

DATE: December 8, 2005

In Re:

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SSN: -----

Applicant for Security Clearance

ISCR Case No. 02-27259

**DECISION OF ADMINISTRATIVE JUDGE**

**CLAUDE R. HEINY**

**APPEARANCES**

**FOR GOVERNMENT**

Francisco Mendez, Esquire and

Jason Perry, Esquire, Department Counsel

**FOR APPLICANT**

*Pro Se*

**SYNOPSIS**

Applicant failed to resolve \$8,700 owed to nine creditors. Even though Applicant has been aware of the government concern about his finances since June 2002, he has not paid any of the debts listed in the Statement of Reasons (SOR). The record evidence is insufficient to mitigate or extenuate the negative security implications stemming from Applicant's unpaid debts. Clearance is denied.

**STATEMENT OF THE CASE**

On November 9, 2004, 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. Security concerns were alleged under Guideline F (Financial Considerations) and Guideline E (Personal Conduct). DOHA recommended the case be referred to an administrative judge to determine whether a clearance should be granted, continued, denied, or revoked.

On January 4, 2005, Applicant answered the SOR and requested a hearing. On July 5, 2005, I was assigned the case. On August 30, 2005, a Notice of Hearing was issued scheduling the hearing which was held on September 13, 2005. On September 27, 2005, DOHA received a copy of the transcript (Tr.). The record was kept open to allow Applicant to submit additional documents. Several documents were received and admitted into the record, without objection, as Applicant's Exhibit (App Ex) B.

**FINDINGS OF FACT**

In his response to the SOR, Applicant admits filing for Chapter 7 bankruptcy protection in 1999, admits owing the 10 debts listed in the SOR and falsifying his Security clearance application. These admissions are incorporated herein as findings of fact. After a thorough review of the entire record, I make the following additional findings of fact:

Applicant is a 36-year-old network engineer who has worked for a defense contractor since August 2001, and is seeking to maintain a secret security clearance.

Applicant is regarded by those who know him as a highly intelligent and perceptive person. In the second quarter of 2005, he received an award for his work performance.

In June 1996, Applicant's car was stolen and with it his wallet containing his driver's license, credit cards, and checks. A copy of the police report was sent to the credit bureaus and fraud alerts were put on all his accounts. Following the theft, a number of illegal charges were made. He was unemployed for three months in 1999 and in 2000. He was also out of work from September 2001 to December 2001 (Tr. 47). In October 1999, Applicant filed for Chapter 7 bankruptcy protection listing obligations of \$16,774 (Gov Ex 9). Applicant states he filed to get a fresh start and to avoid the debts incurred through identity theft (Tr. 27). The bankruptcy was completed in February 2000 (Gov Ex 3). The chain discount store debt listed in SOR 1.h. was included in Applicant's Chapter 7 bankruptcy. None of the other nine debts alleged in the SOR were included in the bankruptcy schedule of debtors.

The debt (\$229) in SOR 1.b was placed for collection in March 1996 three months before his wallet was stolen. Applicant claims this debt was deleted from his credit report but was unable to list which account it was (Tr. 31). He has not paid the \$1,896 debt listed in SOR 1.c, but states he has disputed this debt. Applicant supplied no documentation supporting his claim the debt has been disputed. He has not paid the \$2,800 debt listed in SOR 1.d, the \$541 debt listed in SOR 1.e, the \$451 debt listed in SOR 1.f, or the \$231 debt listed in 1.g. At the hearing, Applicant stated he should have submitted a new credit report showing the accounts were listed in the bankruptcy or deleted from his credit report (Tr. 33). Time was allowed following the hearing for Applicant to submit additional documents. He submitted some documents but not a more current credit report. Applicant provided no evidence he had disputed the debts or that they were included in his bankruptcy (Tr. 34).

Applicant has hired lawyers and consumer credit counselors who have exhausted his income and done nothing. He paid one credit counselor \$1,500 for which he received nothing (Tr. 69). In October 2004, Applicant employed the services of a financial recovery system (FRS) whereby he would make monthly payments of \$93 to pay the services fee of \$895 (App Ex A). Three of the debts listed in the SOR (SOR 1.i, 1.j, and 1. k) are listed under unsecured debt (App Ex B), however only two of the debts were to be currently addressed. Under comments it states: "Client request[s] [FRS] make payment arrangements with both . . . accounts [SOR 1.i and 1.j] totaling no more than \$100 per month. Client wishes not [to] address other delinquent debt at this time." Applicant was to make payment on the two accounts when directed by FRS. The two accounts were established after his bankruptcy and October 2001 is listed as "DLA," which means "date of last activity." He used these credit cards for living expenses when he was unemployed from September 2001 to December 2001 (Tr. 47).

