

DATE: July 13, 2005

In Re:

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SSN: -----

Applicant for Security Clearance

ISCR Case No. 02-30242

## **DECISION OF ADMINISTRATIVE JUDGE**

**ARTHUR E. MARSHALL, JR.**

### **APPEARANCES**

#### **FOR GOVERNMENT**

Jennifer I. Campbell, Esq., Department Counsel

#### **FOR APPLICANT**

*Pro Se*

### **SYNOPSIS**

Applicant is a 26-year-old employee of a defense contractor. Married at 19 and a father by age 21, the couple held their family financially together without accruing significant debt while he attended college. With the birth of their son, however, their situation and their finances changed. His wife chose not to work, he pursued full-time employment, his son faced a medical crisis, and then his wife left them to commence an informal separation. Facing a new life as a single father, Applicant sought to return to financial stability and implemented a serious budget and debt payment plan. He had already commenced paying off his 12 principal debts when they were formally brought to his attention as part of this security clearance application process. Within six months, all but one debt was fully repaid. Applicant has mitigated security concerns. Clearance is granted.

### **STATEMENT OF THE CASE**

On August 19, 2004, the Defense Office of Hearings and Appeals (DOHA), pursuant to 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). That SOR detailed why, pursuant to Guideline F (Financial Considerations), it 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. In response, by letter of September 13, 2004, Applicant admitted to the 12 allegations contained in the SOR and requested an administrative determination based on the record.

The Government's case was submitted on February 9, 2005, and a complete copy of the file of relevant material (FORM)-[\(U\)](#) was provided to Applicant. Applicant was afforded the opportunity to file objections and submit evidence in refutation, extenuation, or mitigation. Applicant signed for a copy of the FORM on March 9, 2005, and, in response, timely submitted a narrative with 11 attachments in mitigation of the allegations. I was assigned this case on May 12, 2005.

## FINDINGS OF FACT

Applicant has admitted to the 12 allegations set forth in the SOR. After a complete and thorough review of the evidence in the record, and upon due consideration of same, I make the following additional findings of fact:

Applicant is a 26-year-old who has worked for a defense contractor since June 2002. In 1998, at age 19, Applicant married his then 18-year-old girlfriend. By 2000, he was in college and his wife was with child. A son was born that December and Applicant's wife chose to stay at home rather than work. Applicant, who worked throughout college as a part-time student employee in a career-complementary position, as well as holding down anywhere from one to two additional part-time jobs in the food service industry, continued his studies and provided for his family. In 2002, at age 23, he became a graduate of a leading engineering university and, several months later, he secured his present employment. In 2003, their son faced an unanticipated medical crisis. Months later, Applicant's wife left and commenced informal separation as a precursor to divorce, leaving Applicant as a single parent with custody of his son. As of 2004, the couple was heading toward an uncontested divorce, with Applicant maintaining custody of their son and, pursuant to state law, paying for his wife's life, health, dental, and automobile insurance policies until the formal, legal separation is sanctioned.

Around the same time in 2003 that he and his wife first separated, and well in advance of the issuance of the SOR, Applicant took a hard look at his finances and realized they were in sad disorder. He soon recognized that he and his wife had spent money on "unnecessary expenses such as dining out and needless purchases which made the other bills late." <sup>(2)</sup> With the help of financial planning software, diligent self-analysis, and a commitment to be more financially responsible, Applicant instituted a budget and a plan to pay back debts. His method was to first reduce debts by using cash then on-hand, then to use excess funds saved under his new budget restrictions, and then to apply the proceeds from a loan drawn against his 401k retirement account. These funds became available in September 2004, shortly after the issuance of the August 19, 2004, SOR.

