

DATE: November 12, 2003

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In re:

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SSN: -----

Applicant for Security Clearance

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ISCR Case No. 02-06687

**DECISION OF ADMINISTRATIVE JUDGE**

**PHILIP S. HOWE**

**APPEARANCES**

**FOR GOVERNMENT**

Erin C. Hogan, Esq., Department Counsel

**FOR APPLICANT**

*Pro Se*

**SYNOPSIS**

Applicant is 45 years old and works as a truck driver for a defense contractor on a military base. Applicant has three delinquent debts owed, one debt is his mortgage on his former family home, the second owed to a cellular telephone company for service provided, and the third on the auto lease he had since 2000. Applicant mitigated all the debts by payment or lawful dispute (as to the mortgage balance) and financial considerations are allayed. Clearance is granted.

**STATEMENT OF THE CASE**

On May 23, 2003, the Defense Office of Hearings and Appeals (DOHA), under Executive Order 10865, *Safeguarding Classified Information Within Industry*, dated February 20, 1960, as amended and modified, and Department of Defense Directive 5220.6, *Defense Industrial Personnel Security Clearance Review Program* (Directive), dated January 2, 1992, as amended and modified, issued a Statement of Reasons (SOR) to Applicant. The SOR detailed reasons under Guideline F (Financial Considerations) 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. DOHA recommended referral to an Administrative Judge to conduct proceedings and determine whether clearance should be granted, continued, denied, or revoked.

Applicant submitted a signed and sworn statement, dated July 11, 2003. He admitted the first two allegations contained in the SOR. The final allegation he denied on the basis the debt, a car lease final payment, was paid. Applicant requested his case be decided on the written record in lieu of a hearing.

On August 15, 2003, Department Counsel submitted the Department's written case. A complete copy of the file of relevant material (FORM) was provided to the Applicant. He was given the opportunity to file objections and submit material in refutation, extenuation, or mitigation. Applicant requested a 30-day extension of time to submit a response to the FORM, making thereby the response date October 25, 2003. The request was granted. On October 27, 2003, Applicant's response was received. The case was assigned to me November 6, 2003.

## FINDINGS OF FACT

Applicant admitted the first and second subparagraphs of the SOR allegations (1.a. and 1.b.). Those admissions are incorporated herein as findings of fact. Applicant denied the third debt as alleged in subparagraph 1.c. After a complete and thorough review of the evidence in the record, and upon due consideration of that evidence, I make the following additional findings of fact:

Applicant is 45 years old and works as a vehicle operator for a defense contractor. Applicant is married and has two children aged 25 and 15. Applicant's wife is chronically ill and on social security disability payments. Applicant has a good work history. (Item 5 at 1 and 2; Item 6 at 1 and 2, 4 to 6; Item 10 at 1; Response at 1; Response attachment 18)

Applicant owes a debt collector at least \$35, 226.00 on a mortgage for a house he purchased for his family's residence in 1980. Applicant paid \$38,000 for the house at that time. He has made regular payments since 1980. For a reason not explained in the record evidence, the collection of the mortgage payments was being done by a debt collector since January 25, 2001. Applicant disputes the amount sought to be collected by the debt collector, and sought assistance from his U.S. Representative to obtain a complete explanation and accounting of payments made. Applicant moved out of the house in an attempt to resolve the debt. Applicant moved his family into a home owned by a relative and saves paying rent or a mortgage payment (Response at 2 to 4, Response attachments 3 to 17; Item 7 at 1 to 3; Item 8 at 1; Item 9 at 4; Item 10 at 14 to 18)

Applicant is paying the cellular telephone bill listed as an outstanding debt in subparagraph 1.b. of the SOR in the monthly amount of \$13.00. Applicant admits the debt and is paying the debt on the installment basis. (Response at 1; Response attachment 1)

Applicant leased a Ford F150 pickup truck in 2000. The lease expired in July 2003. Applicant owed money on the balance of the lease, but has paid the debt and obtained a letter from Ford Motor Credit Company stating the debt is paid in full as of July 16, 2003. Ford Motor Credit Company's letter of October 27, 2003, states also that the credit reports will be updated with information to show the debt no longer is owed. (Response at 1; Response attachment 2 at 1 to 3)

## POLICIES

"[N]o one has a 'right' to a security clearance." *Department of the Navy v. Egan*, 484 U.S. 518, 528 (1988). As Commander in Chief, the President has "the authority to . . . control access to information bearing on national security and to determine whether an individual is sufficiently trustworthy to occupy a position . . . that will give that person access to such information." *Id.* At 527. The president has restricted eligibility for access to classified information to United States citizens "whose personal and professional history affirmatively indicates loyalty to the United States, strength of character, trustworthiness, honesty, reliability, discretion, and sound judgement, as well as freedom from conflicting allegiances and potential for coercion, and willingness and ability to abide by regulations governing he use, handling, and protection of classified information." Exec. Or. 12968, *Access to Classified Information* Section 3.1(b) (Aug. 4, 1995). Eligibility for a security clearance is predicted upon the applicant meeting the security guidelines contained in the Directive.

