

DATE: November 15, 2005

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In re:

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SSN: -----

Applicant for Security Clearance

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ISCR Case No. 03-24256

**DECISION OF ADMINISTRATIVE JUDGE**

**DAVID S. BRUCE**

**APPEARANCES**

**FOR GOVERNMENT**

Raymond T. Blank, Jr., Esq., Department Counsel

**FOR APPLICANT**

*Pro Se*

**SYNOPSIS**

Applicant experienced financial difficulties for several years before becoming unemployed for about ten months in February 2002. His current debts consist of delinquent consumer credit accounts exceeding \$46,000.00. He has never implemented a repayment plan directly with any of his creditors or through any credit counseling service. He has never applied for bankruptcy relief, and no payments have been made against the accounts for several years. Applicant has failed to successfully mitigate the security concerns raised by his financial problems. Clearance is denied.

**STATEMENT OF THE CASE**

On, December 29, 2004, 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 Review Program*, dated January 2, 1992, as amended and modified (Directive), issued a Statement of Reasons (SOR) to Applicant alleging facts that raise security concerns addressed in the Directive under Guideline F - Financial Considerations. The SOR detailed why DOHA could not preliminarily determine under the Directive that it is clearly consistent with the national interest to grant or continue Applicant's request for a security clearance. By his answer executed January 7, 2005, Applicant admitted with explanations the allegations of subparagraphs 1.d. - and 1.g. of the SOR, and denied the allegations of subparagraphs 1.a - 1.c., 1.e. and 1.f., and requested a hearing before an administrative judge.

The case was assigned to me on August 24, 2005, and I conducted the hearing on September 21, 2005. The government submitted exhibits (GE) 1 through 6, which were admitted without objection. Applicant testified at the hearing and offered exhibits (AE) A through Q, also admitted without objection. At the conclusion of the hearing, Department Counsel moved to amend the SOR, without objection from Applicant, to reflect that the debts referred to in subparagraphs 1.a., 1.b. and 1.g., are, in fact, the same debts referred to subparagraphs 1.f., 1.d. and 1.e. of the SOR, and should, accordingly, merge into the latter subparagraphs, and the motion was granted.<sup>(1)</sup> DOHA received the hearing transcript (Tr.) on October 6, 2005.

## FINDINGS OF FACT

Applicant's admissions to the allegations of the SOR as amended are incorporated herein by reference. In addition, after a thorough review of the pleadings, transcript, and exhibits, I make the following findings of fact:

Applicant is 42 years old and has two children, twins, born in 1992. He served in the U.S. Navy for almost eight years and was honorably discharged in December 1989, at paygrade E-6.<sup>(2)</sup> He obtained a B.S. degree in computer engineering in December 1993.<sup>(3)</sup> He does not use illegal drugs and he has no criminal record.<sup>(4)</sup> Applicant has never held a security clearance.<sup>(5)</sup>

Applicant has been employed with a defense contractor as a systems engineer since January 6, 2003. Except for a period of unemployment he endured from February 2002 until he obtained his present position, Applicant has consistently worked since his discharge from the military, and has been working in the computer field since he graduated from college.<sup>(6)</sup> Applicant was unemployed when he actually submitted his Security Clearance Application (SF 86) on November 21, 2002.

Applicant lost his job in February 2002, when his employer went out of business.<sup>(7)</sup> While unemployed, he received unemployment benefits of \$268.00 per week until he returned to work in early January 2003.<sup>(8)</sup> Applicant and his wife began experiencing financial problems several years before he was unemployed. Applicant's wife did not consistently contribute to the income of the household during the time their financial difficulties gradually escalated.<sup>(9)</sup>

On September 17, 2003, Applicant indicated to a Defense Security Service (DSS) Special Agent he would contact a consumer credit counseling service for assistance in negotiating with his creditors to begin paying his debts.<sup>(10)</sup> Applicant subsequently discussed his finances with two credit counseling agencies, but retained neither. He also consulted with two bankruptcy attorneys, but did not file for any form of bankruptcy relief.<sup>(11)</sup>

Applicant owes the following amounts to the creditors referenced in the SOR:

1. Credit card account - \$19,683.00 (Subpara. 1.a., merged with subpara.1.f.)
2. Credit card account - \$10,459.00 (Subpara. 1.b., merged with subpara. 1.d.)
3. Credit account - \$8,324.00 (Subpara. 1.c.)
4. Collection account - \$7,586.00 (Subpara. 1.e., merged with subpara.1.g.)

