

DATE: April 9, 2004

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In re:

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SSN: -----

Applicant for Security Clearance

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ISCR Case No. 02-18405

**DECISION OF ADMINISTRATIVE JUDGE**

**JAMES A. YOUNG**

**APPEARANCES**

**FOR GOVERNMENT**

Kathryn A. Trowbridge, Esq., Department Counsel

**FOR APPLICANT**

Viveck Grover, Esq.

**SYNOPSIS**

Applicant has delinquent debts totaling approximately \$27,000. Although he worked out a plan with a credit counselor to pay these debts, he failed to adhere to it. Applicant failed to mitigate security concerns raised by his financial situation. Clearance is denied.

**STATEMENT OF THE CASE**

The Defense Office of Hearings and Appeals (DOHA) declined to grant Applicant a security clearance. On 25 September 2003, DOHA issued a Statement of Reasons (SOR) [\(1\)](#) detailing the basis for its decision-security concerns raised under Guideline F (Financial Considerations) of the Directive. Applicant answered the SOR in writing on 3 November 2003 and elected to have a hearing before an administrative judge. The case was assigned to me on 13 January 2004. On 4 February 2004, I convened a hearing to consider whether it is clearly consistent with the national interest to grant or continue a security clearance for Applicant. Applicant's attorney entered his appearance and moved, on behalf of his client, to have the case decided on the written record in lieu of a hearing. Department Counsel had no objection, and Applicant's motion was granted. Department Counsel submitted the Government's written case on 13 February 2004. A complete copy of the file of relevant material (FORM) was provided to Applicant, and he was afforded an opportunity to file objections and submit material to refute, extenuate, or mitigate the disqualifying conditions. Applicant received the FORM on 28 February 2004 and responded on 21 March 2004. The case was reassigned to me on 30 March 2004.

**FINDINGS OF FACT**

Applicant is a 29-year-old network administrator for a defense contractor. Item 4 at 1, 2. The following chart summarizes Applicant's delinquent debts and their current status.

¶	Nature and Amount	Status	Record
1.a.	Collection acct \$1,204	No evidence it was paid	Item 2
1.b.	Collection acct \$196	No evidence it was paid	Item 2
1.c.	Collection acct \$40-gasoline card	No evidence it was paid	Item 2
1.d.	Collection accts \$640 and \$151	No evidence it was paid	Item 8 at 18
1.e.	Collection acct \$547	No evidence it was paid	Item 8 at 13
1.f.	Collection acct \$9,029-student loan	No evidence it was paid	Item 2
1.g.	Collection acct \$7,392-student loan	No evidence it was paid	Item 2
1.h.	Judgment to state \$7,441	No evidence it was paid	Item 2
1.i.	Lien-state comptroller-\$3,730	Disputes	Item 8 at 2

Applicant sought assistance from a consumer credit counseling service sponsored by the YWCA. In a letter dated 28 May 2003, his counselor advised that a payment plan had been prepared for Applicant and opined that "[Applicant] can afford to pay creditors directly, but if he has problems paying the suggested payments, he should return to [the counseling service] and start the debt management program." Item 8 at 4.

### 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 (DC) and mitigating conditions (MC) 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, that conditions exist in the personal or professional history of the applicant which disqualify, or may disqualify, the applicant from being eligible for access to classified information. *See Egan*, 484 U.S. at 531. "[T]he Directive presumes there is a nexus or rational connection between proven conduct under any of the Criteria listed therein and an applicant's security suitability." ISCR Case No. 95-0611 at 2 (App. Bd. May 2 1996) (quoting DISCR Case No. 92-1106 (App. Bd. Oct. 7, 1993)).

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 (App. Bd. Dec. 19, 2002). "[S]ecurity clearance determinations should err, if they must, on the side of denials." *Egan*, 484 U.S. at 531; *see* Directive ¶ E2.2.2.

