

DATE: August 5, 2005

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In Re:

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SSN: -----

Applicant for Security Clearance

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ISCR Case No. 03-23506

## DECISION OF ADMINISTRATIVE JUDGE

**THOMAS M. CREAN**

### APPEARANCES

#### FOR GOVERNMENT

Richard A. Stevens, Esq., Department Counsel

#### FOR APPLICANT

*Pro Se*

### SYNOPSIS

Applicant retired from active military service and started working for a defense contractor. His salary was lowered after two years because his employer lost a contract. Applicant started to accumulate delinquent debts. Applicant regained a salary equivalent to his former salary. Even though he had sufficient financial resources each month to pay some creditors, he did not pay any creditors, but filed a petition in bankruptcy. Applicant has not mitigated security concerns for financial considerations. Clearance is denied.

### STATEMENT OF THE CASE

On December 8, 2004, the Defense Office of Hearings and Appeals (DOHA) issued a Statement of Reasons (SOR) detailing the basis for its decision to deny a security clearance for Applicant. The action was taken under Executive Order 10865, *Safeguarding Classified Information within Industry* (February 20, 1990), as amended and modified, and Department of Defense Directive 5220.6, *Defense Industrial Personnel Security Clearance Review Program* (January 2, 1992), as amended and modified (Directive). Applicant acknowledged receipt of the SOR on December 14, 2004. The SOR alleges security concerns under Guideline F (Financial Considerations) of the Directive.

Applicant answered the SOR in writing on January 7, 2005. He admitted all of the allegations under Guideline F, and requested a hearing before an administrative judge. The request was received by DOHA on January 18, 2005. Department Counsel was prepared to proceed with the case on May 19, 2005, and the case was assigned to me on May 20, 2005. A notice of hearing was issued on May 25, 2005, and the hearing convened on June 21, 2005. Four government exhibits, ten Applicant exhibits, the testimony of five Applicant witnesses, and the testimony of the Applicant were received during the hearing. DOHA received the transcript on July 14, 2005.

### FINDINGS OF FACT

Applicant is a 44-year-old electronics technician for a defense contractor. He served 20 years on active military duty before retiring in 1999. He first married in 1980, which lasted 14 years, and there are two children from that marriage

who are now adults that Applicant does not support. He also does not pay support to his former wife. Applicant and his first wife owned a house that was foreclosed because they could not make the payments.<sup>(1)</sup> He married again in 2000 and he has a step-child and a child from the marriage living with him and his wife.<sup>(2)</sup>

Applicant started working for the defense contractor in October 1999, shortly after retiring from active military duty. He made significant pay with the defense contractor and he and his wife were able to meet their obligations. In October 2001, the defense contractor lost the contract Applicant was working on and he had to take another position with the defense contractor at a reduced salary to maintain employment. In June 2002, Applicant was furloughed by the defense contractor for six weeks because of lack of work.<sup>(3)</sup> His only income for this six weeks was government unemployment compensation. Applicant and his wife took in a boarder to help with housing expenses. Applicant's wife is a stay-at-home mother caring for their two children.<sup>(4)</sup>

Applicant and his wife started accumulating delinquent debts in 2002. They sought credit counseling in 2004 but the company could not help them since there was a garnishment order from one of Applicant's creditors.<sup>(5)</sup> Applicant and his wife petition for Chapter 7 bankruptcy protection from all their debts in March 2005, and the creditors meeting was April 12, 2005. The bankruptcy judge has not yet issued a discharge in bankruptcy. Applicant stated that all requirements for the bankruptcy have been met and the discharge is the only action pending.<sup>(6)</sup>

There are 11 allegations of delinquent debt in the SOR totaling over \$35,000.00. SOR allegation 1.a. is a delinquent credit card debt for \$13,575.00 but with penalties and interest the debt is now \$14,726.00. SOR allegation 1.b. is another credit card debt for \$6,671.00. Applicant and his wife used this card for living expenses when he was furloughed. Applicant has made no payments in the past three years on these debts, and the debts are included in the Chapter 7 Bankruptcy.<sup>(7)</sup>

