

DATE: November 18, 2004

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In Re:

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SSN: -----

Applicant for Security Clearance

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ISCR Case No. 03-00106

**CISION OF ADMINISTRATIVE JUDGE**

**MATTHEW E. MALONE**

**APPEARANCES**

**FOR GOVERNMENT**

Jason Perry, Esquire, Department Counsel

**FOR APPLICANT**

*Pro Se*

**SYNOPSIS**

After being discharged through Chapter 7 bankruptcy of about \$10,000 in debts in 1996, Applicant accrued more than \$12,000 in bad debts between 1998 and 2001. However, he has paid all but about \$2,300 of his current debts and now has the resources to satisfy his remaining obligations. He has mitigated the security concerns under Guideline F (financial considerations). Clearance is granted.

**STATEMENT OF THE CASE**

On February 13, 2004, in accordance with DoD Directive 5220.6, as amended (Directive), the Defense Office of Hearings and Appeals (DOHA) issued Applicant a Statement of Reasons (SOR) alleging facts that raise security concerns about his adverse financial history. Based on information available to the government concerning Applicant's finances, DOHA adjudicators could not make the preliminary affirmative finding it is clearly consistent with the national interest to grant or continue Applicant's security clearance. [\(U\)](#)

On March 13, 2004, Applicant responded to the SOR (Answer) and denied all but the allegations in SOR subparagraphs 1.a, 1.b, and 1.d. He also requested a determination without a hearing. On July 29, 2004, DOHA Department Counsel submitted a file of relevant material (FORM) with nine exhibits (Items 1 - 9) attached in support of the government's preliminary decision. Applicant received the FORM on August 11, 2004 and was afforded 30-days to submit additional information in his own behalf. He timely filed a one-page response to the FORM, and the case was assigned to me on September 21, 2004.

**FINDINGS OF FACT**

Applicant's admissions to SOR subparagraphs 1.a, 1.b, and 1.d are incorporated herein as facts. After a thorough review of the pleadings and exhibits, I make the following additional findings of fact:

Applicant is a 34-year-old laborer employed by a defense contractor since April 2002. He and his wife have been married since 1991 and have four children age 10 or younger. Applicant briefly served in the Army in 1998, and has worked steadily since at least 1986, with only two periods of unemployment. Applicant was out of work for almost a year between 1996 and 1997. He also was out of work for about three months from November 2000 through January 2001. Both periods were due to on-the-job injuries for which he does not appear to have had medical coverage. It is only since obtaining his current defense contractor job that he has had full medical coverage for himself and his family. [\(2\)](#)

In 1996, Applicant bought a used car that turned out to be a lemon. He tried to either repair the car himself or have it repaired professionally to no avail. Unable to obtain relief from the car dealer under local "lemon laws," he defaulted on the car loan because he could not afford that payment as well as one for the replacement car he had to buy. The finance company obtained a judgment against him and had his pay garnished as a result. He incurred about \$6,000 debt on the car loan and in repair costs he could not afford to repay. He and his wife filed for Chapter 7 bankruptcy in April 1996 declaring about \$10,500 in liabilities against about \$5,700 in assets. His debts were discharged in July 1996. [\(3\)](#)

The debts listed in SOR subparagraphs 1.b through 1.k total about \$12,745. Applicant has paid the debts listed in SOR subparagraphs 1.c, 1.e, 1.g, 1.h, 1.i, and 1.j, leaving only about \$2,350 in unpaid delinquent debts. [\(4\)](#) Of the remaining debts, Applicant claims to have entered into a settlement with the creditor in SOR 1.d, but offers no other evidence in support of his assertion. The debts in SOR 1.c and 1.h were satisfied in 2002, while the others were addressed more recently in the first four months of 2004. [\(5\)](#)

Applicant's delinquent dental account listed in SOR subparagraph 1.g arose from a misunderstanding wherein he thought a dentist would provide him and his family with dental care in exchange for handyman services. However, Applicant had dealt with the dentist's office manager who failed to get approval for the deal and Applicant was stuck with a bill for \$3,552 for which the dentist obtained a judgment against Applicant. Applicant also thought he had arranged a settlement of \$1,000 for the \$1,450 debt to a landlord listed in SOR 1.j, but the creditor refused payment when tendered. Both debts have now been satisfied. [\(6\)](#)

As of July 2002, having been hired by his current employer four months earlier, Applicant had about \$1,200 in net monthly income after expenses, but without paying any of the debts listed in the SOR. [\(7\)](#) Applicant has not incurred any delinquent debts since April 2002 and appears to be living within his means.

