

DATE: July 19, 2005

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In re:

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SSN: -----

Applicant for Security Clearance

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ISCR Case No. 03-09510

## **DECISION OF ADMINISTRATIVE JUDGE**

**JACQUELINE T. WILLIAMS**

### **APPEARANCES**

#### **FOR GOVERNMENT**

Edward W. Loughran, Esq., Department Counsel

#### **FOR APPLICANT**

*Pro Se*

### **SYNOPSIS**

Applicant is 59 years old and has worked as a security engineer-consultant for the same defense contractor since 1999. From August 1996 to August 1999, he was unemployed and on disability; his unemployment was due to an on-the-job injury. Before he won his disability case, Applicant was living on a pension since he retired from the police department, and according to him that income barely covered his rent and his car payment. Eight credit card debts, totaling \$29,173, were delinquent and written off as bad debts, and eventually sold to collection agencies. With a monthly net remainder income of \$1,891, he is financially irresponsible and will not pay these old debts. He refuses to pay any of the collection agencies because the credit card services will not see any of the money. Clearance is denied.

### **STATEMENT OF THE CASE**

The Defense Office of Hearings and Appeals (DOHA) declined to grant or continue a security clearance for Applicant under Executive Order 10865, *Safeguarding Classified Information Within Industry* (Feb. 20, 1960), as amended and modified, and Department of Defense Directive 5220.6, *Defense Industrial Personnel Security Clearance Review Program* (Jan. 2, 1992), as amended and modified (the "Directive"). On August 2, 2004, DOHA issued a Statement of Reasons (SOR) detailing the basis for its decision: security concerns under Guideline F (Financial Considerations). Applicant answered the SOR on September 3, 2004 and requested a decision without a hearing.

Department Counsel submitted the government's written case on December 17, 2004. Department Counsel provided a complete copy of the file of relevant material (FORM) to Applicant, along with notice of his opportunity to file objections and submit material to refute, extenuate, or mitigate the allegations. Applicant received the FORM on February 22, 2005. He did not respond to the FORM. The case was assigned to me on April 13, 2005.

### **FINDINGS OF FACT**

Applicant admitted all of the allegations contained in the SOR, except he denied the allegation in subparagraph 1.i. Those admissions are incorporated herein as findings of fact, and I make the following additional findings of fact:

Applicant is 59 years old and has worked as a security engineer-consultant for the same defense contractor since 1999. He is married and has three children.

From August 1996 to August 1999, he was unemployed and on disability; his unemployment was due to an on-the-job injury. Applicant received disability income for about three months, after which a doctor concluded nothing was wrong with him and his disability income was stopped. Because the insurance company refused to continue his disability pay, he sued. Three years later he won his case and received back pay and other allowances.

Before he won his disability case, Applicant was living on a pension, having retired as an officer on a police department, and according to him that income barely covered his rent and his car payment. At that point, he did not have enough money pay his credit cards. He contacted the credit card services during this period but they wanted a specific date by which he would receive his settlement and he was not able to give a date certain and was not able to negotiate any of his debt. Applicant's lawsuit settlement payments began in October 1998.

The SOR alleges that Applicant has eight delinquent debts totaling \$29,173. Applicant admits to the debts in subparagraphs 1.a. through 1.g. Regarding subparagraph 1.h, although he has no recollection of this debt, he admits it with qualification, that is, if it is on his credit report, then he must owe the debt. He denied subparagraph 1.i. which states that he is financially capable of paying the debts alleged in the SOR because his Personal Financial Statement of March 7, 2003 indicates he has a monthly net remainder of \$1,891.

He states the credit card companies took it on their own to write off his accounts as a bad debt and uncollectible. He further explains:

By this time the credit card companies had written off the cards as being uncollectible. I got in touch with a few of the companies and asked how I could get these accounts paid up or make some kind of arrangement to settle the cases for a lower amount because I didn't want to permanently destroy my good credit that I had had prior to 1996. I was told that once the credit card company had written them off as uncollectible there was nothing else that could be done. That if I sent them a payment there would be no place to apply that payment. Once an account was sold to a credit card collection agency the original credit card company had nothing to do with this account anymore.<sup>(1)</sup>

### 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. Considering the evidence as a whole, Guideline F, pertaining to financial considerations, with its respective DC and MC, applies in this case. 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.

