

DATE: June 28, 2004

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In Re:

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SSN: -----

Applicant for Security Clearance

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CR Case No. 03-11457

## DECISION OF ADMINISTRATIVE JUDGE

**ELIZABETH M. MATCHINSKI**

### APPEARANCES

#### FOR GOVERNMENT

Catherine Engstrom, Esq., Department Counsel

#### FOR APPLICANT

*Pro Se*

### SYNOPSIS

Applicant is a 28-year-old electrical engineer who owes approximately \$20,000 in delinquent debt. His financial problems, which began in 1999 because he was spending more than he could afford, were exacerbated by an unforeseen job layoff in January 2000. He has satisfied or settled three of his delinquent accounts, but despite an annual salary of \$56,500, he has no reserve funds to devote to repayment of the others. It is too soon to conclude that his financial problems are behind him. Personal Conduct concerns also persist because he was not fully candid about his financial delinquencies when he completed his security clearance application. Clearance is denied.

### STATEMENT OF CASE

On October 16, 2003, the Defense Office of Hearings and Appeals (DOHA) issued a Statement of Reasons (SOR) to the Applicant which detailed reasons why DOHA could not make the preliminary affirmative finding under the Directive that it is clearly consistent with the national interest to grant or continue a security clearance for the Applicant. [\(1\)](#) DOHA recommended referral to an Administrative Judge to conduct proceedings and determine whether clearance should be granted, continued, denied, or revoked. The SOR was based on Financial Considerations (Guideline F) and Personal Conduct (Guideline E).

On November 17, 2003, Applicant filed his response to the SOR and requested a hearing before a DOHA Administrative Judge. The case was assigned to me on December 4, 2003, and pursuant to notice of December 9, 2003, a hearing was scheduled for January 15, 2004. At the hearing, the Government's case consisted of six exhibits. On the Government's motion, the SOR was amended to reflect that Applicant had responded "Yes" and listed one debt of \$1,203 (the debt alleged in SOR subparagraph 1.d.) to question 38 on his April 2001 security clearance application concerning any debts over 180 days delinquent in the last seven years. Applicant testified as reflected in a transcript received January 26, 2004. The record was ordered held open until February 6, 2004, for Applicant to submit documentation of debt payments.

Applicant submitted three documents post-hearing, confirming settlement in February 2001 of the debt alleged in SOR

subparagraph 1.e. (Ex. A), payment in full as of December 2003 of the debt alleged in subparagraph 1.i. (Ex. B) and payment of \$1,112.71 in May 2003 toward satisfaction of the debt alleged in subparagraph 1.a. (Ex. C). Department Counsel having no objection to their admission, the documents were marked and entered into the record as noted.

## FINDINGS OF FACT

DOHA issued an SOR under Financial Considerations because Applicant owed delinquent debt, allegedly totaling \$19,030 as of March 2003, and was financially unable to repay his creditors, and under Personal Conduct as he failed to list any delinquent debt on his April 2001 security clearance application. Applicant admitted the allegations, but at his hearing he disputed the debt alleged in SOR subparagraph 1.j. After a complete and thorough review of the evidence, I render the following findings:

Applicant is a 28-year-old electrical engineer who has worked for his current employer, a defense contractor, since April 2001. He seeks a security clearance for his duties.

A naturalized U.S. citizen, Applicant emigrated from the Dominican Republic with his family when he was 12. He attended college in the U.S., financed in part by student loans. On graduation from college with his B.S. degree in electrical engineering, Applicant went to work as an avionics engineer in May 1997. Despite an annual salary that reached \$52,000 by late 1999, Applicant fell behind on his financial obligations due to overspending and financial mismanagement. A \$1,811 unpaid consumer credit card balance was placed for collection in December 1999 and his charge privileges cancelled by the credit grantor (SOR subparagraph 1.b.). As of August 1999, he was \$111 past due on a department store revolving charge account that had a balance of \$721 (subparagraph 1.e.). Applicant also failed to pay for a school ring, and a \$216.18 balance was placed for collection in July 1997 (subparagraph 1.i.). He made payments as agreed on other accounts, including on the credit card debts alleged in subparagraphs 1.c., 1.d., and 1.g., and on an automobile loan of \$15,952 opened in January 1999.

In January 2000, Applicant was laid off from his job. For the next six months or so, he collected unemployment compensation of about \$340 a week while his live-in girlfriend contributed \$500 per month to the household income from her job as a bartender. (2) During his unemployment, he made his monthly car payment of \$360. He managed to make his student loan payment of \$130 to \$140 per month until the May/June time frame. In July 2000, he got a job as a quality assurance engineer at an annual salary of \$50,000, but did not resume payment of his student loan. In February 2001, he again found himself without a job due to corporate financial problems. He paid half of the \$721 balance owed on one credit card (subparagraph 1.e.) in settlement of that debt in or before late February, but other accounts remained unpaid, and new accounts fell delinquent even after he began working for his current employer in April 2001 at an annual salary of about \$56,500.