At issue in the SOR are 12 debts set forth as the 12 allegations. With the exception of Debt 1.k, each was considered by the Government to have been past due as of August 9, 2004. <sup>(3)</sup> They include debts amassed by both Applicant and his estranged wife, some of which are noted as having been her debts <sup>(4)</sup> and, apparently, assumed by the Applicant. Those bills of a medical nature are related to the balance of his baby son's medical crisis in the summer of 2003, consisting of anesthesiology, radiology, pathology and both in- and out patient services. <sup>(5)</sup>

As listed below, #1.a - #1.l mirror, *in seriatim*, the allegation of debt set forth in each corresponding subparagraph of the SOR. The current status of each debt alleged is explained in *italics*; where the debt has been satisfied, reference is made to the appropriate document supporting that conclusion. As of March 2005, SOR subparagraph 1.a, also referenced as debt 1.a (balance on automobile after repossession), is the sole remaining unpaid debt. All others were paid in full either before the issuance of the August 19, 2004, SOR or shortly thereafter, as noted:

**1.a** - Indebted to a (limited liability company) in the approximate amount of \$7,141.66, the balance owed after resale of your automobile which has been repossessed for non-payment, in approximately April 2001. (*This debt remains the sole debt yet to be satisfied. Applicant has expressed his intent to pay this debt off last on multiple occasions.* <sup>(6)</sup>)

**1.b** - Indebted to (a collection agency) in the approximate amount of \$763.00, for an account placed for collection by a holding company, in or about February 2002. (*Applicant's Attachment 1 demonstrates that as of February 2005, NCO's successor, ARS, settled this account with his payment of \$478.80.*)

**1.c** - Indebted to (a credit corporation) in the approximate amount of \$1,323, for an account placed for collection by a holding company, in about February 2002. (*Applicant's Attachment 2 and Government Item 9 demonstrate that as of February 2005, the credit corporation earlier had accepted his payment of \$952.67 as a settlement and considered the account settled.*)

**1.d** - Indebted to (a financial services partnership) in the approximate amount of \$1,323, for an account placed for collection by a state bank in tandem with an electronics store chain, in about April 2002. (*Applicant's Attachment 3 demonstrates that as of February 2005, the bank/chain's successor had resolved Applicant's balance, subject to*

clearance of any non-certified funds and no charge backs on any credit cards, if applicable. There is no evidence that such was applicable.)

**1.e** - Indebted to (a collection service), in the approximate amount of \$732.32, for an account placed for collection by a major bank in tandem with a jewelry store chain, in about March 2002. (Applicant's Attachment 4 demonstrates that as of February 2005, the bank considered the account settled.)

**1.f** - Indebted to (an association), in the approximate amount of \$985.38, for an account placed for collection a bank, in about July 2002. (Applicant's Attachment 5 demonstrates that as of February 2005, Applicant's prior payment of \$492.89 had settled the account balance at issue.)

**1.g** - Indebted to (a credit agency), in the approximate amount of \$82.26, for an account placed for collection by a cable/internet/multimedia provider, in about ay 2002. (Applicant's Attachment 6 demonstrates that on September 18, 2004, a subsidiary provider was paid directly by debit withdrawal in the amount of \$82.26 for these network services.)

**1.h** - Indebted to (a collection agency), in the approximate amount of \$102.08, for an account placed for collection by a telephone service provider, in about July 2002. (Applicant's Attachment 7 demonstrates that his check ( # 1153) in the amount of \$102.08, dated July 17, 2004, to the collection agency for this debt, cleared his bank on July 26, 2004, making that debt paid in full .)

**1.i** - Indebted to (a collection agency), in the approximate amount of \$58.40, for an account placed for collection by an anesthesiology group practice, in about July 2003. (Applicant's Attachment 8, dated September 30, 2004, demonstrates that by final payment of July 2004, this debt to the practice for care provided to his infant son, date of service July 28, 2003, was paid in full.)

**1.j** - Indebted to (a collection agency), in the approximate amount of \$314.93, for an account placed for collection by a hospital outpatient facility, in about July 2003. (Applicant's Attachment 9, dated September 30, 2004, demonstrates that by final payment of August 2004, the facility considered his balance for his infant son's care, date of service July 28, 2003, paid in full.)

**1.k** - Indebted to (a collection agency), in the approximate amount of \$355.42, for an account placed for collection by the local medical facility that was not settled as of March 25, 2004.(Applicant's Attachment 10 demonstrates that as of February 2005, the first collection agency's successor confirmed that Applicant's account was settled in full.)

**1.l** - Indebted to (a state electric and power company), in the approximate amount of \$41.00 for an account charged off as a bad debt in about July 1999. (Applicant's Attachment 11 demonstrates that his check (# 166) in the amount of \$41.06, dated September 9, 2004, to the local division of that company was posted from his account on September 21, 2004, satisfying his past bad debt.)

