

DATE: November 27, 2002

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In Re:

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SSN: -----

Applicant for Security Clearance

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ISCR Case No. 01-17474

## **DECISION OF ADMINISTRATIVE JUDGE**

**KATHRYN MOEN BRAEMAN**

### **APPEARANCES**

#### **FOR GOVERNMENT**

Catherine M. Engstrom, Esquire, Attorney-Advisor Department Counsel

#### **FOR APPLICANT**

*Pro Se*

### **SYNOPSIS**

Applicant's financial problems raise security concerns. Applicant has resolved his debts to three creditors and mitigated those concerns, but he has failed to resolve his debt of over \$14,000 to Creditor A. Even though his budget shows sufficient reserves to make a greater effort to resolve this debt, he provided evidence of making only one recent \$50 monthly payment to Creditor A. He provided insufficient evidence that conditions that led to that debt were largely beyond his control. Further, Applicant provided no evidence that he has received or is receiving counseling for his financial problems. Clearance is denied.

### **STATEMENT OF THE CASE**

The Defense Office of Hearings and Appeals (DOHA) issued a Statement of Reasons (SOR) to the Applicant on May 15, 2002. The SOR detailed reasons why the Government could not make the preliminary positive finding that it is clearly consistent with the national interest to grant or continue a security clearance for the Applicant. <sup>(1)</sup> The SOR alleges specific concerns over finances (Guideline F). (Item 1) Applicant responded to these SOR allegations in an Answer notarized on July 10, 2002; he admitted all the allegations except for 1.c. He did not request a hearing, so the case was assigned to Department Counsel to prepare for a decision on the administrative record. She prepared the File of Relevant Material (FORM) for the Applicant's review and advised Applicant that he had 30 days to submit objections and/or information before the FORM was submitted to an administrative judge and that he had the right to be represented by counsel. A Personnel Security Specialist (PSS) sent the FORM to Applicant on August 2, 2002, and again notified the Applicant that he had 30 days from receipt of the letter to submit objections and/or information before the FORM was submitted to an administrative judge. Applicant received the FORM on August 20, 2002, with a response due on September 19, 2002. Applicant submitted his response on September 18, 2002 (Exhibit A); Department Counsel indicated on September 18, 2002 that she had no objection. On September 18, 2002, the case was assigned to me; I admitted Exhibit A into evidence.

### **FINDINGS OF FACT**

After a complete and thorough review of the evidence in the record, and upon due consideration of that evidence, I make the following Findings of Fact:

Applicant, 33 years old, has been an employee of Defense Contractor #1 in State #1 since 1993. In October 1998 he applied for a security clearance by completing a Questionnaire for National Security Position (Standard Form 86) (SF 86). He has two children born in 1989 and 1993. He served in the military from 1989 to 1992 and received an honorable discharge and in the national guard from 1996 to at least March 2002. (Items 4, 9)

### **Finances**

While Applicant was in the military, he wrote checks in 1992 assuming his salary would be deposited the next morning, but it was not deposited until the following day. After two checks were returned for insufficient funds, he was given an Article 15, reduced in rank one grade, and confined to barracks. He paid the checks and now uses money orders to pay his bills to avoid a recurrence. (SOR 1.d.). (Items 3, 4, 7) Also, he has satisfied a tax lien in State #1 of \$1,500 (SOR 1.c.). (Item 3)

In October 1999 he was questioned by the Defense Security Service (DSS) about adverse information in his background and provided more information on his finances. He explained in 1996 he developed financial problems when Contractor #1 began paying employees one week late and after he made loans to help out family members who then were unable to re-pay him. He consolidated a number of debts, but still got behind. His girlfriend who lived with him was unable to work in March 1999 as she was expecting a child. In October 1999 he showed a net monthly income of approximately \$2,000 with monthly expenses of over \$2,000 and a debt payment of approximately \$200 per month for his loan consolidation which he was unable to make. (Item 7)

DOHA sent an Interrogatory to ask Applicant to further explain his finances. (Item 8) He replied that in March 2002 his net monthly income was approximately \$2,300 with monthly expenses of approximately \$1,700 and debt payments of approximately \$125 per month for his loans; <sup>(2)</sup> he was making \$100 monthly payments to Creditor B for a \$6,000 debt. (Item 9) He has had a \$9,000 debt for a deficiency owed on a repossessed vehicle and an unpaid cable bill which was turned over for collection. (Items 5 and 6)

In response to the FORM Applicant provided evidence that he had paid his past cable bill in full and was making \$100 monthly payments to a credit company (Creditor B) (Creditor B has a name different from Creditor A named with the \$9,000 debt alleged in SOR 1.a.). (Exhibit A) (I cannot tell from the record whether Creditor A took over the loan from Creditor B, and Applicant provided no explanation on how Creditor B and Creditor A are related.) While Applicant did document a series of 8 payments from December 2000 to November 2001 to Creditor B, he also included an August 2002 statement that he made one \$50 payment to Creditor A which documented a debt of over \$14,000 due. He showed no other payment in 2002 on this debt to either Creditor B or A. Thus, there remains insufficient evidence that he initiated a good-faith effort to repay overdue creditor A. Further, if the debt to Creditor A is for a re-possessed car, he provided insufficient evidence that the conditions that led to that debt were largely beyond his control.

