

DATE: October 17, 2003

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In Re:

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SSN: -----

Applicant for Security Clearance

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CR Case No. 02-32606

## **DECISION OF ADMINISTRATIVE JUDGE**

**MATTHEW E. MALONE**

### **APPEARANCES**

#### **FOR GOVERNMENT**

Catherine Engstrom, Esquire, Department Counsel

#### **FOR APPLICANT**

*Pro Se*

### **SYNOPSIS**

Applicant filed for Chapter 13 bankruptcy protection in February 1996. After converting that petition to a Chapter 7 action, he was eventually discharged of about \$110,000.00 in debt. He again filed Chapter 13 bankruptcy in June 1998, declaring about \$103,000.00 in debts. When he was unable to make required payments to the trustee, his petition was dismissed and his mortgage was foreclosed. Applicant still owes approximately \$11,400.00 in debts originally included in his second bankruptcy petition, and he does not intend to pay those debts despite having the means to do so. He also owes another \$1,200.00 in other more recent, unpaid obligations. Applicant has failed to mitigate the resulting Guideline F (Financial Considerations) security concerns. Clearance is denied.

### **STATEMENT OF THE CASE**

On March 3, 2003 the Defense Office of Hearings and Appeals (DOHA) issued a Statement of Reasons (SOR) alleging facts in Applicant's background which raise security concerns under Guideline F (Financial Considerations). The SOR informed Applicant that, based on information available to the government, DOHA adjudicators could not make a preliminary affirmative finding that it is clearly consistent with the national interest to grant or continue Applicant's security clearance. [\(1\)](#)

On March 22, 2003, Applicant answered the SOR (Answer) and requested a hearing. The case was assigned to me on June 2, 2003. On June 9, 2003, DOHA issued a Notice of Hearing setting this case to be heard on June 25, 2003. All parties appeared as scheduled and the government presented nine exhibits (GE 1 through 9). Applicant relied on four exhibits (AE A through D), and on his own testimony. DOHA received the transcript (Tr) on July 1, 2003.

### **FINDINGS OF FACT**

After a thorough review of the pleadings, transcript, and exhibits, I make the following findings of fact:

Applicant is a 54-year-old employee of a defense contractor. He works as an artillery tester at an Army installation, a position he has held since July 2001. He retired from the Air Force in 1989 after more than 20 years honorable enlisted service. Applicant held a secret or top secret clearance during most of his Air Force career.<sup>(2)</sup> After retiring, he worked for a defense contractor from 1989 until he was laid off in December 1991. His annual income before lay-off was about \$42,000.00. He also received (and still receives) an annual military retirement of about \$15,000.00. In 1991, Applicant's wife also earned about \$13,000.00 annually in 1991.<sup>(3)</sup>

After being laid off, Applicant was unemployed from December 1991 through April 1992. During this time his only income was unemployment compensation (about \$800.00 per month) and military retirement pay (about \$1,000.00 per month). His wife was still employed, bringing in slightly less than \$1,000.00 each month. Starting in April 1992, Applicant found work selling cars, dental supplies, insurance and other products, but his only pay was through sales commissions. His annual income from these sales jobs between April 1992 and July 2001 has averaged less than \$20,000.00. Instead, he has relied primarily on his military retirement and, until 1998, his wife's income for an average total annual income of between \$35,000.00 and \$45,000.00. However, since 1998, Applicant's wife has been generally unemployed due to an unspecified emotional problem. She is once again employed part-time as a retail sales clerk.<sup>(4)</sup>

Applicant and his wife have three sons. Their oldest graduated from high school and began his college studies in 1992. Applicant and his wife paid for most of his tuition between 1992 and 1996. It was during this period that Applicant accumulated most of the debts listed in the SOR. He also began to miss mortgage payments, and by 1996, he was being threatened with foreclosure.

Applicant filed for Chapter 13 bankruptcy protection in February 1996, wherein he declared about \$12,000.00 in unsecured debts. All but two of the debts listed in the SOR were included in this petition.<sup>(5)</sup> The remaining debt consisted almost entirely of his mortgage, foreclosure on which was stayed pending completion of the bankruptcy action. His petition was converted to Chapter 7 liquidation in November 1997, and he was discharged of his debts in February 1998.

Around the time of his Chapter 7 discharge, Applicant's mother died leaving him an inheritance of about \$50,000.00. Applicant's attorney advised him he was required to refile his Chapter 13 petition so that he could apply his new-found funds to his debts.<sup>(6)</sup> He refiled in June 1998, declaring *inter alia* the same \$12,000.00 in debts as before including his VA-guaranteed mortgage, on which he was about \$11,000.00 in arrears. In October 1998, a Chapter 13 payment plan was confirmed whereby Applicant would pay to the bankruptcy trustee \$685.00 monthly for 60 months, and would continue to make mortgage and homeowners association payments totaling \$894.00 monthly.<sup>(7)</sup> Applicant made payments on the Chapter 13 plan until January 2001. In March 2001, his Chapter 13 petition was dismissed for non-payment, and the VA foreclosed on his mortgage. The resulting sale of Applicant's home covered all but \$13,000.00 of the loan, but Applicant was not obliged to pay the difference because of the VA loan guarantee - a benefit afforded veterans such as Applicant.<sup>(8)</sup>