The Government has neither disputed the accuracy of Applicant's supporting attachments, nor questioned their veracity in any terms. The Applicant's supporting attachments are both well organized and well narrated. Based on the discrepancies between some of the "approximate" debt amounts alleged in the SOR and the actual amounts spent to settle them, the SOR occasionally used inflated or unadjusted figures. Although asserted without supporting documentation, Applicant extends this variance to logically imply that the balance owed after repossession and sale of his then-three year old, 1998 car, originally purchased for approximately \$11,000, should be closer to the \$5,600 he claims it to be, than to the "approximately" \$7,141.66 balance alleged in the SOR.

Finally, Applicant was totally unaware of the 1999 power bill debt noted at SOR subparagraph 1.l, having thought the amount was covered by his former apartment deposit. This misunderstanding was compounded by the fact that he shortly thereafter moved out of that state and no bill followed him.

## **POLICIES**

Enclosure 2 of the Directive sets forth adjudicative guidelines which must be considered in the evaluation of security suitability. In addition to brief introductory explanations for each guideline, these adjudicative guidelines are

*subdivided into those that may be considered in deciding whether to deny or revoke one's eligibility for access to classified information (Disqualifying Conditions) and those that may be considered in deciding whether to determine one could still be eligible for access to classified information (Mitigating Conditions).*

*In application, an Administrative Judge is not strictly bound to the adjudicative guidelines. As guidelines, they are but part of an amalgam of elements for the Administrative Judge to consider in assessing an applicant in light of the circumstances giving rise to the SOR, as well as in assessing the applicant as a whole. The concept of the "whole person" means that all available, reliable information about the person - whether it is good or bad, present or past - should be considered in making a fair, impartial, and meaningful decision as to his or her suitability to hold a security clearance. To that end, Enclosure 2 also sets forth factors to be considered during this part of the adjudicative process, including: (1) the nature, extent, and seriousness of the conduct; (2) the circumstances surrounding the conduct, to include knowledgeable participation; (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 pertinent behavioral changes; (7) the motivation of the conduct; (8) the potential for pressure, coercion, exploitation, or duress; and (9) the likelihood of continuation or recurrence.*

*After a full and thorough examination, however, the final assessment must comport with the considerable gravity of the final decision. There is no right to a security clearance<sup>(7)</sup> and one seeking access to classified information must be prepared to enter into a fiduciary relationship with the United States Government that is inherently predicated on trust and confidence. Therefore, when the facts proven by the Government raise doubts as to an applicant's judgment, reliability, or trustworthiness, the applicant has the heavy burden of persuasion to demonstrate that he or she is nonetheless security worthy. As noted by the United States Supreme Court, "the clearly consistent standard indicates that security clearance determinations should err, if they must, on the side of denials."<sup>(8)</sup> Therefore, any doubts will be resolved in favor of the national security, not the applicant.*

*Finally, it should be noted that Applicant's allegiance, loyalty, and patriotism are not at issue in these proceedings. Section 7 of Executive Order 10865 specifically provides that industrial security clearance decisions shall be "in terms of the national interest and shall in no sense be a determination as to the loyalty of the applicant concerned." Therefore, nothing in this Decision should be construed to suggest I have based this decision, in whole or in part, on any express or implied determination as to Applicant's allegiance, loyalty, or patriotism.*

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

***Guideline F - Financial Considerations. 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.***<sup>(9)</sup>

*Conditions that could raise a security concern and may be disqualifying, as well as those which could mitigate security concerns, pertaining to this adjudicative guideline are set forth and discussed in the Conclusions section below.*

### **CONCLUSIONS**

*Upon consideration of all the facts in evidence, and after application of all legal precepts, factors, and conditions, including those described briefly above, I find the following with respect to the allegation set forth in the SOR:*

*With respect to Guideline F (Financial Considerations), the Government has established its case. Applicant admits he had a history of not being able to cover his debts, specifically admitting to 12 instances of accounts past due. Such a history raises a genuine security concern with regard to Financial Considerations Disqualifying Condition (FC DC) E2.A6.1.2.1 ([a] history of not meeting financial obligations).*

*The most significant debt, the one arising from the automobile, was triggered shortly after the birth of Applicant's son in December 2000. The rest of the debts were amassed as the remainder of their marital issues and child's health problem snowballed between 2001 and mid-2003. Therefore, this 12 incident history cannot be found to be mitigated under*

