

DATE: April 17, 2002

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In Re:

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SSN: -----

Applicant for Security Clearance

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ISCR Case No. 01-00734

**DECISION OF ADMINISTRATIVE JUDGE**

**CLAUDE R. HEINY**

**APPEARANCES**

**FOR GOVERNMENT**

Kathryn D. MacKinnon, Department Counsel

**FOR APPLICANT**

*Pro Se*

**SYNOPSIS**

The Applicant owed approximately \$57,000.00 on eight accounts. Although one of the debts was related to a business failure, the Applicant was divorced, and bankruptcy proceedings have been commenced, the debts still exist. Clearance is denied.

**STATEMENT OF THE CASE**

On September 28, 2001, the Defense Office of Hearings and Appeals (DOHA) issued a Statement of Reasons (SOR) to Applicant, stating that DOHA could not make the preliminary affirmative finding [\(1\)](#) it is clearly consistent with the national interest to grant or continue a security clearance for Applicant. On October 22, 2001, the Applicant answered the SOR and requested a hearing. The case was assigned to me on January 4, 2002. A Notice of Hearing was issued on January 28, 2002, scheduling the hearing which was held on February 21, 2002. The Government's case consisted of eight exhibits (Gov. Ex.). The Applicant relied on his own testimony and six documents. (App. Ex.) The record was held open to allow the Applicant to submit additional documents. On February 28, 2002, a single, multi page submission was received. Department counsel having no objection to its admission, the submission was admitted as App. Ex. G. A transcript (tr.) of the hearing was received on February 28, 2002.

**FINDINGS OF FACT**

The SOR alleges financial considerations (Guideline F). The SOR alleged the Applicant owes approximately \$65,500.00 on eight accounts. The Applicant admitted two of the allegations and denied the rest.

The Applicant is 44-years-old, has worked for a defense contractor since November 1998 and is seeking to obtain a security clearance.

In July 1974, the Applicant entered the Navy and retired in June 1994 (App. Ex. D). In July 1978, he married his first

wife. A son was born of this marriage. In April 1993, the marriage ended in divorce which required him to pay \$250.00 per month child support and make a \$36,000.00 property settlement. These amounts are currently paid by a \$773.96 allotment from the Applicant's military retirement. The Applicant has never been late on these payments. In June 2002, the Applicant's child support obligation ends when his son graduates from high school. The allotment will continue paying off the remaining \$8,000.00 owed on the property settlement which should be paid in full in January 2003.

In October 1993, the Applicant married his second wife. At the time of their marriage, she was a government employee making approximately \$40,000.00 per year. Following the marriage she decided not to work outside the home. The Applicant separated from his second wife in late 1997 or early 1998. In April 2000, they were divorced. In October 2002, the Applicant married his current wife.

Following his retirement from the Navy, the Applicant experienced two periods of unemployment, from June 1994 through 1995 and September 1995 through January 1999 (Gov. Ex. 1, p.3) At some period following his retirement from the Navy, the Applicant started a lawn service. It started with a single lawnmower and grew until there were two mowing crews and one landscaping crew. At one time, the business employed 7 or 8 people. The work was seasonal. In the winter all employees were laid off. The company's only wintertime income came from snow plowing done by the Applicant, when weather conditions allowed. In mid 1998 or 1999, the Applicant chose to end the business. Assets were sold to cover corporate obligations.

The Applicant purchased a car financing it through a credit union (SOR subparagraph 1.a.) The Applicant's credit report (Gov. Ex. 4, page 10<sup>(2)</sup>) shows an account opened in June 1986 with the high credit amount of \$8,500.00 and the current balance owed of \$44.00. The account is listed as a bad debt. The Applicant contacted the credit union in an attempt to determine if this was his account and was informed the credit union had no information on this account.

In December 1994, the Applicant's second wife got a \$10,000.00 loan from a different credit union. In June 1997, a \$9,534.00 judgment was entered against the Applicant by the credit union (SOR subparagraph 1.f.). In May 2001, the Applicant notified the credit union he would accept responsibility for the debt and asked to establish a repayment plan (Gov. Ex. 2).

