

DATE: January 19, 2005

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In Re:

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SSN: -----

Applicant for Security Clearance

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ISCR Case No. 02-33550

**DECISION OF ADMINISTRATIVE JUDGE**

**CAROL G. RICCIARDELLO**

**APPEARANCES**

**FOR GOVERNMENT**

Jennifer I. Campbell, Esq., Department Counsel

**FOR APPLICANT**

*Pro Se*

**SYNOPSIS**

Applicant is a 33-year-old mechanic employed since 1999, by a defense contractor. Applicant accepted a promotion with his employer and moved from State A to State B. The cost of living was higher in State B and Applicant fell behind in his financial commitments. Applicant also made unnecessary purchases. Applicant failed to make any payments for over two years on two of his debts and forgot about the other debts he owed. Applicant has no plan of action to pay off his delinquent debts. Clearance is denied.

**STATEMENT OF THE CASE**

On July 22, 2004, 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. [\(1\)](#) The SOR, which is in essence the administrative complaint, alleges security concerns under Guideline F for financial considerations.

In a sworn statement, dated August 10, 2004, Applicant responded to the SOR allegations, and elected to have his case decided on the written record in lieu of a hearing. In his SOR response, Applicant admitted all the allegations contained in the SOR. Department Counsel submitted the government's case on October 22, 2004. A complete copy of the file of relevant material (FORM) was received by Applicant on October 29, 2004. Applicant was afforded an opportunity to file objections and submit material in refutation, extenuation, or mitigation. Applicant did not object to the FORM, and did not provide any additional material. The case was assigned to me on December 15, 2004.

**FINDINGS OF FACT**

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

Applicant is a 33-year-old mechanic employed by a defense contractor since 1999. Applicant is separated from his wife

and they are in the process of getting a divorce. Applicant has a child by a previous relationship, born in 1991. Applicant paid child support from 1991 until 1993. Applicant stopped paying child support from 1993 until 2001. Applicant is now paying child support and paying an additional payment towards the amount in arrears. From approximately 1993 through 1999, Applicant held various positions with different companies, as a laborer and a plumber. Applicant was on active duty with the U.S. Navy from 1992 to 1993. He was discharged due to drug abuse and received a discharge under other than honorable conditions.

In 2001, Applicant was offered a permanent position with his current employer that required he be transferred from State A to State B. With the promotion and permanent position Applicant received a raise in pay and full benefits. Applicant failed to realize the difference in the cost of living between State A and State B. Applicant used his credit card to get settled and also made unnecessary purchases. Applicant has not made a payment on his credit card debt in subparagraph 1.a. since January 2002. Applicant has not made a payment on his debt listed in subparagraph 1.b. since January 2002. Applicant has not been able to cover his bills with his salary. Applicant forgot about the debts in subparagraph 1.c. and 1.d. They have not been paid. Applicant contacted a debt consolidation company, and was advised they could not assist him with his debt in subparagraph 1.b. Applicant failed to follow through with the company regarding his other debts. Applicant admits "I simply don't have a plan of action to pay-off my two delinquent creditors."

### 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. 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. Considering the evidence as a whole, Guideline F, pertaining to financial considerations apply.

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>(2)</sup> The government has the burden of proving controverted facts.<sup>(3)</sup> The burden of proof is something less than a preponderance of evidence,<sup>(4)</sup> although the government is required to present substantial evidence to meet its burden of proof.<sup>(5)</sup> Substantial evidence is more than a scintilla, but less than a preponderance of the evidence.<sup>(6)</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>(7)</sup> Additionally, an applicant has the ultimate burden of persuasion to obtain a favorable clearance decision.<sup>(8)</sup>

No one has a right to a security clearance<sup>(9)</sup> and "the clearly consistent standard indicates that security clearance determinations should err, if they must, on the side of denials."<sup>(10)</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>(11)</sup> The decision to deny an individual a security clearance is not necessarily a determination as to the loyalty of an applicant.<sup>(12)</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.

### CONCLUSIONS

Applicant admits the debts alleged in the SOR. Applicant overextended himself financially when he moved to a new state and made unnecessary purchases. Applicant also forgot about two of his debts. Applicant has not made any

payments on his debts in subparagraph 1.a. and 1.b., and although he acknowledges his debts in 1.c. and 1.d., he has not provided any information that he has paid those debts. Applicant does not have a plan of action to pay off his debts.

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, under Guideline F, I find DC 1: *A history of not meeting financial obligations*; and DC 3: *Inability or unwillingness to satisfy debts*, apply in this case. I have considered all the mitigating conditions under Guideline F, and specifically considered mitigating condition MC 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 conclude it does not apply. Some of Applicant's financial difficulties arose when he moved from State A to State B, and failed to realize the higher cost of living in State B. Applicant's poor planning can not be contributed to a condition beyond his control. Applicant also admitted that he made unnecessary purchases during this period, that contributed to his problems. I have also considered MC 4: *The person has or is receiving counseling for the problem and there are clear indications that the problem is being resolved or is under control*, and conclude it does not apply. Applicant merely mentioned his attempt to seek counseling, but failed to follow through. In addition, despite being aware that counseling services are available Applicant admits he has no plan of action to pay off his delinquent debts.

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 various 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 have considered all the evidence in this case. I have also considered the "whole person" concept in evaluating Applicant's risk and vulnerability in protecting our national interests. I am persuaded by the totality of the evidence in this case that it is not clearly consistent with the national interest to grant Applicant a security clearance. Applicant has failed to mitigate the security concerns caused by his financial delinquencies. Accordingly, Guideline F is decided against 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. 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

### **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.

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. ISCR Case No. 96-0277 (July 11, 1997) at p. 2.
3. ISCR Case No. 97-0016 (December 31, 1997) at p. 3; Directive, Enclosure 3, Section E3.1.14.
4. *Department of the Navy v. Egan* 484 U.S. 518,531 (1988).
5. ISCR Case No. 01-20700 (December 19, 2002) at p.3 (citations omitted).
6. ISCR Case No. 98-0761 (December 27, 1999) at p.2.
7. ISCR Case No. 94-1075 (August 10, 1995) at pp.3-4; Directive, Enclosure 3, Section E3.1.15.
8. ISCR Case No. 93-1390 (January 27, 1995) at pp. 7-8; Directive, Enclosure 3, Section E3.1.15
9. *Egan*, 484 U.S. at 528, 531.
10. *Id.* at 531.
11. *Egan*, Executive Order 10865, and the Directive.
12. Executive Order. 10865. § 7.