

DATE: September 30, 2005

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In Re:

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SSN: -----

Applicant for Security Clearance

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ISCR Case No. 03-09402

**DECISION OF ADMINISTRATIVE JUDGE**

**CLAUDE R. HEINY**

**APPEARANCES**

**FOR GOVERNMENT**

Robert E. Coacher, Department Counsel

**FOR APPLICANT**

John L. Tison, Esquire

**SYNOPSIS**

Applicant mitigated security concerns arising from his failure to resolve delinquent debts by paying some of the debt and arranging payment on other debt. Applicant's security clearance application contains inaccurate information, but falsification was not established. The record evidence is sufficient to mitigate or extenuate the negative security implications stemming from Applicant's debts. Clearance is granted.

**STATEMENT OF THE CASE**

On April 27, 2004, the Defense Office of Hearings and Appeals (DOHA) issued a Statement of Reasons (SOR) to Applicant stating that DOHA could not make the preliminary affirmative finding [\(1\)](#) it is clearly consistent with the national interest to grant or continue a security clearance for Applicant. Security concerns were alleged under Guideline F (Financial Considerations) and Guideline E, (Personal Conduct). DOHA recommended the case be referred to an administrative judge to determine whether a clearance should be granted, continued, denied, or revoked.

On May 14, 2004, Applicant answered the SOR and requested a hearing. On January 5, 2005, I was assigned the case. On March 8, 2005, a Notice of Hearing was issued scheduling the hearing which was held on March 25, 2005. On April 7, 2005, DOHA received a copy of the transcript (Tr.).

**FINDINGS OF FACT**

In his response to the SOR, Applicant admits owing seven debts listed in the SOR and admits he incorrectly answered questions on his security clearance application, Standard Form (SF) 86. Those admissions are incorporated herein as findings of fact. After a thorough review of the entire record, I make the following additional findings of fact:

Applicant is a 52-year-old aircraft electrician who has worked for a defense contractor since August 2002, and is seeking to obtain a security clearance. Applicant is regarded by those who know him as a hardworking, thorough, honest, trustworthy, decent, a fine neighbor, an exceptional person, and a devoted family man.(App Ex D).

Applicant is a retired Air Force E-6 having served from 1971 to 1991. In April 1987, he and his then wife filed for Chapter 7 bankruptcy protection, listing obligations of \$31,889.16, which were discharged. His wife left him and he was unable to make payment on the bills with only his income.

In October 1998, Applicant his current wife filed for bankruptcy protection under Chapter 13, the wage earner's program, listing debts of \$48,506.93. In November 1998, Applicant lost his job. During the same period his wife was diagnosed with a degenerative bone disease that prevents her from working. With both Applicant and his wife out of work, they were unable to make their monthly payments to the trustee. On August 13, 1999, the bankruptcy was dismissed.

On August 20, 1999, they again filed for Chapter 13 bankruptcy protection. However, with his wife's unemployment, he was unable to make the \$490 monthly payments to the trustee. That resulted in his bankruptcy being dismissed in October 2000.

Applicant had a 1993 Buick Century vehicle repossessed. He attempted to arrange payments on the vehicle before it was repossessed. He got behind on the payments and called the financial institution and voluntarily returned the keys to them.

In May 2004, Applicant and his wife purchased a home for \$145,000. His mortgage payment is \$1,421 per month. Applicant, his wife, his three sons (ages 11, 13 and 14), and his wife's daughter's two children (age 2 and 5 months) all live in their four bedroom apartment. Their daughter is bi-polar and unable to raise her two children on her own (Tr. 22). Applicant is the sole support for the household.

Applicant is making \$419 monthly payments on a 2003 van. Applicant has a military exchange credit card and four other credit cards. The credit limit on the four other cards totals less than \$2,000. Applicant's take home pay is \$4,241 a month and his expenses are \$3,451. He has a monthly budget (App Ex A) and is current on his obligations. He is not being contacted by creditors concerning past due obligations.

Applicant and his wife's combined 2002 adjusted gross income was \$36,481 (App Ex B). Their 2003 adjust gross income was \$48,962 and their 2004 adjusted gross income was \$70,436. In March 2004, his wife started receiving \$496 per month in social security disability.

