

DATE: January 13, 2003

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In Re:

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SSN: -----

Applicant for Security Clearance

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ISCR Case No. 01-22997

**DECISION OF ADMINISTRATIVE JUDGE**

**CLAUDE R. HEINY**

**APPEARANCES**

**FOR GOVERNMENT**

Kathryn D. MacKinnon, Department Counsel

**FOR APPLICANT**

*Pro Se*

**SYNOPSIS**

The Applicant owes approximately \$12,000.00 on three debts, two of which have been charged off. The Applicant acknowledges owing the money and intends make payment on the debts at some future date. The record evidence is insufficient to mitigate or extenuate the negative security implications stemming from his debts. Clearance is denied.

**STATEMENT OF THE CASE**

On August 9, 2002, 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<sup>(1)</sup> it is clearly consistent with the national interest to grant or continue a security clearance for Applicant. On September 4, 2002, the Applicant answered the SOR and requested a hearing. The case was assigned to me on November 4, 2002. A Notice of Hearing was issued on November 7, 2002, scheduling the hearing which was held on November 20, 2002.

The Government's case consisted of three exhibits (Gov Ex). The Applicant relied on his own testimony and one exhibit (App Ex). The transcript (tr.) of the hearing was received on November 27, 2002.

**FINDINGS OF FACT**

The SOR alleges financial considerations (Guideline F). The Applicant admits the allegations.

The Applicant is 28-years-old, has worked for a defense contractor since May 2002, and is seeking a security clearance.

In July 1993, a few months after graduating high school, the Applicant and his mother obtained a joint credit card account. Someone other than the Applicant used it to purchase furniture. The Applicant has asked his mother about the debt of approximately \$1,603.00. Her response was not part of the record. In February 1997, this account was charged off. Even though the Applicant never used this card, he is willing to pay this debt, but has yet to make any payment on it.

In June 1996, the Applicant opened an account with Ford Motor Credit on which approximately \$10,116.00 has been charged off. The Applicant still has the car, which was involved in an accident. His cosigner on the loan has declared bankruptcy. In September 2001, the Applicant stated (Gov Ex 3) he planned on paying this bill and hoped to start making payments in the "very near future." He has made no payments on this debt. The Appellant and his fiancée have recently purchased a timeshare on which they pay \$148.00 per month. When the timeshare's equity exceeds the amount owed on this debt, the timeshare will be sold and the debt paid. (tr. 35) When this would occur was not given, only that it would be sometime in the future.

In early 1998, while a graduate student, he and his wife went through a separation and divorce. At that time, he moved to a neighboring state. Also during 1998, the Applicant was involved in a vehicle accident, with the vehicle previously described, which wrecked his vehicle and gave him a concussion. He was out of work for six to eight weeks, but as a graduate research student, being out of work did not affect his pay. The accident resulted in \$3,500.00 in repairs to the car. The car repair shop had to obtain a judgment against the Applicant, which was paid in full by wage garnishment.

In March 1998, the Applicant opened a furniture rental account on which he owes approximately \$420.00. He was renting a whole house full of furniture for \$420.00 per month. The Applicant admits, at the time, he was living beyond his means, and acknowledges he owes this debt. The company has been purchased by another company and for the past three years the Applicant has been trying to determine how to pay this debt. (tr. 26) He has gone to the location of the old branch store to speak with them and called the headquarters of the new store. No one could locate the debt. The Applicant did not exist in their system.

The Applicant wants to seek professional credit counseling, but has not done so. As of September 2001, the Applicant intended to commence payments in the "very near future" sometime during the Fall of 2001 on the three debts. (Gov Ex 3) His monthly net remainder as of September 2001 was approximately \$1,000.00. He has a 401(k) plan at work to which he contributes 1% of his salary and the company matches it with 2%. After being with the company for two years, he intends to increase his contributions to 10% of which the company will match 8% to 12%.

In August 2002, the Applicant's net worth was \$5,000.00, but he liquidated his assets to purchase a new vehicle, moved to a new home, and make payment to catch up on the utility bills. In 2004, after completing his MBA, he will have to start paying on \$60,000.00 in student loans. Those loans are currently deferred.

A few months prior the hearing, the Applicant experienced \$500.00 in unexpected medical expenses, which he has paid.

## 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. E2.A6.1.1.

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:

None Apply.

### **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 Consideration. Under Guideline F, an Appellant is not required to be debt free but is required to manage his finances in such a way as to meet his financial obligations. 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 substantial evidence of extenuating or mitigating circumstances, an appellant 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, Appellant's overall history of financial difficulties, which started in 1997 and continues to the present, provides concern. The Appellant owes approximately \$12,000.00 on three accounts.

The Appellant acknowledged the debts are his debts, acknowledged he had not been paying them, but intends to pay them at some future date. In September 2001, the Applicant stated he would start making payments on the three debts in the "very near future" sometime during the Fall of 2001. Although he had approximately \$1,000.00 per month in income after expenses, he has made no payments on the debts. At the hearing, the Applicant again stated he would start to make payments at some time in the future.

None of the mitigating factors apply in the Appellant's favor. For Mitigating Factor (MC) 6<sup>(2)</sup> to apply there must be an "ability" to repay the debts, the "desire" to repay, and evidence of a good faith effort to repay. Although he has a desire to repay his debts, he has made no payments on the debts. The mere desire to pay past due debts is insufficient. A systematic, concrete method of handling past due liabilities is needed, which is not present here.

The Appellant has not experienced periods of unemployment and under employment, which contributed to his financial difficulties. In 1998 or 1999, he was out of work for six or eight weeks following an auto accident, but his income was not reduced by the accident. The conduct is recent (MC 1)<sup>(3)</sup> in that the debts are still owed. It is not an isolated incident (MC 2)<sup>(4)</sup> because there are three debts, at least one of which has been delinquent for more than five years. The Appellant has not received any financial counseling (MC 4),<sup>(5)</sup> but hopes to do so at some time in the future.

Additionally, there is no indication the Appellant's financial problems are under control.

Following graduation, the Applicant was involved in an auto accident with \$3,500.00 in repair cost. He also got divorced. A few months prior the hearing he experienced \$500.00 in unexpected medical costs. These are events beyond his control. However, the Applicant has failed to established how these unexpected events, two of which occurred four years ago, caused his inability to repay the three debts in question. In August 2002, he had \$5,000.00 in assets and chose to purchase a new car, pay moving expenses, and pay utility bills instead of making payment on the three debts. Since the three debts were not the result of events beyond his control, MC 3<sup>(6)</sup>

does not apply. Because the Appellant has failed to present sufficient mitigation to overcome his financial irresponsibility, I find against the Appellant as to SOR subparagraphs 1. a., 1.b., and 1.c.

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 Considerations): AGAINST THE APPLICANT

Subparagraph 1.a.: Against the Applicant

Subparagraph 1.b.: Against the Applicant

Subparagraph 1.c.: 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 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. MC 6. The individual initiated a good-faith effort to repay overdue creditors or otherwise resolve debts.
3. MC 1. The behavior was not recent.
4. MC 2. It was an isolated incident.
5. 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.
6. 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.)