

DATE: June 29, 2005

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In re:

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SSN: -----

Applicant for Security Clearance

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ISCR Case No. 03-23715

**DECISION OF ADMINISTRATIVE JUDGE**

**NOREEN A. LYNCH**

**APPEARANCES**

**FOR GOVERNMENT**

Jason Perry, Esq., Department Counsel

**FOR APPLICANT**

J. Patrick Anderson, Esq.

**SYNOPSIS**

Applicant, a 50-year-old manager, owned real estate which he rented for investment purposes. Due to circumstances beyond his control, he became unable to rent, sell, or return the property. When he was unable to pay the mortgage, Applicant had a judgment entered against him in December 2000 in the amount of \$14,226.00. The debt was satisfied in May 2005. Applicant has successfully mitigated the security concern raised by the judgment. Clearance is granted.

**STATEMENT OF THE CASE**

In December 2004, [\(1\)](#) the Defense Office of Hearings and Appeals (DOHA), pursuant to Executive Order 10865, *Safeguarding Classified Information Within Industry*, dated February 20, 1960, 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. The SOR 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 referral to an administrative judge to determine whether a clearance should be granted, continued, denied, or revoked.

In a sworn, written statement, dated January 24, 2005, Applicant responded to the allegations in the SOR. He elected to have his case decided on the written record in lieu of a hearing.

Department Counsel submitted the government's case on April 7, 2005. A complete copy of the file of relevant material (FORM) was received by Applicant on ay 2004. Applicant was afforded an opportunity to file objections and submit material in refutation, extenuation, or mitigation. Applicant objected to an allegation in the FORM, and provided additional material (two items admitted as Exhibit A), through Counsel. The case was assigned to me on June 10, 2005.

**FINDINGS OF FACT**

Applicant denied the factual allegation in 1.a. of the SOR and admitted the factual allegation in 1.b., both pertaining to financial matters under Guideline F. (2) The admission is incorporated herein as findings of fact. After a complete and thorough review of the evidence in the record, and upon due consideration of same, I make the following additional findings of fact.

Applicant, a 50-year-old employee of a defense contractor, seeks to obtain a security clearance. (3) Applicant has been employed as a manager for a defense contractor, from July 1, 2002, until the present time. Prior to that time he was self-employed. Applicant is married and has three adopted children. His first marriage ended in divorce in 1982. Applicant received a security clearance in 1980. (4)

Applicant purchased a townhouse as an investment in 1984. He rented the property and used it as a tax deduction. The mortgage was with the creditor listed in SOR, ¶ 1.a. The tenant moved out (date unknown) after the house was vandalized. The tenant had been in a lease to own contract with Applicant. Applicant tried to sell the property or rent it again. Applicant did not earn enough money to pay two mortgages. Applicant contacted the mortgage company in an effort to deed the property back to the bank, but was unsuccessful. The bank foreclosed on the property in 1997. Applicant had mortgage insurance on the property. (5)

The lender assigned all right to pursue actions resulting from the foreclosure of property to the creditor named in the SOR, ¶ 1.b. In 2000, the assignee sued Applicant and obtained a judgment in the amount of \$14,226.00. As of September 16, 2003, the debt had not been satisfied.

On advice of counsel, Applicant tried to settle the lone unsatisfied debt in 2004. Both offers were initially rejected. A Mutual Release of Agreement, dated May 16, 2005, satisfied the Final Judgment for Deficiency entered in favor of assignee in 1997. A Release of Lien in the amount of \$10,000.00 was signed on May 20, 2005. (6)

## POLICIES

Enclosure 2 of the Directive sets forth adjudicative guidelines to be considered in the evaluation of security suitability. In addition to brief introductory explanations for each guideline, the adjudicative guidelines are divided into those that may be considered in deciding whether to deny or revoke an individual's eligibility for access to classified information (Disqualifying Conditions) and those that may be considered in deciding whether to grant an individual's eligibility for access to classified information (Mitigating Conditions).

An administrative judge need not view the adjudicative guidelines as inflexible ironclad rules of law. Instead, acknowledging the complexities of human behavior, these guidelines, when applied in conjunction with the factors set forth in the Adjudicative Process provision set forth in Section E.2.2., Enclosure 2, of the Directive, are intended to assist the administrative judge in reaching fair and impartial common sense decisions. Because the entire process is a conscientious scrutiny of a number of variables known as the "whole person concept," all available, reliable information about the person, past and present, favorable and unfavorable, should be considered in making a meaningful decision.

The Adjudicative Process factors to consider are: (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 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 pertinent 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. Protecting national security is the paramount concern in reaching a decision in any case, and is dependent upon the primary standard that issuance of a clearance must be clearly consistent with the interests of national security.

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

**Guideline F - Financial Considerations: The Concern: An individual who is financially overextended is at risk of having to engage in illegal acts to generate funds.**

The Guideline F Disqualifying and Mitigating conditions, either raising security concerns or mitigating security concerns applicable to this case are set forth and discussed in the Conclusions section below. The decision reached in this case is drawn from conclusions I have found to be reasonable, logical and based upon the evidence contained in the case record.