Further, Applicant provided no evidence that he has received or is receiving counseling for his ongoing financial problems. For example, Applicant provided no clear plan as to how he will resolve the debt to Creditor A. He has resolved the other listed debts in the SOR.

### **POLICIES**

Enclosure 2 of the Directive sets forth adjudicative guidelines to consider in evaluating an individual's security eligibility. They are divided into conditions that could raise a security concern and may be disqualifying and conditions that could mitigate security concerns in deciding whether to grant or continue an individual's access to classified information. But the mere presence or absence of any given adjudication policy condition is not decisive. Based on a consideration of the evidence as a whole in evaluating this case, I weighed relevant Adjudication Guidelines as set forth below :

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

**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;
3. Inability or unwillingness to satisfy debts;

**Conditions that could mitigate security concerns include:**

6. The individual initiated a good-faith effort to repay overdue creditors or otherwise resolve debts.

The responsibility for producing evidence initially falls on the Government to demonstrate that it is not clearly consistent with the national interest to grant or continue Applicant's access to classified information. Then the Applicant presents evidence to refute, explain, extenuate, or mitigate in order to overcome the doubts raised by the Government, and to demonstrate persuasively that it is clearly consistent with the national interest to grant or continue the clearance. Under the provisions of Executive Order 10865, as amended, and the Directive, a decision to grant or continue an applicant's security clearance may be made only after an affirmative finding that to do so is clearly consistent with the national interest. In reaching the fair and impartial overall common sense determination, the Administrative Judge may draw only those inferences and conclusions that have a reasonable and logical basis in the evidence of record.

## CONCLUSIONS

### **Financial Considerations**

Applicant has (1) a history of financial problems and has shown (3) an inability or unwillingness to satisfy all of his debts. Further, he was subjected to military sanctions for uttering worthless checks which he ultimately paid. He further raised security concerns by his failure to address sufficiently his \$9,000 debt to Creditor A alleged in SOR 1.a..

On the other hand, Applicant effectively mitigated the SOR allegations concerning his debts alleged in SOR 1.b, 1.c. and 1.d. By paying those debts, Applicant met mitigating conditions (MC<sup>(3)</sup>) for those debts. However, with respect to 1.a. he failed to mitigate. He did not give a complete explanation on how conditions largely beyond his control may have led to this debt (such as loss of employment, a business downturn, unexpected medical emergency, or a death, divorce or separation.) His explanation that there was delay in getting his pay check is not sufficient to mitigate under that guideline. Applicant now owes over \$14,000 to Creditor A, but did not present a plan to resolve this debt. Thus, he was unable to demonstrate he meets the "good faith" standard in repaying overdue Creditor A. Further, he never explained the relationship between his payments to Creditor A and B.

Applicant has a good income with sufficient reserves shown as of March 2002 to make a greater effort to resolve this debt. While he has had a stable job since 1993, he provided no evidence as to how he is regarded by his superiors. Thus, Applicant has not sufficiently demonstrated he is now financially responsible; for example, he gave no evidence of any effort to seek counseling or guidance to resolve his debt to Creditor A. After considering the Appendix I Adjudicative Process factors and the Adjudicative Guidelines, I rule against Applicant on subparagraph 1.a. under SOR Paragraph 1; I conclude that he has mitigated the allegations in SOR 1.b. through 1.d.

## FORMAL FINDINGS

After reviewing the allegations of the SOR in the context of the Adjudicative Guidelines in Enclosure 2 and the factors set forth under the Adjudicative Process section, I make the following formal findings:

Paragraph 1. Guideline F: AGAINST APPLICANT

Subparagraph 1.a.: Against Applicant

Subparagraph 1.b.: For Applicant

Subparagraph 1.c.: For Applicant

Subparagraph 1.d.: For 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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Kathryn Moen Braeman

Administrative Judge

1. This procedure is required by Executive Order 10865, as amended, and Department of Defense Directive 5220.6, dated January 2, 1992 (Directive), as amended by Change 4, April 20, 1999.

2. In the FORM the Government states at page 3 that Applicant recently advised the government that he was no longer using a debt consolidator and was attempting to repay his debts on his own; however that information is not included in the four pages of Item 9 forwarded for my review.

3. **Conditions that could mitigate security concerns include:** 1. The behavior was not recent; 2. It was an isolated incident; 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); 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; 5. The affluence resulted from a legal source; and 6. The individual initiated a good-faith effort to repay overdue creditors or otherwise resolve debts.