

DATE: May 9, 2005

In Re:

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SSN: -----

Applicant for Security Clearance

CR Case No. 02-10863

**DECISION OF ADMINISTRATIVE JUDGE**

**ROBERT J. TUIDER**

**APPEARANCES**

**FOR GOVERNMENT**

Marc E. Curry, Esq., Department Counsel

**FOR APPLICANT**

*Pro Se*

**SYNOPSIS**

Applicant fell behind on five debts totaling \$9,580.00 after going through a separation and divorce. He did little to resolve his debts during the nine years from his divorce's end to the date of his hearing. All five debts remain unresolved. Clearance is denied.

**STATEMENT OF THE CASE**

The Defense Office of Hearings and Appeals (DOHA) declined to grant or continue a security clearance for Applicant. On October 1, 2003, DOHA issued a Statement of Reasons (SOR)<sup>(1)</sup> detailing the basis for its decision-security concerns raised under Guideline F (Financial Considerations) of the Directive. Applicant answered the SOR in writing on October 18, 2003, and elected to have a hearing before an administrative judge.

The case was assigned to me on March 29, 2004. On June 1, 2004, DOHA issued a notice of hearing scheduling a hearing for June 30, 2004. The hearing was conducted as scheduled to consider whether it is clearly consistent with the national interest to grant or continue a security clearance for Applicant.

The government offered four documents, which were admitted without objection as Government Exhibits (GE) 1 through 4. The Applicant did not offer any exhibits during the hearing. I left the record open after the hearing to afford Applicant the opportunity to submit additional documents. The Applicant submitted five additional documents, which were admitted without objection as AE A through AE E. DOHA received the transcript on July 9, 2004.

**FINDINGS OF FACT**

Applicant's admissions to the SOR allegations are incorporated herein. In addition, after a thorough review of the pleadings, exhibits, and testimony, I make the following findings of fact:

Applicant is a 41-year-old married man, and stepfather of two minor children. He was previously married from April

1992 to July 1995. In August 2001, he married his current wife. Since July 1999, he has been employed by a defense contractor as a calibrations technician. Tr. 50. Applicant earned approximately six hours of college credit while on active duty.

Applicant served in the Air Force from May 1984 to May 1988, and was discharged as a Senior Airman, pay grade E-4. He served in the Army from September 1988 to March 1997, and was discharged as a sergeant, pay grade E-5. In August 1997, he enlisted in his state National Guard and is a sergeant, pay grade E-5. He has held a security clearance except for periods of broken service at the secret level since May 1984. He currently holds a security clearance at the secret level. Tr. 51.

The SOR alleges Applicant is in arrears on six debts. The table below presents details about the debts alleged in the SOR, their current status, and cites to relevant parts of the record.

<b>Debt</b>	<b>Nature &amp; Amount in SOR</b>	<b>Current Status</b>	<b>Record</b>
Debt 1/SOR ¶ 1.a.	Residual debt to bank following automobile repossession \$5,530.00.	Creditor claims amount still owed. Applicant contesting account.	Tr. 13-26, GE 3, GE 2, GE 4, AE A.
Debt 2/SOR ¶ 1.b.	Collection account to bank (former dept. store) \$208.00.	Unpaid. Applicant trying to settle account.	Tr. 27-29, GE 2, GE 4, AE C.
Debt 3/SOR ¶ 1.c.	Charged off account to bank \$2,100.00.	Unpaid. Applicant contesting account.	Tr. 29-38, GE 2, GE 4, AE D.
Debt 4/SOR 1.d.	Charged off account from credit card \$853.00.	Unpaid. Applicant contesting account.	Tr. 38-40, GE 2, AE B.
Debt 5/SOR 1.e.	Collection account to finance company \$208.00.	Duplicate of Debt 2.	
Debt 6/SOR 1.f.	Collection account to finance company for correspondence course \$889.00.	Unpaid. Applicant contesting account.	Tr. 40-42, GE 2, AE E.

