

DATE: November 28, 2007

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In re: )  
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 ----- ) ISCR Case No. 06-21578  
 SSN: ----- )  
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 Applicant for Security Clearance )  
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**DECISION OF ADMINISTRATIVE JUDGE  
NOREEN A. LYNCH**

**APPEARANCES**

**FOR GOVERNMENT**

Daniel F. Crowley, Esq., Department Counsel

**FOR APPLICANT**

Gary Rigney, Esq.

**SYNOPSIS**

Applicant incurred approximately \$24,000 in delinquent debt. Having developed no structured plan to pay these debts, he has not mitigated the security concerns raised under the financial considerations guideline. Applicant's eligibility for a security clearance is denied.

## STATEMENT OF THE CASE

On August 23, 2007, the Defense Office of Hearings and Appeals (DOHA) issued Applicant a Statement of Reasons (SOR) stating that it was unable to find that it is clearly consistent with the national interest to grant or continue a security clearance.<sup>1</sup> The SOR, which is in essence the administrative complaint, alleged security concerns 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 revised guidelines were provided to Applicant when the SOR was issued. On September 12, 2007, Applicant submitted a notarized response to the SOR, and elected to have a hearing before an administrative judge. The case was assigned to me on October 2, 2007.

The hearing was convened as scheduled on October 31, 2007, to consider whether it is clearly consistent with the national interest to grant or continue a security clearance for Applicant. Government exhibits (GE 1-5) were admitted. Applicant's exhibits (AE A-D) were admitted into the record without objection. Applicant had two witnesses testify in his behalf as reflected in the hearing transcript. DOHA received the transcript (Tr.) on November 13, 2007.

## FINDINGS OF FACT

Applicant admitted allegations in subparagraphs 1.c through 1.h in his SOR response under Guideline F. The admissions are incorporated as findings of fact. Applicant denied allegations in subparagraph 1.a, 1.b, and 1.e based on lack of sufficient information. After a complete review of the evidence in the record and upon due consideration, I make the following additional findings of fact:

Applicant is a 31-year-old employee of a defense contractor. After he graduated from high school in 1994, he married. In 1997, Applicant entered the military, but he received a hardship discharge in 1998. His first marriage ended in divorce in 2000. He has worked for his current employer since 2004.<sup>2</sup> On April 6, 2005, he completed his security clearance (SF 86) application.<sup>3</sup>

Applicant remarried in late 2000. As a result of that marriage he has one son. His second wife has substance abuse problems. Unbeknownst to Applicant, she used cocaine and methamphetamine. He and his wife separated because he did not want any part of this behavior. His wife left and Applicant's son stayed with him in approximately 2001. At the same time, Applicant started a flooring business. He was having financial difficulties with the business. He had great difficulty in managing his money.<sup>4</sup>

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<sup>1</sup>This action was taken under Executive Order 10865, dated February 20, 1960, as amended, and DoD Directive 5220.6, dated January 2, 1992, as amended and modified (Directive).

<sup>2</sup>GE 1(Security Clearance Application, dated April 6, 2005).

<sup>3</sup>*Id.*

<sup>4</sup>Tr. 29-30.

The flooring business did not do well. Applicant also had legal expenses in conjunction with his separation and divorce. His self-employment did not produce an adequate income for him and his son. During that time (2003), Applicant wrote checks and did not have sufficient funds in his account to cover the checks. He does not dispute that he was charged with Fraud-Insufficient Funds on four occasions from 2003 until 2005. He paid restitution on all of them.<sup>5</sup>

During the two-year period of separation from his second wife, Applicant had credit cards in both names. His wife continued to use them and the bills were not paid. Applicant tried to have an account closed at one point. However, she continued to use them. They did not have a separation agreement at the time. He also bought her a car a few days after they separated. They co-signed the car note. The car was repossessed in 2002. Applicant called the company to see how much he owed on the vehicle after it was sold. He did not receive any response from them. In 2004, Applicant and his second wife were finally divorced.<sup>6</sup>

Applicant's income began to increase with his current job. In 2004, he earned \$6,600. In 2005, he earned \$25,543 and in 2006, he earned \$31,395. He has filed and paid his taxes.<sup>7</sup> He now has a stable, steady income. He has not incurred any new debt. He does not use credit cards.<sup>8</sup> He managed to pay many debts that were listed in his credit report but none of the debts listed on the SOR. He supports his son on his own. He paid his car loan and several other loans. He does not have any outstanding current debt.

