

DATE: September 23, 2005

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In Re:

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SSN: -----

Applicant for Security Clearance

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CR Case No. 02-12304

## **DECISION OF ADMINISTRATIVE JUDGE**

**CLAUDE R. HEINY**

### **APPEARANCES**

#### **FOR GOVERNMENT**

Robert E. Coacher, Department Counsel

#### **FOR APPLICANT**

*Pro Se*

### **SYNOPSIS**

Applicant's financial problems continue to raise security concerns over his failure to resolve approximately \$9,500 in debt to six creditors. The record evidence is insufficient to mitigate or extenuate the negative security implications stemming from a debt of such magnitude. Clearance is denied.

### **STATEMENT OF THE CASE**

On March 30, 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 [\(1\)](#) 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). DOHA recommended the case be referred to an administrative judge to determine whether a clearance should be granted, continued, denied, or revoked.

On June 30, 2004, Applicant answered the SOR and requested a hearing. On January 4, 2005, I was assigned the case. On March 11, 2005, a Notice of Hearing was issued scheduling the hearing which was held on March 30, 2005. The record was kept open to allow Applicant to submit additional documents. On April 14, 2005, several documents were received and admitted into the record. On April 8, 2005, DOHA received a copy of the transcript (Tr.).

### **FINDINGS OF FACT**

In his response to the SOR, Applicant admits owing seven debts. This admission is incorporated herein as a findings of fact. After a thorough review of the entire record, I make the following additional findings of fact:

Applicant is a 30-year-old test technician who has worked for a defense contractor since March 2001, and he is seeking to obtain a security clearance. Applicant is regarded by those who know him as exhibiting good character, work ethic, trustworthiness, and competence (App Ex C). He works well with others, performs his duties in an acceptable manner, and contributes to the success of his projects (App Ex D). He is responsible, dependable, and his work performance was

consistently rated above average (App Ex E). He is held in high regard by coworkers (App Ex F).

In 1997, Applicant and his wife co-signed on the purchase of a \$20,389 car. In 1998, he and his wife separated, and in June 1998 divorced, with her keeping the car. The car was later repossessed. His wife then declared bankruptcy. He first learned of the repossession three and a half years after the event, when it appeared on his credit report discovered while purchasing a car. Applicant's February 2004 credit report (Gov Ex 5) indicates the car company charged off \$6,906. In December 1998, he moved from one state to another. The financial impact of this move was not shown in the record.

In December 2001, Applicant's fiancée had a baby. In January 2002, his fiancée lost her job. In January 2002, Applicant was questioned about his debts. His net monthly remainder then was \$549.56 (Gov Ex 2). In July 2003, Applicant and his fiancée were married. In July 2003, Applicant indicated he was falling behind on household bills. After payday he had only enough money for gas (Gov Ex 3). His wife currently works for a temporary agency making \$11 per hour. His monthly income is approximately \$3,600 (Tr. 27). With his wife working, their financial picture is improving. He would do nothing to jeopardize his job.

Four years ago, Applicant was attending school. He has a \$9,000 student loan debt on which he makes \$73 per month payments. He is pre approved for a home purchase up to \$135,000.

Applicant sought financial assistance to improve his credit score (App Ex A). He paid a financial consultant \$1,000. The SOR lists three medical bills totaling approximately \$600. Applicant asserts a number of the debts were consolidated, but he still owed \$152. Applicant submitted a letter from a collection agency indicating the city hospital bill was paid.

The SOR alleges Applicant owes approximately \$10,000 on ten debts. A summary of the status of those debts follows:

	Creditor	Amount	Current Status
a	collection agency	\$874	Unpaid.
b	cable bill	\$84	Denied. Credit report lists last reporting date of January 1999.
c	electric bill	\$299	Unpaid.
d	medical bill	\$152	Unpaid. Applicant stated he would pay it by April 15, 2005.
e	medical bill	\$45	Paid. (App Ex I)
f	medical bill	\$100	Paid. (App Ex I)
g	collection agency for cosigned loan with ex-wife	\$937	Unpaid. Applicant disputes the balance owed.
h	automobile repossession	\$6,906	Unpaid. High credit was \$20,389.
i	telephone debt	\$317	Unpaid. Applicant has had no contact with debtor in more than a year.
j	telephone debt	\$395	Applicant renewed his contract with this carrier. The debt deleted from his credit report.
	Total debt listed in SOR	\$10,109	

## 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 guideline to be applied here is Guideline F (Financial Considerations).

## 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 judgement, 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 to be resolved 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.

The Applicant admitted owing seven debts and admitted co-signing on two other debts with his now ex-wife. The nine debts total approximately \$10,000. 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.

Applicant has addressed four debts totaling approximately \$624. Applicant has denied the \$84 cable bill (SOR paragraph 1.b) and the latest report showing the debt was January 1999. I find for Applicant as to this debt. He denies the debt and the most recent evidence of it is more than six years old. Applicant has paid two medical bills. I find for him as to the debts listed in SOR paragraphs 1.e. and 1.f. He said he owed \$152 on a third medical debt and would pay it by April 15, 2005, however, he provided no supporting documentation that it was paid as promised. Applicant renewed his contract with his telephone carrier. He asserts the \$395 telephone debt (SOR paragraph 1.j) was removed from his credit report after he challenged the debt. I find for him as to this debt.

None of the Mitigating Conditions (MC) apply in the Applicant's favor to the remaining six 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 six debts. There was no showing the debts were caused by factors beyond Applicant's control. In June 1998, Applicant divorced, however, he failed to substantiate the impact of the divorce, which occurred more than six years ago, on his current finances. His wife was unemployed for a time, but now that she is working their financial picture is improving.

Applicant has sought the services of a financial consultant to improve his credit score. He has paid the consultant \$1,000, for which the record is meager as to what Applicant received for this payment. Seeking the services of a

financial consultant is not equivalent to a demonstrated track record of financial reform and rehabilitation. Nor is there a showing Applicant's financial difficulties are under control. Therefore MC4 (E2.A6.1.3.4. *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*) does not apply.

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.

Because the six debts totaling approximately \$9,500 remain unpaid, I find against Applicant on financial considerations.

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.

### **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 FOR THE APPLICANT

Subparagraph 1.a.: Against the Applicant

Subparagraph 1.b.: For the Applicant

Subparagraph 1.c.: Against the Applicant

Subparagraph 1.d.: Against the Applicant

Subparagraph 1.e.: For the Applicant

Subparagraph 1.f.: For the Applicant

Subparagraph 1.g.: Against the Applicant

Subparagraph 1.h.: Against the Applicant

Subparagraph 1.i.: Against the Applicant

Subparagraph 1.j.: For the 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