

DATE: February 12, 2003

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In Re:

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SSN: -----

Applicant for Security Clearance

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ISCR Case No. 01-20445

## **DECISION OF ADMINISTRATIVE JUDGE**

**PAUL J. MASON**

### **APPEARANCES**

#### **FOR GOVERNMENT**

Erin C. Hogan, Esq., Department Counsel

#### **FOR APPLICANT**

*Pro se*

### **SYNOPSIS**

Applicant attributes his financial problems to a divorce and lack of steady employment. In a sworn statement in September 2001, answers to interrogatories in arch 2002, and in his answer to the Statement of Reasons in October 2002, Applicant repeatedly made promises to pay off the debts or statements that he had paid certain debts or was participating in a plan to pay the debts. Applicant's repeated statements to resolve the debts, without more, do not establish his ultimate burden of persuasion under the financial considerations guideline. Clearance is denied.

### **STATEMENT OF THE CASE**

On August 8, 2002, 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, with modifications, 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 continue a security clearance for Applicant and recommended referral to an Administrative Judge to determine whether clearance should be denied or revoked. Applicant filed his Answer to the SOR on September 4, 2002. Applicant elected to have his case decided on a written record. The Government provided a copy of the File of Relevant Material (FORM) on October 9, 2002. Applicant received the FORM on October 17, 2002. He submitted a response to the Form December 3, 2002. The case was received by the undersigned for decision on December 12, 2002.

### **FINDINGS OF FACT**

The following factual findings are based on the FORM and Applicant's response. Applicant admitted all the allegations except for 1.h. Applicant claimed the debt alleged in 1.h. relates to a van which was repossessed by the creditor in 1998. According to Applicant, the van was sold above the loan value of the van, and Applicant does not believe he owes any additional money. He decided to sue the creditor.

Applicant is 64 years and has been employed as an engineer by a defense contractor since December 1997. (Item 5) He

seeks a secret clearance.

Applicant's credit bureau report (CBR, item 8) dated April 3, 2001, reflects the following debts:

1.a. Applicant owes the first creditor \$804.00 for an account opened in May 1996, which became delinquent in July 1998. In his response to the FORM, Applicant indicated he was on an unidentified payment plan of \$50.00 a month. As with his response to the other delinquent debts, Applicant furnished no documents, i.e., payment receipts, repayment plan materials or documents, or any kind of corroborative proof of payment to any of the creditors or collection agencies. 1.a. is found against Applicant.

1.b. Applicant owes a \$92.00 delinquent debt for an account opened in May 1992. Applicant stated in his response to the , "[I] sent in payment." Based on the absence of evidence supporting Applicant's claims regarding this debt as well as the others listed in the SOR, I find against Applicant under 1.b.

1.c. Applicant owes \$2,359.00 for a delinquent debt transferred to a collection agency in July 2000. Applicant provided no independent support for his claim he was repaying the debt at \$175.00 a month. 1.c. is found against Applicant.

1d. Applicant owes a telephone company a delinquent debt of \$166.00 on an account transferred for collection in October 1997. Applicant predicted he would send the payment in by October 15, 2002. Applicant's subsequent notation on December 1, 2002 in his response to the FORM that he paid the bill has little probative weight without some evidence from another source indicating he paid bill.

1.e. While Applicant contends he sent \$226.00 to the hospital to pay the debt, the lack of a cancelled check, or letter from the creditor backing up Applicant's statements, convince me a finding against Applicant is correct under 1.e.

1f. In his answer to the SOR, Applicant advised the apartment rental debt of \$461.00 would be paid by November 15, 2002. In his response to the FORM, he stated payment was in process. I find against Applicant under 1.f.

1g. Applicant stated in his reply to the SOR the delinquent debt of \$98.00 to the cable company would be paid off by November 15, 2002. In his response to the FORM, Applicant stated, "payment made." With no documentation to substantiate his claim subparagraph 1.g. is found against Applicant.

1.h. Applicant's van was repossessed in April 1998 for failure to make required installment payments on a government credit union loan. Applicant offered no proof he was disputing the debt. I find against Applicant under 1.h.

Applicant completed a security clearance application (Item 5) on July 10, 2000. Applicant incorrectly answered "no" to question 38 (in the last 7 years, have you been over 180 days delinquent on any debt(s)?), and question 39 ( Are you currently over 90 days on any debt(s)?). Applicant should have answered "yes" to both questions as all the above debts are over 90 days delinquent. Although unalleged in the SOR, Applicant's false answers raise even more doubt regarding his statements of having paid off or being on a payment plan with the other creditors.

In his sworn statement (item 7) dated September 12, 2001, Applicant promised to pay the listed debts within two years.

Item 6 are Applicant's answers to interrogatories dated March 5, 2002. <sup>(1)</sup> Applicant indicated he had taken no action to pay any of the debts but stated he would pay the smaller debts within a month and the larger debts within six months. The record shows no documented record of payment of any of the creditors.

Applicant blamed his financial problems on the domestic relations judge who required Applicant to pay \$500.00 alimony a month. Also, Applicant had trouble keeping up with payments to the listed creditors while moving to new jobs.