SOR allegation 1.c. is a delinquent department store account for \$778.00 that has been in collection by garnishment. The amount of the debt is now approximately \$500.00. SOR allegation 1.d. is a department store credit card account for \$2,226.00. Applicant has made no payments on this account. SOR allegation 1.e. is a delinquent debt with an oil company for household fuel for \$588.00. Applicant has paid about \$150.00 on this debt. These debts are included in the Chapter 7 bankruptcy.<sup>(8)</sup>

SOR allegation 1.f. is a delinquent credit card debt for \$8,418.00. Some of the debt has been paid by garnishment, and Applicant owes approximately \$7,600.00. SOR allegation 1.g. is a hospital bill for \$640.00 for which Applicant has made no payments. SOR allegation 1.h. is for a delinquent gas company credit card for \$40.00 for which Applicant has not made a payment. SOR allegation 1.i. is a delinquent account for purchases from a electronics store for \$201.00 that Applicant has not paid. SOR allegation 1.j. is a delinquent credit card account for \$991.00 for which Applicant has made no payments. SOR allegation 1.k. is a delinquent debt in collection for a credit card company for \$3,278.00 for which Applicant has made no payments. These debts are included in the Chapter 7 bankruptcy.

During most of the period from 2002 to 2004, Applicant was traveling for his employer and his wife was managing the finances. She did not tell him they were having difficulty meeting expenses until he learned of his debts from security investigators. He tried to borrow money from family but was unsuccessful.<sup>(9)</sup> Applicant presented two current credit bureau reports that shows the accounts in bankruptcy, other past due accounts, and also current accounts.<sup>(10)</sup> Applicant also presented recent bank statements to show his banking activity, bill payments, and fiscal resources. There were no extraordinary account activities.<sup>(11)</sup> Applicant's step-child's father does provide support for her.<sup>(12)</sup> Applicant has rented his home for over five years and he has always paid on time or made arrangements with the landlady.<sup>(13)</sup> Applicant and his wife have two cars that are paid for and there is no debt on the cars. Applicant stated he has approximately \$750.00 remaining each month after expenses. However, this did not take into account the \$890.00 in military retired pay and approximately \$100.00 he receives from a friend for use of a telephone. Therefore, Applicant has over \$1,600.00 each month in discretionary income.<sup>(14)</sup> Applicant's wife testified the family lives pay check to pay check.<sup>(15)</sup>

Applicant has performed well for his employer and is highly regarded by his supervisor. <sup>(16)</sup> His employer's security manager has known Applicant since he started work with the company and does not consider him a security risk. <sup>(17)</sup> A former active duty military friend also considers him a good worker and not a security risk. <sup>(18)</sup> Applicant's wife stated Applicant's security clearance is most important to him and he would not jeopardize it in any way. <sup>(19)</sup>

## POLICIES

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." <sup>(20)</sup> Eligibility for a security clearance is predicated upon the applicant meeting the security guidelines contained in the Directive. <sup>(21)</sup>

The Directive sets out the adjudicative guidelines for making decisions on security clearances. Enclosure 2 of the Directive sets forth adjudicative guidelines for determining eligibility for access to classified information, and it lists the disqualifying conditions and mitigating conditions for each guideline. Each clearance decision must be fair, impartial, and a commonsense decision based on the relevant and material facts and circumstances, the whole person concept, and the factors listed in the Directive ¶ 6.3.1 through ¶ 6.3.6.