The third debt listed on a FRS worksheet is for \$510. Applicant states he has recently been presented with this debt and does not believe he opened this account (Tr. 38).

In June 2002, Applicant was questioned about his finances during an interview with Defense Security Service (DSS) special agent (Gov Ex 2). In June 2003, he was sent written interrogatories about his debts and current financial status. In May 2004, additional interrogatories were requested of Applicant concerning his finances.

Applicant's yearly salary is \$54,000. His wife is a school teacher with monthly income of \$900 (Tr. 60). He is current on his monthly \$732 child support obligations. He understands the big responsibility associated with his credit and understands he needs a budget. He has recently purchased a new car financing the \$23,000 purchase price over five to six years. Applicant is unsure the interest rate he is being charged on this loan. His monthly car payments are \$480 and his insurance is \$210 per month.

Applicant owes approximately \$9,000 on nine debts. A summary of the current status of those debts follows:

	Creditor	Amount Owed	Current Status
1.b	debt	\$229	Unpaid. Written off before Applicant lost his wallet.

1.c	debt	\$1,896	Unpaid.
1.d	debt	\$2,808	Unpaid.
1.e	debt	\$541	Unpaid.
1.f	debt	\$451	Unpaid.
1.g	debt	\$231	Unpaid.
1.h	national discount store	\$423	Included in Chapter 7.
1.i	credit card debt	\$952	Listed in FRS agreement. No evidence of payment.
1.j	credit card debt	\$1,115	Listed in FRS agreement. No evidence of payment.
1.k	debt	\$510	Unpaid.
		\$9,156	Total of Debts alleged in SOR

On February 15, 2002, Applicant completed a Security Clearance Application, Standard Form (SF) 86. In response to Question 38 Applicant failed to indicate he had ever been more than 180 days delinquent on any debt. He answered "Yes" and listed a single delinquent account. In response to Question 39, he failed to indicate he was currently more than 90 days delinquent on any debt. He answered as he did because he was unaware of his debts. At the time he completed his SF 86, he was not receiving any mail or telephone calls from creditors except for telephone calls from collectors for accounts created through the identity theft.

A July 2004 judgment not listed in the SOR has been paid (Tr. 44). He has recently paid off a car loan (Tr. 74).

### **POLICIES**

The Directive sets forth adjudicative guidelines to be considered when evaluating a person's eligibility to hold a security clearance. Disqualifying Conditions (DC) and Mitigating Conditions (MC) are set forth for each applicable guideline. Additionally, each decision must be a fair and impartial commonsense decision based upon the relevant and material facts and circumstances, the whole person concept, and the factors listed in Section 6.3 of the Directive. The adjudicative guidelines 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. The presence or absence of a particular condition or factor for or against clearance is not determinative of a conclusion for or against an applicant. However, the adjudicative guidelines should be followed whenever a case can be measured against this policy guidance. Considering the evidence as a whole, I conclude the relevant guidelines to be applied here are Guideline F (Financial Considerations) and Guideline E (Personal Conduct).

### **BURDEN OF PROOF**

The sole purpose of a security clearance decision is to decide if it is clearly consistent with the national interest to grant or continue a security clearance for an applicant. 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, an applicant from being eligible for access to classified information. The burden of proof in a security clearance case is something less than a preponderance of evidence, although the government is required to present substantial evidence to meet its burden of proof. Substantial evidence is more than a scintilla, but less than a preponderance of the evidence. All that is required is proof of facts and circumstances which 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. Additionally, the government must prove controverted facts alleged in the SOR. Once the government has met its burden, the burden shifts to an applicant to present evidence to refute, extenuate or mitigate the government's case. Additionally, an applicant has the ultimate burden of persuasion to obtain a favorable clearance decision. <sup>(2)</sup>

As noted by the United States Supreme Court in *Department of Navy v. Egan*, 484 U.S. 518, 528 (1988), "no one has a 'right' to a security clearance." A person who has access to classified information enters into a fiduciary relationship with the government based on trust and confidence. The government, therefore, has a compelling interest in ensuring

each applicant possesses the requisite judgment, reliability and trustworthiness of one who will protect the national interests. The "clearly consistent with the national interest" standard compels resolution of any reasonable doubt about an applicant's suitability for access to classified information in favor of protecting national security. Security clearance determinations should err, if they must, on the side of denials.

