

DATE: December 29, 2004

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In Re:

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SSN: -----

Applicant for Security Clearance

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ISCR Case No. 02-11689

## DECISION OF ADMINISTRATIVE JUDGE

**ROGER E. WILLMETH**

**APPEARANCES**

**FOR GOVERNMENT**

Kathryn MacKinnon, Department Counsel

**FOR APPLICANT**

*Pro Se*

**SYNOPSIS**

Applicant's financial problems arose during an eight month period in 1996-1997 in which he was unemployed. Therefore, Mitigating Condition 3 is applicable to Applicant's initial financial delinquencies. However, it does not completely absolve his failure to resolve his financial delinquencies over the last seven years. Although Applicant has settled a delinquent automobile loan and rehabilitated his student loan, he has failed to mitigate a delinquent automobile loan that resulted in judgment against him in 2001 in the amount of \$5, 594.00. Applicant has also failed to demonstrate that he paid the two smallest debts addressed by the SOR or that another debt to a bank resulted from excessive charges. In addition, his contention that one debt is duplicated by the SOR is not supported by evidence of record. Clearance is denied.

## STATEMENT OF THE CASE

On August 7, 2003, the Defense Office of Hearings and Appeals (DOHA), pursuant to the applicable Executive Order [\(1\)](#) and Department of Defense Directive, [\(2\)](#) issued a Statement Reasons (SOR) to Applicant. The SOR details security concerns under Guideline F (Financial Considerations). The SOR states that DOHA was unable to find that it is clearly consistent with the national interest to grant him access to classified information and recommends that his case be submitted to an Administrative Judge.

Applicant submitted an undated response to the SOR in which he requested a hearing. The case was assigned to me on February 11, 2004. A notice of hearing was issued on February 25, 2004 and the hearing was held on March 4, 2004. During the hearing, 10 Government exhibits (Govt Ex), seven Applicant exhibits (Ap Ex) and the testimony of Applicant were received. The transcript (Tr) was received on March 12, 2004. Without objection from Department Counsel, I granted Applicant until March 18, 2004 to submit additional supporting documentation. On March 24, 2004, he provided additional documentation to which Department counsel did not object and which I have marked as Applicant Exhibit H.

## FINDINGS OF FACT

Having thoroughly considered the evidence in the record, I make the following findings of fact:

Applicant is a 45-year-old systems engineer employed by a defense contractor. He holds a Ph.D. in cell and developmental biology.

In December 1994, Applicant financed the purchase of an automobile. From October 10, 1996 until June 1997, he was unemployed. By May 1997, Applicant was delinquent in the payment of the automobile loan. He experienced another month of unemployment in May 1999. In March 2001, the creditor obtained a judgment against Applicant in the amount of \$5,594.00. There is no evidence in the record that the debt has been paid or otherwise satisfied (SOR ¶ 1.a).

In May 1997, Applicant financed the purchase of a vehicle. By May 1999, he was delinquent in the payment of the loan and the vehicle was subsequently repossessed. By August 22, 2001, Applicant's balance on the account was \$4,903.48. On October 29, 2001, he was offered a settlement of the account for \$2,582.09. There is no evidence in the record that the debt has been paid or otherwise satisfied (SOR ¶ 1.e).

In June 2000, Applicant obtained a student loan. By April 11, 2003, he had become delinquent on the loan. By March 12, 2004, Applicant had rehabilitated the loan and owed a principal balance of \$28,297.49 (SOR ¶ 1.c).

In September 2000, Applicant opened a credit card account with a bank. By January 2003, he was past due on payment of a balance on the account. There is no evidence in the record that the a debt in the amount of \$201.00 has been paid or otherwise satisfied (SOR ¶ 1.f).

In October 2000, Applicant financed the purchase of a vehicle. By January 2003, he was delinquent in the payment of the loan and owed a balance of \$9,111.00. By January 13, 2004, Applicant had reached a settlement of the debt with the creditor (SOR ¶ 1.g).

In December 2001, Applicant opened an account with a telecommunications company. By February 2002, he incurred a \$100.00 debt that he did not pay. There is no evidence in the record that the debt has been paid or otherwise satisfied (SOR ¶ 1.b).

In June 2002, applicant obtained the services of a dentist. By August 2002, he failed to pay \$150.00 for the services. There is no evidence in the record that the debt has been paid or otherwise satisfied (SOR ¶ 1.d).

## POLICIES

Department Counsel is responsible for presenting witnesses and other evidence to establish facts alleged in the SOR that have been controverted. Directive E3.1.14. The applicant is responsible for presenting witnesses and other evidence to rebut, explain, extenuate, or mitigate facts

admitted by the applicant or proven by Department Counsel, and has the ultimate burden of persuasion as to obtaining a favorable clearance decision. Directive E3.1.15.

