

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. 03-24530

**DECISION OF ADMINISTRATIVE JUDGE**

**CAROL G. RICCIARDELLO**

**APPEARANCES**

**FOR GOVERNMENT**

Rita O'Brien, Esq., Department Counsel

**FOR APPLICANT**

*Pro Se*

**SYNOPSIS**

Applicant is 42 years old, married with two daughters, has worked for the same federal contractor since 1988, and held a security clearance since 1989. In 1994 Applicant became seriously ill and almost died. Some of his fingers on both hands and both his feet were amputated. In 1995 he and his family were in a car accident. His mother died and his family sustained serious injuries. Applicant received social security disability benefits. He believed he was entitled to these benefits, but did not know for how long. Applicant was overpaid and currently has a payment plan and financial resources to repay this debt. Applicant did not list this debt on his security application because he believed the question pertained to consumer debt. Applicant has mitigated the financial and personal conduct security concerns. Clearance is granted.

**STATEMENT OF CASE**

On February 23, 2005, the Defense Office of Hearings and Appeals (DOHA) issued to Applicant a Statement of Reasons (SOR) stating they were unable to find that it is clearly consistent with the national interest to grant or continue a security clearance. <sup>(1)</sup> The SOR, which is in essence the administrative complaint, alleges security concerns under Guideline F, financial considerations, and Guideline E, personal conduct.

In a sworn statement, dated March 21, 2005, Applicant responded to the SOR allegations, and requested a hearing. In his SOR response, Applicant admitted some of the allegations in the SOR and denied others with an explanation.

The case was assigned to me on May 25, 2005. A notice of hearing was issued on June 3, 2005, originally scheduling the hearing for June 23, 2005. The hearing was rescheduled for June 22, 2005, due to scheduling conflicts, and a notice of the amended date was issued on June 10, 2005. Applicant agreed to the scheduling change. The hearing was conducted as scheduled on June 22, 2005. The government submitted four exhibits that were marked as Government Exhibits (GE) 1-4, and were admitted into the record without objection. The Applicant testified on his own behalf, and had one witness testify for him. Applicant submitted seven exhibits that were marked as Applicant's Exhibits (AE) A-G, and were admitted into the record without objection. The transcript was received on June 30, 2005.

## FINDINGS OF FACT

Applicant's admissions to the allegations in the SOR, are incorporated herein. In addition, after a thorough and careful review of the pleadings, exhibits, and testimony, I make the following findings of fact:

Applicant is 42 years old, married for 19 years, and the father of two daughters. He has been employed by the same federal contractor since 1988 as a specialist engineer, and has held a security clearance since 1989.

In October 1994 Applicant was diagnosed with pneumococcal pneumonia, acute respiratory distress syndrome, and disseminated intravascular coagulations. These illnesses caused all of his organs to shut down and he was put on a ventilator. His lungs shut down and he lost blood to all of his extremities and organs. Applicant almost died due to these illnesses. Applicant was in the hospital until approximately December 1994 and, as a result of his illnesses, he had fingers on both hands amputated and had both of his feet amputated. It took him many months to recover and to a certain extent he will never fully recover.

In April 1995 Applicant and his wife, two daughters, father and mother were in a serious car accident. Applicant's mother was killed in the accident, and the rest of the family, except his youngest daughter who was one-year old at the time, were injured. His wife suffered serious injuries that required hospitalization for several weeks, surgeries, and convalescing for several months.

During the period of Applicant's illness he received social security disability benefits (SSDB). Applicant went back to work in a reduced capacity in July 1995. Applicant's wife attempted several times to contact the Social Security Administration (SSA) to advise them that Applicant had returned to work, however she could never make contact with a live person and resorted to leaving a message on their voicemail advising the administration that her husband had returned to work.

Applicant continued to receive SSDB despite returning to work and believed because of his severe disabilities he was entitled to them. Applicant admits he was not quite sure when the SSDB were to suppose to stop; that there was a great deal of turmoil going on in his life during this period with his health, the tragic death of his mother, and the injuries suffered by his family; he was not paying close attention to when these benefits were suppose to stop; and he received an overpayment. He was in a mental mode of getting back to work and taking care of his family, and that was all he could handle at the time due to his illness and the accident.