Applicant used the inheritance from his mother's estate to pay for home repairs, a student loan for his son, his son's wedding, long-needed dental work, and a family vacation. Nonetheless, based on the figures he provided at hearing, it is appears Applicant would still have had enough money left to pay the arrearage on his mortgage and the other \$12,000.00 in unsecured debts he declared in his 1998 bankruptcy.<sup>(9)</sup>

Applicant does not intend to pay the debts listed in SOR subparagraphs 1.c, 1.d, and 1.g on the theory that those creditors are no longer seeking payment, having written off his debts as business losses. As for the debt listed at paragraph 1.e, Applicant insists this is his wife's credit card debt not his; however, this debt is listed as a joint account in Applicant's most recent bankruptcy petition. He is liable for this debt, but has not paid or otherwise resolved it. The debt listed in subparagraph 1.f is a judgement against Applicant after his minor son, driving Applicant's uninsured care, caused an auto accident in January 1993. The resulting damages of \$8,304.00 were paid by a state uninsured motorists fund. Applicant's son repaid half the damages, but the state fund had to obtain a judgment in May 1995 against Applicant for the unpaid remainder. Applicant has not paid or otherwise resolved this debt, again, on the theory that the state is not actively seeking repayment of the debt.<sup>(10)</sup>

Another judgement against Applicant was entered in October 2000 for non-payment of homeowners association dues. The debt, listed in SOR subparagraph 1.h and owed to the same creditor as in subparagraph 1.c, has not been paid because Applicant claims he was not properly served notice by the plaintiff. However, Applicant was made aware of the judgement when interviewed during his investigation yet has not attempted to resolve this obligation. [\(11\)](#)

Applicant asserts the tax debt listed in subparagraph 1.i has been paid. However, he revealed at hearing that he owes another, more recent tax debt of about \$3,000.00 for the 1999 tax year. [\(12\)](#)

Applicant currently earns about \$32,000.00 annually. He also receives about \$21,000.00 in retirement pay each year. [\(13\)](#) He also borrowed \$2,000.00 from his sister to pay a rent deposit in August 2001. He will not repay that debt until and unless he gets the deposit back at the end of the lease. [\(14\)](#)

Applicant is highly-regarded at work. More than 30 of his fellow employees wrote letters of support or indicated their support through signatures on a general letter of recommendation. His military service was unblemished by adverse conduct and he is, by all accounts a valuable employee and steadfastly loyal veteran of the armed forces. [\(15\)](#)

## POLICIES

The Directive sets forth adjudicative guidelines [\(16\)](#) to be considered in evaluating an Applicant's suitability for access to classified information. The Administrative Judge must take into account both disqualifying and mitigating conditions under each adjudicative issue applicable to the facts and circumstances of each case. Each decision must also reflect a fair and impartial common sense consideration of the factors listed in Section 6.3 of the Directive. The presence or absence of a disqualifying or mitigating condition is not determinative of a conclusion for or against an Applicant. However, specific applicable guidelines should be followed whenever a case can be measured against them as they represent policy guidance governing the grant or denial of access to classified information. Having considered the record evidence as a whole, I conclude Guideline F (Financial Considerations) is the relevant adjudicative guideline to be applied here.

## BURDEN OF PROOF

A security clearance decision is intended to resolve whether it is clearly consistent with the national interest [\(17\)](#) for an Applicant to either receive or continue to have access to classified information. The Government bears the initial burden of proving, by something less than a preponderance of the evidence, controverted facts alleged in the SOR. If the government meets its burden it establishes a *prima facie* case that it is not clearly consistent with the national interest for the Applicant to have access to classified information. The burden then shifts to the Applicant to refute, extenuate or mitigate the Government's case. Because no one has a "right" to a security clearance, the Applicant bears a heavy burden of persuasion. [\(18\)](#) A person who has access to classified information enters into a fiduciary relationship with the Government based on trust and confidence. The Government, therefore, has a compelling interest in ensuring each Applicant possesses the requisite judgement, reliability and trustworthiness of one who will protect the national interests as his or her own. The "clearly consistent with the national interest" standard compels resolution of any reasonable doubt about an Applicant's suitability for access in favor of the Government. [\(19\)](#)

## CONCLUSIONS

**Guideline F (Financial Considerations).** A security concern arises when it is shown that a person is either unwilling or unable to manage his finances so that he avoids unreasonable delinquencies. A person who is overextended financially is at risk of engaging in illegal actions to obtain money. [\(20\)](#) Here, the Government has shown that Applicant accumulated approximately \$12,000.00 in bad debt between 1991 and 2001. Applicant also filed two bankruptcy petitions in 1996 and 1998. The first petition resulted in a full discharge of his debts and stay of foreclosure on his mortgage. As a result of a significant windfall around the time of discharge, he was required to re-file his petition. That second petition failed due to failure to pay into the plan as required. The end result has been that Applicant still owes the debts he declared in his first petition. He has yet to pay or otherwise resolve those obligations. Disqualifying Condition

(DC) 1 [\(21\)](#) and DC 3 [\(22\)](#) apply.

