

DATE: June 29, 2004

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In Re:

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SSN: -----

Applicant for Security Clearance

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ISCR Case No. 02-32006

## DECISION OF ADMINISTRATIVE JUDGE

KATHRYN MOEN BRAEMAN

### APPEARANCES

#### FOR GOVERNMENT

Francisco J. Mendez, Jr., Esquire, Department Counsel

#### FOR APPLICANT

*Pro Se*

### SYNOPSIS

Applicant's financial problems raised security concerns after he and his wife allowed their home to go into foreclosure in 2000 while they were divorcing. The forced sale resulted in a \$13,000 deficiency. Instead of resolving this debt immediately, he chose to prioritize his credit card debt which he substantially reduced. He mitigated this concern as he otherwise has a favorable financial record. Conditions that led to the debt were largely beyond his control. While Applicant provided no evidence that he has received counseling for this financial problem, he did seek legal advice. He established that it is unlikely that these conditions will recur as he now has appreciable resources from a stable job and substantial income. The Judgement for a Deficiency Degree for this 2000 debt was vacated in January 2004 when he was not served properly. Clearance is granted.

### STATEMENT OF THE CASE

The Defense Office of Hearings and Appeals (DOHA) issued a Statement of Reasons (SOR) to the Applicant on September 4, 2003. The SOR detailed reasons why the Government could not make the preliminary positive finding that it is clearly consistent with the national interest to grant or continue a security clearance for the Applicant.<sup>(1)</sup> The SOR alleges specific concerns over finances (Guideline F). (Item 1) Applicant responded to these SOR allegations in an Answer notarized on August 8, 2003 where he admitted allegations 1.a., in part, but denied 1.b; he did not request a hearing.

The case was assigned to Department Counsel to prepare for a decision on the administrative record. On November 26, 2003, he prepared the File of Relevant arial (FORM) for the Applicant's review and advised Applicant that he had 30 days to submit objections and/or information before the FORM was submitted to an administrative judge and that he had the right to be represented by counsel. A Personnel Security Specialist (PSS) sent the FORM to Applicant on December 1, 2003, and again notified the Applicant that he had 30 days from receipt of the letter to submit objections and/or information before the FORM was submitted to an administrative judge. Applicant received the FORM on January 5, 2004. He responded on January 27, 2004<sup>(2)</sup>, before the deadline. (Exhibits A-F) Department Counsel on

February 9, 2004 did not object to Exhibits A-F. On February 11, 2004, the case was assigned to me; and I admitted Exhibit A-F into evidence.

### **PROCEDURAL ISSUE**

In the FORM Department Counsel moved to amend the SOR to conform to the evidence so that the debt alleged in 1.a. be amended to state it is "over \$13,000" as opposed to the \$15,999 amount originally alleged and that the other allegation<sup>(3)</sup> be deleted and replaced by an allegation that says: "You are unable and/or unwilling to satisfy your delinquent debt set forth in subparagraph 1.a. above." Applicant did not object to this amendment, so I granted the amendments to the SOR. While Appellant did not respond specifically to the proposed new allegations, in submitting his January 2004 Response to the SOR/FORM he stated that his Exhibits A-F refute the allegations. I interpret that response to mean that the Applicant denies the new allegations.

### **FINDINGS OF FACT**

After a complete and thorough review of the evidence in the record, and upon due consideration of that evidence, I make the following findings of fact:

Applicant, 41 years old, has been an employee of Defense Contractor #1 in State #1 since 1986 and Defense Contractor #2 since May 2001. In February 2001 and again in January 2002 he applied for a security clearance by completing a Security Clearance Application (Standard Form 86) (SF 86). Applicant has a degree from a university in State #2 that he received in 1986. (Items 4, 5)

He was married in 1994 and divorced in March 1999. He has one child born repossession 1997. (Items 4, 5)

#### **Finances**

In his February 2001 SF 86 he disclosed a May 2000 repossession of his home with an estimated \$15,5000 deficiency. In July 2002 Applicant was interviewed by the Defense Security Service (DSS). He had an exemplary 22-year credit history, except for a foreclosed property in State #1 which resulted from a difficult divorce and a breakdown of communication between his former wife and himself. At the time, he believed there was enough equity in the home to cover any outstanding balances due. However, there remained a balance of over \$13,000 unpaid after the sale of the home. Applicant explained that he was in the process of repairing his credit. First, he planned to stop the growth of his debt; second, he planned to pay off all debt that had the potential for growth over time; and third, he planned to pay off the foreclosure debt. Because of skyrocketing credit card interest rates, which resulted from the foreclosure, he was focused on resolving all credit card debt, which he had reported he had reduced from \$15,000 to \$8,000. He planned to pay the unpaid balance from the foreclosure when he had resolved all of his credit card debt. He explained that he had over 15 years of experience with his present employer; he had a gross annual salary of \$92,000; and he had the ability to pay off his present debt which totaled \$21,000 in July 2002. His total net monthly income was \$4,500, his monthly expenses were \$3,440, and his credit card debts required monthly payments of \$400. Consequently, he had a net remainder of \$670. (Items 5, 7)

In June 2003 in response to a Financial Interrogatory from DOHA, Applicant was again questioned about a balance of \$15,599 from the 2000 foreclosure and repossession of property in State #1 that he and his former wife had owned. As a result of their expensive divorce, both he and his former wife had high credit card debt, attorney's fees, a mortgage, and other expenses from financing separate households. The financial strain of the divorce led to the foreclosure of the family home. Applicant stated that he had "every intention of resolving any and all financial debt for which I am responsible." However, as of June 2003 he had not yet paid the balance from the repossession. As the foreclosure adversely affected the rate for his credit card debt, Applicant explained again his decision to resolve his credit card debt first. He had paid over \$18,000 to resolve those debts in the three years since the foreclosure. In June 2003 his total net monthly income was over \$5,000, his monthly expenses had risen to \$4,700, and his debts required monthly payments of \$350. Consequently, he had a net remainder of only \$3. He drove a 1992 automobile worth \$2,000 and had \$100 in savings. (Item 6)