The adjudicative process is an examination of a sufficient period of a person's life to make an affirmative determination that the person is eligible for a security clearance. An administrative judge must apply the "whole person concept," and consider and carefully weigh the available, reliable information about the person. <sup>(22)</sup> An administrative judge should consider: (1) the nature, extent, and seriousness of the conduct; (2) the circumstances surrounding the conduct, to include knowledgeable participation; (3) the frequency and recency of the conduct; (4) the applicant's age and maturity at the time of the conduct; (5) the voluntariness of participation; (6) the presence or absence of rehabilitation and other pertinent behavioral changes; (7) the motivation for the conduct; (8) the potential for pressure, coercion, exploitation, or duress; and (9) the likelihood of continuation of recurrence. <sup>(23)</sup>

A person granted access to classified information enters into a special relationship with the government. The government must be able to repose a high degree of trust and confidence in those individuals to whom it grants access to classified information. The decision to deny an individual a security clearance is not necessarily a determination as to the loyalty of the applicant. <sup>(24)</sup> 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 present evidence to establish controverted facts in the SOR that disqualify or may disqualify the Applicant from being eligible for access to classified information. <sup>(25)</sup> Thereafter, Applicant is responsible for presenting evidence to rebut, explain, extenuate, or mitigate facts. <sup>(26)</sup> An applicant "has the ultimate burden of demonstrating that it is clearly consistent with the national interest to grant or continue his security clearance." <sup>(27)</sup> "[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." <sup>(28)</sup> "Any doubt as to whether access to classified information is clearly consistent with national security will be resolved in favor of the national security." <sup>(29)</sup>

Based upon a consideration of the evidence, I find the following adjudicative guideline most pertinent to the evaluation of the facts in this case:

**Guideline F - Financial Considerations:** A security concern exists for an individual who is financially irresponsible. An individual who is financially irresponsible may also be irresponsible, unconcerned, or careless in their obligations to protect classified information. Behaving responsibly or irresponsibly in one aspect of life provides an indication of how a person may behave in other aspects of life.

Conditions that could raise a security concern and may be disqualifying, as well as those which would mitigate security concerns, pertaining to the adjudicative guideline are set forth and discussed in the conclusions section below.

## CONCLUSIONS

I carefully considered all of the facts in evidence and the legal standards discussed above. I reach the following conclusions regarding the allegations in the SOR.

The government has established its case under Guideline F. Applicant's delinquent debts brings the matter within Financial Considerations Disqualifying Conditions E2.A6.1.2.1 (*a history of not meeting financial obligations*), and E2.A6.1.2.3 (*inability or unwillingness to satisfy debts*). Applicant accumulated delinquent debts after he received less salary because his employer lost some contract work. While Applicant eventually regained an equivalent salary, he made little effort to pay his debts, and still has delinquent debts. Applicant's financial history shows he has not meet his financial obligations, and he is unwilling or unable to satisfy debts. The above disqualifying conditions have been established.

I have considered Financial Considerations Mitigating Conditions E2.A6.1.3.1 (*the behavior was not recent*); E2.A6.1.3.3 (*the conditions that resulted in the behavior were largely beyond the person's control (e.g. loss of employment. . .)*); and E2.A6.1.3.6 (*the individual initiated a good-faith effort to repay overdue creditors or otherwise resolve debts*). Applicant started to accumulate delinquent debts after 2000 and the debts are still outstanding so they are recent. While Applicant's lesser salary was a contributing factor to the start of his accumulating delinquent debts, he was never without some salary or unemployment benefits. He regained, over a period of time, a salary level comparable to his former salary. He also had income from his military retirement. Applicant's lower salary did not significantly contribute to Applicant's delinquent debts. Also, it is not a factor beyond Applicant's control that his wife did not tell him of the family financial situation. When he did learn of the debts, Applicant took no action to resolve or pay the debts.