### CONCLUSIONS

The Government has satisfied its initial burden of proof under Guideline F, financial considerations. 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 evidence of strong extenuating or mitigating circumstances, an applicant with a history of serious or recurring financial difficulties is in a position of risk that is inconsistent with the holding of a security clearance. An applicant is not required to be debt free, but is required to manage his finances so as to meet his financial obligations. An applicant who is financially overextended is at risk of having to engage in illegal acts to generate funds. Directive E.2.A.6.1.1.

Additionally, an individual who is financially irresponsible may also be irresponsible, unconcerned, or careless in their obligations to protect classified information. Behaving responsibly or irresponsibly in one aspect of life provides an indication of how a person may behave in other aspects of life.

The Applicant owes nine debts totaling approximately \$8,700. Disqualifying Conditions (DC) 1 (E2.A6.1.2.1 *A history of not meeting financial obligations*) and 3 (E2.A6.1.2.3 *Inability or unwillingness to satisfy debts*) apply.

One of the debts (SOR 1. h) was included in Applicant's October 1999 bankruptcy. Applicant chose to file for bankruptcy protection due to identity theft and periods of unemployment. I will not find against him for having to seek bankruptcy protection. I find for Applicant as to SOR 1.a and 1.h.

Applicant asserts six of the debts (SOR 1.b, 1.c, 1.d, 1.e, 1.f, and 1.g) were either included in his bankruptcy, have been disputed, or do not appear on his current credit report. He failed to document the debts were disputed and did not submit a current credit report, although given time to do so. The schedule of unsecured creditors in his bankruptcy do not list any of these debts, which indicates they were not included in his bankruptcy and, therefore, have not been discharged (Gov Ex 9). Additionally, there are numerous reasons why a debt no longer appears on one's credit report other than that it was paid. In fact, if the debt were to be paid, that act would normally be reflected on the credit report. Applicant has not paid any of these debts.

To his credit Applicant has employed two credit services to help him resolve his credit problems. He paid one credit counseling service \$1,500 for which he received no benefit and paid approximate \$900 to a financial recovery system (FRS), which he employed a year ago. Applicant alleges two debts (SOR 1.i and 1.j) are being handled through an arrangement with FRS. The record fails to support payment has been made on these debts. The FRS documents reflects FRS "will attempt" to negotiate repayment on the two debts, and only these two debts, not to exceed \$100 monthly. There is no evidence FRS was able to negotiate such a repayment schedule nor is there any evidence Applicant has made payment on these debts. A third debt (SOR 1.k) is listed on a FRS worksheet under unsecured debt, but the agreement specifically indicated only two debts were to be addressed.

Applicant was first made aware of the government's concerns about the security significance of his unpaid debts during a June 2002 interview, and again during June 2003 interrogatories, a May 2004 interrogatories, and in the November 2004 SOR. Since becoming aware of the government concern, Applicant paid off two debts not listed in the interrogatories or the SOR and paid the service fee for the two credit services. In reviewing his priorities, instead of paying any of the creditors listed in the SOR, he chose instead to purchase a \$23,000 vehicle with monthly payments for the vehicle and insurance of approximately \$700 per month. Had Applicant delayed the purchase of his car for six months and applied the monthly fee to his debts he would have been able to address six of nine unpaid debts listed in the SOR.

Applicant's recent efforts to pay off his indebtedness are not a substitute for a consistent record of timely remedial action. A period of sound financial management is lacking. None of the Mitigating Conditions (MC) apply in the Applicant's favor to the remaining nine unpaid debts. MC 1 (E2.A6.1.2.1 *The behavior was not recent*) does not apply

because the conduct is recent since the debts remain unpaid. MC 2 (E2.A6.1.2.2 *It was an isolated incident*) does not apply because there are nine debts. There was no showing the debts were caused by factors beyond Applicant's control. Periods of unemployment were mentioned, but the record is minimal as to the impact of these periods of unemployment on Applicant's finances. The record shows Applicant attempted to reduce the impact of his 2002 period of unemployment by using the credit cards that are now debts (SOR 1.i and 1.j) listed in the SOR.