In his October 2003 response to the SOR Applicant agreed that there was a deficiency from the 2000 foreclosure, but

that the amount was \$13,478, not \$15,999, and that he and his wife were jointly liable. (SOR 1.a.) He denied that his monthly expenses made him unable to pay the delinquent foreclosure debt. (SOR 1.b.) Applicant provided no evidence that he has received or is receiving counseling for his financial problems; however, he did seek legal advice on the debt.

In his January 2004<sup>(4)</sup> response to the FORM he clarified that his "essential" monthly expenses were only \$2,600 and his "nonessential" expenses were \$2,100 which he could reprioritize. His decision to defer payment on the foreclosure balance did not reflect an unwillingness to satisfy this debt. He explained that State #1 had a rule that limited the time for a creditor to file a petition for a deficiency judgement to three years following an auditor's report. After a judgment for a deficiency decree was filed against him and his former wife in January 9, 2004, he retained counsel who demonstrated that Applicant was not provided proper service; thus, a Motion to Vacate Judgement as to him only was filed in January 16, 2004. (Exhibits A-F) Department Counsel accepted his evidence in response to the FORM.

## POLICIES

Enclosure 2 of the Directive sets forth adjudicative guidelines to consider in evaluating an individual's security eligibility. They are divided into conditions that could raise a security concern and may be disqualifying and conditions that could mitigate security concerns in deciding whether to grant or continue an individual's access to classified information. But the mere presence or absence of any given adjudication policy condition is not decisive. Based on a consideration of the evidence as a whole in evaluating this case, I weighed relevant Adjudication Guidelines as set forth below :

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

**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.**

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

1. A history of not meeting financial obligations;
3. Inability or unwillingness to satisfy debts;

**Conditions that could mitigate security concerns include:**

1. The behavior was not recent;
2. It was an isolated incident;
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);
6. The individual initiated a good-faith effort to repay overdue creditors or otherwise resolve debts.

The responsibility for producing evidence initially falls on the Government to demonstrate that it is not clearly consistent with the national interest to grant or continue Applicant's access to classified information. Then the Applicant presents evidence to refute, explain, extenuate, or mitigate in order to overcome the doubts raised by the Government, and to demonstrate persuasively that it is clearly consistent with the national interest to grant or continue the clearance. Under the provisions of Executive Order 10865, as amended, and the Directive, a decision to grant or continue an applicant's security clearance may be made only after an affirmative finding that to do so is clearly consistent with the national interest. In reaching the fair and impartial overall common sense determination, the Administrative Judge may draw only those inferences and conclusions that have a reasonable and logical basis in the evidence of record.

## CONCLUSIONS

### **Financial Considerations**

Applicant has (1) a history of financial problems and has shown (3) an inability or unwillingness to satisfy immediately the debt resulting from the foreclosure of his house in 2000. (SOR 1.a. and 1.b.)

Applicant provided a logical rationale for his decision to prioritize his credit card debt, which he substantially reduced, and to wait for the holder of the foreclosure debt to take the proper legal steps to file a petition for a deficiency judgement required within three years following the auditor's report. When a Judgment for a Deficiency Decree was filed against him and his former wife in January 9, 2004, he retained counsel who demonstrated that Applicant was not provided proper served so a Motion to Vacate Judgement as to him only was filed in January 16, 2004. Department Counsel accepted his evidence in response to the FORM.

Further, in response to the FORM Applicant provided updated information on his 2004 finances which clarified that over \$2,000 of his monthly expenses were flexible and could be allocated to resolve this debt should he be properly served. While he did not document that he sought any financial counseling, he did seek legal advice for the matter. Further, he established that this foreclosure debt was isolated, not recent, and caused by a condition beyond his control, a difficult divorce. Applicant has a stable job with a substantial income.

Applicant effectively mitigated these concerns under mitigating conditions (MC<sup>(5)</sup>)1, 2, 3, and 6. After considering the Appendix I Adjudicative Process factors and the Adjudicative Guidelines, I rule for Applicant on subparagraph 1.a. and 1.b. under SOR Paragraph 1.

### **FORMAL FINDINGS**

After reviewing the allegations of the SOR in the context of the Adjudicative Guidelines in Enclosure 2 and the factors set forth under the Adjudicative Process section, I make the following formal findings:

Paragraph 1. Guideline F: FOR APPLICANT

Subparagraph 1.a.: For Applicant

Subparagraph 1.b.: For 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.

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Kathryn Moen Braeman

Administrative Judge

1. This procedure is required by Executive Order 10865, as amended, and Department of Defense Directive 5220.6, dated January 2, 1992 (Directive), as amended by Change 4, April 20, 1999.
2. Applicant misdated his response as January 2003.
3. The SOR includes this second allegation as subparagraph 1.b.; in the FORM Department Counsel mistakenly cites to this allegation as "2.a.."
4. Applicant misdated his response as January 2003.
5. **Conditions that could mitigate security concerns include:** 1. The behavior was not recent; 2. It was an isolated incident; 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); 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; 5. The affluence resulted from a legal source; and 6. The individual initiated a good-faith effort to repay overdue creditors or otherwise resolve debts.