account in collection status that appeared on Applicant's credit report because Applicant was an authorized user of the account (SOR ¶ 1.j). As of May 2004, his son owed \$937.29. Applicant never used the credit card.

In about Fall 2006, Applicant was interviewed by an authorized investigator for the Department of Defense about his finances. He estimated for the agent that he had about \$977 left over each month after paying his expenses (SOR ¶ 1.m), but he failed to calculate the costs of his grandson's nursery school and of other items for his grandchildren and children. He bought a grill for his son as his son was having a party ("Yes, I do spend a hell of a lot on my kids, I do." Tr. 61).

A subsequent check of Applicant's credit on December 15, 2006, showed Applicant was continuing to rely on consumer credit. He opened a credit card account in April 2006 with a \$400 limit. The balance of that account was \$395. Another account opened in November 2006 had a balance of \$50. The four charge accounts opened between March 2003 and March 2005 were still rated as current, although on one account the debt balance of \$956 exceeded his credit limit of \$845. In addition to the total debt of \$4,034 on those four accounts, Equifax reported he owed delinquent debt of \$3,098 (\$54 on SOR ¶ 1.a, \$80 on SOR ¶ 1.b, \$54 on SOR ¶ 1.c, \$1,246 on SOR ¶ 1.d, and \$1,664 on SOR ¶ 1.e). Discrepant credit information was reported as to the \$6,000 charged off personal loan (SOR ¶ 1.g). Equifax reported that Applicant owed a zero balance on the debt as of October 2001 but \$6 after charge off as of November 2006 (SOR ¶ 1.f). Trans Union had reported the debt balance of ¶ 1.g to be \$5,210 as of September 2006. Documentation from the creditor (Ex. F) confirms a balance of \$5,205.72 as of February 2007.

Applicant has not made any payments on his delinquent debt because a family friend advised him that the debts were not legally collectable under state law after six or seven years. Applicant does not intend to repay any of the debts.

Applicant's net pay as of June 2007 was about \$557 weekly. He drives a 1988 model-year car that is paid for. His daughter lives with him, and she pays half the \$1,000 monthly rent. Applicant covers all the utility costs and the groceries. He has a checking account in which he maintains a \$200 balance for emergencies. Applicant owes \$2,200 in federal taxes for tax year 2006 that he has to repay at \$62 per month after an initial payment of \$105. Applicant is paying about \$105 total per month on his four credit card accounts with an aggregate balance of about \$2,500. He was current in his utility and credit card payments as of June 2007.

As of June 2007, the older of Applicant's two sons was married with two children. This son was working part-time while studying at the university. Applicant's younger son was 20 and putting himself through college, although Applicant helped him financially when he moved to an apartment closer to school and work in March 2007. In 2006, Applicant gave his daughter \$540 to get her car out of the impound lot after she had an accident. She has been employed for the past six months as an emergency medical technician.

Out of his net pay of about \$2,228 monthly, Applicant pays monthly living expenses of about \$1,600, including about \$6 per day spent at the cafeteria at work. He also pays \$40 per month for his younger son's car insurance, and gives him \$150 per month for his college expenses. Applicant also spends about \$75 to \$100 a month on his two grandsons. After factoring in his credit card, and required income tax payments, it would appear that he has about \$170 per month left over for incidentals, although he was unable to account for those funds. He also was unable to provide specifics as to his recent purchases on credit that have led him to owe about \$2,500 in active credit card debt.

## 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. The President authorized the Secretary of Defense or his designee to grant applicants eligibility for access to classified information "only upon a finding that it is clearly consistent with the national interest to do so." Exec. Or. 10865, *Safeguarding Classified Information within Industry* § 2 (Feb. 20, 1960). An applicant "has the ultimate burden of demonstrating that it is clearly consistent with the national interest to grant or continue his security clearance." ISCR Case No. 01-20700 at 3 (App. Bd. Dec. 19, 2002).