There is no showing Applicant has received financial counseling nor is there evidence his financial difficulties are under control. For MC 6 (E2.A6.1.2.6 *The individual initiated a good-faith effort to repay overdue creditors or otherwise resolve debts*) to apply there must be an "ability" to repay the debts, the "desire" to repay, and evidence of a good-faith effort to repay. A systematic, concrete method of handling his debts is needed, which is not present here. He has paid FRS its fee, but there is no evidence of payment to any creditor. Because he has failed to document payment of his debts, I find against Applicant on financial considerations.

The Government has satisfied its initial burden of proof under guideline E, (Personal Conduct). Under Guideline E, the security eligibility of an applicant is placed into question when that applicant is shown to have been involved in personal conduct which creates doubt about the person's judgment, reliability, and trustworthiness. Complete honesty and candor on the part of applicants for access to classified information is essential to make an accurate and meaningful security clearance determination. Without all the relevant and material facts, a clearance decision is susceptible to error, thus jeopardizing the nation's security.

The allegations under Guideline E, (Personal Conduct) are unfounded. The Government has shown Applicant's answer to questions 38, and 39 were incorrect. However, this does not prove the Applicant deliberately failed to disclose information about his finances even though he admitted the allegations in his response to the SOR. The Applicant has denied intentional falsification. Deliberate omission, concealment, or falsification of a material fact in any written document or oral statement to the Government when applying for a security clearance is a security concern. But every inaccurate statement is not a falsification. A falsification must be deliberate and material. It is deliberate if it is done knowingly and willfully. An omission concerning over due accounts and delinquencies is not deliberate if the person did not know of their existence.

In January 2002, when Applicant completed an SF 86 he answered "no" to question 38 which asked him if he had been more than 180 days delinquent on any debt and question 39 which asked him if he was currently more than 90 days delinquent. Applicant's last activity on his credit cards (SOR 1.i and 1.j) occurred in October 2001 and the SF 86 was completed in February 2002, which is not 180 days. At the time he completed his SF 86, he was not receiving any mail concerning overdue or past due accounts and the only calls he was receiving were concerning accounts that resulted from the identity theft. His answers to questions 38 and 39 were not deliberate omissions, concealment or falsifications. I find for Applicant as to Personal Conduct, SOR subparagraph 2.

In reaching my conclusions I have also considered: the nature, extent, and seriousness of the conduct; Applicant's age and maturity at the time of the conduct; the circumstances surrounding the conduct; 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.

The awarding of a security clearance is not a once in a life time occurrence, but is based on applying the factors, both disqualifying and mitigating, as set forth in the directive, to the evidence presented. Under the Applicant's current circumstances a clearance is not recommended, but should the Applicant be afforded an opportunity to reapply for a security clearance in the future, with the timely payment of his debts, sound financial management, and no future serious or recurring financial difficulties, he may well demonstrate persuasive evidence of his security worthiness. A clearance at this time is not warranted.

### **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 APPLICANT

Subparagraph 1.a: For Applicant

Subparagraph 1.b: Against Applicant

Subparagraph 1.c: Against Applicant

Subparagraph 1.d: Against Applicant

Subparagraph 1.e: Against Applicant

Subparagraph 1.f: Against Applicant

Subparagraph 1.g: Against Applicant

Subparagraph 1.h: For Applicant

Subparagraph 1.i: Against Applicant

Subparagraph 1.j: Against Applicant

Subparagraph 1.k: Against Applicant

Paragraph 2 Guideline E (Personal Conduct): FOR APPLICANT

Subparagraph 2.a: For Applicant

Subparagraph 2.b: 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 Applicant. Clearance is denied.

**Claude R. Heiny**

**Administrative Judge**

1. Required by Executive Order 10865, *Safeguarding Classified Information Within Industry*, as amended, and Department of Defense Directive 5220.6, *Defense Industrial Personnel Security Clearance Review Program* (Directive), dated January 2, 1992, as amended.
2. ISCR Case No. 93-1390 (January 27, 1995) at pp. 7-8; Directive, Enclosure 3, Item E3.1.15.