

DATE: January 29, 2004

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In Re:

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SSN: -----

Applicant for Security Clearance

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ISCR Case No. 02-25001

## **DECISION OF ADMINISTRATIVE JUDGE**

**CHARLES D. ABLARD**

### **APPEARANCES**

#### **FOR GOVERNMENT**

Eric Borgstrom, Esq., Department Counsel

#### **FOR APPLICANT**

*Pro Se*

### **SYNOPSIS**

Applicant is a thirty two-year-old employee of a defense contractor who incurred debts over a long period of time, three of them for student loans. He has consolidated those loans and is now able to pay them on a monthly basis. Four other debts have been paid. Clearance is granted.

### **STATEMENT OF CASE**

On July 31, 2003, the Defense Office of Hearings and Appeals (DOHA) pursuant to Executive Order 10865, *Safeguarding Information Within Industry*, as amended and modified, and Department of Defense Directive 5220.6, *Defense Industrial Personnel Security Clearance Review Program* (Directive), dated January 2, 1992, as amended and modified, issued a Statement of Reasons (SOR) to Applicant which 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. DOHA recommended the case be referred to an administrative judge to determine whether a clearance should be granted, continued, denied, or revoked.

On September 4, 2003, Applicant, in a sworn written statement, responded to the allegations set forth in the SOR, and requested a hearing. The case was assigned to me on November 14, 2003. A notice of hearing was issued on November 26, 2003 and a hearing was held on December 5, 2003. The Government introduced five exhibits at the hearing. The Applicant testified and introduced eight exhibits at the hearing. The record was left open until December 22, 2003, and four additional exhibits were received. All of the exhibits were admitted into evidence. The transcript was received on December 17, 2003.

### **FINDINGS OF FACT**

Applicant admitted several of the factual allegations pertaining to his debts under Guideline F and they are incorporated as findings of fact.

After a complete review of the evidence in the record and upon due consideration of the record the following additional findings of fact are made:

Applicant is a thirty two-year-old employee of a defense contractor who incurred debts over a period of time, three of them for student loans that comprised the bulk of the debt, \$11,000.00. Those debts were due six months after he left school but he did not start paying until almost two years later since he had moved from the southwest to the East Coast and had incurred higher costs of living. His starting annual salary was \$26,000.00 (TR. 22). He has been paying the three loans on a monthly basis since June, 2002, (TR. 23 and Answer). He now has consolidated the loans and is paying them by monthly withholding from his salary. He did not finish his education when he left college but has begun again and is one class short of graduation (TR 22).

Four other debts listed in the SOR totaling \$3,300.00 have been paid. Two were paid before September, 2003 (Exh. A and B). The other two were paid after the hearing because he had difficulty finding one of the creditors and the other was in dispute (Exh. I 2 and 3). One of those debts was incurred for purchase of a computer while he was in college and partially paid in 2000. Applicant has received credit counseling.

Applicant and his wife have a combined annual income of over \$70,000.00. He does not have a credit card and they do not own an automobile. Their monthly rent is \$765.00 (TR. 29).

At the hearing the government conceded that the two debts paid at that time resolved its concern on those two issues and requested that the record be kept open so that proof could be offered of payment of one of the other two where no receipt was available.

Applicant is highly regarded by his employers, his clients in the government and his peers. He is regarded as trustworthy and an excellent employee. (Exh. D, E, F, G, and H)

### 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.

An evaluation of whether the applicant meets the security guidelines includes consideration of the following factors: (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. Directive, ¶ E2.2.1. Security clearances are granted only when "it is clearly consistent with the national interest to do so." Executive Order No. 10865 § 2. *See* Executive Order No. 12968 § 3.1(b).

Initially, the Government must establish, by something less than a preponderance of the 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. The applicant then bears the burden of demonstrating that it is clearly consistent with the national interest to grant or continue the applicant's clearance. "Any doubt as to whether access to classified information is clearly consistent with national security will be resolved in favor of the national security." Directive, ¶ E2.2.2. "[S]ecurity clearance determinations should err, if they must, on the side of denials." *Egan*, 484 U.S. at 531. *See* Executive Order No. 12968 § 3.1(b).

The applicable Guideline cited in the SOR concern the following Disqualifying Conditions (DC): Financial Considerations Guideline F:

An individual who is financially overextended is at risk of having to engage in illegal acts to generate funds.

Conditions that could raise a security concern and may be disqualifying include a history of not meeting financial

obligations (DC 1) or an inability or unwillingness to satisfy his debts (DC 3).

Conditions that could mitigate security concerns (MC) include the fact that he has received counseling and there is clear indications that the problem is being resolved or is under control (MC 4), and that he has initiated good faith effort to repay creditors and resolve debts (MC 6).

### **CONCLUSIONS**

Upon consideration of all the facts in evidence, and after application of all appropriate legal precepts, factors and conditions above, I conclude the following with respect to all allegations set forth in the SOR.

The financial considerations alleged as a Disqualifying Condition (DC) under Guideline F are based on a series of debts incurred by Applicant over a two-year period. I find that DC 1 and 3 are applicable.

I also find that Mitigating Conditions 4 and 6 are applicable in that the debts have been and are being resolved and the Applicant has been and is making a good faith effort to resolve them. The combined income of Applicant and his wife is ample to pay the school loans and the creditor has agreed to a withholding plan. The Applicant has shown restraint in his spending and credit practices and evidenced a sincere desire to live within his means.

In all adjudications the protection of our national security is of paramount concern. Persons who have access to classified information have an overriding responsibility for the security concerns of the nation. The objective of the security clearance process is the fair-minded, commonsense assessment of a person's trustworthiness and fitness for access to classified information.

The "whole person" concept recognizes that we should view a person by the totality of their acts and omissions. Each case must be judged on its own merits taking into consideration all relevant circumstances, and applying sound judgment, mature thinking, and careful analysis.

After considering all the evidence in its totality and as an integrated whole to focus on the whole person of Applicant, I conclude that he is trustworthy, reliable, and that it is clearly consistent with the national interest to grant clearance to Applicant.

### **FORMAL FINDINGS**

Formal Findings as required by Section E3.1.25 of Enclosure 3 of the Directive are hereby rendered as follows:

Paragraph 1 Guideline F:For Applicant

Subparagraph 1.a.:For Applicant

Subparagraph 1.b.:For Applicant

Subparagraph 1.c.:For Applicant

Subparagraph 1.d.:For Applicant

Subparagraph 1.e.:For Applicant

Subparagraph 1.f.:For Applicant

Subparagraph 1.g.:For Applicant

### **DECISION**

In light of all the circumstances and facts presented by the record in this case, it is clearly consistent with the national interest to grant a security clearance for Applicant.

Charles D. Ablard  
Administrative Judge