

DATE: May 31, 2005

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In Re:

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SSN: -----

Applicant for Security Clearance

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CR Case No. 02-18418

**DECISION OF ADMINISTRATIVE JUDGE**

**JOHN GRATTAN METZ, JR.**

**APPEARANCES**

**FOR GOVERNMENT**

Stephanie C. Hess, Esquire, Department Counsel

**FOR APPLICANT**

*Pro Se*

**SYNOPSIS**

Applicant's financial irresponsibility renders him an unsuitable candidate for a security clearance. Clearance denied.

**STATEMENT OF THE CASE**

Applicant challenges the 8 December 2003 Defense Office of Hearings and Appeals (DOHA) Statement of Reasons (SOR) recommending denial or revocation of his clearance because of financial considerations and personal conduct. [\(1\)](#) Applicant answered the SOR on 26 January 2004, and requested a hearing. The case was assigned to me 23 November 2004, and heard on 30 November 2004. DOHA received the transcript (Tr.) on 9 December 2004.

**FINDINGS OF FACT**

Applicant denied falsifying his clearance application, but admitted all the financial allegations except 1.e., 1.i., 1.k., and 1.o., which he denied because he was unable to obtain confirmation from the creditor, not because he necessarily disputed the debts. Accordingly, I incorporate his admissions as findings of fact.

Applicant--a 45-year-old security guard for a defense contractor since approximately 1984--seeks to retain the access to classified information he has had since 1985.

Applicant and his divorcing wife filed for chapter 7 bankruptcy protection in February 1995 and obtained a discharge of their unsecured debt in July 1995 (G.E. 6). Applicant reaffirmed his mortgage and a car loan. He attributes this bankruptcy to his separation and divorce, as well as overextending his credit cards and generally living beyond his means.

After his bankruptcy, his financial problems continued because he was laid off from his employment for 15-18 months, during which time he took some low paying jobs, but was not able to keep with his child support obligations or other bills. He regained full-time employment in 1998, at which time he also remarried. His new wife had debts of her own as

she was pursuing her undergraduate degree in nursing.

In December 2000, Applicant completed a clearance application for his periodic reinvestigation (G.E. 1). He disclosed his 1995 bankruptcy and a current wage garnishment for child support arrearages. He did not report any past due debts, encompassing the debts at 1.a., 1.c., and 1.f.-1.o. However, he believes he submitted a copy of his credit report to his security officer along with his completed application as he was well aware of his debts. Otherwise, he cannot understand why he failed to report his past due debts.

During a subject interview in March 2002, Applicant acknowledged his past due debts (G.E. 2). He also disclosed that his wife was graduating in June and already had full-time employment lined up. He expected his financial picture to improve dramatically in the future. However, his May 2003 response to DOHA interrogatories (G.E. 3), including a current credit report, shows basically no change in his financial picture, although he claims to have been addressing his wife's delinquent accounts.

The December 2003 SOR alleges 15 past due accounts totaling over \$9,000.00. The bulk of the past due debt is for seven charged off credit cards. Eight collection accounts totaling \$1,400.00 are for medical expenses and bad checks dating back to 1995-1996.

Applicant admits 11 debts totaling \$7,145.00 and denies four debts totaling \$1,933.00 because he has not been able to confirm those debts with the creditors. Of the 11 admitted debts, Applicant appears to have paid three totaling \$3,186 (1.b., 1.c., and 1.f.) with a loan from his 401k plan and some savings. He has not entered into repayment plans on the remaining eight debts totaling \$3,959.00, is not otherwise making payments on these accounts, and still has not addressed the four debts that he denies, but that appear in his credit report. He has not sought credit counseling.

With his wife's overtime last year, their combined income was \$88,000.00. He expects it will be at least \$75,000.00 this year, but cannot say how or when he will resolve existing debt. He claims, without corroboration, to be current on his day-to-day expenses.

### **POLICIES**

The Directive, Enclosure 2 lists adjudicative guidelines to be considered in evaluating an Applicant's suitability for access to classified information. Administrative Judges must assess both disqualifying and mitigating conditions under each adjudicative issue fairly raised by the facts and circumstances presented. Each decision must also reflect a fair and impartial common sense consideration of the factors listed in Section 6.3. of the Directive. The presence or absence of a disqualifying or mitigating condition is not determinative for or against Applicant. However, specific adjudicative guidelines should be followed whenever a case can be measured against them, as they represent policy guidance governing the grant or denial of access to classified information. Considering the SOR allegations and the evidence as a whole, the relevant, applicable, adjudicative guidelines are guidelines F (Financial Considerations) and E (Personal Conduct).

### **BURDEN OF PROOF**

Security clearance decisions resolve whether it is clearly consistent with the national interest to grant or continue an Applicant's security clearance. The government must prove, by something less than a preponderance of the evidence, controverted facts alleged in the SOR. If it does so, it establishes a *prima facie* case against access to classified information. Applicant must then refute, extenuate, or mitigate the government's case. Because no one has a right to a security clearance, the Applicant bears a heavy burden of persuasion.

Persons with access to classified information enter into a fiduciary relationship with the government based on trust and confidence. Therefore, the government has a compelling interest in ensuring each Applicant possesses the requisite judgement, reliability, and trustworthiness of those who must protect national interests as their own. The "clearly consistent with the national interest" standard compels resolution of any reasonable doubt about an Applicant's suitability for access in favor of the government. <sup>(2)</sup>

### **CONCLUSIONS**

The Government established a Guideline F case and Applicant did not mitigate the security concerns. Accepting that Applicant's year-plus unemployment in the mid-1990s was the biggest cause of his financial difficulties, he documents little in the way of good-faith efforts to pay these debts since regaining full-time employment in 1998. His decision to address his wife's educational and other debt since her graduation in July 2002 may make sense (particularly if she is the principal source of income), but that is nevertheless a choice. Further, Applicant has been aware of the government's security concerns over his finances since at least March 2002 and has continually promised to address those concerns, yet has accomplished little as of the date of his hearing. Disqualifying Conditions 1 and 3 apply. On this record, Applicant has failed to demonstrate that his financial problems are behind him or will be under control anytime soon. I conclude Guideline F against Applicant.

The Government established a Guideline E case, but Applicant mitigated the security concerns by demonstrating that he lacked the intent to mislead the Government, as well as disclosing significant adverse financial information. I conclude Guideline E for Applicant.

### **FORMAL FINDINGS**

#### Paragraph 1. Guideline F: AGAINST THE APPLICANT

Subparagraph a: Against the Applicant

Subparagraph b: Against the Applicant

Subparagraph c: Against the Applicant

Subparagraph d: Against the Applicant

Subparagraph e: Against the Applicant

Subparagraph f: Against the Applicant

Subparagraph g: Against the Applicant

Subparagraph h: Against the Applicant

Subparagraph i: Against the Applicant

Subparagraph j: Against the Applicant

Subparagraph k: Against the Applicant

Subparagraph l: Against the Applicant

Subparagraph m: Against the Applicant

Subparagraph n: Against the Applicant

Subparagraph o: Against the Applicant

Subparagraph p: Against the Applicant

#### Paragraph 2. Guideline E: FOR THE APPLICANT

Subparagraph a: 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.

**John G. Metz, Jr.**

**Administrative Judge**

1. Required by Executive Order 10865 and Department of Defense Directive 5220.6, as amended (Directive).
2. *See, Department of the Navy v. Egan*, 484 U.S. 518 (1988).