Applicant's total debt set forth above is \$46,052.00. With the exception of three payments for \$250.00 each made in the first three months of 2003 against the debt referred to in No. 1, no payments have been made to these accounts for many years. All the accounts were charged off as bad debts by the original creditors before Applicant's period of unemployment.<sup>(12)</sup> In September 2003, Applicant paid \$499.08 to pay off a different credit account in full which was not one of the debts referred to in the SOR.<sup>(13)</sup>

When Applicant submitted his personal financial statement to the DSS Special Agent in September 2003, he claimed he owned a home that was rented to a third party at the time and a vacant lot, with positive equity. The loan obligations for these properties totaled \$1,590.00 per month and were current. The statement also reflected he was current on automobile and education loans requiring payments of \$550.00 per month. With credit for these monthly payments being made each month, Applicant's statement showed positive net income of \$85.00 per month, after also accounting for all his other miscellaneous family and personal expenses.<sup>(14)</sup>

## POLICIES

Enclosure 2 of the Directive, *Adjudicative Guidelines For Determining Eligibility For Access To Classified Information*, sets forth the criteria which must be evaluated when determining security clearance eligibility. The adjudicative

guidelines specifically distinguish between those factors that are considered in denying or revoking an employee's request for access to classified information (Disqualifying Conditions), together with those factors that are considered in granting an employee's request for access to classified information (Mitigating Conditions). By acknowledging that individual circumstances of each case are always different, the guidelines provide substantive standards to assist an administrative judge in reaching fair and impartial common sense decisions.

The adjudicative process requires thorough consideration and review of all available, reliable information about the applicant, past and present, favorable and unfavorable, to arrive at well- informed decisions. Section E2.2. of Enclosure 2 of the Directive describes the essence of scrutinizing all appropriate variables in a case as the "whole person concept." In evaluating the conduct of the applicant and the circumstances in any case, the factors an administrative judge should consider pursuant to the concept 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 the 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. Granting an applicant's clearance for access to classified information is predicated on a high degree of trust and confidence in the individual. Accordingly, decisions under the Directive must include consideration of not just the *actual* risk of disclosure of such information, but also consideration of any *possible* risk an applicant may deliberately or inadvertently compromise classified information in any aspect of his or her life. Any doubt about whether an applicant should be allowed access to classified information must be resolved in favor of protecting classified information. <sup>(15)</sup> The decision to deny a security clearance request to an individual is not necessarily a determination of the loyalty of the applicant. <sup>(16)</sup> It is merely an indication the applicant has not met the strict guidelines established by the Department of Defense for issuing a clearance.

In accordance with the Directive, the government bears the burden of proof in the adjudicative process to first establish conditions by substantial evidence which indicate it is not clearly consistent with the national interest to grant or continue an applicant's access to classified information. <sup>(17)</sup> The legal standard for the burden of proof is something less than a preponderance of the evidence. <sup>(18)</sup> When the government meets this burden, the corresponding heavy burden of rebuttal then falls on the applicant to present evidence in refutation, explanation, extenuation or mitigation sufficient to overcome the position of the government, and to ultimately demonstrate it is clearly consistent with the national interest to grant or continue the applicant's clearance. <sup>(19)</sup>

## CONCLUSIONS

Under Guideline F, a security concern exists when a person has significant delinquent debts. An individual who is financially overextended is at risk of having to engage in illegal or unethical acts to generate funds to meet financial obligations. Similarly, an individual who is financially irresponsible may also be irresponsible, unconcerned, or careless in their obligation 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.

Based on all the evidence, Financial Considerations Disqualifying Condition (FC DC) E2.A6.1.2.1 (*A history of not meeting financial obligations*), and E2.A6.1.2.3 (*Inability or unwillingness to satisfy debts*), apply in this case. I have considered all the Financial Considerations Mitigating Conditions (FC MC), and, as argued by Applicant, especially considered FC MC E2.A6.1.3.1 (*The behavior was not recent*), FC MC E2.A6.1.3.2 (*It was an isolated incident*), FC C 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)*), and FC MC E2.A6.1.3.6 (*The individual initiated a good faith effort to repay overdue creditors or otherwise resolve debts*). I conclude none apply to this case.