The revised Adjudicative Guidelines set forth potentially disqualifying conditions (DC) and mitigating conditions (MC) under each guideline. In evaluating the security worthiness of an applicant, the administrative judge must also assess the adjudicative process factors listed in ¶ 6.3 of the Directive. The decision to deny an individual a security clearance is not necessarily a determination as to the loyalty of the applicant. *See* Exec. Or. 10865 § 7. It is merely an indication the applicant has not met the strict guidelines the President and the Secretary of Defense have established for issuing a clearance.

## CONCLUSIONS

### **Guideline F—Financial Considerations**

*Failure or inability to live within one's means, satisfy debts, and meet financial obligations may indicate poor self-control, lack 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.* (AG ¶ 18). Applicant has had financial problems starting

in the mid-1990s. In December 1996, he was granted a discharge in bankruptcy of credit card debt totaling \$13,050.30 and \$10,241.89 in personal loan debt. The financial fresh start afforded Applicant through the bankruptcy was short-lived. In August 1997, he opened a MasterCard card account that was delinquent by July 2001 (SOR ¶ 1.e). A VISA card account opened with the same lender in November 1999 was charged off in April 2001 with a balance owed of \$1,246 (SOR ¶ 1.d). Another VISA account opened with a different lender in that same month was charged off in July 2001 with \$1,645 past due (SOR ¶ 1.h). He paid only about \$790 of the \$6,000 borrowed to pay for his spouse's gravestone (SOR ¶ 1.g). As of June 2007, these debts as well as some undisputed minor medical debts in collection totaling \$134 had not been satisfied. Guideline F disqualifying conditions ¶ 19(a), *inability or unwillingness to satisfy debts*, and ¶ 19(c), *a history of not meeting financial obligations*, apply.

The government's case for application of DC ¶ 19(b), *indebtedness caused by frivolous or irresponsible spending and the absence of any evidence of willingness or intent to pay the debt or establish a realistic plan to pay the debt*, is less persuasive. Although his recent expenditure of a grill for his son is difficult to justify when old debts remain unpaid, his financial difficulties were caused largely by circumstances beyond his control (loss of his spouse's income and his repeated job layoffs) rather than by irresponsible spending. The personal loan debts discharged in bankruptcy, including a loan for a car for his son, were taken out in or before January 1996 when he and his spouse's joint income was about \$43,000. They experienced a precipitous loss of income in 1996 when his spouse lost her job, and the problems continued in 1997 because he was also laid off. He earned only \$12,721 in 1997 and his spouse was unemployed. While he worked the entire year of 1998 and was paid \$30,441 by the defense contractor, Applicant's spouse worked for only four months part-time that year, and then went to school to become a medical transcriber at a tuition cost of about \$1,200, which they paid. Applicant was again laid off in 1999, and his earned income for that year was only \$13,387. His spouse started working as a medical transcriber, and she earned about \$19,065.92, but \$527 of their income each month had to go to medical insurance while Applicant was undergoing treatment for cancer. On his spouse's untimely death in April 2000, Applicant incurred unexpected burial costs that he could not pay (SOR ¶ 1.g) without a loan due to his unemployment from June 2000 to December 2000. Full employment in 2001 gave him a chance to get caught up in his living expenses, but subsequent layoffs left him with earned income of only \$4,081 in 2002 and \$9,656 in 2003, which is not enough to pay his living expenses or his credit obligations, even with unemployment compensation. Mitigating condition ¶ 20(b), *the conditions that resulted in the financial problem 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*, applies.