*either Financial Considerations Mitigation Condition (FC MC) E2.A6.1.3.1 ([t]he behavior is not recent) or FC MC E2.A8.1.3.2 ([i]t was not an isolated incident). Moreover, while it is highly arguable that Applicant learned more through his commendable, self-initiated approach to tackling his finances problems, budgeting for the future, and implementing a repayment plan, such efforts, no matter how successful, do not qualify as receiving financial consulting under the Directive. Therefore, FC MC E2.A6.1.3.4 ([t]he 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) does not apply.*

*The root of Applicant's financial problems began with their son's birth in December 2000 and ran through the time his wife left him in 2003. This period included the loss of income from his wife's decision not to work, his need to seek new, full-time employment after college, his son's unplanned major medical crisis, the couple's separation, and their preparation for divorce. Each one of these events is individually capable of resulting in financial mishap or derailing the most careful financial planning and of providing extenuating circumstances. While it is true that Applicant and his wife's lifestyle set the tone for living paycheck-to-paycheck in the beginning, it was extenuating circumstances such as these that tossed Applicant from the realm of modest solvency into his financial abyss. Therefore, I find that FC MC E2.A6.1.3.3 ([t]he 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, separation) applies.*

*After his wife left, Applicant addressed his finances directly. Choosing active self-initiative over fainéant passivity, he set out to make things right. With his budget in place and a plan in mind, he had already commenced paying off debts by the time the SOR was issued in August 2004. By March 2005, every debt but one was paid. Such resolve and significant headway cannot be overlooked. Nor can his expressions of commitment to fulfill this last remaining obligation just as diligently and successfully as the others. Therefore, I find that FC MC E2.A6.1.3.6 ([t]he individual initiated a good-faith effort to repay overdue creditors or otherwise resolve debts) applies. The other mitigating conditions do not apply.*

*I have considered the record evidence and assessed Applicant using the "whole person" concept. Despite the disintegration of his marriage and his early financial difficulties, Applicant has proven himself to be ever-increasingly responsible, conscientious, and mature. Based on his track record for addressing these debts, I have no reservation that he will renege on his commitment to pay his final debt last and in full.*

*Under these circumstances, I find that Applicant has, through evidence of extenuation and explanation, successfully mitigated or overcome the Government's case. Having thus carried his burden, I find all the allegations in Applicant's favor. For the reasons stated, I conclude that Applicant is eligible for access to classified information.*

### **FORMAL FINDINGS**

*Formal findings For or Against Applicant on the allegations set forth in the SOR, as required by Section E3.1.2.5 of Enclosure 3 of the Directive, are:*

*Paragraph 1, Guideline F: FOR THE APPLICANT*

*Subparagraph 1.a For the Applicant*

*Subparagraph 1.b For the Applicant*

*Subparagraph 1.c For the Applicant*

*Subparagraph 1.d For the Applicant*

*Subparagraph 1.e For the Applicant*

*Subparagraph 1.f For the Applicant*

*Subparagraph 1.g For the Applicant*

*Subparagraph 1.h For the Applicant*

*Subparagraph 1.i For the Applicant*

*Subparagraph 1.j For the Applicant*

*Subparagraph 1.k For the Applicant*

*Subparagraph 1.l 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 a security clearance for Applicant.*

*Arthur E. Marshall, Jr*

*Administrative Judge*

1. <sup>0</sup> *The government submitted 11 items in support of its case.*

2. *Government Item 8 (Interrogatories, dated March 25, 2004), at 10.*

3. *These are not Applicant's only debts, just those which were not current. Student loans through the U.S. Dep't of Educ. and to his university were existent, but not delinquent.*

4. *E.g. electronics store bill at 1.d and jewelry store bill at 1.e.*

5. *Regarding items 1.i - 1.k, respectively, for the anesthesiology, in-, and out-patient services balances.*

6. *E.g. Government Item 8, supra, at 9; Government Item 5 (Statement of Applicant, dated August 23, 2002), at 1.*

7. <sup>0</sup> *Department of the Navy v. Egan*, 484 U.S. 518, 528 (1988).

8. <sup>0</sup> *Id.*, at 531.

9. Directive, Enclosure 2, Attachment 6, Guideline F, ¶ E2.A6.1.1.