In March 1995, the Applicant's second wife purchased a truck in her name for \$14,000.00. The Applicant's credit report (Gov. Ex 8, page 3) indicates \$2,043.00 is owed on this account (SOR subparagraph 1.b.). In May 2001, although not initially obligated on the note, the Applicant notified the bank he accepted responsibility on this account and asked to set up a repayment plan (Gov. Ex. 2). The Applicant's credit report (Gov. Ex. 8) lists three accounts with this bank. The account opened March 1995, had \$2,043.00 charged off. The account, opened November 2000, had \$2,653.00 charged off. The account opened April 2001, is current.

The Applicant and his second wife lived in a house apartment with monthly rent of \$900.00. In July 1994, the Applicant was convinced to purchase the house they were renting for \$173,000.00 which increased his monthly payments for mortgage to \$1,800.00. The mortgage was sold a number of times before it went to its final lender (SOR subparagraph 1.g.). As part of the Applicant's separation agreement, the Applicant's ex-wife was to maintain the house for one year, at which time the house would be sold and equity, if any, divided. His then wife failed to make the monthly mortgage payments and foreclosure proceedings commenced. Prior to foreclosure the house was deeded back in lieu of foreclosure. At the time of the foreclosure, the debt was approximately \$20,000.00 past due. Expenses associated with the foreclosure brought the amount owed to \$38,088.00. The debt totaling \$39,744.00 are listed in the Applicant's most recent credit report, dated February 2002. (Gov. Ex. 8) The Applicant alleges the house was resold for the loan amount due and no additional funds are owed. No evidence supporting this contention was presented at hearing.

In May 1995, the Applicant opened a corporate credit card account for his lawn business (SOR subparagraph 1.d.). In March 1998, a \$1,182.00 judgment was entered against the Applicant.

In August 1997, the Applicant and his second wife filed for Chapter 13 bankruptcy protection. In April 1998, an amended Chapter 13 plan was filed (Gov. Ex. 6, p.21). At the time of filing, total assets were approximately \$223,500.00 and liabilities totaled approximately \$246,000.00, which included the house as both an asset and liability. (Gov. Ex. 24) The plan would have paid the creditors \$42,440.00 over a five-year period. In June 1998, an order confirming the plan (Gov. Ex. 6, page 109) was made which called for four monthly payments of \$670.00 and 56 additional monthly payments of \$710.00. When the plan was entered into, the Applicant believed the payment schedule was unrealistic, but he was willing to try to make the payments. After four months the Applicant could no longer continue making payments. In August 1999, because of the default, the bankruptcy was dismissed.

At that time the Chapter 13 was dismissed, the bankruptcy could have been converted into a Chapter 7 for a \$15.00 fee (Gov. Ex. 6, p. 98). The Applicant overlooked this point at the time and now wished he had proceeded at that time with the Chapter 7.

In November 1999 and January 2000, two telephone accounts totaling \$815.00 (SOR subparagraph 1.c.) were placed for collection. The Applicant

acknowledges owing the money, but does not know if the accounts were related to his defunct lawn business or was for his personal telephone.

In February 2000, a \$2,126.00 judgment was entered against the Applicant for local county income tax (SOR subparagraph 1.e.). Also in February 2000, a \$548.00 judgment was entered against the Applicant for state income tax (SOR subparagraph 1.h.). When married to his second wife, the Applicant completed his federal tax return as married filing separately. However, the return was filed as a joint return, which resulted in the Applicant owing additional tax. The Applicant does not know how this joint filing occurred. The Applicant has been working with the IRS to correct the mistake. During the past year, a tax garnishment was levied on the Applicant, but the garnishment was dismissed when the Applicant informed the IRS employee he had been working with about it. The IRS employee stated no garnishment or lien would be issued until a final determination of the Applicant's tax liability was made.

In May 2001, the Applicant sent a letter (Gov. Ex. 2) to each creditor listed in the SOR asking to set up a reasonable repayment schedule. To date none of the eight creditors have responded to his letters.

In February 2002, two days before the hearing, the Applicant filed for Chapter 7 bankruptcy protection (App. Ex. A., I.) The schedules show assets of approximately \$41,000.00 and liabilities of \$154,000.00. The Applicant believes this bankruptcy filing will eliminate his past obligations and alleges no non-asset Chapter 7 bankruptcy has ever been denied. He provided no evidence supporting this allegation. As of February 2002, the Applicant lists his and his current wife's monthly net income of \$6,257.00 and his income after expenses of \$1,748.00 (App. Ex. C)

### **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 as well. In that vein, the government not only has the burden of proving any controverted fact(s) alleged in the SOR, it must also demonstrate the facts proven 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.