As of June 2007, Applicant had taken no steps to resolve the \$9,894.72 in outstanding delinquent debt that he does not dispute (SOR ¶¶ 1.a, 1.b, 1.d, 1.e, 1.g, and 1.h).<sup>4</sup> Failure to satisfy debts may indicate a lack of judgment or unwillingness to abide by rules and regulations, but Applicant's overall attitude toward his finances has not been one of cavalier disregard. He was not in a position to repay his old obligations when he was advised by a family friend that he should not

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<sup>4</sup>The debt in ¶ 1.j is his oldest son's (see MC 20(e) *the individual has a reasonable basis to dispute the legitimacy of the past-due debt which is the cause of the problem and provides documented proof to substantiate the basis of the dispute or provides evidence of actions to resolve the issue*). There is inconclusive evidence as to whether Applicant owes the very minor \$6 debt alleged in 1.f, and he disputes the legitimacy of the debt in ¶ 1.c.

pay them because they would soon be legally unenforceable. After he was recalled to his defense contractor job in June 2005, Applicant showed good financial judgment in continuing to work part-time for his previous employer until spring 2006. The extra income was needed to catch up on those day-to-day obligations that had fallen behind when he was earning only \$7.50 to \$8.50 an hour. While he estimated discretionary income of about \$977 per month as of May 2006, the reality was that he failed to account for all of his expenses. Recent expenditures for his youngest son's college education and to get his daughter's car out of the impound lot are understandable. A current estimate of \$170 in monthly disposable income does not include seasonally higher costs for utilities, but Applicant does not appear to be at risk of having to engage in illegal acts to generate funds to repay his debts. There is no evidence of active collection efforts by his old creditors, and his delinquencies are or will soon be legally uncollectible. Outstanding balances were close to the credit limits on four of his six charge accounts opened since March 2003 (\$395 balance on \$400 limit, \$478 balance on \$500 limit, \$1,469 on \$1500 limit, \$1,131 on 1,150 limit), and he was over the limit on one account (\$956 on \$845 limit). Yet, he owed no past due balances on those accounts, and was current in his living expenses.

Applicant lives simply, sharing a home with his daughter and driving a 1988-model year vehicle. Whatever funds he has he spends on his children in the hope that they will have a better life than he had. His expenditures for his children are not so extravagant as to jeopardize his financial solvency which he has regained through his own hard work. Furthermore, Applicant has held a security clearance without adverse incident when the financial stressors were greater than at present. The decision as to a person's security suitability does not turn simply on whether a debt is paid or not. While Applicant cannot avail himself of the benefit of mitigating condition ¶ 20 (d), *the individual initiated a good-faith effort to repay overdue creditors or otherwise resolve debts*, the absence of any recent delinquency weighs in his favor (see ¶ 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*). Given the considerable extenuating circumstances (layoffs, spouse's death, inadequate income while employed in retail) in this case, the Financial Considerations concerns do not rise to the level to deny or revoke Applicant's clearance.

### **Whole-Person Concept**

*The adjudicative process is an examination of a sufficient period of a person's life to make an affirmative determination that the person is eligible for a security clearance. AG ¶ 2(a). Each security clearance decision must be a fair and impartial common sense determination based upon consideration of all the relevant and material information and the pertinent criteria and adjudication policy. Directive ¶ 6.3.* Applicant has experienced more than his share of hardship not of his own doing. Despite several layoffs between September 1996 and June 2005, he has managed to provide for his now grown children while not falling seriously behind in his day-to-day obligations. The government must be assured that those individuals granted access can be counted on to put their fiduciary obligations ahead of their personal interests. His employer has found him reliable enough to recall him to work several times, and Applicant has not violated his employer's trust during the many years that he has held a clearance despite enduring the many unforeseen problems already discussed.



## **FORMAL FINDINGS**

The following are my conclusions as to each allegation in the SOR:

|                           |                    |
|---------------------------|--------------------|
| 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:         | (Duplicate of 1.h) |
| Subparagraph 1.j:         | For Applicant      |
| Subparagraph 1.k:         | For Applicant      |
| Subparagraph 1.l:         | For Applicant      |
| Subparagraph 1.m:         | For Applicant      |

## **DECISION**

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

Elizabeth M. Matchinski  
Administrative Judge