

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. 03-24028

**DECISION OF ADMINISTRATIVE JUDGE**

**KATHRYN MOEN BRAEMAN**

**APPEARANCES**

**FOR GOVERNMENT**

Francisco J. Mendez, Esquire, Department Counsel

**FOR APPLICANT**

*Pro Se*

**SYNOPSIS**

Applicant's financial problems invoke security concerns because of his failure to resolve his debts to seven creditors. While in July 2003 he promised to begin a good-faith effort to resolve his debts, he failed to do so even though he has a stable job. Although Applicant is hardworking, he failed to seek financial counseling or bankruptcy to resolve his dated debts. On the other hand, the government failed to establish security concerns over his criminal conduct or personal conduct. Clearance is denied.

**STATEMENT OF THE CASE**

The Defense Office of Hearings and Appeals (DOHA) issued a Statement of Reasons (SOR) to the Applicant on August 17, 2004. The SOR detailed reasons why the Government could not make the preliminary positive finding that it is clearly consistent with the national interest to grant or continue a security clearance for the Applicant.<sup>(1)</sup> The SOR alleges specific concerns over finances (Guideline F), criminal conduct (Guideline J), and personal conduct (Guideline E). Applicant responded to these SOR allegations in an Answer notarized on October 7, 2004, and requested a decision be made with a hearing.

After Department Counsel stated the case was ready to proceed on January 5, 2005, the case was assigned to me on January 10, 2005. On February 1, 2005, DOHA issued a Notice of Hearing and set this case to be heard on February 24, 2005, in a city near where Applicant lives and works.

At the hearing the government presented eight exhibits (Exhibits 1-8) which were admitted into evidence without objection. (TR 10-13) No evidence was presented to support allegations 1.h., 1.i., 2.a., 2.b, 3.a, or 3.b. (TR 8) Applicant testified. The transcript (TR) was received on March 15, 2005.

**FINDINGS OF FACT**

After a complete and thorough review of the evidence in the record, and upon due consideration of that evidence, I

make the following findings of fact:

Applicant, 38 years old, has been employed by a defense contractor in State #1 since November 2001. He completed a Security Clearance Application (SF 86) on January 1, 2002. (Exhibit 1) He was granted an interim clearance for two years which was revoked when the Statement of Reasons was issued. (TR 16; 34)

Applicant received An AS degree in 1988 from an institute in State #1. (Exhibit 1) Applicant married in 1994 and separated in July 2001. He has two children born in 1990 and 1993. (Exhibit 4; TR 4, 16-17; 18) He is now living with his parents. (TR 18, 20)

Applicant signed his SF 86 in January 2002 and certified that the statements on the form were true and correct. (Exhibit 1) Applicant disclosed adverse information regarding his finances in response to questions on the form, but failed to disclose his alcohol-related traffic offenses in 1993 and 1996 in response to Question 24. (Exhibit 1) Applicant denied the criminal conduct and personal conduct allegations which the government failed to otherwise establish. (Answer; TR 8)

### **Finances**

Investigation by the Defense Security Service (DSS) disclosed several additional adverse credit references on his January 2002 Report of Credit and his March 2003 Report of Credit. (Exhibits 5, 6) During his May 2003 interview he provided a Statement where he explained that he began having financial troubles in 1997 and 1998 when he was with his wife because she was irresponsible with use of credit cards and the telephone. For a period of time his wife was out of work for eight or nine months as she injured her ankle. These problems continued even after they were separated in May 2001 as he was still supporting his wife and children. (Exhibit 2; TR 21) He was re-interviewed in July 2003 and provided more details. (Exhibit 3)

At the hearing he explained that he is in the process of divorcing his wife and will file for bankruptcy to clear up the debts when he has enough money. (TR 14-15, 17)