Applicant bought a home in 2006. The mortgage company did not require a down payment. The mortgage rate increased from approximately 7 percent to 12 percent in a short period of time. He could not refinance due to his credit rating. He had no choice at that time. The home was foreclosed. He contacted the company but has not received anything from them with regard to the current status.<sup>9</sup>

He earns approximately \$1,600 net take home pay each month. After expenses he has a net remainder of \$480.<sup>10</sup> He now rents from his father.

The current status of Applicant's alleged debts listed in the SOR is as follows:

SOR ¶	Type of Account/Amount	Status	Evidence
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<sup>5</sup>GE 5 (Applicant's answer to Interrogatories, dated July 26, 2007).

<sup>6</sup>Tr. 30-31; AE A (Divorce Decree).

<sup>7</sup>AE B, C, and D (Income Tax Forms 2006-2004).

<sup>8</sup>Tr.27.

<sup>9</sup>Tr. 40.

<sup>10</sup>Personal Financial Statement, dated 2007.

1.a	Collection account	\$3,275	Disputed <sup>11</sup>	Tr.47-48
1.b	Credit card	\$2,581	Disputed	Tr.51
1.c	Car Repossession	\$6,286	Attempted settlement	Tr.52
1.d	Credit account	\$1,914	Disputed	Tr.53
1.e	Phone account	\$ 402	Disputed	Tr.54
1.f	Foreclosure	\$9,971	Unpaid	Tr.63

Applicant’s team leader reports that Applicant is a very good employee who is conscientious and follows all rules.<sup>12</sup> He also believes Applicant is well respected and well liked by his peers. He recommends him for a security clearance. He has no misgivings about Applicant’s ability to safeguard classified information. A manager of the company also testified in Applicant’s behalf. He characterizes Applicant as honest, and dependable. He has proven to be an invaluable asset. He does not require frequent direction and can be trusted in his position.

### POLICIES

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.”<sup>13</sup> In Executive Order 10865, *Safeguarding Classified Information Within Industry* (Feb. 20, 1960), the President set out guidelines and procedures for safeguarding classified information and determining trustworthiness within the executive branch.

To be eligible for a security clearance or access to sensitive information, an applicant must meet the security guidelines contained in the Directive. The revised Adjudicative Guidelines set forth potentially disqualifying conditions (DC) and mitigating conditions (MC) under each guideline. Additionally, each security decision must be a fair and impartial commonsense decision based on the relevant and material facts and circumstances, the whole-person concept, along with the adjudicative process factors listed in ¶ 6.3 of the Directive, and AG ¶ 2(a).

“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.”<sup>14</sup> An administrative judge must apply the “whole person concept,” and consider and carefully weigh the available, reliable

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<sup>11</sup> Although Applicant disputes some debts due to his wife’s use of the credit, the debts themselves are not denied.

<sup>12</sup> Testimony of witness at Tr. 67.

<sup>13</sup> *Department of the Navy v. Egan*, 484 U.S. 518, 527 (1988).

<sup>14</sup> Directive, ¶ E2.2.1.

information about the person.<sup>15</sup> An administrative judge should consider the following 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 behavioral changes; (7) the motivation for the conduct; (8) the potential for pressure, coercion, exploitation, or duress; and (9) the likelihood of continuation or recurrence.<sup>16</sup>

Initially, the Government must present evidence to establish controverted facts in the SOR that disqualify or may disqualify the applicant from being eligible for access to classified information.<sup>17</sup> Thereafter, the applicant is responsible for presenting evidence to rebut, explain, extenuate, or mitigate the facts.<sup>18</sup> An applicant "has the ultimate burden of demonstrating that it is clearly consistent with the national interest to grant or continue his security clearance."<sup>19</sup> Any doubt as to whether access to classified information is clearly consistent with national security will be resolved in favor of the national security.<sup>20</sup> The same rules apply to trustworthiness determinations for access to sensitive positions.

## CONCLUSIONS

I have carefully considered all the facts in evidence and the legal standards. The government has established a *prima facie* case for disqualification under Guideline F of the revised Adjudicative Guidelines (AG) most pertinent to the evaluation of the facts in this case.

