

KEYWORD: Financial

DIGEST: Applicant has a history of failing to meet his financial obligations dating back to 1997. As of the date of his response to the FORM, he had 19 accounts totaling approximately \$29,000, which had been delinquent for many years. His evidence is insufficient to show that he is in control of his finances, is not overextended, and has a track record of financial responsibility. Clearance is denied.

CASENO: 06-23382.h1

DATE: 07/17/2007

DATE: July 17, 2007

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In re:)  
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          ISCR Case No. 06-23382  
          SSN: -----  
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Applicant for Security Clearance)  
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**DECISION OF ADMINISTRATIVE JUDGE  
JUAN J. RIVERA**

**APPEARANCES**

**FOR GOVERNMENT**

Nicole L. Noel, Esq., Department Counsel

**FOR APPLICANT**

*Pro Se*

## **SYNOPSIS**

Applicant has a history of failing to meet his financial obligations dating back to 1997. As of the date of his response to the FORM, he had 19 accounts totaling approximately \$29,000, which had been delinquent for many years. His evidence is insufficient to show that he is in control of his finances, is not overextended, and has a track record of financial responsibility. Clearance is denied.

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### **STATEMENT OF THE CASE**

On January 30, 2007, the Defense Office of Hearings and Appeals (DOHA) issued Applicant a Statement of Reasons (SOR), alleging facts and security concerns under Guideline F (Financial Considerations). The SOR informed Applicant that based on the available information, DOHA adjudicators could not make a preliminary affirmative finding that it is clearly consistent with the national interest to grant him access to classified information and submitted the case to an administrative judge for a security determination.<sup>1</sup>

On February 20, 2007, Applicant answered the SOR. He admitted all of the SOR allegations, and requested a decision without a hearing. On April 19, 2007, Department Counsel prepared a File of Relevant Material (FORM), which was mailed to Applicant on April 20, 2007. He acknowledged receipt of the FORM on April 23, 2007, and did not object to anything contained in the FORM or submit additional information for consideration within the 30-day period provided to him. The case was assigned to me on June 28, 2007.

### **FINDINGS OF FACT**

Applicant admitted all SOR allegations. His admissions are incorporated herein as findings of fact. After a thorough review of the FORM evidence, I make the following additional findings of fact:

Applicant is a 36-year-old senior proposal designer. He has worked for his current employer, a defense contractor, since May 2005. He attended a trade school from 1993 to 1994, where he learned to be a graphics designer. He served as an enlisted in the Air Force Reserve from June 1991 to June 1997. He married his first spouse in June 1996 and they were divorce in December 2002. It is not clear from his security clearance application whether he has any children born of this marriage. He

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<sup>1</sup> See Executive Order 10865, *Safeguarding Classified Information Within Industry* (Feb. 20, 1960, as amended, and Department of Defense Directive 5220.6, *Defense Industrial Personnel Security Clearance Review Program* (Jan. 2, 1992)(Directive), as amended. On August 30, 2006, the Under Secretary of Defense (Intelligence) published a memorandum directing application of revised Adjudicative Guidelines (AG) to all adjudications and other determinations made under the Directive and Department of Defense (DoD) Regulation 5200.2-R, *Personnel Security Program* (Regulation), dated January 1987, as amended, in which the SOR was issued on or after September 1, 2006.

married his current wife in September 2005. He has three stepchildren, ages 18, 14 and 12, of this marriage (GE 3).<sup>2</sup>

Applicant's security clearance application indicates no periods of unemployment from May 1994 to January 2006, when he submitted his application. His work history shows that Applicant has held numerous jobs for short periods of time, some of them overlapping each other. He also has short, unaccounted periods of time in between jobs.

Applicant's background investigation addressed his financial situation and included a review of his February 2006 credit bureau report (CBR),<sup>3</sup>and his December 2006 (GE 5) response to the DOHA interrogatories.

In his statement in response to the DOHA interrogatories, Applicant explained he has no documents to verify the payment history of his delinquent debts. He claimed his earnings only allow him to pay for his day-to-day living expenses and current obligations. He is paying past due state and federal taxes for tax years 2004 and 2005. After paying his past due taxes, he has no money left to pay his old debts. Applicant promised to contact his creditors, and to pay his delinquent obligations when his wife begins working. He presented no evidence of any measures he has taken to avoid future financial difficulties.

The SOR alleges 19 delinquent/charged off accounts totaling approximately \$29,000. Applicant admitted the alleged debts, and they are supported by the government's evidence. He did not explain how he acquired the debts, why they became delinquent, and what efforts, if any, he has taken through the years to pay or otherwise resolve his debts.

## **POLICIES**

The Directive sets forth adjudicative guidelines which must be considered in evaluating an Applicant's eligibility for access to classified information. Foremost are the Disqualifying and Mitigating conditions under each adjudicative guideline applicable to the facts and circumstances of the case. However, the guidelines are not viewed as inflexible ironclad rules of law. The presence or absence of a

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<sup>2</sup> Applicant's Questionnaire for Sensitive Positions (Standard Form 86) (electronic version), dated January 24, 2006, is the source for the information in the paragraph.

<sup>3</sup> GE 4.

