

DATE: March 26, 2004

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In Re:

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SSN: -----

Applicant for Security Clearance

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ISCR Case No. 02-21882

## **DECISION OF ADMINISTRATIVE JUDGE**

**JOAN CATON ANTHONY**

### **APPEARANCES**

#### **FOR GOVERNMENT**

Erin C. Hogan, Esq., Department Counsel

#### **FOR APPLICANT**

*Pro Se*

### **SYNOPSIS**

Applicant admits financial delinquencies, including bad debts and a judgment entered against him in 2000. His unmitigated history of financial over-extension raises serious security concerns. Clearance is denied.

### **STATEMENT OF THE CASE**

The Defense Office of Hearings and Appeals (DOHA) declined to grant or continue a security clearance for Applicant. On October 7, 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) of the Directive. Applicant answered the SOR in writing on November 3, 2003, and requested that his case be determined on the record in lieu of a hearing. The Government compiled its File of Relevant Material (FORM) on December 4, 2003. The FORM contained documents identified as Items 1 through 6. By letter dated December 12, 2003, a copy of the FORM was forwarded to Applicant. Applicant received the file on January 7, 2004. He submitted additional material within the 30-day time period. On February 20, 2004, the case was assigned to me for a decision.

### **FINDINGS OF FACT**

The SOR contains nine allegations of disqualifying conduct under Guideline F, Financial Considerations. Applicant admitted five allegations and denied four. His admissions are incorporated as findings of fact.

Applicant is employed as a technical representative by a defense contractor. He is divorced and the father of two minor children. In 2000 he was assigned by his employer to a work site in a Western European country. Later, the company moved its work site within the same country, and it was necessary for Applicant to move his family to the new site. In August 2001, Applicant completed a personal security application (SF-86) and identified an automobile repossession, an unpaid judgment, and two financial delinquencies of over 180 days. In May 2002, Applicant completed a signed sworn statement in which he acknowledged two debts identified on his SF-86 as continuing in delinquent status, and he

expressed an intention to pay them. He also acknowledged the debts resulting from a voluntary repossession of a pickup truck and a judgment rendered against him for unpaid rent. He expressed an interest in settling or paying off these debts as his financial situation permitted. These debts, along with more recent delinquencies, were identified in the SOR issued by DOHA in October 2003.

The SOR alleged Applicant's unpaid debts totaled \$21,895. In his answer to the SOR, Applicant admitted unpaid debts totaling \$20,285. Applicant denied that four debts alleged on the SOR still existed.<sup>(3)</sup> He stated he had paid the debts but they had not been removed from his credit report. In his response to the FORM, he filed a letter from a court official, dated January 23, 2004, indicating that Applicant had paid in full a judgment in the amount of \$650 rendered against him and others in September 2000 and alleged at SOR ¶ 1.i. The Applicant also included a receipt showing payment of \$196.54 and a subsequent zero balance on a delinquent utility bill debt, identified in the SOR at ¶ 1.d.<sup>(4)</sup> He provided no evidence to demonstrate that the debts alleged at SOR ¶¶ 1.a. and 1.g. had been paid and been removed from his credit report. The total of the debts admitted by Applicant and for which he had no evidence of payment was approximately \$20,610.

In his signed, sworn statement of May 21, 2002, Applicant suggested the debts later alleged at SOR ¶¶ 1.c. and 1.f. were one and the same and referenced the amount due on a pickup truck he had turned in voluntarily when he could no longer meet the required payments. However, in his November 3, 2003 answer to the SOR, Applicant does not assert that allegations 1.c. and 1.f. reference the same debt. The credit report he submitted on May 30, 2003, in response to DOHA interrogatories, indicated two distinct automobile debts in the amounts indicated in the SOR allegations.

### 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, 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

The Government's concern under Guideline F, Financial Considerations, is that individuals who are financially overextended and unable or unwilling to pay their just debts may try to generate funds by engaging in illegal acts. Directive ¶ E2.A6.1.1. Applicant has a history of not meeting his financial obligations, and his financial history suggests an inability or unwillingness to satisfy his debts, conditions which raise security concerns under ¶¶ E2.A6.1.2.1. and E2.A6.1.2.3. of Guideline F. DOHA's Appeal Board has concluded that "[a] person who is unwilling to fulfill his legal obligations does not demonstrate the high degree of good judgment and reliability required of persons granted access to classified information." ISCR Case No. 98-0810 at 4 (App. Bd. June 8, 2000).

In the SOR, DOHA alleged Applicant had delinquent accounts (¶¶ 1.a. and 1.b.); accounts charged off as bad debts (¶¶ 1.c. and 1.d.); accounts placed in collection (¶¶ 1.e., 1.f., 1.g., and 1.h.); and a civil judgment levied against him in 2000 (¶ 1.i.).

While Applicant provided persuasive evidence to show that the debts alleged at SOR ¶¶ 1.d, and 1.i. had been satisfied, he provided no credible evidence that two of the four debts he denied had been paid, satisfied, or discharged, and therefore removed from his credit report. The Government has established, through the FORM and Applicant's admissions, a *prima facie* case that Applicant is financially overextended. Applicant provided no persuasive evidence to rebut the financial concerns specified in the SOR and identified as disqualifying conditions E2.A6.1.2.1. and E2.A6.1.2.3. of Guideline F.

We turn to a review of the several conditions that could mitigate the security concerns raised by Applicant's financial delinquencies. Applicant's acknowledged delinquencies involve long-standing debts, some of which continue to be unsatisfied to this day. Thus, neither mitigating condition E2.A.6.1.3.1. nor mitigating condition E2.A6.1.3.2. applies. While Applicant suggests that living in Western Europe is expensive and moving from one location to another in Western Europe caused him financial strain, the record also shows that Applicant's financial difficulties were not generated by his location and residency in Western Europe and were not the result of circumstances beyond his control. Thus, mitigating condition E2.A6.1.3.3. does not apply.

Applicant has not sought counseling for his financial problems, and he submits no persuasive evidence that he has developed and implemented a practical and comprehensive plan for resolving his indebtedness. Thus mitigating condition E2.A6.1.3.4. does not apply. To his credit, Applicant provided persuasive evidence to demonstrate that he had contacted two of his creditors and paid the delinquencies identified at SOR ¶¶ 1.d. and 1.i. Accordingly, mitigating condition E2.A6.1.3.6. applies to those allegations, and they are concluded for the Applicant.

Regarding his other debts, Applicant provided some evidence that he had contacted or attempted to contact his creditors, but he failed to produce sufficient persuasive records to demonstrate that payment plans he proposed had actually been accepted by the creditors. Thus, neither mitigating condition E2.A6.1.3.4. nor E2.A6.1.3.6. applies to the allegations of debt in subparagraphs 1.a., 1.b., 1.c., 1.e., 1.f., 1.g. and 1.h of the SOR, and those allegations are concluded against the Applicant.

### **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.: For Applicant

Subparagraph 1.e.: Against Applicant

Subparagraph 1.f.: Against Applicant

Subparagraph 1.g.: Against Applicant

Subparagraph 1.h.: Against Applicant

Subparagraph 1.i.: For 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.

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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. Those debts were identified on the SOR at ¶¶ 1.a., 1.d., 1.g., and 1.i.
4. The debt alleged at ¶ 1.d was for unpaid utility charges of \$635. Applicant provided evidence to show that he had paid the bill down over time and had made the final payment of \$196.54 on January 7, 2004, resulting in a zero balance owed.