Needing a security clearance for his current position, Applicant executed a security clearance application on April 27, 2001. He responded "Yes" to questions 38 ["In the last 7 years, have you been over 180 days delinquent on any debt(s)?"] and 39 ["Are you currently over 90 days delinquent on any debt(s)?"] and listed one credit card debt of \$1,203 (subparagraph 1.d.) delinquent since January 2001. Aware he was behind on other accounts, Applicant did not report any other delinquencies as he lacked specifics of the amounts owed and was concerned about the impact on his clearance.

On June 13, 2001, the Defense Security Service (DSS) ran a credit check which reported Applicant had not paid the \$1,811 credit card debt (subparagraph 1.b.) or the \$216 school ring debt (subparagraph 1.i.); was 60 days past due as of that April on a fuel bill of \$315 (not alleged); had a \$388 residential telephone debt written off to profit and loss (subparagraph 1.h.); was 90 days past due as of April 2001 on two installment loans with a total balance of \$4,727; (3) and was 120 days past due as of August on the \$721 store credit card debt that was settled in February 2001, and on two credit card accounts with the same retailer with balances of \$597 (SOR subparagraph 1.g.; debt had been placed for collection in October 2000) and \$2,377 (subparagraph 1.k.). Applicant was also reported to owe a cellular telephone debt of \$3,609 in collection since July 1998 (subparagraph 1.j.). His automobile loan was rated "pays as agreed" with a balance of \$10,320 (subparagraph 1.f.).

In January 2002, Applicant opened a credit card account requiring payment of the total balance at the end of the billing

period. As of February 2003, his card was cancelled by the creditor as it was \$2,225 past due (subparagraph 1.a.). Sometime in early 2002, Applicant paid his school ring debt of \$271 (subparagraph 1.i.).<sup>(4)</sup>

In February 2002, Applicant and his girlfriend had a son. Medical expenses for the birth and baby care were covered by insurance, but Applicant and his spouse incurred the costs of furnishings (total expenditure of \$1,400 included a living room set), food, and clothing for the baby, which negatively impacted his ability to make his credit card and car payments. In February 2002, a department store creditor obtained a civil judgment against Applicant in the amount of \$2,569 (subparagraph 1.k.) that negatively impacted his ability to make his car payments. In April 2002, his vehicle was repossessed, leaving him with a deficiency balance on the loan of \$3,282 (subparagraph 1.f.). In June 2002, a \$2,640 delinquent balance on a VISA card account opened in May 1994, was placed for collection by the creditor (subparagraph 1.c.). That October, the MasterCard debt he had reported as delinquent, was written off to profit and loss in the amount of \$1,481 (subparagraph 1.d.). Applicant contacted the creditor in an effort to set up a repayment plan without success.

Applicant did not make any payments on his delinquent consumer credit accounts due to unexpected car expenses in 2002. Following the repossession of his vehicle in April 2002, Applicant purchased a 1999 Dodge Intrepid and a Mitsubishi Eclipse. After the Dodge Intrepid was totaled in an accident that November, he bought a 1993 Eagle Vision for \$1,000 cash. The engine subsequently blew in the Mitsubishi, leaving him with only one vehicle.<sup>(5)</sup>

A check of Applicant's credit by DSS on March 29, 2003, reported Applicant had not satisfied any of his outstanding debts, even though Applicant had settled the department store debt in February 2001 and the school ring debt in early 2002. On April 8, 2003, Applicant was interviewed by a DSS special agent about his personal history and financial affairs. Applicant acknowledged owing delinquent credit card debts of \$2,225 and \$1,811 to the same lender (subparagraphs 1.a. and 1.b.), \$2,640 and \$1,481 on Visa and MasterCard accounts (subparagraphs 1.c. and 1.d.), a \$698 collection debt and \$2,569 civil judgment owed to a retail department store (subparagraphs 1.g. and 1.k.), a \$388 bad debt for residential phone service (subparagraph 1.h.), and a past due balance of \$270 to a local utility company (not alleged). He maintained he had paid and/or settled the school ring debt (subparagraph 1.i.) and the \$721 department store debt (subparagraph 1.e.), and was uncertain whether he owed any balance on his car loan following the repossession. Applicant disputed the validity of the \$3,609 communications debt reported to be in collection (subparagraph 1.j.) contending someone else opened the account in his name using a phony address. Told two years before by the creditor to file a police report, he had not yet done so. Applicant explained he had not listed all his delinquent debt on his SF 86 because he did not have the information about his debts and he was afraid it might hurt his chances of obtaining a clearance. Applicant and the agent arranged another interview to discuss Applicant's plans to resolve his outstanding indebtedness.