### CONCLUSIONS

In the SOR, DOHA alleged under Guideline F that Applicant had seven delinquent debts that were placed for collection

(¶¶ 1.a.-1.g.), was indebted to the State for a judgment of over \$7,000 (¶ 1.h.), and indebted to the State for a tax lien in the amount of \$3,730 (¶ 1.i.). An applicant who is financially overextended is at risk of having to engage in illegal acts to generate funds. Directive ¶ E2.A6.1.1.

The Government established by substantial evidence and Applicant's admissions the debts alleged in the SOR. Applicant denied the debts alleged in ¶¶ 1.d., 1.e., and 1.i. However, Applicant specifically lists the debts alleged in 1.d. on his proposed payment plan. <sup>(2)</sup> Item 8 at 18. The debt alleged in ¶ 1.e. appears on the credit report he submitted as part of his Answer. Item 8 at 13. There is no evidence that any of these debts have been paid. In his interrogatories, dated 30 May 2003, Applicant claimed he was going to set up a meeting with the state comptroller to dispute and resolve the issue of the state tax lien (¶ 1.i.). Applicant provided no evidence that he ever set up such a meeting or was truly contesting that debt.

Applicant has a history of not meeting his financial obligations (DC E2.A6.1.2.1.) and is unable or unwilling to satisfy his debts (DC E2.A6.1.2.3.). Applicant asserts three mitigating conditions apply to his case: (1) The behavior was not recent (MC E2.A6.1.3.1.); (2) The conditions that resulted in his behavior were beyond his control (MC E2.A6.1.3.3); and (3) Applicant has received counseling for his problem and there are clear indications that problem is being resolved (MC E2.A6.1.3.4.).

Some of Applicant's debts were not incurred recently. However, the issue is not when the debts were incurred, but whether his behavior (non-payment) was recent. As the debts remain outstanding, MC E2.A6.1.3.1. does not apply. ISCR Case No. 01-3695, 2002 DOHA LEXIS 453 at \*7 (App. Bd. Oct. 16, 2002).

Applicant states his financial difficulties stem from the 1999 failure of his business and the illness of his parents. His father eventually died in June 2003. Item 5 at 1; Response to FORM at 2-3. He claims he spent more than \$18,000 supporting his siblings and parents during his father's illness. But Applicant received financial counseling in May 2003 and completed a list of his expenses in which he specifically denied any payments to family and friends. Item 8 at 22. Applicant failed to provide any corroborating evidence of this support. Although the evidence supports a conclusion Applicant's business failure contributed to his financial situation, he has not shown that he was incapable of paying these debts. I conclude MC E2.A6.1.3.3. does not apply.

Applicant received counseling for his financial problems-and a somewhat favorable prognosis from the credit counselor that he had sufficient funds to pay his debts with a payment plan-but there is no indication that Applicant's problems are being resolved. He provided no evidence to demonstrate that he is making the recommended payments, or any payments at all, even though his financial plan showed he had over \$500 a month available after paying his monthly bills. I conclude MC E2.A6.1.3.4. does not apply.

### **FORMAL FINDINGS**

The following are my conclusions as to each allegation in the SOR:

Paragraph 1. Guideline F: AGAINST APPLICANT

Subparagraph 1.a.: Against Applicant

Subparagraph 1.b.: Against Applicant

Subparagraph 1.c.: Against Applicant

Subparagraph 1.d.: Against Applicant

Subparagraph 1.e.: Against Applicant

Subparagraph 1.f.: Against Applicant

Subparagraph 1.g.: Against Applicant

Subparagraph 1.h.: Against Applicant

Subparagraph 1.i.: Against Applicant

**DECISION**

In light of all of 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.

**James A. Young**

**Administrative Judge**

1. Exec. Or. 10865, *Safeguarding Classified Information within Industry* (Feb. 20, 1960), as amended and modified, and Department of Defense Directive 5220.6, *Defense Industrial Personnel Security Clearance Review Program* (Jan. 2, 1992), as amended and modified.
2. The SOR alleges the debts in ¶ 1.d. as \$640 and \$151. The payment plan lists them as \$140 and \$151.