**Guideline F (Financial Considerations) The Concern:** *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.*<sup>21</sup>

In this matter, the government provided substantial evidence that Applicant accrued delinquent debts with an approximate total balance of \$24,000. He admits many debts are still not paid. His 2007 credit report confirms his SOR alleged debts. Consequently, Financial Considerations Disqualifying Conditions (FC DC) AG ¶ 19(a) (*inability or unwillingness to satisfy debts*) and FC DC AG ¶ 19(c) (*a history of not meeting financial obligations*) apply.

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<sup>15</sup> Directive, Revised Adjudicative Guidelines (AG) ¶ 2 (a)(1)-(9).

<sup>16</sup> *Id.*

<sup>17</sup> Directive, ¶ E3.1.14.

<sup>18</sup> Directive, ¶ E3.1.15.

<sup>19</sup> ISCR Case No. 01-20700 at 3 (App. Bd. Dec. 19, 2002).

<sup>20</sup> Directive, ¶ E2.2.2.

<sup>21</sup> AG ¶ 18.

With the government's case established, the burden shifts to Applicant to present evidence of refutation, extenuation, or mitigation to overcome the case against him. I considered the Financial Considerations Mitigating Condition (FC MC) AG ¶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*). This does not apply because Applicant's debts from the SOR are as recent as 2005 and 2006.

Applicant's debt resulted from his separation and divorce from his second wife. He also had a business downturn in his flooring business. These are conditions that were largely beyond his control. To fully satisfy 20(b), Applicant must have acted responsibly under the circumstances. However, he paid other bills but did not actively pursue the debts listed in the SOR. The car repossession and the foreclosure were addressed somewhat, but Applicant did not continue efforts to resolve the debts. FC MC 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*). Applicant has not fully met both requirements of 20(b).

I have considered the remaining mitigating conditions. FC 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 under control*) does not apply in this case. FC MC AG ¶ 20(d) (*the individual initiated a good-faith effort to repay overdue creditors or otherwise resolve debts*) partially applies. Applicant called some of the companies but did not follow up in writing. He did not take an active stance to resolve his debts or seek protection in bankruptcy. FC MC AG ¶ 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*) partially applies as well. Applicant did not have any documented proof to substantiate the disputed accounts. He was credible in that his second wife continued to use the credit cards, but he had a legal responsibility because they were in his name, and he did not act to remove her.

Applicant has not received any financial counseling. There are not clear indications that the financial problem is being resolved or is under control.

## **Whole Person**

In all adjudications, the protection of our national security is the paramount concern. The objective of the trustworthy determination process is the fair-minded, commonsense assessment of a person's life to make an affirmative determination that the person is eligible for assignment to sensitive duties. Indeed, the adjudicative process is a careful weighing of a number of variables in considering the "whole person" concept. It recognizes that we should view a person by the totality of their acts, omissions, motivations and other variables. Each case must be adjudged on its own merits, taking into consideration all relevant circumstances, and applying sound judgment, mature thinking, and careful analysis.

I have considered all the evidence and the "whole person" in evaluating Applicant's security clearance determination. Applicant is a hard-working man who was honorably discharged from the military in 1998. His second marriage created financial problems as his second wife accumulated debt

under Applicant's name. This is the half of the debt listed in the SOR. He had a business downturn and severe financial difficulty in 2003-2005. He has custody of his son and provides for him. He now has a stable position and is current on his bills. He has made some good faith efforts to resolve his delinquent debts, but not sufficient to meet his burden in this case. He was honest and candid at the hearing concerning his second wife's part in this matter.

I considered his military experience, his service to the country, and the very favorable endorsement by his employer. After considering all the evidence, and particularly that Applicant has no structured plan to pay the delinquent debts, I find Applicant has not presented sufficient evidence of extenuation, mitigation or changed circumstances to warrant a favorable security determination. Applicant has not met his burden in this case. He has not mitigated the government's concerns under Guideline F. It is not clearly consistent with the national interest to grant Applicant a security clearance. Clearance is denied.

### **FORMAL FINDINGS**

Formal Findings for or against Applicant on the allegations set forth in the SOR, as required by Section E3.1.25 of Enclosure 3 of the Directive, are:

Paragraph 1: Guideline F	AGAINST APPLICANT
Subparagraph 1.a:- 1.j:	Against Applicant

### **DECISION**

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

Noreen A. Lynch  
Administrative Judge