

DATE: June 16, 2004

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In Re:

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SSN: -----

Applicant for Security Clearance

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ISCR Case No. 02-18397

**DECISION OF ADMINISTRATIVE JUDGE**

**PAUL J. MASON**

**APPEARANCES**

**FOR GOVERNMENT**

Erin C. Hogan, Esq., Deputy Chief Department Counsel

**FOR APPLICANT**

Pro se

**SYNOPSIS**

Applicant's financial problems were caused by his former wife charging each credit card to the maximum. Though it is unfortunate Applicant's former wife did not comply with the divorce decree order requiring her to pay off her credit card liability, Appellant is still not excused from some degree of liability for the listed debts. Having provided no documentation of his efforts to pay off some debt and/or have other debt obligations deleted from his credit file, Applicant has not satisfactorily rebutted the Government's case under financial considerations. Clearance is denied.

**STATEMENT OF CASE**

On August 7, 2003, the Defense Office of Hearings and Appeals (DOHA), pursuant to Executive Order 10865 and Department of Defense Directive 5220.6 (Directive), dated January 2, 1992, amended April 4, 1999, issued a Statement of Reasons (SOR) to Applicant. The SOR detailed reasons why DOHA 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 and recommended referral to an Administrative Judge to determine whether clearance should be denied or revoked.

Applicant furnished his answer to the SOR on November 25, 2003. Applicant elected to have his case decided on a written record. The Government provided Applicant a copy of the File of Relevant Material (FORM) on January 29, 2004. Applicant received the FORM on December 3, 2003. His response to the FORM was received on February 17, 2004. The case was assigned to me on March 22, 2004.

**FINDINGS OF FACT**

The SOR alleged financial considerations. Applicant admitted subparagraphs 1.a., 1.b., 1.d., 1.f., and 1.g. He denied 1.c., and 1.e., and noted his attorney is in the process of getting those creditors deleted from his record. Applicant opined his credit record would eventually be clean. According to a divorce decree, Applicant's wife was responsible for but declined to pay her part of the credit card debt, and Applicant was unable to pay off the debt she had created in the last

portion of their marriage.

Applicant is 56 years old and has been employed as a supervisor of the safety and health department for a defense contractor for the last five years. He seeks a secret security clearance.

**Financial Considerations.** In his sworn statement dated November 9, 2001, Applicant explained the debts to subparagraphs 1.a. and 1.f. belonged to his wife pursuant to a divorce decree in 1998, ordering her to pay these and other debts. According to Applicant, his former wife abused their credit toward the end of the marriage by spending money on items they did not need. Appellant did not consider himself responsible for the credit card abuse committed by his wife.

The department store account identified in subparagraph 1.a. of the SOR was opened in August 1988 with the last payment to the account occurring in November 1997. (Item 6) The last payment activity on the credit card account identified in 1.b. of the SOR was November 1997. The account in 1.c. of the SOR was past due since April 1998 while the account in 1.d. was transferred to a collection agency in August 2001. The delinquent account in 1.e. was charged off in September 2002. The creditors identified in 1.f. and 1.g. are not referenced in Item 6 of the FORM. Without any evidence establishing Applicant's responsibility for the accounts in 1.f. and 1.g., the two subparagraphs are found in his favor. <sup>(1)</sup> The total indebtedness to five creditors is \$39,953.00.

In his answer to the SOR dated November 25, 2003, and his undated response to the FORM, Applicant indicated his attorney had taken certain steps to remove false entries from Applicant's credit report. Without verifying documentation identifying the changes made in Applicant's credit report, there is no way to determine what changes Applicant is referring to in his credit report.

In his response to the FORM, Applicant described his wife as suffering from a mental condition (no further information provided) that caused her to charge all credit cards to their limits. Applicant obtained loans to repay the charged amounts but his former wife increased the credit limits on the joint accounts. Applicant reestablished a good credit rating with the help of his current wife he married in 1997. Although he provided no documentation, he claimed his attorney was in the process of clearing the erroneous entries from his credit report. There are some charges on the report Applicant does not intend to pay.

**Character Evidence.** In support of his request for security clearance access, Applicant believes his 39 years of service to the national security of the United States should be taken into consideration. He has good working habits and attends school part-time to increase his job-advancement potential.

## POLICIES

Enclosure 2 of the Directive sets forth policy disqualifying conditions (DC) and mitigating conditions (MC) that must be given binding consideration in making security clearance decisions. These conditions must be considered in every case according to the pertinent guideline; however, the conditions are in no way automatically determinative of the decision in any case nor can they supersede the Administrative Judge's reliance on his own common sense. Because each security case presents its own unique facts and circumstances, it should not be assumed that the conditions exhaust the entire realm of human experience or that the conditions apply equally in every case. In addition, the Judge, as the trier of fact, must make critical judgments as to the credibility of witnesses. Conditions most pertinent to evaluation of the facts in this case are:

### **Financial Considerations**

Disqualifying Conditions (DC):

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

Mitigating Conditions (MC):

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;
4. The person has received or is receiving counseling for the problem and there are clear indications the problem is being resolved or is under control;
6. The individual initiated a good-faith effort to repay overdue creditors or otherwise resolve debts.