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. Enclosure 2 to the Directive sets forth adjudicative guidelines that must be carefully considered according to the pertinent Guideline in making the overall common sense determination required.

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).

Because each security case presents its own unique facts and circumstances, it should not be assumed that the factors exhaust the realm of human experience or that the factors apply equally in every case. Moreover, although adverse information concerning a single condition may not be sufficient for an unfavorable determination, the individual may be disqualified if available information reflects a recent or recurring pattern of questionable judgment, irresponsibility, or other behavior specified in the Guidelines.

Initially, the Government must establish, by substantial evidence, that conditions exist in the personal or professional history of the applicant which disqualify, or may disqualify, the applicant from being eligible for access to classified information. See *Egan*, 484 U.S. at 531. All that is required is proof of facts and circumstances that indicate an applicant is at risk for mishandling classified information, or that an applicant does not demonstrate the high degree of judgment, reliability, or trustworthiness required of persons handling classified information. ISCR Case No. 00-0277, 2001 DOHA LEXIS 335 at \*\*6-8 (App. Bd. 2001). Once the Government has established a *prima facie* case by substantial evidence, the burden shifts to the applicant to rebut, explain, extenuate, or mitigate the facts. See Directive Para E3.1.15. An applicant "has the ultimate burden of demonstrating that is clearly consistent with the national interest to grant or continue his security clearance." ISCR Case No. 01-20700 at 3 (App. Bd. 2002). "Any doubt as to whether access to classified information is clearly consistent with national security will be resolved in favor of the national security." Directive Para. E2.2.2. "[S]ecurity clearance determinations should err, if they must, on the side of denials." *Egan*, 484 U.S. at 531. See Exec . Or. 12968 Section 3.1(b).

Based upon a consideration of the evidence as a whole, I find the following adjudicative guidelines most pertinent to an evaluation of the facts of this case:

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

An individual who is financially overextended is at risk of having to engage in illegal acts to generate funds. Directive, ¶ E2.A6.1.1.

Conditions that could raise a security concern and may be disqualifying include:

- (1) A history of not meeting financial obligations. Directive, ¶ E2.A6.1. 2.1.
- (3) Inability or unwillingness to satisfy debts. Directive, ¶ E2.A6.1.2.3.

Conditions that could mitigate security concerns include:

- (3) The conditions that resulted in the behavior were largely beyond the person's control. Directive, ¶ E2.A6.1.3.3.

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

#### **CONCLUSIONS**

In the SOR, DOHA alleged Applicant failed to pay delinquent debts that were past due, charged off, or placed for collection (subparagraphs 1.a. to 1.c.). An applicant who is financially overextended is at risk of having to engage in illegal acts to generate funds. Directive ¶ E2.A6.1.1. Disqualifying Conditions (DC) 1 and 3 are present and apply.

The Mitigating Conditions (MC) that apply are MC 3 and MC 6. First, MC 3 applies because the circumstances of an abusive debt collector who cannot explain to the Applicant or his Congresswoman exactly what the basis for the debt is and why so much money is owed after payments were made for 20 years is a circumstance beyond Applicant's control. The mortgage debt is in dispute by Applicant with the bill collector company. There is also sufficient evidence in the file that raises a question about the validity of the debt. Applicant also involved his U.S. Representative in an attempt to resolve the dispute. Applicant also submitted evidence that he was making regular payments on the mortgage debt for over twenty years. After considering all the record evidence, I give greater weight to the evidence submitted the Applicant than to the credit report's standard entry that was put there by the debt collector with no explanation. Applicant has also moved out of his residence of 20 years duration in an attempt to resolve the matter finally.

Furthermore, regarding MC 6, Applicant paid the auto lease and has a letter from the lessor that all monies owed are paid. The wireless telephone bill is currently being paid on an installment basis. Applicant made his good-faith efforts to repay these bills, and succeeded in the auto lease debt.

I considered all of the record evidence, and weighed it accordingly. I made my conclusions and decision based only on that evidence. The finding is for Applicant.

### **FORMAL FINDINGS**

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

Paragraph 1 Guideline F: For Applicant

Subparagraph 1.a.: For Applicant

Subparagraph 1.b.: For Applicant

Subparagraph 1.c.: For Applicant

### **DECISION**

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

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Philip S. Howe

Administrative Judge