In the decision-making process, the burden of producing evidence initially falls on the government to establish a case which demonstrates, in accordance with the Directive, that it is not clearly consistent with the national interest to grant or continue an applicant's access to classified information.<sup>(7)</sup> If the government meets its burden, the heavy burden of persuasion then falls upon the applicant to present evidence in refutation, explanation, extenuation or mitigation sufficient to overcome the doubts raised by the government's case, and to ultimately demonstrate that it is clearly consistent with the national interest to grant or continue the applicant's clearance.<sup>(8)</sup>

A person who seeks access to classified information enters into a fiduciary relationship with the government predicated upon trust and confidence. It is a relationship that transcends normal duty hours and endures throughout off-duty hours as well. It is because of this special relationship that 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. Decisions under this Directive include, by necessity, consideration of the possible risk that an applicant may deliberately or inadvertently fail to protect or safeguard classified information. Such decisions entail a certain degree of legally permissible extrapolation as to potential, rather than actual, risk of compromise of classified information. Any doubt about whether an applicant should be allowed access to classified information must be resolved in favor of protecting classified information.<sup>(9)</sup>

One additional comment is worthy of note. Applicant's allegiance, loyalty, and patriotism are not at issue in these proceedings. Section 7 of Executive Order 10865 specifically provides that industrial security clearance decisions shall be "in terms of the national interest and shall in no sense be a determination as to the loyalty of the applicant concerned."<sup>(10)</sup> Security clearance decisions cover many characteristics of an applicant other than allegiance, loyalty, and patriotism. Nothing in this decision should be construed to suggest I have based this decision, in whole or in part, on any express or implied decision as to Applicant's allegiance, loyalty, or patriotism.

## CONCLUSIONS

Upon consideration of all the facts in evidence, an assessment of all appropriate legal precepts, factors, and conditions, including those described briefly above, I conclude the following with respect to each allegation set forth in the SOR:

The government has established its case under Guideline F. Applicant has been in the defense industry for some years. As indicated above, despite Applicant's contention that his financial difficulties are of no concern, it is clear that he was in some degree of financial difficulty since the foreclosure of the investment property in 1997.

Beginning in 1997 and until September 2003, Applicant had a delinquent debt to a creditor for a sum owed after resale of Applicant's mortgage which had been foreclosed for nonpayment. As of September 2003, the debt had not been satisfied. Although Applicant offered to settle the debt, he did not do so until 2005. Despite being advised of the particular issue in his SF 86 in September 2003, and attempts to settle in 2004, he did not pay the debt until 2005. His overall financial activity and subsequent inactivity, gave rise to Financial Considerations Disqualifying Conditions (FC DC)

¶ E2.A6.1.2.3. (*Inability or unwillingness to satisfy debts*).

However, Applicant has not had any other negative financial issues. He has no other debts. Directive ¶ E2.A6.1.3.2 (*It was an isolated incident*). Furthermore, the investment property could not be sold or rented at any time relevant to the case due to its undesirability. Applicant was not successful in deeding the property bank to the bank. Applicant did not earn enough money to pay two mortgages. Directive ¶ 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, unexpected medical emergency, or a death, divorce or separation)*).

Applicant satisfied the Final Judgment for Deficiency in 2005. Prior attempts to settle had been rejected by the assignee.

Also, Applicant relied on advice of counsel concerning the best way to proceed in the matter. Directive, ¶ E2.A6.1.3.6. (*The individual initiated a good-faith effort to repay overdue creditors or otherwise resolve debts*).

I carefully considered all the circumstances in light of the "whole person" concept as required by the Directive in evaluating Applicant's vulnerability in protecting our national interest. I conclude Applicant has mitigated the security concerns arising from the financial considerations.

Accordingly, Applicant has, through evidence of extenuation and explanation, successfully mitigated and overcome the government's case with respect to Guideline F. Thus, allegations 1.a. and 1.b. of the SOR are concluded in favor of the Applicant.

### **FORMAL FINDINGS**

In accordance with Section E. 2. 2. of Enclosure 2 of the Directive, the following are the formal findings as to each allegation in the SOR:

Paragraph 1, Financial Considerations (Guideline F): FOR THE APPLICANT

Subparagraph 1.a. For the Applicant

Subparagraph 1.b. For the Applicant

### **DECISION**

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

**Noreen A. Lynch**

**Administrative Judge**

1. The SOR was undated. The transmittal sheet was dated December 30, 2004.
2. Item 3 (Applicant's Answer to SOR dated January 24, 2005), at 1.
3. Item 4 (Security Clearance Application (SF 86) dated September 16, 2003), at 1.
4. Item 5 (Applicant's Statement dated September 13, 2004), at 2.
5. *Id.*, at 2.
6. Item 1, *supra* note 2, at 2.
7. ISCR Case No. 96-0277 (July 11, 1997) at page 2.
8. ISCR Case No. 94-1075 (August 10, 1995) at pp. 3-4; Directive, Enclosure 3, Para E3.1.15.
9. Directive, Enclosure 2, Para. E2.2.2
10. Executive Order 10865, Section 7.