The SOR lists eight debts totaling approximately \$14,500. The current status of those debts follows:

SOR	Creditor	Amount	Current Status
1. d	bank or credit card debt	\$571	Disputed by Applicant. He has never been contacted by the creditor concerning this debt
1.e	repossessed car debt	\$6,017	Settlement agreement. Paying \$50 per month on \$1,800 balance. (See Response to SOR and App Ex A)
1.f	cable bill	\$500	Paid in May 2004. (See Answer to SOR)
1.g	loan company	\$221	Paid. (See answer to SOR)
1.h	loan company	\$3,444	Paying \$35 per month per agreement with creditor. (See answer to SOR)
1.i	medical debt	\$139	Paid. (See answer to SOR)
1.j	bank debt	\$2,714	Paid. Credit report lists a zero balance and indicates the payment status as "Paid, was a charge-off"
1.k	finance company	\$892	Paying \$25 per month per agreement with creditor. (See answer to SOR)
	Total debt listed in SOR	\$14,498	

In November 4, 2002, Applicant completed an SF 86. In response to Question 33, which asked about bankruptcies during the prior seven years, Applicant listed his most recent bankruptcy, i.e., August 1999. He did not list his October

1998 Chapter 13 bankruptcy, which was dismissed on August 13, 1999 because he refiled for Chapter 13 protection seven days later. Although there were two Chapter 13 filings, Applicant saw the two bankruptcies as a single bankruptcy, with a seven day interruption. Applicant's April 1987 bankruptcy was outside the scope of the question, having occurred more than seven years prior to completing the SF 86.

In response to Question 35, which asked him about repossessions, he answered "No." He had returned a car but did not think of it as a repossession, but thought of it as merely the returning of the car to the financial institution.

In response to Question 38 Applicant failed to indicate he had ever been more than 180 days delinquent on any debt. In response to Question 39, he failed to indicate he was currently more than 90 days delinquent on any debt. He answered as he did because he thought of his old, past due debts as being included in his bankruptcy. In responding to the question, he was focusing on those debts incurred since his latest bankruptcy, which was dismissed in October 2000. Since he was not behind on those debts, he answered "No" to the question. Applicant denies he intended to deceive the government by any of his answers.

### **POLICIES**

The Directive sets forth adjudicative guidelines to be considered when evaluating a person's eligibility to hold a security clearance. Disqualifying Conditions (DC) and Mitigating Conditions (MC) are set forth for each applicable guideline. Additionally, each decision must be a fair and impartial commonsense decision based upon the relevant and material facts and circumstances, the whole person concept, and the factors listed in Section 6.3 of the Directive. The adjudicative guidelines are to be applied by administrative judges on a case-by-case basis with an eye toward making determinations that are clearly consistent with the interests of national security. The presence or absence of a particular condition or factor for or against clearance is not determinative of a conclusion for or against an applicant. However, the adjudicative guidelines should be followed whenever a case can be measured against this policy guidance. Considering the evidence as a whole, I conclude the relevant guidelines to be applied here are Guideline F (Financial Considerations) and Guideline E (Personal Conduct).

### **BURDEN OF PROOF**

The sole purpose of a security clearance decision is to decide if it is clearly consistent with the national interest to grant or continue a security clearance for an applicant. Initially, the Government must establish, by substantial evidence, that conditions exist in the personal or professional history of the applicant which disqualify, or may disqualify, an applicant from being eligible for access to classified information. The burden of proof in a security clearance case is something less than a preponderance of evidence, although the government is required to present substantial evidence to meet its burden of proof. Substantial evidence is more than a scintilla, but less than a preponderance of the evidence. All that is required is proof of facts and circumstances which indicate an applicant is at risk for mishandling classified information, or that an applicant does not demonstrate the high degree of judgment, reliability, or trustworthiness required of persons handling classified information. Additionally, the government must prove controverted facts alleged in the SOR. Once the government has met its burden, the burden shifts to an applicant to present evidence to refute, extenuate or mitigate the government's case. Additionally, an applicant has the ultimate burden of persuasion to obtain a favorable clearance decision. [\(2\)](#)

As noted by the United States Supreme Court in *Department of Navy v. Egan*, 484 U.S. 518, 528 (1988), "no one has a 'right' to a security clearance." 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. The "clearly consistent with the national interest" standard compels resolution of any reasonable doubt about an applicant's suitability for access to classified information to be resolved in favor of protecting national security. Security clearance determinations should err, if they must, on the side of denials.