SOR 1.a.. Applicant admitted his debt to Creditor #1, a bank, for \$804 which was a deficit on a delinquent credit card account that was charged off to bad debt and turned over to a collection agency. In 2003 they offered him a settlement payment of \$301, but they never sent the information as to where he should send payment. He did not pursue a payment plan. (Answer; Exhibits 2 at 3, 3, 6; TR 18-20)

SOR 1.b. Applicant admits his debt to Creditor #2, a bank, for \$401 for a delinquent credit card account. He has not pursued payment. (Answer; Exhibits 2 at 3, 3, 6; TR 21-21)

SOR 1.c. Applicant admits his debt to Creditor #3, for a personal computer for \$1,775; he has not made any payments for two years. (Answer; Exhibits 1, 2, 3; TR 22)

SOR 1.d. Applicant admits his debt to Creditor #4, for \$105 for a phone bill. He believes he probably paid this bill, but is not sure. (Answer; Exhibits 3, 7, 8; TR 22)

SOR 1.e. Applicant admits his debt to Creditor #5, for \$184, for a cable box that he was not able to return as his wife would not allow him access to it. He has not paid this bill. (Answer; Exhibits 7, 8; TR 23-24)

SOR 1.f. Applicant admits his debt to Creditor #6, for \$14,089 for a used vehicle he purchased in 2001 at 21 or 24% interest with a \$475 payment per month. He returned the car in November 2002. He tried to negotiate a payment plan but was unsuccessful. (Answer; Exhibits 7, 8; TR 24-26)

SOR 1.g. Applicant admits his debt to Creditor #7, for a judgment of \$2,436 entered in June 1999. He had given his wife the money to resolve this debt for dental care, but she did not do so. At one job he agreed to have his salary garnished to pay off this debt, but he was laid off in April 2001 and was unemployed for two months. In July 2003 he stated to DSS that he planned to arrange a payment schedule to satisfy this judgment, but he provided no evidence he ever did so. (Answer; Exhibits 1, 2, 3, 7, 8; TR 26-27)

SOR 1.h and i. Applicant resolved his debt to Creditor #8 both for \$395 for a judgment in 1997 for an unpaid motor vehicle surcharge and for a judgment in 1996 for an unpaid \$147 surcharge which had led to his license being suspended. He got this ticket in 1993, but finally paid the surcharge in 2000. (Answer; Exhibits 7, 8; TR 27-28; 40)

Applicant in 2003 had a net monthly remainder of only \$136 to resolve his debts. (Exhibit 3) In 2005 he has a monthly take-home pay of \$1,300; he pays \$300 every two weeks for child support that is garnished. He pays his parents \$150 per month for rent; he has a \$40 cell phone bill, a \$303 car payment and pays \$100 a month on a student loan and \$100 a month on insurance. He does not have a budget. He also pays for his daughter's dance lessons. His wife calls him to provide additional support which he often does. He has no credit cards. He has a 401K worth \$3,000. Applicant explored credit counseling or bankruptcy six months ago, but could not afford either. (TR 29-32; 33-34) He did not have \$500 to give to the bankruptcy lawyer to start the process. He hopes to start the process when his income tax return arrives. (TR 35) Although Applicant stated he has not resolved these debts, he is hardworking.

## POLICIES

Enclosure 2 of the Directive sets forth adjudicative guidelines to consider in evaluating an individual's security eligibility. They are divided into conditions that could raise a security concern and may be disqualifying and conditions that could mitigate security concerns in deciding whether to grant or continue an individual's access to classified information. But the mere presence or absence of any given adjudication policy condition is not decisive. Based on a consideration of the evidence as a whole in evaluating this case, I weighed relevant Adjudication Guidelines as set forth below:

### **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. Unexplained affluence is often linked to proceeds from financially profitable criminal acts.**

### **Guideline J - Criminal Conduct**

***The Concern:* A history or pattern of criminal activity creates doubt about a person's judgment, reliability and trustworthiness.**

