

DATE: February 13, 2003

---

In Re:

-----

SSN: -----

Applicant for Security Clearance

---

ISCR Case No. 01-25672

**DECISION OF ADMINISTRATIVE JUDGE**

**CLAUDE R. HEINY**

**APPEARANCES**

**FOR GOVERNMENT**

Rita C. O'Brien, Department Counsel

**FOR APPLICANT**

*Pro Se*

**SYNOPSIS**

The Applicant owes approximately \$36,000.00 on three student loans. The Applicant acknowledges owing the money, intends to pay these loans, and during the past year has made 18 payments, which paid approximately \$5,000.00 on these loans. He has made arrangements with the creditors to repay the loans. The record evidence is sufficient to mitigate or extenuate the negative security implications stemming from his debts. Clearance is granted.

**STATEMENT OF THE CASE**

On August 20, 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 [\(U\)](#) it is clearly consistent with the national interest to grant or continue a security clearance for Applicant. At a date uncertain during 2002, the Applicant answered the SOR and requested a hearing. The case was assigned to me on December 5, 2002. A Notice of Hearing had previously been issued on November 5, 2002, scheduling the hearing, which was held on December 6, 2002.

The Government's case consisted of four exhibits (Gov Ex). The Applicant relied on his own testimony, that of his wife, and one exhibit (App Ex). The transcript (tr.) of the hearing was received on December 13, 2002. Following the hearing, three additional documents were received, provisions having been made for their submission following the hearing. Department Counsel (DC) having no objection to their admission, the submissions were admitted as applicant's exhibits B, C, and D.

The SOR alleges financial concerns (Guideline F). The Applicant denies owing one debt and admits the other.

**FINDINGS OF FACT**

The Applicant is 47-years-old, has worked for a defense contractor since November 1980, and is seeking to maintain a secret security clearance.

The Applicant obtained three student loans to pay for his youngest son's college education. In August 1996, he obtained a loan for \$13,610.00 from the Department of Education (DoE). In October 1997, he obtained a second loan from the DoE for \$16,059.00. In 1998, the Applicant took out a loan for his son's third year<sup>(2)</sup> of college. The loan was a Sallie Mae<sup>(3)</sup> loan for \$7,600.00, which as of August 2002, had a balance owed of \$8,815. In October 2001, the Applicant made a sworn statement saying he would begin repaying the student loans in January 2002. (Gov Ex 2)

In January 2000, the Applicant made a \$1,100.00 payment on the Sallie Mae loan. (App Ex B) In March 2002, the Applicant agreed (App Ex A) to an automatic \$100.00 monthly payment (tr. 50) on this loan. Since January 2002, the Applicant has made 11 payments on this loan paying \$2,099.22, which reduced the balance to \$7,667.45. (App Ex B)

The Applicant talked with the DoE concerning loan repayment and agreed to pay \$250.00 per month. The Applicant made numerous requests for forbearance to prevent the accumulation of interest. (tr. 41) He did not keep any paperwork concerning these requests. At the hearing, the Applicant stated he has made three monthly on the two DoE loans. (tr. 37) However, since January 2002, he has actually made seven payments totaling \$2,779.72. (App Ex D)

In October 2002, the Applicant's wife became unemployed when the company that had employed her for 20 years went bankrupt. Her job contributed \$700.00 to \$800.00 per month, after taxes, to the family's income. The Applicant was aware as the bills arrived, but it was his wife who controlled the checkbook and paid the bills. (tr. 57) She states:

So he had some knowledge, but he hasn't had total knowledge of the schedule way I was paying bills. I have thought at some time of turning the checkbook over to him because I wasn't doing such a good job or we wouldn't be here. There are circumstances that come up where I was trying to juggle family and finance and I think that's what brought us here. (tr. 58)

The Applicant's job pays him \$43,000 a year. (App Ex C) The Applicant has a 401(k) retirement program and \$1,610.00 was added to it during 2002. The Applicant and his wife have a part time business which generates \$40.00 to \$50.00 per month. Since 1996, when their youngest son started college, they have taken no vacations. Their 1984 car was given to them by a cousin. (tr. 39) The Applicant is supporting his granddaughter; paying for her food, clothes, and medical needs. He also paid for his oldest son's legal fees. The Applicant intends to pay the loans in full.

## 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:

6. The individual initiated a good-faith effort to repay overdue creditors or otherwise resolve debts. (E2.A6.1.3.6.)

### **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, the Appellant's history of sporadic payment on three student loans provides concern. The Appellant owes approximately \$ 36,000.00 on three loans. Disqualifying Conditions (DC) 1-(4) and 3-(5) apply.

Prior the hearing, the Applicant was aware as the bill came in, but it was his wife who controlled the checkbook and paid the bills. However, she was trying to juggle family needs and finances, which resulted, at times, in sporadic payments being made. Because of her past performance, she has agreed to turn the checkbook over to the Applicant. The Applicant does not live extravagantly, he drives a 1984 car and has not had a vacation since 1996. The Applicant acknowledged the debts are his debts and intends to pay them in full.

In October 2001, the Applicant stated he would start making payments on the debts in January 2002. He has fulfilled this promise and it appears his financial problems are under control. Since January 2002, the Applicant has made 18 payments totaling \$4,878.94. The Applicant has a \$100.00 automatic monthly payment to repay the Sallie Mae loan. Between January 2002 and December 2002, the Applicant made 11 payments totaling approximately \$2,100.00 on this loan. With the automatic, systematic monthly repayment of this loan, Mitigating Condition (MC) 6-(6) applies. I find for the Appellant as to the Sallie Mae loan, SOR subparagraph 1. a.

The other two loans, totaling approximately \$28,000.00, are owed to the same creditor. During the last 12 months, the Applicant has made seven payments totaling \$2,779.72. The Applicant has talked with the DoE concerning loan repayment and agreed to pay \$250.00 per month. He has initiated a good-faith effort to repay the DoE. Mitigating Condition (MC) 6-(7) applies. I find for the Appellant as to SOR subparagraph 1. b.

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 (Financial Considerations): FOR THE APPLICANT

Subparagraph 1.a.: For the Applicant

Subparagraph 1.b.: For the Applicant

### **DECISION**

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

---

**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. His son took out a loan for his fourth year because the Applicant was unable to secure a fourth loan. (tr. 38)
3. This loan had been sold or transferred from Sallie Mae to a bank, but for reference it will be listed as the Sallie Mae loan throughout this decision.
4. DC 1. A history of not meeting financial obligations. (E2.A6.1.2.1.)
5. DC 3. Inability or unwillingness to satisfy debts. (E2.A6.1.2.3.)
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 6. The individual initiated a good-faith effort to repay overdue creditors or otherwise resolve debts. (E2.A6.1.3.6.)