After accumulating the delinquent debts, Applicant only recently filed a bankruptcy petition to resolve his debts. Bankruptcy is a legal and permissible means of resolving debts. While his eventual discharge in bankruptcy may resolve his debts, it does not preclude consideration of the security significance of the actions leading to the delinquent debts. (30) Applicant made no effort to resolve any of his debts before filing the bankruptcy petition. By his own admission, Applicant had over \$1,600.00 in discretionary funds each month to use to pay overdue creditors. It seem disingenuous to say the family lived pay check to pay check with this amount of discretionary funds per month. Some of Applicant's delinquent debts were large but some were only a few hundred dollars, and one only \$40.00. With so much discretionary income, Applicant made no effort to pay any, even the small, delinquent debts. Applicant did not initiate a good-faith effort to repay overdue creditors or otherwise resolve debts. Applicant's irresponsibility in his financial affairs indicates he may be irresponsible in dealing with classified information. Applicant has not mitigated the security concerns of his financial situation.

I carefully considered all of the circumstances in light of the "whole person" concept. I have considered Applicant is a good worker and respected by his employer. I have considered he retired from military service and that he highly values his security clearance. I conclude Applicant is not eligible for access to classified information.

## FORMAL FINDINGS

Formal findings for or against Applicant on the allegations in the SOR, as required by Section E3.1.25 of Enclosure 3 of the Directive, are:

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

Subparagraph 1.j.: Against Applicant

Subparagraph 1.k.: Against Applicant

### **DECISION**

In light of all of the circumstances presented by the record in this case, it is clearly not consistent with the national security to grant or continue a security clearance for Applicant. Clearance is denied.

Thomas M. Crean

Administrative Judge

1. Tr. 25-26.

2. Tr. 23; Government Exhibit 1 (Security clearance application, dated Feb. 6, 2003).

3. Applicant Exhibit B (Earnings verification from employer, dated Jun. 14, 2005).

4. Tr. 43-47; Tr. 27; Appellant Exhibit A (Applicant prepared "History, Reasons for Debts/Faults, and Travel", undated).

5. Tr. 27-28; Applicant Exhibit C (Notice of Bankruptcy Case Filing, dated Mar. 8, 2005).

6. Tr. 29.

7. Tr. 33-34.

8. Tr. 35-37.

9. Applicant Exhibit A (Applicant prepared "History, Reasons of Debts/Fault, and Travel", undated).

10. Applicant Exhibit F (Equifax report, dated Jun. 14, 2005); Applicant Exhibit G (Experian report, dated Jun. 14, 2005)

11. Applicant Exhibit H (Bank statements from Feb. 2002 to Nov. 2004); Appellant Exhibit I (Bank record, dated Jun. 15, 2005); Appellant Exhibit J (Bank records, dated Jun 15, 2005).

12. Tr. 57-59.

13. Tr. 49-51.

14. Tr. 31-32; Applicant Exhibit K (Applicant prepared financial analysis).

15. Tr. 64.

16. Tr. 52-54; Applicant Exhibits D and E (Performance evaluations).

17. Tr. 67.
18. Tr. 68-69.
19. Tr. 63.
20. *Department of the Navy v. Egan*, 484 U.S. 518 (1988).
21. Directive ¶ E2.2.1.
22. *Id.*
23. Directive ¶¶ E2.2.1.1 through E2.2.1.9.
24. *See* Exec. Or. 10865 § 7.
25. Directive ¶ E3.1.14.
26. ISCR Case No. 01-20700 at 3 (App. Bd. Dec. 19, 2002); *see* Directive ¶ E3.1.15.
27. ISCR Case No. 01-20700 at 3 (App. Bd. Dec. 19, 2002).
28. ISCR Case No. 95-0611 at 2 (App. Bd. May 2, 1996) (quoting DISCR Case No. 92-1106 (App. Bd. Oct. 7, 1993))
29. *Egan*, 484 U.S. at 531; *see* Directive ¶ E2.2.2.
30. ISCR Case No. 01-26675 at 3 (App. Bd. Jun. 13, 2003), *See*, ISCR Case No. 97-0016 (App. Bd. Dec 13, 1997).