

DATE: February 25, 2004

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In Re:

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SSN: -----

Applicant for Security Clearance

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ISCR Case No. 02-15739

**DECISION OF ADMINISTRATIVE JUDGE**

**JOAN CATON ANTHONY**

**APPEARANCES**

**FOR GOVERNMENT**

Francisco Mendez, Esq., Department Counsel

Kathryn Antigone Trowbridge, Esq., Department Counsel

**FOR APPLICANT**

*Pro Se*

**SYNOPSIS**

Applicant incurred substantial debt in the early to mid 1990s, when he left military service and pursued a second career in the ministry. He sought advice from a financial planner and set about satisfying financial delinquencies and bad debts. He has paid or settled all outstanding debts and is current on all his financial responsibilities. He has successfully mitigated concerns about his security worthiness under Guideline F, Financial Considerations. Clearance is granted.

**STATEMENT OF THE CASE**

The Defense Office of Hearings and Appeals (DOHA) declined to grant or continue a security clearance for Applicant. On March 25, 2003, under the applicable Executive Order<sup>(1)</sup> and Department of Defense Directive,<sup>(2)</sup> DOHA issued a Statement of Reasons (SOR) detailing the basis for its decision-security concerns raised under Guideline F (Financial Considerations) Applicant answered the SOR in writing on May 7, 2003 and elected to have a hearing before an administrative judge. The case was assigned to me on August 15, 2003. On October 1, 2003, I convened a hearing to consider whether it is clearly consistent with the national interest to grant or continue a security clearance for Applicant. At the close of the hearing the record was held open for one calendar month, until November 1, 2003, so that Applicant could submit additional documentation. By facsimile dated October 30, 2003, Applicant submitted documents to show that he and his wife had received financial counseling. He also submitted copies of credit card statements to support his assertion that medical procedures and college tuition expenses, and not consolidated old debts, accounted for the major portion of his current credit card debt. Without objection, Applicant's submissions were admitted to the record and marked as D, E-1, E-2, E-3, and E-4. DOHA received the transcript (Tr.) of the proceeding on October 9, 2003.

**FINDINGS OF FACT**

The SOR contains 8 allegations of disqualifying conduct under Guideline F, Financial Considerations. In his answer to

the SOR, Applicant admitted the bad debts and financial delinquencies alleged in the SOR at subparagraphs 1.a., 1.b., 1.c., 1.d., 1.e., 1.g. and stated they had been satisfied. He denied the allegation at 1.f. and asserted that it was a duplicate of the debt alleged at 1.a. of the SOR. He admitted the allegation at 1.h. of the SOR and stated that he had satisfactorily met all of his debt obligations and was, as of May 7, 2003, current with all of his creditors. Applicant's admissions are included as findings of fact.

At the time of his hearing Applicant was 39 years old. He is employed by a defense contractor as vice president of business development and support operations. He has worked for his present employer since 1998. He is married and the father of two children. His wife is attending college and studying to be a paramedic.

At the age of 17, Applicant enlisted in the Army and served for 3 years. He then received an appointment to one of the service academies, and received a bachelor of science degree in 1989. For three years he served on active military duty as an officer with a monthly salary of approximately \$3,000 per month.. In 1992, he was honorably separated from active duty, and he is currently serving as an active reservist.

Applicant married in 1992 and, after leaving the military, he held a series of commission -based jobs. In approximately 1995, he began a new career as a youth minister at a salary of approximately \$10,000 per year. His salary was not sufficient for him to support his family and pay his debts. He used several credit cards to purchase goods and services, and he fell further behind in his payments to his creditors. The delinquencies alleged in the SOR date to this period in Applicant's life.

When Applicant was working as a minister, he approached his creditors about paying off his debts to them. He testified that his creditors told him he must pay one-half of each debt before they would work out individual payment plans with him. Applicant lacked sufficient funds to follow through on the creditors' terms. In 2001, when he had \$1,000 in remaining discretionary income each month, he still thought he lacked sufficient funds to meet the creditors' repayment requirements. One creditor later approached him with a settlement offer, which he accepted.

Applicant continued to work as a minister until 1998. Applicant's creditors stopped their attempts to obtain repayment from him. In 1998 he went to work for his present employer and, over time, received increases in responsibility and salary.

