

DATE: May 31, 2005

In Re:

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SSN: -----

Applicant for Security Clearance

ISCR Case No. 02-33066

**DECISION OF ADMINISTRATIVE JUDGE**

**JOHN GRATTAN METZ, JR.**

**APPEARANCES**

**FOR GOVERNMENT**

Stephanie C. Hess, Esquire, Department Counsel

**FOR APPLICANT**

*Pro Se*

**SYNOPSIS**

Applicant mitigated the security concerns raised by his adverse financial history by demonstrating 1) that his financial difficulties were largely due to circumstances beyond his control, 2) that he had dealt responsibly with his creditors as his means permitted, 3) that he had begun to deal with his delinquent accounts before the SOR was issued, and 4) that all the debts alleged in the SOR had been addressed well before the hearing. Clearance granted.

**STATEMENT OF THE CASE**

Applicant challenges the 12 February 2004 Defense Office of Hearings and Appeals (DOHA) Statement of Reasons (SOR) recommending denial or revocation of his clearance because of financial considerations and personal conduct.<sup>(1)</sup> Applicant answered the SOR on 26 March 2004, and requested a hearing. The case was assigned to me 23 November 2004, and heard on 2 December 2004. DOHA received the transcript (Tr.) on 13 December 2004.

**FINDINGS OF FACT**

Applicant denied the Guideline G (Financial) SOR allegations except 1.a., 1.c., and 1.j.<sup>(2)</sup> He admitted omitting adverse financial information from his clearance application [Guideline E (Personal Conduct)], but denied an intent to mislead the government. Accordingly, I incorporate his admissions as findings of fact.

Applicant--a 41-year-old hazardous materials handler for a defense contractor--seeks to retain the access to classified information he has had since approximately 1990.

The February 2004 SOR alleges nine past due accounts totaling approximately \$9,400.00. G.E. 8 confirms that two debts totaling \$7407.00 (1.h. and 1.i.) were discharged in Applicant's February 1998 chapter 7 bankruptcy (1.j.).<sup>(3)</sup> In May 2004, Applicant paid the debts at 1.a. (A.E. F), 1.b. (A.E. D), 1.c. (A.E. E), 1.d. (A.E. G), and 1.e. (A.E. D) with the proceeds from the sale of their house and a \$2,000-3,000 loan from his father-in-law.<sup>(4)</sup> In February 2004, Applicant

resubmitted answers to DOHA's June 2003 financial interrogatories (G.E. 4) that documented apparent settlement of the debts at 1.g. [\(5\)](#) and 1.f. [\(6\)](#)

Applicant denied falsifying his clearance application by failing to report the past-due debts at 1.b., 1.d., 1.e., 1.h., and 1.i. because he was unaware of the debts at 1.b. and 1.e. (his wife handles the finances at his house) and believed the debts at 1.d., 1.h., and 1.i. were included (and thus reported) in his bankruptcy. He credibly stated (G.E. 3) that he was not aware of these debts until he and his wife started gathering documents to prepare for his June 2002 subject interview.

Applicant acknowledges that before 1996, he was somewhat "careless and irresponsible" in handling his finances because he indulged his wife's shopping habits. At the time, she was employed full time. However, her health began to decline after the birth of their child in December 1996 and deteriorated to the point where she was unable to work after August 1999. Their bills got out of hand, they filed chapter 7 bankruptcy in October 1997, and were discharged in February 1998.

Applicant's finances have continued to be challenging, albeit due to circumstances beyond his control. He was unemployed between 2000 and 2002, precipitating some of the past due accounts alleged in the SOR. His wife has continued to have medical issues (half the past-due debts alleged in the SOR were for medical accounts). Although she now receives social security disability payments, those payments do not cover her lost income.

Their finances got a lift when Applicant's father-in-law gave them a house, free and clear. That allowed them to sell their old house, apply some of the proceeds to their past due debt, and not have a mortgage payment. However, they suffered significant damage to the house during hurricane season in 2003 and had to take out an equity loan to effect necessary repairs. They also borrowed \$2,000-3,000 from his father-in-law to address the remaining debts in the SOR. It's an open-ended loan with no interest rate or set repayment period.

Applicant characterizes their finances as tight, but manageable. They can handle their equity loan payment, and their credit reports since April 2002 show a generally improving financial picture.

### **POLICIES**

The Directive, Enclosure 2 lists adjudicative guidelines to be considered in evaluating an Applicant's suitability for access to classified information. Administrative Judges must assess both disqualifying and mitigating conditions under each adjudicative issue fairly raised by the facts and circumstances presented. 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 for or against Applicant. However, specific adjudicative 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. Considering the SOR allegations and the evidence as a whole, the relevant, applicable, adjudicative guidelines are guidelines F (Financial Considerations) and E (Personal Conduct).