Eligibility for access to classified information is predicated upon an individual meeting adjudicative guidelines discussed in Enclosure 2 of the Directive. An evaluation of whether an applicant meets these guidelines includes the consideration of a number of variables known as the "whole person concept." Available, reliable information about the person, past and present, favorable and unfavorable, should be considered in reaching a decision. This assessment should include the following factors: (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 for the conduct; (8) the potential for pressure, coercion, exploitation, or duress; and (9) the likelihood of continuation or recurrence. Any doubt as to whether

access to classified information is clearly consistent with national security will be resolved in favor of national security. Directive E2.2.2.

Enclosure 2 provides conditions for each guideline that could raise a concern and may be disqualifying, as well as further conditions that could mitigate a concern and support granting a clearance. The following guideline is applicable to this case.

#### Guideline F: Financial Considerations

The concern is that an individual who is financially overextended is at risk of having to engage in illegal acts to generate funds. Conditions that could raise a security concern and may be disqualifying include E2.A6.1.2.1, a history of not meeting financial obligations (Disqualifying Condition 1). They also include E2.A6.1.2.3, inability or unwillingness to satisfy debts (Disqualifying Condition 3).

Conditions that could mitigate security concerns include E2.A6.1.3.3, 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) (Mitigating Condition 3). They also include E2.A6.1.3.6, the individual initiated a good-faith effort to repay overdue creditors or otherwise resolve debts (Mitigating Condition 6).

### CONCLUSIONS

The evidence in the record of Applicant's delinquent indebtedness since 1997 substantiates SOR ¶ 1.a through ¶ 1.g. It demonstrates Applicant's history of not meeting financial obligations, as well as his inability or unwillingness to satisfy debts, Disqualifying Condition 1 and Disqualifying Condition 3, respectively.

Applicant suggested that it would be in the national interest to grant him a security clearance because of the contribution he could make because of his background. <sup>(3)</sup> However, Applicant's value as an employee does not reduce or diminish the negative security implications of his conduct. ISCR Case No. 98-0435 (September 16, 1999) at p.2.

Applicant's financial problems arose during an eight month period in 1996-1997 in which he was unemployed. He also experienced a month of unemployment in 1999. Therefore, Mitigating Condition 3 is applicable to his initial financial delinquencies. However, it does not totally mitigate his failure to resolve his financial delinquencies over the last seven years.

Five months after receiving the SOR, Applicant settled a delinquent automobile loan (SOR ¶ 1.g). He also rehabilitated his student loan (SOR ¶ 1.c). This mitigates these delinquent debts in accordance with Mitigating Condition 6 and I find in favor of Applicant with regard to them. However, Applicant's student loan now amounts to more than \$28,000.00 and he must make payments of nearly \$200.00 per month. Applicant is yet to demonstrate his ability to comply with that obligation over an extended period. This is of special concern, given Applicant's testimony that he was not currently assigned to a project by his employer.

Applicant attributed the delinquent automobile loan that resulted in judgment against him (SOR ¶ 1.a) to the fact the automobile never functioned properly. However, he failed to provide any corroborating evidence of a dispute with the dealer or creditor concerning the alleged problems even though he was given a post-hearing opportunity to provide additional documentation. The same is true with regard to the three smallest financial delinquencies addressed by the SOR (¶ 1.b, d, f). Although Applicant claimed he had paid two of the debts (SOR ¶ 1.b, d), he provided no corroboration of having done so. He also failed to provide evidence corroborating his assertion that he was subjected to excessive charges by a bank (SOR ¶ 1.f). All that Applicant submitted were copies of his post-hearing unsupported requests to credit reporting agencies that two of the debts be removed from his credit history. Although he contends that there is a duplication of debts addressed by the SOR (¶ 1.a, e), the evidence of record does not establish such a duplication. Applicant's failure to corroborate his contentions leaves doubt concerning these delinquencies. In accordance with E2.2.2 of the Directive, such doubt must be resolved in favor of national security. I find against Applicant with regard to these delinquent debts.

### FORMAL FINDINGS

Formal findings, as required by section E3.1.25 of Enclosure 3 of the Directive, are as follows:

Paragraph 1. Guideline F: AGAINST APPLICANT

Subparagraph 1.a: Against Applicant

Subparagraph 1.b: Against Applicant

Subparagraph 1.c: For Applicant

Subparagraph 1.d: Against Applicant

Subparagraph 1.e: Against Applicant

Subparagraph 1.f: Against Applicant

Subparagraph 1.g: For Applicant

### **DECISION**

In light of the evidence of record in this case, it is not clearly consistent with the national interest to grant or continue a security clearance for Applicant.

*Signed*

**Roger E. Willmeth**

**Administrative Judge**

1. Executive Order 10865, *Safeguarding Classified Information Within Industry*, dated February 20, 1960, as amended.
2. Department of Defense Directive 5220.6, *Defense Industrial Personnel Security Clearance Review Program* (Directive), dated January 2, 1992, as amended and modified.
3. Tr 40.