Applicant completed and certified security clearance applications (SF-86) on March 28, 2000 and November 18, 2002. (Ex. 1; Ex. 5.) Applicant answered Question 38 on the SF-86 by listing five financial delinquencies of more than 180 days. These delinquencies totaled approximately \$15,800 and are alleged at subparagraphs 1.b., 1.d., 1.e., 1.f., and 1.g. of the SOR.

On March 22, 2001, Applicant completed a signed, sworn statement in which he responded to financial delinquencies identified on a report of his credit status shown to him by a special agent of the Defense Security Service. Applicant acknowledged six financial delinquencies. One delinquency he identified on his SF-86 was not listed on the credit report. Two delinquencies listed on the credit report were duplicates resulting from the sale of Applicant's account to a second creditor. In his signed sworn statement, Applicant averred that none of the delinquent accounts was caused by carelessness or irresponsibility, alcohol abuse, illegal drug use, criminal conduct, gambling or any other behavior of a security concern.

From 1994 to 2000, Applicant incurred no new debts. In 2000 he purchased a minivan on credit, and he is current on his car payments. Applicant possesses one credit card and is current on all payments. At his hearing, he presented evidence to show that he had paid off or settled six of the debts identified on the SOR. He also persuasively demonstrated that the seventh debt identified on the SOR was a duplicate of a debt he had previously paid. At the hearing, Applicant also submitted a current monthly budget showing a total monthly income of \$9,500. His monthly expenses include a \$1500 payment on his sole credit card account and a payment of \$488 on his automobile loan. After meeting all fixed monthly expenses, Applicant is able to save \$3,000 each month.

In post-hearing submissions, Applicant provided a letter from a Certified Financial Planner who stated that she had held numerous informal financial counseling sessions with Applicant and his wife over the past several years. The planner

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also stated that she had counseled Applicant and his wife on their spending plan and savings program. Additionally, Applicant provided monthly credit card statements for January, August, and September 2003 showing major medical and educational expenses incurred at those times, thus rebutting the suggestion that his current credit card debt derived primarily from the consolidation of his previous earlier debts. <sup>(4)</sup>

## POLICIES

"[N]o one has a 'right' to a security clearance." *Department of the Navy v. Egan*, 484 U.S. 518, 528 (1988). As Commander in Chief, the President has "the authority to . . . control access to information bearing on national security and to determine whether an individual is sufficiently trustworthy to occupy a position . . . that will give that person access to such information." *Id.* at 527. The President has restricted eligibility for access to classified information to United States citizens "whose personal and professional history affirmatively indicates loyalty to the United States, strength of character, trustworthiness, honesty, reliability, discretion, and sound judgment, as well as freedom from conflicting allegiances and potential for coercion, and willingness and ability to abide by regulations governing the use, handling, and protection of classified information." Exec. Or. 12968, *Access to Classified Information* § 3.1(b) (Aug. 4, 1995). Eligibility for a security clearance is predicated upon the applicant meeting the security guidelines contained in the Directive.

Enclosure 2 of the Directive sets forth personal security guidelines, as well as the disqualifying conditions and mitigating conditions under each guideline. In evaluating the security worthiness of an applicant, the administrative judge must also assess the adjudicative process factors listed in ¶ 6.3 of the Directive. The decision to deny an individual a security clearance is not necessarily a determination as to the loyalty of the applicant. *See* Exec. Or. 10865 § 7. It is merely an indication that the applicant has not met the strict guidelines the President and the Secretary of Defense have established for issuing a clearance.

Initially, the Government must establish, by substantial evidence, conditions in the personal or professional history of the applicant that disqualify, or may disqualify, the applicant from being eligible for access to classified information. *See Egan*, 484 U.S. at 531. The Directive presumes a nexus or rational connection between proven conduct under any of the disqualifying conditions listed in the guidelines and an applicant's security suitability. *See* ISCR Case No. 95-0611 at 2 (App. Bd. May 2, 1996).