### **CONCLUSIONS**

A person's relationship with his creditors is a private matter until evidence is uncovered demonstrating an inability or

unwillingness to repay debts under agreed upon terms. Absent evidence of strong extenuating or mitigating circumstances, an applicant with a history of serious or recurring financial difficulties is in a position of risk that is inconsistent with the holding of a security clearance. Under Guideline F, an Applicant is not required to be debt free, but is required to manage his finances so as to meet his financial obligations. An applicant who is financially overextended is at risk of having to engage in illegal acts to generate funds. Directive E.2.A.6.1.1.

The Government has satisfied its initial burden of proof under Guideline F (Financial Considerations). The Applicant admits owing seven debts which had totaled approximately \$14,000. Disqualifying Conditions (DC) 1 (E2.A6.1.2.1 *A history of not meeting financial obligations*) and 3 (E2.A6.1.2.3 *Inability or unwillingness to satisfy debts*) apply.

Applicant has paid four of the debts (SOR paragraphs 1.f, 1.g, 1.I and 1.j). He is making \$50 a month payments on the car repossession debt (SOR paragraph 1.e) which is now \$1,800. He is also making payments on two additional debts (SOR paragraphs 1.h and 1.k). Mitigating Conditions (MC) 6 (E2.A6.1.3.6 *The individual initiated a good-faith effort to repay overdue creditors or otherwise resolve debts*) applies to these three debts on which he is making payment.

Applicant disputes the \$571 debt (SOR paragraph 1.d) because he never had an account with this creditor. Even if this debt is owed, its size would not establish that Applicant was financially overextended. I find for Applicant as to financial considerations.

The allegations under Guideline E, (Personal Conduct) are unfounded. The Government has shown Applicant's answer to questions 33, 35, 38, and 39 were incorrect, but this does not prove the Applicant deliberately failed to disclose information about his finances. The Applicant has denied intentional falsification. Deliberate omission, concealment, or falsification of a material fact in any written document or oral statement to the Government when applying for a security clearance is a security concern. But every inaccurate statement is not a falsification. A falsification must be deliberate and material. It is deliberate if it is done knowingly and willfully.

In response to Question 33, Applicant listed a single bankruptcy dated August 1999. Actually, Applicant had filed for Chapter 13 bankruptcy protection twice. In August 1999, his Chapter 13 was dismissed and seven days later a second Chapter 13 was filed. Applicant thought of this as not two bankruptcies but a single bankruptcy. This was an error, but not a falsification. Applicant's third bankruptcy was outside the scope of the question and did not need to be listed.

In response to question 35, Applicant knew he had returned his car to the financing agency, but he did not think of this as a repossession. When answering questions 38 and 39, he was thinking about those debts incurred since his last bankruptcy. Since he was current on those debts, he indicated "no" to the questions. Again these were errors, but not falsifications.

In reaching my conclusions I have also considered: the nature, extent, and seriousness of the conduct; Applicant's age and maturity at the time of the conduct; the circumstances surrounding the conduct; Applicant's voluntary and knowledgeable participation; the motivation for the conduct; the frequency and recency of the conduct; presence or absence of rehabilitation; potential for pressure, coercion, exploitation, or duress; and the probability that the circumstance or conduct will continue or recur in the future.

### **FORMAL FINDINGS**

Formal Findings as required by Section 3, Paragraph 7, of Enclosure 1 of the Directive are hereby rendered as follows:

Paragraph 1 Guideline F (Financial Considerations): 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

Paragraph 2 Guideline E, (Personal Conduct): FOR THE APPLICANT

Subparagraph 2.a.: For the Applicant

Subparagraph 2.b.: For the Applicant

Subparagraph 2.c.: 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. Clearance is granted.

**Claude R. Heiny**

**Administrative Judge**

1. Required by Executive Order 10865, *Safeguarding Classified Information Within Industry*, as amended, and Department of Defense Directive 5220.6, *Defense Industrial Personnel Security Clearance Review Program* (Directive), dated January 2, 1992, as amended.
2. ISCR Case No. 93-1390 (January 27, 1995) at pp. 7-8; Directive, Enclosure 3, Item E3.1.15.