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.<sup>(2)</sup> The government has the burden of proving controverted facts.<sup>(3)</sup> The burden of proof in a security clearance case is less than a preponderance of the evidence.<sup>(4)</sup> Once the government has met its burden, the burden shifts to an applicant to present evidence of refutation, extenuation, or mitigation sufficient to overcome the case against him.<sup>(5)</sup> Additionally, an applicant has the ultimate burden of persuasion to obtain a favorable clearance decision.<sup>(6)</sup>

No one has a right to a security clearance<sup>(7)</sup> and "the clearly consistent standard indicates that security clearance determinations should err, if they must, on the side of denials."<sup>(8)</sup> Any reasonable doubt about whether an applicant should be allowed access to classified information must be resolved in favor of protecting such sensitive information.<sup>(9)</sup> The decision to deny an individual a security clearance is not necessarily a determination as to the loyalty of an applicant.<sup>(10)</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.

Based upon consideration of all the evidence, I find the following adjudicative guideline most pertinent to the evaluation of the facts in this case:

Guideline F - Financial Considerations: 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 acts to generate funds. Unexplained affluence is often linked to proceeds from financially profitable criminal acts.

Conditions that could raise a security concern and may be disqualifying, as well as those which would mitigate security concerns, pertaining to the adjudicative guideline are set forth and discussed in the conclusions below.

### **CONCLUSIONS**

I have carefully considered all the facts in evidence and the legal standards. The government has established a case for disqualification under Guideline F. Based on all the evidence as a whole, Financial Considerations Disqualifying Conditions (FC DC) E2.A6.1.2.1 (*a history of not meeting financial obligations*) and FC DC E2.A6.1.2.3 (*inability or unwillingness to satisfy debts*), apply in this case. Applicant accumulated significant delinquent debt totaling \$29,173 and owes eight creditors. These debts occurred almost eight and one-half years ago. Even though he now has at least a financial monthly net remainder of \$1,891.00, he believes that since the credit card companies wrote off his accounts as a bad debt, they are therefore uncollectible because the debts were sold to collection agencies. He states that he refuses to pay any of the collection agencies because the credit card services will not see any of the money. This is an interesting but untenable position. It is perfectly legal and acceptable for a financial company to sell or assign the debt to another, and the debtor is not thereby relieved from the obligation to pay the debt. His plan seems to be to let his old debts stay on his credit report and make sure that he timely pays all his other debts.

I have considered all the Financial Considerations Mitigating Conditions (FC MC) and find that none of them apply. FC MC E2.1.3.1 (*the behavior was not recent*) does not apply in mitigation. Although these debts are almost eight and one-half years old, it is not realistic to say that his behavior was not recent. He has had several years to pay these debts but he chooses not to pay them because the original creditors are no longer in the picture. FC MC E2.A6.1.3.2 (*it was an isolated incident*) is not applicable in mitigation because his behavior was not an isolated incident. There are eight, separate and distinct debts that he incurred. I cannot conclude that eight unpaid debts should be considered as one event occurring in isolation in Applicant's life. Moreover, FC MC 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)*) is not applicable in mitigation. In October 1998, he won a court case and started receiving payments because of his period of unemployment after an injury on the job. It is unfair for him to think that his accumulation of debts due to his disability was largely beyond his control because once the payments started, he was in a position to take care of his financial responsibilities with his creditors. His unpaid debts indicate he is financially irresponsible. That he simply refuses to pay collection agencies when he has the financial ability to repay his debts, proves that the allegations have not been mitigated.

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 Applicant should not have a security clearance. Applicant has not mitigated the security concerns caused by his financial considerations. Accordingly, subparagraphs 1.a through 1.i of the SOR are 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., 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 of 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.

Jacqueline T. Williams

Administrative Judge

1. Item 3, (Applicant's Answer dated September 3, 2004), at 3.
2. ISCR Case No. 96-0277 (July 11, 1997) at 2.
3. ISCR Case No. 97-0016 (December 31, 1997) at 3; Directive, Enclosure 3, ¶ E3.1.14.
4. *Dep't of Navy v. Egan*, 484 U.S. 518, 531 (1988).
5. ISCR Case No. 94-1075 (August 10, 1995) at 3-4; Directive, Enclosure 3, ¶ E3.1.15.
6. ISCR Case No. 93-1390 (January 27, 1995) at 7-8; Directive, Enclosure 3, ¶ E3.1.15.
7. *Egan*, 484 U.S. at 531.
8. *Id.*
9. *Id.*; Directive, Enclosure 2, ¶ E2.2.2.
10. Executive Order 10865 § 7.