Once the Government establishes a disqualifying condition by substantial evidence, the burden shifts to the applicant to rebut, explain, extenuate, or mitigate the facts. ISCR Case No. 01-20700 at 3 (App. Bd. Dec. 19, 2002); *see* Directive ¶ E3.1.15. An applicant "has the ultimate burden of demonstrating that it is clearly consistent with the national interest to grant or continue his security clearance." ISCR Case No. 01-20700 at 3.

## CONCLUSIONS

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

In the SOR, DOHA alleged Applicant had seven delinquent debts (¶¶ 1.a.-1.g.). The SOR further alleged that Applicant had sufficient funds to pay the debts but had made little effort to resolve his indebtedness. (¶ 1.h.) An applicant who is financially overextended is at risk of having to engage in illegal acts to generate funds. Directive ¶ E2.A6.1.1. Security concerns under Guideline F include a history of not meeting financial obligations (¶ E2.A6.1.2.1.) and an inability or unwillingness to satisfy one's debts. (¶ E2.A6.1.2.3.) Conditions that could mitigate security concerns include a finding that the behavior was not recent (¶ E2.A6.1.3.1.) or was an isolated incident (¶ E2.A6.1.3.2.). Guideline F security concerns can also be mitigated if a person has received or is receiving counseling for financial problems and there are clear indications that the problems are being resolved or are under control (¶ E2.A6.1.3.4.) or if the individual has initiated a good-faith effort to repay overdue creditors or otherwise resolve debts. (¶ E2.A6.1.3.6.).

Applicant admitted the debts alleged in subparagraphs 1.a., 1b., 1c., 1d., 1e., and 1.g. of the SOR. He provided persuasive evidence to show that the debt alleged in subparagraph 1.a. duplicated the debt alleged in subparagraph 1.f. of the SOR. He admitted the allegation in subparagraph 1.h. that he was financially capable of paying his debts but had not done so as of March 22, 2001.

Through Applicant's security clearance application, his answer to the SOR, and his admissions at the hearing, the Government established a *prima facie* case that Applicant was financially overextended, thus raising security concerns under Guideline F of the Directive. Applicant has shown that his financial over-extension occurred from approximately 1992 to 1995. However, while he adopted more responsible spending habits and did not accumulate unpaid debt after 1994, he lacked sufficient income to pay or settle the debts on the creditors' terms until recently. Accordingly, it is not possible to say that mitigating conditions E2.A6.1.3.1. and E2.A6.1.3.2. apply.

Applicant supplied evidence to show that he had, in good faith, paid or settled all the debts identified in the SOR and that he had sought financial counseling and guidance to avoid repetition of his financial problems. Thus, mitigating conditions E2.A6.1.3.4. and E2.A6.1.3.6. apply to the facts of Applicant's case, and it appears unlikely that his earlier financial problems will reoccur.

In my evaluation of the record, I have carefully considered each piece of evidence in the context of the totality of evidence and under all of the Directive guidelines that were generally applicable or might be applicable under the facts of the case. Under the whole person concept, I conclude that Applicant has successfully demonstrated that it is clearly consistent with the national interest to grant or continue his security clearance.

### **FORMAL FINDINGS**

Formal findings For or Against Applicant on the allegations set forth in the SOR, as required by Section E3.1.25 of Enclosure 3 of the Directive are:

Paragraph 1, Financial Considerations (Guideline F): FOR APPLICANT

Subparagraph 1.a.: For Applicant

Subparagraph 1.b.: For Applicant

Subparagraph 1.c.: For Applicant

Subparagraph 1.d.: For Applicant

Subparagraph 1.e.: For Applicant

Subparagraph 1.f.: For Applicant

Subparagraph 1.g.: For Applicant

Subparagraph 1.h.: 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. Clearance is granted.

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Joan Caton Anthony

Administrative Judge

1. Exec. Or. 10865, *Safeguarding Classified Information within Industry* (Feb. 20, 1960), as amended and modified.
2. Department of Defense Directive 5220.6, *Defense Industrial Personnel Security Clearance Review Program* (Jan. 2, 1992), as amended and modified.

3. Applicant stated that the Certified Financial Planner was his mother-in-law.

4. Applicant testified that the debt alleged at 1.g. of the SOR was settled for less than \$3,000 and consolidated into his current credit card debt, but that all other debts were paid in cash from his savings.