

DATE: September 2, 2004

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In Re:

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SSN: -----

Applicant for Security Clearance

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ISCR Case No. 01-16969

## DECISION OF ADMINISTRATIVE JUDGE

**MARTIN H. MOGUL**

### APPEARANCES

#### FOR GOVERNMENT

Edward W. Loughran, Department Counsel

#### FOR APPLICANT

*Pro Se*

### SYNOPSIS

Applicant has had a history of financial difficulties, including a bankruptcy. A significant amount of Appellant's past financial difficulties were the result of a loss of employment and then a significant period of time of retraining and underemployment, through no fault of his own. Applicant has successfully resolved much of his past overdue indebtedness, and he is making an effort to resolve the rest. Appellant is now living in a stable, financial manner and he has a mature outlook about his finances. Mitigation has been established. Clearance is granted.

**STATEMENT OF THE CASE** On September 4, 2003, the Defense Office of Hearings and Appeals (DOHA), pursuant to Executive Order 10865 and Department of Defense Directive 5220.6 (Directive), dated January 2, 1992, issued a Statement of Reasons (SOR) to Applicant which detailed reasons why DOHA could not make the preliminary affirmative finding under the Directive that it is clearly consistent with the national interest to grant or deny a security clearance for Applicant and recommended referral to an Administrative Judge to determine whether clearance should be denied or granted.

Applicant filed a notarized response, dated October 17, 2003, to the allegations set forth in the SOR, and requested a hearing before a DOHA Administrative Judge. On February 13, 2004, the case was assigned to this Administrative Judge to conduct a hearing. Pursuant to formal notice, dated March 3, 2004, a hearing was held on March 31, 2004.

At the hearing, the Government presented six exhibits, (Exhibits 1 through 6), admitted without objection, and no witnesses were presented. Applicant, acting pro se, presented twelve exhibits, (Exhibits A through L), admitted without objection into evidence, and offered his own testimony. The record was left open for Applicant to offer additional evidence, after the hearing, regarding the status of some of his debts. He submitted five documents, which have been entered into evidence without objection as Exhibit M. The transcript was received on April 21, 2004.

### FINDINGS OF FACT

In the SOR, the Government alleges that a security risk may exist under Adjudicative Guideline F (Financial

Considerations) of the Directive. The SOR contains eight allegations, 1.a. through 1.h., under Guideline F.

In his response to the SOR, Applicant admits all of the allegations, except 1.e., which he contends is a debt of which he is not aware, and 1.g. The admitted allegations are incorporated as findings of fact.

After a complete and thorough review of the evidence in the record, including Applicant's Answer to the SOR and the admitted documents, and upon due consideration of that evidence, I make the following additional findings of fact:

Applicant is a 48 year old employee for a defense contractor who seeks access to classified information. He works in the field of security, and he is a high school graduate. He is divorced and has one 15 year old daughter who lives with him. Applicant has been in the regular Army for two years and 14 years in the Army reserve. He is currently a Staff Sergeant in the National Guard, in which he has served for 14 years.

(Guideline F - Financial Considerations)

The SOR lists six debts that Applicant owed as of March 30, 2003, 1.a. to 1.e. In his response to the SOR, Applicant admits that all of these debts were owed, except 1.e., in the amount of \$1,929, but he states that he has been paying on these debts. The total of the debts admitted to be owed by Applicant was approximately \$9,660.

1.a. This debt to Creditor 1 is listed in the SOR in the amount of \$3,057 for a delinquent account. Applicant testified that he paid off this debt. A letter from the creditor, dated April 1, 2004, establishes that Applicant made a final payment of \$128.63, and this debt was paid off as of January 13, 2004 (Exhibit M ).

1.b. These two debts to Creditor 2 are listed in the SOR in the amounts of \$1,357 and \$890. Applicant testified that he has made payment on one of these debts. He is now making payments of \$50 a month until these debts are completely resolved (TR at 28-30). I conclude that he now owes \$687 on one account and \$890 on the other account.

1.c. This debt to Creditor 3 is listed in the SOR in the amount of \$768 for a delinquent account. Applicant testified that he has been making payments on this debt (TR at 52-53). A letter from the creditor, dated February 9, 2004, establishes that Applicant owes \$459.37, and if he makes final payments of \$150 for two months this debt will be satisfied. (Exhibit J). Applicant submitted a statement after the hearing as part of Exhibit M in which he avers that he will be making one final payment of \$369 on April 30, 2003, to resolve this debt. Based on his history with this debt it is my belief that this debt was satisfied on that date.

1.d. This debt to Creditor 4 is listed in the SOR in the amount of \$880 for a delinquent account. Applicant testified that he is paying \$50 a month on this account (TR at 54-55). A letter from the creditor, dated March 17, 2004, establishes that he last made a payment of \$50 on that date, and the current balance for this debt is \$1,376 (Exhibit M ).

1.e. This debt to Creditor 5 is listed in the SOR in the amount of \$1,929 for a delinquent account. Applicant testified that he did not believe he owed this debt as he never had anything but a checking account with this creditor. He testified that he paid \$105, through the military to a credit counseling organization, to try and resolve these debts but nothing was ever done by this organization (TR at 55-60). Applicant has consistently denied this debt, while conceding that he did owe every other debt listed on the SOR. Since the only evidence of this debt is a credit report, I conclude that the Government has not established that this debt is due and owing.