### **BURDEN OF PROOF**

Security clearance decisions resolve whether it is clearly consistent with the national interest to grant or continue an Applicant's security clearance. The government must prove, by something less than a preponderance of the evidence, controverted facts alleged in the SOR. If it does so, it establishes a *prima facie* case against access to classified information. Applicant must then 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.

Persons with access to classified information enter into a fiduciary relationship with the government based on trust and confidence. Therefore, the government has a compelling interest in ensuring each Applicant possesses the requisite judgement, reliability, and trustworthiness of those who must protect national interests as their 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. [\(7\)](#)

## CONCLUSIONS

The Government established a Guideline F case but Applicant mitigated the security concerns. The government demonstrated the applicability of Disqualifying Conditions 1 and 3. However, Applicant established the clear applicability of Mitigating Conditions 3 and 6. Although, Applicant acknowledged his financial irresponsibility before 1996, the degradation in his financial situation was largely due to circumstances beyond his control: his wife's failing health and progressive fall into disability, his own two-year period of unemployment, and hurricane damage to their principal residence. Nevertheless, not only does Applicant's financial situation show improvement from his April 2002 credit report through the most recent report in October 2004, both the government's exhibits and Applicant's exhibits demonstrate that he has dealt with his creditors as his means permitted before being interviewed in June 2002 and continued to deal responsibly with them through his June 2003 interrogatories, the February 2004 SOR, and December 2004 hearing. The process has been slow, and bogged down by occasional setbacks, but Applicant has proceeded responsibly to address his debts and not waited for prodding from the government. Consequently, I conclude that Applicant will continue to gain better control of his finances. Accordingly, I resolve Guideline F for Applicant.

The Government established a Guideline E case, but Applicant mitigated the security concerns by demonstrating that he lacked the intent to mislead the Government, as well as disclosing significant adverse financial information. I conclude Guideline E for Applicant.

## FORMAL FINDINGS

Paragraph 1. Guideline F: FOR THE APPLICANT

Subparagraph a: For the Applicant

Subparagraph b: For the Applicant

Subparagraph c: For the Applicant

Subparagraph d: For the Applicant

Subparagraph e: For the Applicant

Subparagraph f: For the Applicant

Subparagraph g: For the Applicant

Subparagraph h: For the Applicant

Subparagraph i: For the Applicant

Subparagraph j: For the Applicant

Subparagraph k: For the Applicant

Paragraph 2. Guideline E: FOR THE APPLICANT

Subparagraph a: 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.

**John G. Metz, Jr.**

## Administrative Judge

1. Required by Executive Order 10865 and Department of Defense Directive 5220.6, as amended (Directive).
2. Although he effectively admitted the allegations of 1.b. and 1.e., believing--incorrectly--that these debts were included in a higher balance being collected by the creditor at 1.c.
3. Applicant had a second account with the creditor at 1.h., a secured automobile loan that Applicant reaffirmed and ultimately paid off. The debt at 1.h. was for an unsecured credit card. Applicant also claimed that the debt at 1.d. was included in bankruptcy, and G.E. 8 confirms that a debt to that creditor was discharged. However, Applicant later learned that the debt at 1.d. was a deferred balance to that creditor that was not included in the bankruptcy. Applicant paid that balance (plus an additional amount due) in May 2004 (A.E. G). Payment was confirmed in Applicant's October 2004 credit report (G.E. 5).
4. Each of these creditors received payments for additional amounts/accounts not alleged in the SOR. All the payments are confirmed by the October 2004 credit report (G.E. 5), except for the debt at 1.d., which had not been updated by the creditor since May 2000.
5. The creditor at 1.g. is the successor-in-interest to a different credit card. In October 2002, the original creditor sold the account to the creditor at 1.g. with an initial balance of \$1,172.00. The account numbers accurately account for the transfer of accounts. Applicant provided letters from the collection agent in November and December 2002--and copies of checks used for electronic funds transfers--that suggest that the creditor accepted two payments totaling \$826.79 in settlement on the account (Answer, G.E. 4). The \$345.00 balance allegedly owed by Applicant in 1.g. suggests the creditor either did not accept the compromise, or did not update the credit report to reflect the benefit of Applicant's bargain. However, as Applicant denied the debt at 1.g. [while previously providing documentary support for his claim the account had been settled (G.E. 4)] and reasserted his proof of payment with his Answer, I conclude that the successor creditor accepted \$826.00 as payment in full on Applicant's account.
6. Settlement of this debt was confirmed as of July 2004 by G.E. 5.
7. *See, Department of the Navy v. Egan*, 484 U.S. 518 (1988).