In the spring of 1999 Applicant again contacted the SSA and asked when the SSDB was suppose to stop. In July 1999 the SSA sent paperwork to Applicant for him to fill out and return, which he did.<sup>(2)</sup> In December 1999 the SSA sent another form for Applicant to fill out.<sup>(3)</sup> Applicant filled out the form promptly and returned it. He next heard from the SSA in 2000. He was advised that the SSDB he was receiving should have lasted for one year after his return to work.<sup>(4)</sup> Applicant had been overpaid from approximately the middle of 1996 to 1999, by \$52,000. Applicant admits he should was not entitled to receive these benefits during that time.

Applicant met with the local SSA in March 2000 and declined a settlement offer to pay 80% of the debt. Applicant reasoned was he did not have the lump sum of money and, although he did have assets, they were not liquid. Applicant again met with the SSA in March 2001 and agreed to have his tax refund checks and tax credits be applied to this debt. Applicant did not make any payments on the debt from 1999, when he first contacted the SSA, to 2001 when his tax refund checks were applied to the debt. Applicant's reason for failing to make any payments was because he thought he had to pay it all back at once, the debt was daunting, and he did not know how to deal with it.

Applicant had \$3,010 from tax returns and credits applied to his SSDB debt from 2001 to 2004.<sup>(5)</sup> In June 2004 Applicant pledged to pay \$10,000 to SSA by the year-end and to continue to pay down the debt in the following years until it is fully paid off.<sup>(6)</sup> In October of 2004 Applicant set up a payment plan with the SSA and agreed to pay \$100 a month. He has consistently made this payment.<sup>(7)</sup> Applicant paid \$10,000 to the SSA on March 21, 2005.<sup>(8)</sup> As of April 2005 Applicant owes \$39,332 to the SSA. Applicant improperly received approximately \$52,000 in disability

benefits that he was not entitled to from the SSA.

Applicant earns approximately \$65,000 a year before taxes. Applicant took out an equity line of credit from a credit card company to pay off his mortgage, because he could receive a lower interest rate from the credit card company than he could from the mortgage company. Applicant paid off the mortgage on his house and anticipates paying off this line of credit in July 2008. Applicant's home is worth approximately \$200,000. Applicant will pay off the loan on his car in August 2006. Applicant charges most of his and his family's living expenses to a credit card so he can receive a cash rebate. He pays this credit card bill on time each month. Applicant has investments in his company's 401K retirement plan and in IRAs for both he and his wife. He also has money in his saving account. Applicant does not have any outstanding debts other than the repayment to the SSA and his equity line of credit that he considers equivalent to a mortgage. Applicant anticipates when he completes the equity payment (\$699) and the car payment (\$254) he will be able to make larger payments towards his SSDB debt. Applicant also plans on making annual lump sum payments at the end of each year to buy down the debt. After having made a recent payment of \$10,000 Applicant needs time to save money to put towards this debt.

Applicant answered "No" to Question 39 on his security clearance application (SF 86) which asked: *Are you currently over 90 days delinquent on any debt(s)?* Applicant explained that he believed that this question was addressing if he had any outstanding consumer debt, such as credit cards. He did not believe it applied to his overpayment debt to the SSA.

Applicant provided performance evaluations from his employer that show he is a valued and consistent worker who either met the expectations of his employer or exceeded them.<sup>(9)</sup>

### POLICIES

Enclosure 2 of the Directive sets forth adjudicative guidelines to be considered in evaluating a person's eligibility to hold a security clearance. Included in the guidelines are disqualifying conditions (DC) and mitigating conditions (MC) applicable to each specific guideline. Considering the evidence as a whole, Guideline F, pertaining to financial considerations, and Guideline E, personal conduct, with their respective DC and MC, apply in this case. Additionally, each security clearance decision must be a fair and impartial commonsense decision based on the relevant and material facts and circumstances, the whole-person concept, along with the factors listed in the Directive. Specifically these are: (1) the nature and seriousness of the conduct and surrounding circumstances; (2) the frequency and recency of the conduct; (3) the age of the applicant; (4) the motivation of the applicant, and the extent to which the conduct was negligent, willful, voluntary, or undertaken with knowledge of the consequences; (5) the absence or presence of rehabilitation; and (6) the probability that the circumstances or conduct will continue or recur in the future. Although the presence or absence of a particular condition or factor for or against clearance is not outcome determinative, the adjudicative guidelines should be followed whenever a case can be measured against this policy guidance.

