

DATE: May 31, 2005

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In Re:

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SSN: -----

Applicant for Security Clearance

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ISCR Case No. 03-24789

**DECISION OF ADMINISTRATIVE JUDGE**

**THOMAS M. CREAN**

**APPEARANCES**

**FOR GOVERNMENT**

Edward W. Loughran, Esq., Department Counsel

**FOR APPLICANT**

*Pro Se*

**SYNOPSIS**

Applicant is a draftsman for a defense contractor. He incurred delinquent credit card debts after leaving active military service. He also used student loans to complete an associate's degree at a technical college. Applicant acknowledged the credit card debts, but has taken no action to pay the overdue creditors. He chose to start paying off his student loans first. Applicant has not mitigated security concerns based on financial considerations. Clearance is denied.

**STATEMENT OF THE CASE**

On December 21, 2004, the Defense Office of Hearing 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 January 4, 2005. The SOR alleges security concerns under Guideline F (Financial Considerations) of the Directive.

Applicant answered the SOR in writing on January 24, 2005, admitting all the allegations under Guideline F. He elected to have the matter decided on the written record in lieu of a hearing.

Department Counsel submitted the government's written case on February 25, 2005. Applicant received a complete file of relevant material (FORM) on March 4, 2005, and was provided the opportunity to file objections and submit material to refute, extenuate, or mitigate the disqualifying conditions. On March 31, 2005, he responded to the FORM providing matters in extenuation of his financial problems. Department Counsel had no objection to consideration of Applicant's extenuating information. The case was assigned to me on May 12, 2005.

**FINDINGS OF FACT**

Applicant is a 37-year-old draftsman for a defense contractor. After serving four years on active military duty, Applicant

attended a technical school earning an associate's degree. He held a security clearance while on active duty. Applicant has never been married. <sup>(1)</sup>

There are nine allegations of over \$13,000 of delinquent debt in the SOR. Applicant accumulated the delinquent debts from 1997 to 2003. Debt 1.a. in the SOR is a credit card debt to a bank. Debt 1.b. in the SOR is a credit card debt to a credit card company. Debts 1.c. and 1.d. in the SOR are credit card debts on different credit cards to the same bank. Debt 1.e. in the SOR is a department store credit card debt. Debts 1.f. and 1.g. in the SOR are two different credit card accounts in collection with the same collection agency for the same department store. Debt 1.h. in the SOR is a credit card debt in collection with the same collection agency in debts 1.f. and 1.g. but for a different credit card company. Debt 1.i. in the SOR is a debt in collection for a telephone bill. Applicant admits he owes all of these debts. <sup>(2)</sup> Applicant has not taken any action to satisfy any of these debts. <sup>(3)</sup>

In addition to the debts listed in the SOR, Applicant has student loans. He has been paying on these loans and his accounts are current. Applicant chose to use his financial resources to pay approximately \$258 per month on his student loans before starting to pay on the debts listed in the SOR. <sup>(4)</sup> He still has approximately \$400 remaining each month after paying all expenses and recurring bills. <sup>(5)</sup> Applicant initially tried to resolve his indebtedness using a credit counseling agency but he could not make the payments required by the agency. <sup>(6)</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>(7)</sup> Eligibility for a security clearance is predicated upon the applicant meeting the security guidelines contained in the Directive. <sup>(8)</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>(9)</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>(10)</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>(11)</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>(12)</sup> Thereafter, Applicant is responsible for presenting evidence to rebut, explain, extenuate, or mitigate facts. <sup>(13)</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>(14)</sup> "[T]he Directive presumes there is a nexus or rational connection between proven conduct under any of the Criteria listed <sup>(15)</sup>

therein and an applicant's security suitability." "Any doubt as to whether access to classified information is clearly consistent with national security will be resolved in favor of the national security." (16)

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 have 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 under Financial Considerations Disqualifying Conditions E2.A6.1.2.2 (*a history of not meeting financial obligations*) and E2.A6.1.2.3 (*inability or unwillingness to satisfy debts*). Applicant admitted all the delinquent debts and admitted he is not taking actions to satisfy the debts. This shows a history of not meeting his financial obligations and an unwillingness to satisfy debts. I conclude the above Financial Considerations Disqualifying Conditions have been established.

Financial Considerations Mitigating Conditions E2.A6.1.3.1 (*the behavior was not recent*), E2.A6.1.3.2 (*it was an isolated incident*), and E2.A6.1.3.3 (*the conditions that resulted in the behavior were largely beyond the person's control. . .*) do not apply. Applicant started accumulating delinquent indebtedness in 1997, and has incurred delinquent debt as recently as 2003. The debts are on different accounts and credit cards so the debts are not isolated. The debts have not been satisfied and he is not paying any of his indebtedness so the debts are current. Applicant did not establish any conditions beyond his control to cause him to not resolve his indebtedness.

Applicant's decision to repay his student loans before paying off his other indebtedness raises Financial Considerations Mitigating Condition E2.A6.1.3.6 (*the individual initiated a good-faith effort to repay the overdue creditors or otherwise resolve debts*). The decision to chose to pay only one type of debt and not make any effort to pay other debts is not a good-faith effort to repay overdue creditors or otherwise resolve indebtedness. Applicant has financial resources remaining at the end of the month to make some payment towards these delinquent debts. Applicant presented no extenuating circumstances preventing him from making some arrangements or taking some action to repay overdue creditors. There is no information presented by Applicant that would prevent him from initiating an effort to resolve all of his indebtedness and not just the debts he wants to resolve. Applicant has not initiated a good-faith effort to repay overdue creditors or satisfy his delinquent debts, and has not mitigated the financial considerations security concerns.

I carefully considered all of the circumstances in light of the "whole person" concept. I conclude Applicant is not eligible for access to classified information.

### 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, 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

### **DECISION**

In light of all of 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.

Thomas M. Crean

Administrative Judge

1. FORM, Item 4 (Security clearance application, dated Oct. 16, 2002).
2. FORM, Item 3 (Applicant's answer to the SOR, dated Jan. 24, 2005).
3. FORM, Item 5, (Applicant's statement, dated Sep. 9, 2003).
4. Applicant's answer to the FORM, dated Mar. 31, 2005.
5. FORM, Item 5 (Applicant's statement, dated Sep. 9, 2003), at 5.
6. FORM, Item 5 (Applicant's statement, dated Sep. 9, 2003), at 3.
7. *Department of the Navy v. Egan*, 484 U.S. 518 (1988).
8. Directive ¶ E2.2.1.
9. *Id.*
10. Directive ¶¶ E2.2.1.1 through E2.2.1.9.
11. *See* Exec. Or. 10865 § 7.
12. Directive ¶ E3.1.14.
13. ISCR Case No. 01-20700 at 3 (App. Bd. Dec. 19, 2002); *see* Directive ¶ E3.1.15.
14. ISCR Case No. 01-20700 at 3 (App. Bd. Dec. 19, 2002).
15. ISCR Case No. 95-0611 at 2 (App. Bd. May 2, 1996) (quoting DISCR Case No. 92-1106 (App. Bd. Oct. 7, 1993))
16. *Egan*, 484 U.S. at 531; *see* Directive ¶ E2.2.2.