## **POLICIES**

The Directive sets forth adjudicative guidelines [\(8\)](#) 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 SOR allegations and having reviewed the record evidence as a whole, I conclude the relevant adjudicative guidelines to be applied here are those conditions listed under Guideline F (financial considerations).

## **BURDEN OF PROOF**

A security clearance decision is intended to resolve whether it is clearly consistent with the national interest [\(9\)](#) 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. [\(10\)](#)

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. <sup>(11)</sup>

## CONCLUSIONS

Under Guideline F, a security concern exists where it is shown an individual is financially overextended, thus being at risk of having to engage in illegal acts to generate funds. <sup>(12)</sup> Also, an inability to properly manage one's finances may indicate that person may not have the judgment or reliability necessary to protect classified information. Department Counsel has presented sufficient evidence in the FORM to establish a *prima facie* case for disqualification under this guideline. I conclude that Guideline F disqualifying condition (DC) 1 <sup>(13)</sup> applies here, because Applicant has had significant financial delinquencies dating back to 1996 and he still has four delinquencies dating back to 1998. DC 3 <sup>(14)</sup> also applies due only to his inability to pay his debts for a period of time.

By contrast, Applicant has managed to pay down most of his debts in the past two years. He has a steady stream of income, sufficient surplus each month to support his family and pay his debts, and his delinquent debt has not increased in the past three years. Mitigating condition (MC) 6 <sup>(15)</sup> applies here. Further, Applicant's debts can be attributed in some measure to his factors beyond his control - two periods of unemployment, the failed deal with his dentist, unexpected medical bills without benefit of adequate insurance. MC 3 <sup>(16)</sup> applies; however, enough time has passed since each of these events that Applicant should have been able to take action to overcome their adverse effects on his finances. He has, in fact, done just that. His finances now appear sound, and, rather than refile for bankruptcy protection in the face of his debts, he has reduced them by more than 80%. The remaining debts total less than \$3,000 and are not significant in light of Applicant's current financial condition.

I have carefully weighed all of the evidence, and I have applied the relevant disqualifying and mitigating conditions under Guideline F. I have also tried to make a fair and commonsense assessment of the record before me as required by Directive Section E2.2.3, which shows Applicant to be a man of modest means who has worked steadily over the past 18 years, sometimes at two jobs, to make ends meet and support his family. That he has been able to pay down as much debt as he has to date, combined with his increased pay and benefits with his current employer, shows his financial difficulties of the 1990's are unlikely to recur. I conclude Guideline F for the Applicant.

## FORMAL FINDINGS

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

Paragraph 1, Financial Considerations (Guideline F): FOR THE APPLICANT

Subparagraph 1.a: For the Applicant

Subparagraph 1.b: For the Applicant

Subparagraph 1.c: For the Applicant

Subparagraph 1.d: For the Applicant

Subparagraph 1.e: For the Applicant

Subparagraph 1.f: For the Applicant

Subparagraph 1.g: For the Applicant

Subparagraph 1.h: For the Applicant

Subparagraph 1.i: For the Applicant

Subparagraph 1.j: For the Applicant

Subparagraph 1.k: For the Applicant

Subparagraph 1.l: 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 the Applicant. Clearance is granted.

Matthew E. Malone

Administrative Judge

1. Required by Executive Order 10865, as amended, and by DoD Directive 5220.6 (Directive), as amended.
2. FORM, Items 4 and 5.
3. FORM, Items 4, 5 and 9.
4. Answer; FORM, p. 4.
5. Answer; FORM, Item 5.
6. Answer; FORM, Item 5.
7. FORM, Item 5.
8. Directive, Enclosure 2.
9. *See Department of the Navy v. Egan*, 484 U.S. 518 (1988).
10. *See Egan*, 484 U.S. at 528, 531.
11. *See Egan*; Directive E2.2.2.
12. Directive, E2.A6.1.1.
13. Directive, E2.A6.1.2.1. A history of not meeting financial obligations;
14. Directive, E2.A6.1.2.3. Inability or unwillingness to satisfy debts;
15. Directive, E2.A6.1.3.6. The individual initiated a good-faith effort to repay overdue creditors or otherwise resolve debts.
16. Directive, 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);