Considering the evidence as a whole, this Administrative Judge finds the following adjudicative guidelines to be most pertinent to this case:

Financial Considerations (Guideline F) The Concern: An individual who is financially overextended is at risk of having to engage in illegal acts to generate funds. Unexplained affluence is often linked to proceeds from financially profitable criminal acts.

Conditions that could raise a security concern and may be disqualifying include:

1. A history of not meeting financial obligations. (E2.A6.1.2.1.)
3. Inability or unwillingness to satisfy debts. (E2.A6.1.2.3.)

Conditions that could mitigate security concerns include:

3. 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). (E2.A6.1.3.3.)

### **BURDEN OF PROOF**

Initially, the Government has the burden of proving any controverted fact(s) alleged in the Statement of Reasons. If the Government meets that burden, the burden of persuasion then shifts to the Applicant who must remove that doubt and establish 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.

A person who seeks access to classified information enters into a fiduciary relationship with the Government predicated upon trust and confidence. Where the facts proven by the Government raise doubts about an applicant's judgment, reliability or trustworthiness, the applicant has a heavy burden of persuasion to demonstrate that he is nonetheless security worthy. As noted by the United States Supreme Court in *Department of Navy v. Egan*, 484 U.S. 518, 531 (1988), "the clearly consistent standard indicates that security clearance determinations should err, if they must, on the side of denials." As this Administrative Judge understands the Court's rationale, doubts are to be resolved against the applicant.

## CONCLUSIONS

The Government has satisfied its initial burden of proof under Guideline F (Financial Considerations). Under Guideline F, the security eligibility of an applicant is placed into question when the applicant is shown to have a history of excessive indebtedness, recurring financial difficulties, or a history of not meeting financial obligations. The United States must consider whether individuals granted access to classified information are through financial irresponsibility in a position where they may be more susceptible to mishandling or compromising classified information or material for financial gain.

A person's relationship with his creditors is a private matter until evidence is uncovered demonstrating an inability or unwillingness to repay debts under agreed upon terms. Absent evidence of strong extenuating or mitigating circumstances, an applicant with a history of serious or recurring financial difficulties is in a situation of risk that is inconsistent with the holding of a security clearance. Here, Applicant's overall history of financial difficulties, which started following his October 1993 marriage, and continues to the present, provides concern. The Applicant owes approximately \$ 57,000.00 on eight accounts. As of February 2002, the Applicant lists his and his current wife's monthly net income of \$6,257.00 and his income after expenses of \$1,748.00 (App. Ex. C) Disqualifying conditions (DC) 1. <sup>(3)</sup> and 3. <sup>(4)</sup> apply.

In August 1997, the Applicant filed for Chapter 13 bankruptcy protection. In April 1998, an amended Chapter 13 plan was filed (Gov. Ex. 6, p.21). The Applicant knew the repayment plan calling for repayment of \$42,440.00 over a five year period was unrealistic, but he went along with it. After four months the Applicant could no longer make payments and in August 1999, because of the default, the bankruptcy was dismissed. In February 2002, two days before the hearing, the Applicant filed for Chapter 7 bankruptcy protection, which the Applicant believes will eliminate his past obligations. Even though the Applicant alleges no non-asset Chapter 7 bankruptcy has ever been denied, he provided no evidence to support his allegation. Mere filing of bankruptcy is insufficient, there must be a discharge of debtors before the obligations listed in the bankruptcy proceeding are eliminated. Furthermore, removal of the debt does not end the inquiry. An applicant must also demonstrate that his financial difficulties are unlikely to recur.

Mitigating Condition 3. <sup>(5)</sup> applies to SOR subparagraph 1.d. The debt is related to a defunct lawn service once owned by the Applicant. I find for the Applicant as to SOR subparagraph 1.d. However, none of the mitigating factors apply to the other debts.

The Applicant acknowledged the debts in the SOR are his debts. Some of the debts were taken out by his second wife, but the Applicant has informed the two creditors (SOR subparagraphs 1.b. and 1.f.) he desires to satisfy these debts. The Applicant believes the \$39,744.00 owed to the mortgage company was an error because the house was resold after it was deeded back in lieu of foreclosure. Although the Applicant alleges it was resold for the loan amount due, no evidence supporting this contention has been presented.

