

DATE: May 18, 2005

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In Re:

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SSN: -----

Applicant for Security Clearance

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ISCR Case No. 03-11399

**DECISION OF ADMINISTRATIVE JUDGE**

**ROBERT J. TUIDER**

**APPEARANCES**

**FOR GOVERNMENT**

Sabrina Elaine Redd, Esq., Department Counsel

**FOR APPLICANT**

*Pro Se*

**SYNOPSIS**

Applicant encountered financial difficulties adapting to the loss of a lengthy overseas cost of living allowance and adjusting spending habits downwards, a costly two-year marital separation, and transitioning from career active duty Air Force to civilian life. During the separation, Applicant became responsible for the sole support and care of his two teenage sons. Applicant has since reconciled with his wife and paid or resolved all past debts, thus mitigating financial considerations concerns. Clearance is granted.

**STATEMENT OF THE CASE**

The Defense Office of Hearings and Appeals (DOHA) declined to grant or continue a security clearance for Applicant. On June 3, 2004, DOHA issued a Statement of Reasons (SOR) <sup>(1)</sup> detailing the basis for its decision-security concerns raised under Guideline F (Financial Considerations) of the Directive. Applicant answered the SOR in writing on July 2, 2004, and elected to have a hearing before an administrative judge.

The case was assigned to another administrative judge on March 9, 2005 and on March 10, 2005, he issued a notice of hearing scheduling a hearing for April 4, 2005. The case was transferred to me on April 1, 2005. The hearing was conducted as scheduled to consider whether it is clearly consistent with the national interest to grant or continue a security clearance for Applicant.

The government offered seven documents, which were admitted without objection as Government Exhibits (GE) 1 through 7. The Applicant offered 11 documents, which were admitted without objection as Applicant Exhibits (AE) A through K. I left the record open after the hearing to afford Applicant the opportunity to submit additional documents. The Applicant submitted nine additional documents, which were admitted without objection as AE L through T. DOHA received the transcript on April 19, 2005.

**FINDINGS OF FACT**

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

Applicant is a 46-year-old married man, and father of two sons, ages 22 and 20. He is a high school graduate and attended college for approximately 1 ½ years. He served in the Air Force from April 1983 to April 2003, and retired as a Master Sergeant, pay grade E-7. Applicant held a security clearance for the majority of his Air Force career at the top secret level.

Since March 2003, Applicant has been employed by a defense contractor as a Logistics Engineer III. He seeks a secret security clearance, which is a requirement for his current position.

The SOR alleges Applicant is in arrears on 11 debts. The table below presents details about the debts alleged in the SOR, their current status, and cites to relevant parts of the record.

<b>Debt</b>	<b>Nature &amp; Amount in SOR</b>	<b>Current Status</b>	<b>Record</b>
Debt 1/SOR ¶ 1.a	Credit card account in delinquent status \$3,329.00.	Paid in full.	Tr. 20-21, AE A.
Debt 2/SOR ¶ 1.b.	Credit card account in delinquent status \$2,923.00.	Paid in full.	Tr. 20-21, AE A.
Debt 3/SOR ¶ 1.c.	Collection agency account in delinquent status \$2,812.00.	Paid in full.	Tr. 20-21, AE A.
Debt 4/SOR ¶ 1.d.	Credit card account in delinquent status \$1,348.00.	Settled for lesser amount of \$1,175.00. Paid in full.	Tr. 21-22, AE L, AE M, AE N.
Debt 5/SOR ¶ 1.e.	Phone company account in delinquent status \$177.00.	Paid in full.	Tr. 22-23, AE L, AE O.
Debt 6/SOR ¶ 1.f.	Cable company account in delinquent status \$595.00.	Returned cable boxes and credited \$435.00. Paid balance owed. Account paid in full.	Tr. 23-24, AE L, AE P, AE Q.
Debt 7/SOR ¶ 1.g.	Department store account in delinquent status \$529.00.	Paid in full.	Tr. 25, AE A.
Debt 8/SOR ¶ 1.h.	Cable company account in delinquent status \$595.00.	Duplicate of Debt 6 (SOR ¶ 1.f.)	N/A.
Debt 9/SOR ¶ 1.i.	Credit card account in delinquent status \$368.00.	Paid in full.	Tr. 25, AE A.
Debt 10/SOR ¶ 1.j.	Credit card account in delinquent status \$141.00.	Applicant made repeated efforts to pay creditor. Creditor has no record of debt. Debt being removed from credit report.	Tr. 25-27, AE L.
Debt 11/SOR ¶ 1.k.	Medical bill in delinquent status \$48.00.	Paid in full.	Tr. 27-29, AE L, AE S.

Applicant attributes his past financial problems to several factors. First, Applicant and his wife were overseas for ten years and received a substantial cost of living allowance (COLA), which ended when they returned to the Continental

United States (CONUS). Second, they had difficulty adjusting their spending habits downward when they lost their COLA and returned to CONUS. Third, Applicant and his wife began having marital problems and they had a costly two-year separation. During this separation, Applicant assumed sole responsibility for the care and support of their two teenage sons. Fourth, when Applicant retired from the Air Force and transitioned to a civilian career, he experienced a downward salary adjustment.