Debt 1 stemmed from an automobile Applicant purchased shortly before he was discharged from the Army in March 1997. Unable to find a job after the Army, Applicant joined the National Guard in August 1997 and was activated at a base near his home. He testified it took some time to get paid after affiliating with the National Guard. As a result, he fell behind on his car payments. He sought the services of a base legal assistance officer and through that attorney made payment arrangements with the bank. His car was nonetheless repossessed and the amount of \$5,300.00 is the amount the bank contends is owed as deficiency. Tr. 13-26.

Debt 3 stemmed from a truck Applicant purchased in 1994 shortly after he separated from his wife. Applicant's estranged wife had sold his truck while he was deployed. Applicant's brother co-signed a loan for a new truck to replace the one his estranged wife had sold. Applicant was making payments on his new truck, however, the checks he wrote to cover the monthly truck payments began to "bounce" because his estranged wife had removed the money from their joint bank account. Falling behind on payments, Applicant placed the truck in his brother's custody and it was eventually repossessed. The amount of \$2,100.00 is the amount the bank contends is owed as deficiency. Tr. 29-38.

In October 2001, Applicant was interviewed the Defense Security Service. Regarding the debts above, Applicant stated, "I have all intentions to pay all my delinquent accounts as soon as possible." GE 2.

Applicant submitted a budget in April 2003 showing a net remainder of \$220.00. He contacted a credit repair company in January 2003, but did not follow up with them or any other credit repair companies. Tr. 47-49.

Applicant is receiving treatment from the Veterans Administration for post-traumatic stress disorder. Tr 56-57.

Per the SOR issued in October 2003, Applicant owes five creditors a total of \$9,580.00. Debt 2 is a duplicate of Debt 5. As of the date of the hearing in June 2004, Applicant did not have any tangible plan to address these debts. Tr. 57-62. In July 2004, Applicant submitted copies of letters to the five creditors listed in the SOR. Applicant requested to settle with two of the creditors and he contested his accounts with the remaining three creditors. AE A through E.

### **POLICIES**

The Adjudicative Guidelines in the Directive are not a set of inflexible rules of procedure. Instead they are to be applied by administrative judges on a case-by-case basis with an eye toward making determinations that are clearly consistent with the interests of national security. In making overall common sense determinations, administrative judges must consider, assess, and analyze the evidence of record, both favorable and unfavorable, not only with respect to the relevant Adjudicative Guidelines, but in the context of factors set forth in section E 2.2.1. of the Directive. The government has the burden of proving any controverted fact(s) alleged in the SOR, and the facts must have a nexus to an Applicant's lack of security worthiness.

The adjudication process is based on the whole person concept. All available, reliable information about the person, past and present, is to be taken into account in reaching a decision as to whether a person is an acceptable security risk. Although the presence or absence of a particular condition for or against clearance is not determinative, the specific adjudicative guidelines should be followed whenever a case can be measured against this policy guidance.

### **BURDEN OF PROOF**

As noted by the United States Supreme Court in *Department of Navy v. Egan*, 484 U.S. 518, 528 (1988), "no one has a 'right' to a security clearance." 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 has restricted eligibility for access to classified information to "United States citizens . . . whose personal and professional history affirmatively indicates loyalty to the United States, strength of character, trustworthiness, honesty, reliability, discretion, and sound judgment, as well as freedom from conflicting allegiances and potential for coercion, and willingness and ability to abide by regulations governing the use, handling, and protection of classified information." Executive Order 12968, *Access to Classified Information* § 3.1(b) (Aug. 4, 1995). Eligibility for a security clearance is predicated upon the applicant meeting the security guidelines contained in the Directive.

Initially, the Government must establish, by substantial evidence, that conditions exist in the personal or professional history of the applicant which disqualify, or may disqualify, the applicant from being eligible for access to classified information. *See Egan*, 484 U.S. at 531. All that is required is proof of facts and circumstances which indicate an applicant is at risk for mishandling classified information, or that an applicant does not demonstrate the high degree of judgment, reliability, or trustworthiness required of persons handling classified information. Where the facts proven by the Government raise doubts about an applicant's judgment, reliability or trustworthiness, then the applicant has the ultimate burden of establishing his security suitability with substantial evidence in explanation, mitigation, extenuation, or refutation, sufficient to demonstrate that despite the existence of guideline conduct, it is clearly consistent with the national interest to grant or continue his security clearance.