The Applicant believes the county tax judgement (SOR subparagraph 1.e) and the state tax lien (SOR subparagraph 1.h) are due to a filing error, which when corrected will result in a refund to the Applicant. He is currently working with the IRS to correct the matter. It is mere speculation by the Applicant that the correction of his federal income tax return will result in a federal refund and the cancelling of the county tax judgement and the state tax lien. Currently the debts to the state and county exist.

There is no evidence the Applicant is currently making payment pursuant to an agreement, nor is there any evidence the creditors have accepted an arrangement. Without such evidence, it is not possible to find the Applicant has initiated a good-faith effort to repay his creditors. Merely writing each creditor asking to establish a repayment plan is insufficient. MC 6. <sup>(6)</sup> does not apply.

The conduct is recent (MC 1) <sup>(7)</sup> in that the debts are still owed. It is not an isolated incident (MC 2) <sup>(8)</sup> because there are eight debts. The Applicant has not received any financial counseling, (MC 4) <sup>(9)</sup> and even though the Applicant's and his wife's monthly income, after expenses, exceeds \$4,000.00, there is no indication the Applicant has made any payments on his debts. Unexplained affluence (MC5) <sup>(10)</sup> was never alleged.

Because the Applicant has failed to present sufficient mitigation to overcome his financial irresponsibility, SOR subparagraphs 1.a., 1.b., 1.c., 1.e., 1.f, 1.g., and 1.h. are resolved against the Applicant.

In reaching my conclusions I considered the Applicant's 1997 filing for Chapter 13 bankruptcy protection and his

current monthly income exceeds his expenses. However, I find in the Applicant's favor as to these allegations, SOR subparagraphs 1.i. and 1.j.

The awarding of a security clearance is not a once in a life time occurrence, but is based on applying the factors, both disqualifying and mitigating, as set forth in the directive, to the evidence presented. 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. But, at this time, a clearance is not warranted. Additionally, the determination is not a questioning of the Applicant's patriotism and should not be seen as such.

In reaching my conclusions I have also considered: the nature, extent, and seriousness of the conduct; the Applicant's age and maturity at the time of the conduct; the circumstances surrounding the conduct; the Applicant's voluntary and knowledgeable participation; the motivation for the conduct; the frequency and recency of the conduct; presence or absence of rehabilitation; potential for pressure, coercion, exploitation, or duress; and the probability that the circumstance or conduct will continue or recur in the future.

### **FORMAL FINDINGS**

Formal Findings as required by Section 3., Paragraph 7., of Enclosure 1 of the Directive are hereby rendered as follows:

Paragraph 1 Guideline F (Financial): AGAINST THE APPLICANT

Subparagraph 1.a.: Against the Applicant

Subparagraph 1.b.: Against the Applicant

Subparagraph 1.c.: Against the Applicant

Subparagraph 1.d.: For the Applicant

Subparagraph 1.e.: Against the Applicant

Subparagraph 1.f.: Against the Applicant

Subparagraph 1.g.: Against the Applicant

Subparagraph 1.h.: Against the Applicant

Subparagraph 1.i.: For the Applicant

Subparagraph 1.j.: For the 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.

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**Claude R. Heiny**

**Administrative Judge**

1. Required by Executive Order 10865, as amended and Department of Defense Directive 5220.6 (Directive), dated January 2, 1992 as amended.
2. All page numbers referred to in government exhibits are hand written numbers appearing at the lower right of the page.

3. DC 1. A history of not meeting financial obligations. (E2.A6.1.2.1.)
4. DC 3. Inability or unwillingness to satisfy debts. (E2.A6.1.2.3.)
5. MC 3. 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). (E2.A6.1.3.3.)
6. MC 6. The individual initiated a good-faith effort to repay overdue creditors or otherwise resolve debts. (E2.A6.1.3.6.)
7. MC 1. The behavior was not recent. (E2.A6.1.3.1.)
8. MC 2. It was an isolated incident. (E2.A6.1.3.2.)
9. MC 4. The person has received or is receiving counseling for the problem and there are clear indications that the problem is being resolved or is under control.(E2.A6.1.3.4.)
10. MC 5. The affluence resulted from a legal source. (E2.A6.1.3.5.)