### **Guideline E - Personal Conduct**

***The Concern:* Conduct involving questionable judgment, untrustworthiness, unreliability, lack of candor, dishonesty, or unwillingness to comply with rules and regulations could indicate that the person may not properly safeguard classified information.**

The responsibility for producing evidence initially falls on the Government to demonstrate that it is not clearly consistent with the national interest to grant or continue Applicant's access to classified information. Then the Applicant presents evidence to refute, explain, extenuate, or mitigate in order to overcome the doubts raised by the Government, and to demonstrate persuasively that it is clearly consistent with the national interest to grant or continue the clearance. Under the provisions of Executive Order 10865, as amended, and the Directive, a decision to grant or continue an applicant's security clearance may be made only after an affirmative finding that to do so is clearly consistent with the national interest. In reaching the fair and impartial overall common sense determination, the Administrative Judge may draw only those inferences and conclusions that have a reasonable and logical basis in the evidence of record.

## CONCLUSIONS

### **Financial Considerations**

The Government established disqualifying conditions that could raise a security concern and may be disqualifying including Applicant's (1) history of financial problems and his (3) inability or unwillingness to satisfy all of his debts. At the time of the investigation he had seven unresolved debts that remain unresolved. Applicant disputed two debts where the government provided no supporting evidence. While in 2003 he promised to make arrangements to pay some of

these debts, he provided no evidence he has done so. While his wife has been ill and was unemployed for a period, he provided no evidence of how her medical expenses adversely affected his finances.

Applicant is now separated from his wife and planing to divorce. While he has extremely limited income to handle his current financial obligations, Applicant has failed to mitigate<sup>(2)</sup> these financial concerns as he has provided no evidence that he resolved any of these debts. Applicant has failed to demonstrate that he is now financially responsible as he failed to follow through on his plan to resolve these debts. In fact, he does not even have a budget. Neither has Applicant shown that he has received or is receiving counseling for the problem. There are no clear indications that the problem is being resolved or is under control.

After considering the Adjudicative Process factors and the Adjudicative Guidelines, I rule against Applicant under SOR Paragraph 1, as he failed to mitigate the allegations in SOR subparagraphs 1.a. through 1.g., but for him on subparagraphs 1.h. and 1.i.

### **Criminal Conduct**

The government provided no evidence to support the charges of criminal misconduct. After looking at the whole person and considering the Adjudicative Process factors and the Adjudicative Guidelines, I rule for Applicant on subparagraph 2.a. and 2.b. under SOR Paragraph 2.

### **Personal Conduct**

The government provided no evidence to support the charges of personal misconduct. After looking at the whole person and considering the Adjudicative Process factors and the Adjudicative Guidelines, I rule for Applicant on subparagraph 3.a. and 3.b. under SOR Paragraph 3.

### **FORMAL FINDINGS**

After reviewing the allegations of the SOR in the context of the Adjudicative Guidelines in Enclosure 2 and the factors set forth under the Adjudicative Process section, I make the following formal findings:

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.: For Applicant

Subparagraph 1.i.: For Applicant

Paragraph 2. Guideline J: FOR APPLICANT

Subparagraph 2.a.: For Applicant

Subparagraph 2.b.: For Applicant

Paragraph 3. Guideline E: FOR APPLICANT

Subparagraph 3.a.: For Applicant

Subparagraph 3.b.: For 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 the Applicant. Clearance is denied.

Kathryn Moen Braeman

Administrative Judge

1. This procedure is required by Executive Order 10865, as amended, and Department of Defense Directive 5220.6, dated January 2, 1992 (Directive), as amended by Change 4, April 20, 1999.
2. **Conditions that could mitigate security concerns include:** 1. The behavior was not recent; 2. It was an isolated incident; 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); 4. The person has received or is receiving counseling for the problem and there are clear indications that the problem is being resolved or is under control; 5. The affluence resulted from a legal source; and 6. The individual initiated a good-faith effort to repay overdue creditors or otherwise resolve debts.