The sole purpose of a security clearance determination is to decide if it is clearly consistent with the national interest to grant or continue a security clearance for an applicant.<sup>(10)</sup> The government has the burden of proving controverted facts.<sup>(11)</sup> The burden of proof is something less than a preponderance of evidence.<sup>(12)</sup> Once the government has met its burden, the burden shifts to an applicant to present evidence of refutation, extenuation, or mitigation to overcome the case against

him.<sup>(13)</sup> Additionally, an applicant has the ultimate burden of persuasion to obtain a favorable clearance decision.<sup>(14)</sup>

No one has a right to a security clearance<sup>(15)</sup> and "the clearly consistent standard indicates that security clearance determinations should err, if they must, on the side of denials."<sup>(16)</sup> Any reasonable doubt about whether an applicant should be allowed access to sensitive information must be resolved in favor of protecting such sensitive information.<sup>(17)</sup> The decision to deny an individual a security clearance is not necessarily a determination as to the loyalty of an applicant.<sup>(18)</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.

Based upon consideration of all 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 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.

Guideline E-Personal Conduct is a security concern when an individual's conduct involves questionable judgment, untrustworthiness, unreliability, lack of candor, dishonesty, or unwillingness to comply with rules and regulations that could indicate that the person may not properly safeguard classified information.

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 below.

### CONCLUSIONS

I have carefully considered all the facts in evidence and the legal standards. The government has established a prima facie case for disqualification under Guideline F and Guideline E.

Based on all the evidence, Financial Considerations Disqualifying Condition (FC DC) E2.A6.1.2.1 (*A history of not meeting financial obligations*), FC DC E2.A6.1.2.3 (*Inability or unwillingness to satisfy debts*), apply in this case. Applicant has approximately \$39,322 in an overpayment debt to the SSA. The overpayment began approximately one year after he returned to work in July 1995 and Applicant has only recently started to make consistent payments to resolve it.

I have considered all the Financial Considerations Mitigating Conditions (FC MC), and 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 MC 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*).

Applicant has one outstanding debt owed to the SSA for an overpayment for SSDB. Due to Applicant's serious illnesses and severe disabilities he was entitled to SSDB for a period of time. He credibly testified that he believed he was entitled to this payment for a period of time, but really did not know for how long. He certainly was delinquent in not following up on when the payment should have ceased. Applicant's life was in turmoil with two back to back personal tragedies, first with his illness and then with a serious car accident. Applicant focused on restoring his family life and getting back to work, during this time. Applicant believed he was entitled to these benefits due to his severe disabilities resulting from the serious illnesses he had in 1994, but did not follow up, as he should have, on how long the payments should have continued. Applicant finally took the initiative to re-contact the SSA and later set up a payment plan. Although Applicant waited longer than he should have to set up this plan, he did have yearly tax refund payments and a tax credit credited toward the debt and did not totally ignore it. Because the debt is still current and the payment plan was only set up in October 2004, I find FC MC E2.A6.1.3.1, that the behavior was not recent, does not apply.

I find FC MC E2.A6.1.3.2 and FC MC E2.A6.1.3.3 apply because the conditions that started the whole SSDB process were due to major life changing events in Applicant's life that were beyond his control. It is reasonable to accept that his life was in turmoil and his medical conditions and disabilities were severe. It is also reasonable to believe that Applicant truly did believe he was entitled to these benefits due to his disabilities. The question is for how long? After a period of time had passed and Applicant's life was returning to some normalcy he then re-contacted the SSA to resolve the issue. Applicant does not have any other delinquent debts, therefore I find this was an isolated incident.

I also find that FC MC E2.A6.1.3.6 applies. Applicant is making a good-faith effort to resolve this debt. At first he was overwhelmed by the amount he owed and delayed action. However, he has since made consistent payments and a large lump sum payment to lower the amount. Applicant's pays his bills on time, does not live beyond his means, and has a plan to make annual lump sum payments and when he pays off his equity debt and car debt he intends on increasing his

payments for this debt.

Based on all the evidence, Personal Conduct Disqualifying Condition (PE DC) E2.A5.1.2 (*The deliberate omission, concealment, or falsification of relevant and material facts from any personnel security questionnaire, personal history statement, or similar form used to conduct investigations, determine employment qualifications, award benefits or status, determine security clearance eligibility or trustworthiness, or award fiduciary responsibilities*), and PE DC E2.A5.1.4 (*Personal conduct or concealment of information that increases an individual's vulnerability to coercion, exploitation or duress, such as engaging in activities which, if known, may affect the person's personal, professional, or community standing or render the person susceptible to blackmail*) apply in this case. Applicant failed to list his overpayment debt to SSA on his SF 86 and he received SSDB that he was not entitled to for approximately three years.