By contrast, Applicant's debt problems were initially caused, and to some extent prolonged, by a short period of unemployment in early 1991, and a longer period of reduced income between 1991 and 2001. Applicant also was burdened with increasing expenses such as his son's college tuition, which began around the time Applicant first experienced reduced income after his lay off. Guideline F Mitigating Condition (MC) 3 [\(23\)](#) applies to these facts.

Applicant claims mitigation through what he asserts is a good-faith effort to pay or otherwise resolve his debts. [\(24\)](#) He asserts that filing bankruptcy to enter into a repayment plan constitutes such action. However, the net result of two bankruptcy filings has been that none of his creditors have been paid. Applicant has also stated he no longer intends to pay the debts listed in the SOR at subparagraphs 1.c through 1.g. To further undermine his claim that he has tried to make good on his debts, Applicant failed to resolve those obligations even after receiving a \$50,000.00 inheritance. Additionally, Applicant has failed to act in response to the judgement listed in SOR subparagraph 1.h, and, despite having paid one tax debt (SOR 1.i), he has incurred another larger debt for tax year 1999. In 2001, he borrowed \$2,000.00 from his sister to pay a rent deposit, but has no plans to repay this debt from his own funds even though he now has steady income. Not only does his inaction in response to his obligations undermine any claim of mitigation under MC 6, it also diminishes the weight of MC 3, discussed above. Applicant's difficulties may have been caused by unforeseen or uncontrollable events 12 years ago, but that did not completely relieve him of his responsibility to do what was within his power to resolve his financial obligations. In 1998, he was provided an equally unforeseen opportunity to pay most if not all of his debts with the inheritance he received. However, after paying for what he considered legitimate items, he still had enough money remaining to pay his debts; yet he chose not to do so. I conclude that MC 6 is not available to Applicant here.

Finally, Applicant has failed to demonstrate that he has changed his approach to indebtedness and overall management of his finances. He remains indifferent to his past debts and has incurred new debts without changing his fiscal habits. The effect of his past debts and the prospect of future money problems continues to cast doubt on his suitability for clearance. I have also considered the whole person concept as contemplated by the Directive in Section 6.3, and as called for by a fair and commonsense assessment of the record before me as required by Directive Section E2.2.3. It is clear that Applicant is a well-respected, hard-working family man. However, his value to his company and his job performance alone do not justify a grant of access to classified information. Having carefully weighed all of the evidence in this case, and having applied the disqualifying and mitigating conditions provided under Guideline F, on balance, I conclude that Applicant's financial problems and unwillingness to satisfy his debts when he was clearly able to do so, raise doubts that must be resolved in favor of the government. I conclude Guideline F against the Applicant.

### **FORMAL FINDINGS**

Formal findings regarding each SOR allegation as required by Directive Section E3.1.25 are as follows:

Financial Considerations (Guideline F): AGAINST THE APPLICANT

Subparagraph 1.a: Against the Applicant

Subparagraph 1.b: Against the Applicant

Subparagraph 1.c: Against the Applicant

Subparagraph 1.d: Against the Applicant

Subparagraph 1.e: Against the Applicant

Subparagraph 1.f: Against the Applicant

Subparagraph 1.g: Against the Applicant

Subparagraph 1.h Against the Applicant

Subparagraph 1.i 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 the Applicant.

Matthew E. Malone

Administrative Judge

1. Required by Executive Order 10865, as amended, and by DoD Directive 5220.6 (Directive), as amended.
2. Tr., p. 39.
3. Tr., p. 40.
4. Tr., p. 43.
5. Of the SOR listed debts, only those listed in subparagraphs 1.h and 1.I have accrued since Applicant's bankruptcy actions.
6. Tr., p. 50.
7. GE 9.
8. Tr., p. 53.
9. Tr., p. 52 - 53.
10. GE 6; Tr., p. 64 - 65, 88.
11. Tr., p. 66 - 67.
12. Tr., p. 67.
13. Tr., p. 73 - 74.
14. Tr., p. 89 - 90.
15. AE A, AE B, AE C, AE D.
16. Directive, Enclosure 2.
17. *See Department of the Navy v. Egan*, 484 U.S. 518 (1988).
18. *See Egan*, 484 U.S. at 528, 531.
19. *See Egan*; Directive E2.2.2.
20. Directive, E2.A6.1.1.
21. E2.A6.1.2.1. A history of not meeting financial obligations;
22. E2.A6.1.2.3. Inability or unwillingness to satisfy debts;

23. 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);

24. E2.A6.1.3.6. The individual initiated a good-faith effort to repay overdue creditors or otherwise resolve debts.