1.f. This debt to Creditor 6 is listed in the SOR in the amount of \$2,704 for a delinquent judgement awarded against him. Applicant testified that he had discharged this debt in the bankruptcy that he filed in 1999. Exhibit 5 lists this judgement as one to be discharged . I conclude that this debt for a judgement was discharged and is no longer owing.

1.g. This allegation states that based on a Personal Financial Statement, dated March 24, 2003, Applicant does not have enough money remaining after expenses to resolve his delinquent debts. The Personal Financial Statement shows Applicant's income is \$1,080 a month. At the hearing he testified that he now earns \$13.50 an hour. I have concluded that he was in error in his calculations of making \$1,080 a month, and that he actually earns approximately \$2,200 a month (Exhibit L). Based on this income Applicant should be able to resolve his unpaid debts without difficulty.

1.h. Applicant petitioned for Chapter 7 bankruptcy in March 15, 1999. He listed his total assets as \$1,340 and his total liabilities as \$23,875. His non-secured debts were discharged on June 28, 1999. At the time Applicant filed the bankruptcy petition, he showed his income to date as \$1,800 (Exhibit5).

Applicant's financial problems began in 1996, after he was laid off from the company for which he had worked as a machine operator for 17 ½ years. He went to a school for six months, as a full time student, to be retrained in the field of security. For several years, despite his best efforts, he was unemployed, underemployed, or continuing his limited employment with the National Guard. Applicant has worked full time at his current employment since 2000 (TR at 29-33).

Since Applicant became fully employed he has lived in a fiscally responsible manner. He only has one credit card, and he is current on all of the debts he incurred since he became fully employed (TR at 65-68).

### **POLICIES**

Enclosure 2 of the Directive sets forth adjudicative guidelines that must be carefully considered in evaluating an individual's security eligibility and making the overall common sense determination required. The Administrative Judge must take into account the conditions raising or mitigating security concerns in each area applicable to the facts and circumstances presented. 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, as the guidelines reflect consideration of those factors of seriousness, recency, motivation, *etc.*

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.

Each adjudicative decision must also include an assessment of: (1) the nature, extent, and seriousness of the conduct; (2) the circumstances surrounding the conduct, and the extent of knowledgeable participation; (3) how recent and frequent the behavior was; (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 (See Directive, Section E2.2.1. of Enclosure 2).

### **BURDEN OF PROOF**

Initially, the Government must prove controverted facts alleged in the Statement of Reasons. If the Government meets that burden, the burden of persuasion then shifts to Applicant to establish his security suitability through evidence of refutation, extenuation or mitigation sufficient to demonstrate that, despite the existence of disqualifying conduct, it is nevertheless clearly consistent with the national interest to grant or continue the security clearance. Assessment of Applicant's fitness for access to classified information requires evaluation of the whole person, and consideration of such factors as the recency and frequency of the disqualifying conduct, the likelihood of recurrence, and evidence of rehabilitation.

A person who seeks access to classified information enters into a fiduciary relationship with the U.S. Government that is predicated upon trust and confidence. Where facts proven by the Government raise doubts about Applicant's judgment, reliability, or trustworthiness, Applicant has a heavy burden of persuasion to demonstrate that he or she is nonetheless security worthy. As noted by the United States Supreme Court in *Department of the 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."

### **CONCLUSIONS**

Having considered the evidence of record in light of the appropriate legal precepts and factors, I conclude the following

with respect to Guideline F:

With respect to Guideline F, the Government has established that Applicant has had a history of financial difficulties, including a bankruptcy. However, he has successfully resolved much of his past overdue indebtedness, and he is making an effort to resolve the rest. I, therefore, resolve Guideline F for Applicant.

Regarding Disqualifying Conditions (DC) , I conclude DC E2.A6.1.2.1. applies, because of Applicant's history of not meeting financial obligations. However, I find Mitigating Condition (MC) E2.A6.1.3.3 applies because Applicant's past financial difficulties occurred because of his loss of employment. This was largely beyond Applicant's control. Additionally, MC E2.A6.1.3.6 applies because Applicant has initiated a good-faith effort to repay overdue creditors and resolve his debts. Finally, with his current employment, Applicant is now able to live within his means.

### **FORMAL FINDINGS**

Formal Findings as required by Section E3.1.25 of Enclosure 3 of the Directive are hereby rendered as follows:

#### **Paragraph 1, Financial Considerations, Guideline F: For the Applicant**

Subparagraph 1.a.: For the Applicant

Subparagraph 1.b.: For the Applicant

Subparagraph 1.c.: For the Applicant

Subparagraph 1.d.: For the Applicant

Subparagraph 1.e.: For the Applicant

Subparagraph 1.f.: For the Applicant

Subparagraph 1.g.: For the Applicant

Subparagraph 1.h.: For the Applicant

### **DECISION**

In light of all the circumstances and facts presented by the record in this case, it is clearly consistent with the national interest to grant or continue a security clearance for Applicant.

Martin H. Mogul

Administrative Judge