

DATE: March 3, 2003

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In Re:

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SSN: -----

Applicant for Security Clearance

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ISCR Case No. 02-24479

**DECISION OF ADMINISTRATIVE JUDGE**

**JOHN G. METZ, JR.**

**APPEARANCES**

**FOR GOVERNMENT**

Jonathan A. Beyer, Esquire, Department Counsel

**FOR APPLICANT**

*Pro Se*

**SYNOPSIS**

Although Applicant's financial difficulties were largely due to circumstances beyond his control, they were not mitigated where Applicant had not begun any repayment on nine delinquent accounts totaling nearly \$15,000.00, notwithstanding that creditors had not responded to Applicant's July 2002 request for repayment plans. Applicant's favorable character references were insufficient to overcome adverse security inference of his indebtedness. Clearance denied.

**STATEMENT OF THE CASE**

On 8 October 2002, the Defense Office of Hearings and Appeals (DOHA) issued a Statement of Reasons (SOR) to Applicant, stating that DOHA could not make the preliminary affirmative finding<sup>(1)</sup> that it is clearly consistent with the national interest to grant or continue a security clearance for Applicant. On 12 November 2002, Applicant answered the SOR and requested a hearing. The case was originally assigned to a different Administrative Judge but was re-assigned to me on 8 January 2003 because of case load considerations, and received by me the same day. On 15 January 2003 I scheduled the case for hearing and I issued a Notice of Hearing on 17 January 2002 for a hearing on 7 February 2003.

At the hearing, the Government presented five exhibits--admitted without objection--and no witnesses; Applicant presented one exhibit--admitted without objection--and his testimony. DOHA received the transcript on 20 February 2003.

**FINDINGS OF FACT**

Applicant admitted the allegations of the SOR except for subparagraphs 1. e. and g., concerning debts which he asserted he paid 30 July 2002;<sup>(2)</sup> accordingly, I incorporate these admissions as findings of fact.

Applicant--a 37-year-old employee of a defense contractor--seeks access to classified information. He has been

employed by his current employer since August 1999. Applicant is a computer network technician, employed in direct support of government agencies, including the U.S. Navy.

The SOR alleges--and the government's evidence documents--Applicant's nine delinquent credit accounts totaling approximately \$15,000.00, and falling delinquent between approximately 1997 and 1998.

Applicant attributed his past due accounts to a variety of factors: losing his job in early 1994, followed by sporadic employment until obtaining his current position in August 1999; an unsuccessful business venture in mid-1994, when he used credit cards to acquire inventory for his computer business; an automobile repossession due in part to his being swindled by a used car reseller; and the birth of a child in August 1994 (Applicant already had a step-child, born in 1990). Applicant acknowledged a large number of delinquent debts in his sworn statement in June 2000 (G.E. 2). In response to government interrogatories (G.E. 3), and as a show of good faith, Applicant made approximately \$2,200.00 in payments to eight creditors (including the creditors alleged at 1.e. and g.); he sent letters to the other 10 creditors alleged in the SOR (including the debt at 1.i. that I conclude is not Applicant's) attempting to make payment arrangements with each creditor. None responded. Applicant has not made any payments to any of the nine delinquent accounts listed in the SOR. Although he intends to repay these creditors, the security of his family comes first, and he is currently saving his pay in case he does not obtain his clearance and loses his job (Tr. 54).

Applicant's Answer and A.E. A contain an impressive array of character references and job commendations, praising the quality of his work and his honesty and integrity on the job. The military references--including a RADM (O-8)--specifically express no concerns over granting Applicant's clearance, although none appear to be aware of his financial problems. I found Applicant to be an honest and straightforward witness. His monthly positive cash flow is approximately \$400.00 (Tr. 50). He essentially pleads for the opportunity to continue his employment in order to begin repaying his past due creditors (Tr. 53).

## **POLICIES**

Enclosure 2 of the Directive sets forth adjudicative guidelines to be considered in evaluating an individual's security eligibility. The Administrative Judge must take into account the conditions raising or mitigating security concerns in each area applicable to the facts and circumstances presented. Each adjudicative decision must also assess the factors listed in Section F.3. and in Enclosure (2) of the Directive. Although the presence or absence of a particular condition for or against clearance is not determinative, the specific adjudicative guidelines should be followed whenever a case can be measured against this policy guidance, as the guidelines reflect consideration of those factors of seriousness, recency, motivation, *etc.*

Considering the evidence as a whole, the following adjudication policy factors are most pertinent to this case:

### **FINANCIAL CONSIDERATIONS (GUIDELINE F)**

E2.A6.1.1. The Concern: An individual who is financially overextended is at risk of having to engage in illegal acts to generate funds. Unexplained affluence is often linked to proceeds from financially profitable criminal acts.

E2.A6.1.2. Conditions that could raise a security concern and may be disqualifying include:

E2.A6.1.2.1. A history of not meeting financial obligations;

E2.A6.1.2.3. Inability or unwillingness to satisfy debts;

E2.A6.1.3. Conditions that could mitigate security concerns include:

E2.A6.1.3.3. The conditions that resulted in the behavior were largely beyond the person's control (e.g. loss of employment, a business downturn. . .).

### **Burden of Proof**

Initially, the Government must prove controverted facts alleged in the Statement of Reasons. If the Government meets that burden, the burden of persuasion then shifts to the applicant to establish his security suitability through evidence of refutation, extenuation or mitigation sufficient to demonstrate that, despite the existence of disqualifying conduct, it is nevertheless clearly consistent with the national interest to grant or continue the security clearance.

A person who seeks access to classified information enters into a fiduciary relationship with the Government predicated upon trust and confidence. Where facts proven by the Government raise doubts about an applicant's judgment, reliability or trustworthiness, the applicant has a heavy burden of persuasion to demonstrate that he or she is nonetheless security worthy. As noted by the United States Supreme Court in *Department of the Navy v. Egan*, 484 U.S. 518, 531 (1988), "the clearly consistent standard indicates that security-clearance determinations should err, if they must, on the side of denials."

### **CONCLUSIONS**

The government has established its case under Guideline F. The record evidence clearly establishes Applicant's indebtedness and his current non-payment on the delinquent accounts. While circumstances beyond his control contributed to the original indebtedness, the past due amount on the nine accounts is nearly \$15,000.00. The fact that the creditors have not responded to Applicant's request to enter into repayment plans, does not absolve Applicant of his responsibility to resolve these debts one way or the other.

Applicant meets none of the mitigating factors for financial considerations, except that the indebtedness was due to circumstances beyond his control. While Applicant appears to have stopped digging himself into a financial hole, he has not started to pull himself out of it, except for the good-faith payments made in response to the interrogatories. His remaining indebtedness is too large and his repayment plan too little evolved to conclude that Applicant's financial problems are behind him. I resolve Guideline F. against 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: For the Applicant

Subparagraph f: Against the Applicant

Subparagraph g: For the Applicant

Subparagraph h: Against the Applicant

Subparagraph i: Against the Applicant

Subparagraph j: Against the Applicant

Subparagraph k: Against the Applicant

Subparagraph l: 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, as amended, and Department of Defense Directive 5220.6, dated January 2, 1992--and amended by Change 3 dated 16 February 1996, and by Change 4 dated 20 April 1999 (Directive).
2. G.E. 4, Applicant's response to interrogatories, documented that Applicant paid these two accounts before issuance of the SOR. Although Applicant admitted the debt at subparagraph 1.1., the record evidence (A.E. A) tends to confirm Applicant's testimony that his account appeared on his CBR in error (Tr. 49-50).