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disqualifying or mitigating condition is not determinative of a conclusion for or against an Applicant. Each decision must also reflect a fair and impartial common sense consideration of the factors listed in Section 6.3 of the Directive,<sup>4</sup> and the whole person concept.<sup>5</sup> Having considered the record evidence as a whole, I conclude Guideline F (Financial Considerations) is the applicable relevant adjudicative guideline.

### **BURDEN OF PROOF**

The purpose of a security clearance decision is to resolve whether it is clearly consistent with the national interest to grant or continue an applicant's eligibility for access to classified information.<sup>6</sup> The government has the initial burden of proving controverted facts alleged in the SOR. To meet its burden, the government must establish a prima facie case by substantial evidence.<sup>7</sup> The responsibility then shifts to the applicant to refute, extenuate or mitigate the government's case. Because no one has a right to a security clearance, the applicant carries the ultimate burden of persuasion.<sup>8</sup>

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<sup>4</sup> Directive, Section 6.3. "Each 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 in enclosure 2 . . ."

<sup>5</sup> AG ¶ 2(a). ". . . The adjudication process is the careful weighing of a number of variables known as the whole person concept. Available, reliable information about the person, past and present, favorable and unfavorable, should be considered in reaching a determination. . . ." The whole person concept includes the consideration of the nature, extent, and seriousness of the conduct; the circumstances surrounding the conduct, to include knowledgeable participation; the frequency and recency of the conduct; the individual's age and maturity at the time of the conduct; the extent to which participation is voluntary; the presence or absence of rehabilitation and other permanent behavioral changes; the motivation for the conduct; the potential for pressure, coercion, exploitation, or duress; and the likelihood of continuation or recurrence. . ."

<sup>6</sup> See *Department of the Navy v. Egan*, 484 U.S. 518, 531 (1988).

<sup>7</sup> ISCR Case No. 98-0761 at 2 (App. Bd. Dec. 27, 1999) (Substantial evidence is more than a scintilla, but less than a preponderance of the evidence); ISCR Case No. 02-12199 at 3 (App. Bd. Apr. 3, 2006) (Substantial evidence is such relevant evidence as a reasonable mind might accept as adequate to support a conclusion in light of all the contrary evidence in the record); Directive ¶ E3.1.32.1.

<sup>8</sup> *Egan*, *supra* n.6, at 528, 531.

A person who has access to classified information enters into a fiduciary relationship with the government based on trust and confidence. The government, therefore, has a compelling interest to ensure each applicant possesses the requisite judgment, reliability and trustworthiness of one who will protect the national interests as his or her own. The “clearly consistent with the national interest” standard compels resolution of any reasonable doubt about an applicant’s suitability for access to classified information in favor of protecting national security.<sup>9</sup>

### CONCLUSIONS

Under Guideline F (Financial Considerations),<sup>10</sup> the government’s concern is that an Applicant’s 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.

Applicant has a history of failing to meet his financial obligations dating back to 1997. Since 1997, he has accumulated at least 19 delinquent/charged off debts totaling approximately \$29,000, which have been delinquent for many years. In December 2006, Applicant was confronted about his financial problems by DOHA and asked to provide documentation verifying payments and current status of his delinquent accounts. He provided no information to show he has in any way attempted to resolve any of his debts. In April 2007, Applicant was provided a copy of the FORM stating the government’s security concerns. He presented no evidence to show he has taken any action to resolve his debts. Financial Considerations Disqualifying Condition (FC DC) ¶ 19(a): *inability or unwillingness to satisfy debts*; and FC DC ¶ 19(c): *a history of not meeting financial obligations; apply in this case.*

Considering the record evidence as a whole,<sup>11</sup> I conclude that none of the mitigating conditions apply. Applicant presented no evidence of efforts taken to contact creditors, or to resolve any of the debts since he acquired them. Nor is there any evidence that he has participated in any financial counseling, or that circumstances beyond his control prevented him from resolving his debts.

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<sup>9</sup> See *Id.*; AG ¶ 2(b).

<sup>10</sup> AG ¶ 18.

<sup>11</sup> See ISCR Case No. 03-02374 at 4 (App. Bd. Jan. 26, 2006) (citing ISCR Case No. 02-22173 at 4 (App. Bd. May 26, 2004)). When making a recency analysis for FC MC 1, all debts are considered as a whole.

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Applicant presented no evidence to show he dealt responsibly with his financial obligations before, or after receipt of the SOR (i.e., paid debts, settlements, documented negotiations, payment plans, budgets, financial assistance/counseling). Applicant's financial history and lack of favorable evidence preclude a finding that he has established a track record of financial responsibility, or that he has taken control of his financial situation. Based on the available evidence, his financial problems are likely to be a concern in the future. Moreover, his financial problems are recent, not isolated, and ongoing.

I have carefully weighed all evidence, and I applied the disqualifying and mitigating conditions as listed under the applicable adjudicative guideline. I applied the whole person concept. I specifically considered Applicant's age, education, maturity, his work experience, and his response to the DOHA interrogatories. Considering the totality of Applicant's circumstances, he demonstrated a lack of judgment and trustworthiness in the handling of his financial affairs. He has failed to mitigate the financial considerations security concerns.

**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
Subparagraphs 1.a – 1.s:	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 eligibility for a security clearance for Applicant. Clearance is denied.

Juan J. Rivera  
Administrative Judge