Security clearances are granted only when "it is clearly consistent with the national interest to do so." *See* Executive Orders 10865 § 2 and 12968 § 3.1(b). "Any doubt as to whether access to classified information is clearly consistent with national security will be resolved in favor of the national security." Directive ¶ E2.2.2 "The clearly consistent standard indicates that security clearance determinations should err, if they must, on the side of denials." *See Egan*, 484 U.S. at 531. Doubts are to be resolved against the applicant.

### **CONCLUSIONS**

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

In the SOR, DOHA alleged Applicant had six delinquent debts (§§ 1.a. through 1.f) totaling \$9,580.00. *The Concern:* An individual who is financially overextended is at risk of having to engage in illegal acts to generate funds. Directive ¶ E2.A6.1.1.

The Government established its case under Guideline F by Applicant's admissions and evidence submitted. However, Debt 2 (¶ 1.b.) is a duplicate of Debt 5 (¶ 1.e.), thus reducing the number of debts owed by Applicant from six to five. His inability to satisfy his outstanding financial obligations gives rise to Financial Considerations Disqualifying Conditions (FC DC) E2.A6.1.2.1. (*A history of not meeting financial obligations*); and FC DC E2.A6.1.2.3. (*inability or unwillingness to satisfy debts*).

Granted, Applicant experienced a financial setback as a result of going through a separation and divorce. Applicant presented credible evidence the financial difficulties he encountered, especially pertaining to his two vehicles were in large part exacerbated as a result of his divorce. However, his divorce was final in July 1995. He was interviewed by the Defense Security Service in October 2001, his SOR was issued in October 2003, and his hearing was held June 2004. He was put on notice that his debts were a security concern in October 2001 and when his SOR was issued in October 2003. During the eight years that elapsed from his divorce being final to the SOR being issued, none of these financial concerns were resolved.

His post-hearing response was equally disappointing. Writing letters nine-plus years later to the five creditors in the SOR contesting his debts or attempting to make payment arrangements is hardly indicative of a good-faith attempt to resolve his debts. His net monthly remainder of \$220.00 suggests he had the means to address past debts. Applicant is hardly closer to resolving these debts now than he was when he was interviewed by the Defense Security Service in October 2001 or when his SOR was issued in October 2003. Accordingly, none of the mitigating conditions under E2.A6.1.3. are applicable.

Based on the totality of the circumstances, I find against Applicant on SOR §§ 1., 1.a. through 1.f. I consider the debt listed in ¶ 1.b. to be a duplicate of the debt listed in ¶ 1.e.

The awarding of a security clearance is not a once in a lifetime occurrence, but is based on current disqualifying and mitigating conditions. Under the Applicant's current circumstances a clearance is not recommended, but should the Applicant be afforded an opportunity to reapply for a security clearance, in the future, he may well demonstrate persuasive evidence of his security worthiness. A clearance at this time is not warranted.

### **FORMAL FINDINGS**

Formal findings regarding each SOR allegation as required by Directive Section E3.1.25 are as follows:

Paragraph 1. Guideline F: AGAINST APPLICANT

Subparagraph 1.a.-d: Against Applicant

Subparagraph 1.e.: Duplicate of 1.b.

Subparagraph 1.f. Against Applicant

### **DECISION**

In light of all of 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 Applicant. Clearance is denied.

**Robert J. Tuider**

**Administrative Judge**

1. Pursuant to Exec. Or. 10865, *Safeguarding Classified Information within Industry* (Feb. 20, 1960), as amended and

modified, and Department of Defense Directive 5220.6, *Defense Industrial Personnel Security Clearance Review Program* (Jan. 2, 1992), as amended and modified.