### **General Policy Factors (Whole Person Concept)**

Every security clearance case must also be evaluated under additional policy factors that make up the whole person concept. Those factors (found at pages 16 and 17 of Enclosure 2 of the Directive) include: (1) the nature, extent, and seriousness of the conduct; (2) the circumstances surrounding the conduct; (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 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.

### **Burden of Proof**

As set forth in the Directive, every personnel security determination must be a fair and impartial overall commonsense decision based upon all available information, both favorable and unfavorable, and must be arrived at by applying the standard that the granting (or continuance) of a security clearance under this Directive may only be done upon a finding that to do so is clearly consistent with the national interest. In reaching determinations under the Directive, careful consideration must be directed to the actual as well as the potential risk involved that an applicant may fail to properly safeguard classified information in the future. The Administrative Judge can only draw those inferences or conclusions that have a reasonable and logical basis in the evidence of record. The Judge cannot draw inferences or conclusions based on evidence which is speculative or conjectural in nature.

The Government must establish a *prima facie* case under financial considerations (Guideline F) that establishes doubt about a person's judgment, reliability, and trustworthiness. Then, the burden shifts to applicant to refute, explain, mitigate, or extenuate the facts. An applicant has the ultimate burden of persuasion to demonstrate he qualifies for a security clearance.

### **CONCLUSIONS**

**Financial Considerations.** An individual who is unable to pay his bills in a timely fashion is at risk of engaging in illegal acts to generate funds. Applicant has a history of not meeting financial obligations within the scope of the first disqualifying condition (DC). The history of delinquent debts totaling about \$40,000.000 extends to 1997 because the last payment activity to creditor 1.a. was 1997. DC 3 is pertinent to these circumstances because Applicant stated in his response to the FORM an unwillingness to recompense certain creditors.

There are five mitigating conditions (MC) under the financial considerations guideline that may remove the security concerns established by Applicant's financial problems. Since there is no evidence after 2001 of the creation of new debt, Applicant is entitled to limited mitigation under MC 1. Because Applicant's indebtedness is linked to only four creditors in the period 2001 and before, Applicant is due some consideration under MC 2.

MC 3 recognizes that events outside an individual's control may interfere with his ability to pay his debts. The condition cites examples such as a sudden loss of employment, a business downturn, an unexpected medical emergency, or marital problems. Applicant has repeatedly accused his wife of charging all the credit cards to their maximum and not complying with the terms of the divorce decree obligating her to pay the listed creditors. Applicant is entitled to significant extenuation under MC 3 for being unaware of his former wife's spendthrift activities. However, after he

found out about her irresponsible behavior, he should have devoted more attention to her mismanagement of the credit cards. Applicant's present claim of not being liable for the listed accounts is misplaced. Unless Applicant can demonstrate he was not the primary or joint holder of the credit card account, or that he was deleted from the account, he still bears some degree of liability for any credit charges made on the card.

The claim he is protected from additional liability by the divorce decree ordering her to pay the credit charges is also incorrect. Appellant may be able to sue his former wife in state court for breach of contract for violating the terms of the divorce decree but he cannot argue that state law preempts federal law with regard to matters related to the national security. An individual's financial obligations become a legitimate governmental concern when information reveals he is not paying those debts in a timely manner. Relevant information from reliable sources reflect Applicant is delinquent to five creditors in an amount approaching \$40,000.00.

MC 4 refers to counseling and taking action to restore control over the debt problem. MC 6 recognizes a good-faith effort to repay creditors. While counseling does not appear to be an underlying problem, Applicant has failed to provide documentation indicating he has taken action to resolve his indebtedness to the four creditors. While Appellant maintains he paid off some of the creditors, he has provided no documentation indicating which creditors he paid and/or which creditors he successfully deleted from his credit file. Hence, Applicant receives little or no mitigation under MC 4 or MC 6.

Applicant is congratulated for his 39 years as a reliable and diligent employee in jobs related to national security. His part-time enrollment in college to increase his promotability also weighs in his favor. However, without documentation of his efforts to pay off his delinquent debts, Applicant has not satisfied his ultimate burden of persuasion under the financial considerations guideline and the whole person concept of the Directive.

### **FORMAL FINDINGS**

Formal Findings required by Section 3, Paragraph 7, of Enclosure 1 of the Directive are:

Paragraph 1 (financial considerations, Guideline F): **AGAINST THE APPLICANT.**

- a. Against the Applicant.
- b. Against the Applicant.
- c. Against the Applicant.
- d. Against the Applicant.
- e. Against the Applicant.
- f. For the Applicant.
- g. 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 Applicant a security clearance.

Paul J. Mason

Administrative Judge

1. Though he admitted subparagraph 1.f. in his answer to the SOR, he noted in Item 5 (sworn statement) this debt was his wife's responsibility.