## POLICIES

Enclosure 2 of the Directive sets forth policy factors which must be given binding consideration in making security clearance determinations. These factors must be considered in every case according to the pertinent criterion; however,

the factors are in no way automatically determinative of the decision in any case nor can they supersede the Administrative Judge's reliance on his own common sense. Because each security case presents its own unique facts and circumstances, it should not be assumed that the factors exhaust the entire realm of human experience or that the factors apply equally in every case. In addition, the Judge, as the trier of fact, must make critical judgments as to the credibility of witnesses. Factors most pertinent to evaluation of the facts in this case are:

### **Financial Considerations**

#### **Disqualifying Conditions:**

1. A history of not meeting financial obligations;
2. Inability or unwillingness to satisfy debts.

#### **Mitigating Conditions:**

None.

### **General Policy Factors (Whole Person Concept)**

Every security clearance case must also be evaluated under additional policy factors that make up the whole person concept. Those factors (found at page 16 and 17 of Enclosure 2 of the Directive) include: (1) the nature, extent, and seriousness of the conduct; (2) the circumstances surrounding the conduct; (3) the frequency and recency of the conduct; (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 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.

### **Burden of Proof**

As set forth in the Directive, every personnel security determination must be a fair and impartial overall commonsense decision based upon all available information, both favorable and unfavorable, and must be arrived at by applying the standard that the granting (or continuance) of a security clearance under this Directive may only be done upon a finding that to do so is clearly consistent with the national interest. In reaching determinations under the Directive, careful consideration must be directed to the actual as well as the potential risk involved that an applicant may fail to properly safeguard classified information in the future. The Administrative Judge can only draw those inferences or conclusions that have a reasonable and logical basis in the evidence of record. The Judge cannot draw inferences or conclusions based on evidence which is speculative or conjectural in nature.

The Government must establish all the factual allegations under Guideline F (financial considerations) which establishes doubt about a person's judgment, reliability and trustworthiness. While a rational connection, or nexus, must be shown between an applicant's adverse conduct and his ability to effectively safeguard classified information, with respect to the sufficiency of proof of a rational connection, objective or direct evidence is not required.

Then, the Applicant must remove that doubt with substantial evidence in refutation, explanation, mitigation or extenuation which demonstrates that the past adverse conduct is unlikely to repeat itself and Applicant presently qualifies for a security clearance.

### **CONCLUSIONS**

An individual's financial habits and practices become a legitimate concern of the Department of Defense when information is developed showing the individual is not paying his bills on time. Failing to pay bills on time raises a logical inference the individual is overextended. When a person is overextended, he is at risk of engaging in illegal acts to generate funds.

Applicant's financial problems fall within the first disqualifying condition (DC) of the financial considerations

guideline. There is no record of action taken by Applicant to pay on any of the debts for at least three years. Even though Applicant has repeatedly expressed an intention in September 2001, March 2002, and October 2002 to pay the debts, Applicant's inaction requires the application of DC 3 (inability or unwillingness to satisfy debts).

The financial considerations guideline contains five mitigating conditions (MC) that potentially may mitigate the debtor's financial difficulties. However, none are available for mitigation or extenuation under the circumstances of this case. MC 1 mitigates financial problems that are not recent. MC 1 is not available to mitigate because there is no evidence in the record whether Applicant has modified his underlying behavior to prevent his present financial difficulties from getting worse in the future.

MC 2 should be considered where the financial problems were isolated. Even though there is no evidence of more recent financial problems within the last three years, Applicant cannot mitigate his financial problems with MC 2 because he has provided no evidence demonstrating changes in his financial habits to conclude his financial problems were isolated.

MC 3 may mitigate or extenuate financial problems caused by events which could not have been anticipated. While Applicant's divorce and job loss entitle Applicant to limited mitigation under MC 3, Applicant has provided no details as to why these two reasons mitigate his debt of more than \$17,000.00 to eight creditors. In addition, item 5 reflects Applicant had uninterrupted employment since 1997.

MC 4 applies to counseling for the financial problem and whether there are clear indications the matter is being resolved or is under control. Applicant has presented no evidence of counseling or any other kind of financial education. Second, there are no signs his debt is under control. In sum, Applicant can receive no mitigation under MC 4 of the financial considerations guideline.

Applicant's repeated statements in September 2001, March 2002, and October 2002 about paying off creditors or being in a payment plan are not credible without documents in support of those statements. Hence, Applicant receives no mitigation under MC 6 because there has been no good-faith effort to pay creditors or otherwise resolve debts.

Considering the evidence as a whole, Applicant has not met his burden of persuasion under the financial considerations guideline. In reaching my decision, I have also considered the general factors of the whole person concept of Directive 5220.6. Without any evidence of a change in financial habits, there is the likelihood the present financial problems will persist in the future. (whole person concept, factor #9).

### **FORMAL FINDINGS**

Formal findings required by the Section 3, paragraph 7, of Enclosure 1 of the Directive are:

Paragraph 1(financial considerations): AGAINST THE APPLICANT.

Subparagraph 1a. Against the Applicant.

Subparagraph 1.b. Against the Applicant.

Subparagraph 1.c. Against the Applicant.

Subparagraph 1.d. Against 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.

**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 Applicant.

Paul J. Mason

Administrative Judge

1. The interrogatories requested information about action Applicant had taken to pay off any of the debts identified in the SOR.