As the above chart reflects, Applicant has paid or otherwise resolved his past debts. He submitted a monthly budget indicating he has a net remainder of \$2,640.00 after paying all his bills. Applicant has since reconciled with his wife.

Applicant submitted evaluations from the Air Force reflecting 20 years of outstanding service. GE 6. Furthermore, his employer submitted a Letter of Compelling Need indicating he is the only person "either active duty Air Force or working for [his company], who has the intimate knowledge" capable of performing his duties. GE 7. His character references portray an individual of extraordinary integrity and tremendous work ethic. AE F through AE K.

### **POLICIES**

The Adjudicative Guidelines in the Directive are not a set of inflexible rules of procedure. Instead they 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. In making overall common sense determinations, administrative judges must consider, assess, and analyze the evidence of record, both favorable and unfavorable, not only with respect to the relevant Adjudicative Guidelines, but in the context of factors set forth in section E 2.2.1. of the Directive. The government has the burden of proving any controverted fact(s) alleged in the SOR, and the facts must have a nexus to an Applicant's lack of security worthiness.

The adjudication process is based on the whole person concept. All available, reliable information about the person, past and present, is to be taken into account in reaching a decision as to whether a person is an acceptable security risk. Although the presence or absence of a particular condition for or against clearance is not determinative, the specific adjudicative guidelines should be followed whenever a case can be measured against this policy guidance.

### **BURDEN OF PROOF**

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." As Commander in Chief, the President has "the authority to . . . control access to information bearing on national security and to determine whether an individual is sufficiently trustworthy to occupy a position . . . that will give that person access to such information." *Id.* at 527. The President has restricted eligibility for access to classified information to "United States citizens . . . whose personal and professional history affirmatively indicates loyalty to the United States, strength of character, trustworthiness, honesty, reliability, discretion, and sound judgment, as well as freedom from conflicting allegiances and potential for coercion, and willingness and ability to abide by regulations governing the use, handling, and protection of classified information." Executive Order 12968, *Access to Classified Information* § 3.1(b) (Aug. 4, 1995). Eligibility for a security clearance is predicated upon the applicant meeting the security guidelines contained in the Directive.

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, the applicant from being eligible for access to classified information. *See Egan*, 484 U.S. at 531. 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. Where the facts proven by the Government raise doubts about an applicant's judgment, reliability or trustworthiness, then the applicant has the ultimate burden of establishing his security suitability with substantial evidence in explanation, mitigation, extenuation, or refutation, sufficient to demonstrate that despite the existence of guideline conduct, it is clearly consistent with the national interest to grant or continue his security clearance.

Security clearances are granted only when "it is clearly consistent with the national interest to do so." *See* Executive Orders 10865 § 2 and 12968 § 3.1(b). "Any doubt as to whether access to classified information is clearly consistent with national security will be resolved in favor of the national security." Directive ¶ E2.2.2 "The clearly consistent

standard indicates that security clearance determinations should err, if they must, on the side of denials." *See Egan*, 484 U.S. at 531. Doubts are to be resolved against the applicant.

## CONCLUSIONS

### **Guideline F - Financial Considerations**

In the SOR, DOHA alleged Applicant had 11 delinquent debts (§§ 1.a. through 1.k.). *The Concern*: An individual who is financially overextended is at risk of having to engage in illegal acts to generate funds. Directive ¶ E2.A6.1.1.

The Government established its case under Guideline F by Applicant's admissions and evidence submitted. However, Debt 6 (¶ 1.f.) is a duplicate of Debt 8 (¶ 1.h.), thus reducing the number of debts owed by Applicant from 11 to 10. His inability to satisfy his outstanding financial obligations gives rise to 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*).

As reflected above, Applicant submitted evidence at his hearing and after his hearing that he has paid or resolved all debts alleged. Applicant experienced several events that severely impacted his financial standing and ability to remain current on his debts. The financial adjustment of losing his COLA when he returned to CONUS, his family not being able to adjust their spending habits downwards after returning to CONUS, a two-year marital separation, and transition to civilian life all contributed to his financial difficulties. His personal life and financial status have since stabilized allowing him to focus on rectifying his past debts. His family budget reflects financial solvency.

Applicant has paid or otherwise resolved the ten debts identified in the SOR thus mitigating financial consideration concerns. These actions trigger Financial Considerations Mitigating Conditions (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 of separation)*); and FC MC E2.A6.1.3.6 (*the individual initiated a good-faith effort to repay overdue creditors or otherwise resolve debts*). In short, Applicant has aggressively tackled his past financial problems and returned to financial stability.

Based on the totality of the circumstances to include his documented actions coupled with his credible testimony, I find for Applicant on SOR §§ 1., 1.a. through 1.k.

## FORMAL FINDINGS

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

Paragraph 1. Guideline F: FOR APPLICANT

Subparagraph 1.a.-1.k.: For Applicant

## DECISION

In light of all of 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.

**Robert J. Tuider**

**Administrative Judge**

1. Pursuant to Exec. Or. 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.