I have considered all the mitigating conditions and especially considered Personal Conduct Mitigating Condition (PC MC) E2.A5.1.3.2 (*The falsification was an isolated incident, was not recent, and the individual has subsequently provided correct information voluntarily*), PC MC E2.A5.1.3.3 (*The individual made prompt, good-faith efforts to correct the falsification before being confronted with the facts*), and PC MC E2.A5.1.3.5 (*The individual has taken positive steps to significantly reduce or eliminate vulnerability to coercion, exploitation, or duress*). It is unclear whether Applicant provided the correct information regarding his debt to SSA prior to being confronted with the facts. However, Applicant credibly testified that despite the wording of Question 39 he believed it was referring to consumer debt. I find this was an isolated incident, was not recent and Applicant has been forthcoming in providing information regarding his debt to the SSA. I also find Applicant has taken positive steps in addressing his debt by paying a lump sum payment, having a payment plan in place that he makes consistent monthly payments towards, and his overall financial stability are mitigating and eliminate his potential vulnerability to coercion, exploitation, or duress. I find PC MC E2.A5.1.3.2 and PC MC E2.A5.1.3.5 apply.

I have also considered the general adjudicative guidelines, specifically the motivation of the applicant, and the extent to which the conduct was negligent, willful, voluntary, or undertaken with the knowledge of the consequences. I have also considered the probability that the circumstances or conduct will continue or recur in the future. I find Applicant's failure to be proactive in contacting the SSA regarding his benefits was negligent, but not willful. Applicant should have been more diligent. However, I have considered the stress Applicant suffered for an extended period of time and the enormity of the events that took place in a relatively short period of time and conclude that the probability that the circumstances or conduct will recur in the future are remote.

In all adjudications, the protection of our national security is the paramount concern. The objective of the security-clearance process is the fair-minded, commonsense assessment of a person's life to make an affirmative determination that the person is eligible for a security clearance. Indeed, the adjudicative process is a careful weighing of a number of variables in considering the "whole person" concept. It recognizes that we should view a person by the totality of their acts, omissions, motivations and other variables. Each case must be adjudged on its own merits, taking into consideration all relevant circumstances, and applying sound judgment, mature thinking, and careful analysis.

I considered all the evidence provided and also considered the "whole person" concept in evaluating Applicant's risk and vulnerability in protecting our national interests. I considered the Applicants credibility and demeanor while testifying and found him forthright and credible. I find Applicant has mitigated the security concerns raised by the financial consideration concerns and personal conduct concerns. Therefore, I am persuaded by the totality of the evidence in this case, that it is clearly consistent with the national interest to grant Applicant a security clearance. Accordingly, Guideline F and Guideline E are decided for Applicant.

### **FORMAL FINDINGS**

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

Paragraph 1 Financial Considerations (Guideline F) FOR THE APPLICANT

Subparagraph 1.a For the Applicant

Paragraph 2 Personal Conduct (Guideline E) FOR THE APPLICANT

Subparagraph 2.a For the Applicant

Subparagraph 2.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.

Carol. G. Ricciardello

Administrative Judge

1. This action was taken under Executive Order 10865, dated February 20, 1960, as amended, and DoD Directive 5220.6, dated January 2, 1992, as amended and modified (Directive).
2. GE 2 at 4; (*A Notice of Continuing Review*).
3. *Id.*; (*Employee Work Activity Report*).
4. *Id.*
5. *Id.*; AE B.
6. GE 2 at 4.
7. AE C.
8. AE A.
9. AE D.
10. ISCR Case No. 96-0277 (July 11, 1997) at p. 2.
11. ISCR Case No. 97-0016 (December 31, 1997) at p. 3; Directive, Enclosure 3, ¶ E3.1.14.
12. *Department of the Navy v. Egan*, 484 U.S. 518, 531 (1988).
13. ISCR Case No. 94-1075 (August 10, 1995) at pp.3-4; Directive, Enclosure 3, ¶ E3.1.15.
14. ISCR Case No. 93-1390 (January 27, 1995) at pp. 7-8; Directive, Enclosure 3, ¶ E3.1.15
15. *Egan*, 484 U.S. at 531.
16. *Id.*
17. *Id.*; Directive, Enclosure 2, ¶ E2.2.2.
18. Executive Order 10865 § 7.