Applicant showed successfully that three of the debts listed on the SOR were actually duplicates of others. The four

merged SOR allegations, however, still exceed \$46,000.00. This amount is substantial and took time to accrue, heightened by the fact that it was ostensibly consumer credit debt that was amassed before Applicant's period of unemployment. The clear inference is that Applicant and his family lived beyond their means for a lengthy period, and Applicant failed to recognize the magnitude of his escalating debt. He took no affirmative steps then to tighten the family budget to get his financial affairs in order. The unfortunate loss of his job in February 2002 only compounded his already serious financial difficulties. The debt accrued over several years, and because almost nothing has been paid against the debts, I consider the debts recent, in the sense that they remain presently overdue. Likewise, I cannot consider accrual of the debts to be an isolated event because the debts were multiple and were progressively incurred over a lengthy period.

Applicant represented to the DSS investigator over two years ago he would initiate efforts to begin paying the accounts since he had resumed working. At the hearing about two years later, no payments had been made and no repayment plans or schedules had been implemented by Applicant with any of the creditors. A different conclusion might be appropriate had Applicant adjusted his budget and made good-faith efforts to repay any significant portion of the total debt since he filed his SF 86 nearly three years ago. Applicant did not seriously undertake efforts to benefit from meaningful credit counseling, and never considered bankruptcy a viable option, likely premised upon being told he would not qualify for relief that would totally discharge the debts. As of April 2004, Applicant had paid nothing and was electing not to pay any of the creditors to, hopefully, allow the statute of limitations to expire on the debts and avoid repayment. (20) It is interesting to note in September 2003, Applicant paid off a separate credit account in full for almost \$500.00. He also regularly kept his car payments current. It appears Applicant has chosen to ignore certain debts, in spite of having had at least a modest ability to accomplish some partial repayment. Given the chronology and seriousness of the events, Applicant has failed to show his failure to pay his debts was due principally to conditions beyond his control, and he has not made a good-faith effort to repay any of his creditors or otherwise resolve his debts. He has made no effort to satisfy even a modest amount of the delinquent debts he acknowledges are his responsibility. His deliberate and irresponsible inattention to his debts causes great concern, particularly considering he has ignored the debts when he has had a modest ability in recent years to begin making payments on some of them.

I have further reviewed all the record evidence under the "whole person" concept required by the Directive in evaluating Applicant's vulnerability in protecting our national security. An applicant with a good or even an exemplary work history may engage in conduct that has negative security implications. Although I do not believe Applicant would resort to illegal acts to pay his debts, and Applicant's loyalty to the United States is also not in question, I am persuaded by the totality of the evidence that it is not clearly consistent with the national interest to grant Applicant a security clearance. For the reasons stated, Applicant has not met the strict guidelines established by the Department of Defense for issuance of a clearance, and he has failed to mitigate the security concerns regarding the financial issues raised in this case. Accordingly, Guideline F is decided against Applicant.

## **FORMAL FINDINGS**

In accordance with Section E3.1.25 of Enclosure 3 of the Directive, the following are the formal findings as to each allegation in the SOR:

Paragraph 1. Financial Considerations (Guideline F) AGAINST THE APPLICANT

Subparagraph 1.a. (merged with 1.f.)\_Against the Applicant

Subparagraph 1.b. (merged with 1.d.)\_Against the Applicant

Subparagraph 1.c. Against the Applicant

Subparagraph 1.e. (merged with 1.g.) Against 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. Clearance is denied.

David S. Bruce  
Administrative Judge

1. Tr, at 54-55.
2. GE 1 (Applicant's Security Clearance Application dated November 21, 2002), at 1 and 4.
3. *Id.* at 2.
4. *Id.* at 5-6.
5. *Id.* at 7.
6. Tr. at 21-22.
7. GE 4 (Applicant's statement to Defense Security Service Special Agent dated September 17, 2003), at 2.
8. AE B (Employment Security Commission records - March 12, 2002). See also Tr. at 22 and 32.
9. Tr. at 74-75.
10. GE 4, *supra* note 6, at 3.
11. Tr. at 28-29.
12. Tr. at 50-63.
13. AE 4 (Payment receipts). See also Tr. at 35-36.
14. GE 4, *supra* note 6, at 4.
15. Directive, Enclosure 2, Para. E2.2.2.
16. Executive Order 10865 § 7.
17. ISCR Case No. 96-0277 (July 11, 1007) at p. 2.
18. *Department of the Navy v. Egan*, 484 U.S. 518, 531 (1988).
19. ISCR Case No. 94-1075 (August 10, 1995) at pp. 3-4; Directive, Enclosure 3, Para. E3.1.15.
20. GE 3 (Applicant's answers to Interrogatories signed April 6, 2004.), at 2.