After his initial DSS interview, Applicant contacted the creditor to whom he owed \$2,225 (subparagraph 1.a.) and made arrangements to pay half of the debt by late April 2003 and the remaining half of the debt by the end of May 2003. On April 15, 2003, Applicant was reinterviewed by the DSS agent. He indicated he had no current plan to repay his debts, with the exception of the \$2,225 credit card debt that he planned to satisfy in two installments, and expressed his intent to contact a credit counselor in the next week or two. On completion of a personal financial statement showing he would have a \$760.98 negative balance that month if he made the first payment of \$1,112.50, Applicant indicated he would either fall behind or borrow the money from family. On or before May 1, 2003, Applicant tendered a check (postdated May 6, 2003) for \$1112.71 to the collection agency handling the debt.<sup>(6)</sup>

After this interview, Applicant contacted a debt consolidation service, but they wanted a monthly payment of between \$350 and \$375 he could not afford. Applicant also looked into filing for bankruptcy but elected not to pursue it due to his pending clearance and desire to purchase a home someday.

In default on his student loans of \$5,500, Applicant contacted the lender in December 2003 and learned his account had been sold. He has made no payments on his student loan debt since May 2000.

As of January 2004, Applicant was making no payment on the delinquent consumer credit debt still outstanding (those debts alleged in subparagraphs 1.a.,<sup>(7)</sup> 1.b., 1.c., 1.d., 1.f., 1.g., 1.h., and 1.k.). Although the \$3,609 debt alleged in SOR subparagraph 1.j. appears on Applicant's credit reports, and Applicant has been dilatory in pursuing the matter, I accept

as credible Applicant's testimony he did not open the account and never lived at the address listed on the account. He has admitted to several other significant delinquencies.

Applicant has incurred no new delinquent debt, but lives from paycheck to paycheck and has no funds in saving or checking. He had not yet filed a police report complaining someone had stolen his identity and incurred the \$3,609 in cellular phone charges in his name. Applicant recently spent \$300 in conjunction with his relocation to a city closer to his work.

## POLICIES

"[N]o one has a 'right' to a security clearance." *Department of the Navy v. Egan*, 484 U.S. 518, 528 (1988). 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." Exec. Or. 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.

Enclosure 2 of the Directive sets forth personal security guidelines, as well as the disqualifying conditions (DC) and mitigating conditions (MC) under each guideline. In evaluating the security worthiness of an applicant, the administrative judge must also assess the adjudicative process factors listed in ¶ 6.3 of the Directive. The decision to deny an individual a security clearance is not necessarily a determination as to the loyalty of the applicant. *See* Exec. Or. 10865 § 7. 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.

Initially, the Government must establish, by substantial evidence, conditions in the personal or professional history of the applicant that disqualify, or may disqualify, the applicant from being eligible for access to classified information. *See Egan*, 484 U.S. at 531. The Directive presumes a nexus or rational connection between proven conduct under any of the disqualifying conditions listed in the guidelines and an applicant's security suitability. *See* ISCR Case No. 95-0611 at 2 (App. Bd. May 2, 1996).

Once the Government establishes a disqualifying condition by substantial evidence, the burden shifts to the applicant to rebut, explain, extenuate, or mitigate the facts. ISCR Case No. 01-20700 at 3 (App. Bd. Dec. 19, 2002); *see* Directive ¶ E3.1.15. An applicant "has the ultimate burden of demonstrating that it is clearly consistent with the national interest to grant or continue his security clearance." ISCR Case No. 01-20700 at 3.

Considering the evidence as a whole, the following adjudicative guidelines are the most pertinent to this case:

### **Guideline F**

#### **Financial Considerations**

E2.A6.1.1. The Concern: 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 acts.

E2.A6.1.2. Conditions that could raise a security concern and may be disqualifying include:

E2.A6.1.2.1. A history of not meeting financial obligations;

E2.A6.1.2.3. Inability or unwillingness to satisfy debts.

E2.A6.1.3. Conditions that could mitigate security concerns include:

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);

E2.A6.1.3.6. The individual initiated a good-faith effort to repay overdue creditors or otherwise resolve debts.

## **Guideline E**

### **Personal Conduct**

E2.A5.1.1. The Concern: Conduct involving questionable judgment, untrustworthiness, unreliability, lack of candor, dishonesty, or unwillingness to comply with rules and regulations could indicate that the person may not properly safeguard classified information.

E2.A5.1.2. Conditions that could raise a security concern and may be disqualifying also include:

E2.A5.1.2.2. The deliberate omission, concealment, or falsification of relevant and material facts from any personnel security questionnaire, personal history statement, or similar form used to conduct investigations, determine employment qualifications, award benefits or status, determine security clearance eligibility or trustworthiness, or award fiduciary responsibilities.

E2.A5.1.3. Conditions that could mitigate security concerns include:

None applicable.

## **CONCLUSIONS**

Having considered the evidence of record in light of the appropriate legal precepts and factors, and having assessed the credibility of the Applicant, I conclude the following with respect to Guidelines F and E:

Under Guideline F, the security eligibility of an applicant is placed into question when the applicant is shown to have a history of excessive indebtedness, recurring financial difficulties, or a history of not meeting his financial obligations. The Government must consider whether individuals granted access to classified information are because of financial irresponsibility in a position where they may be susceptible to mishandling or compromising classified information. As of June 1999, Applicant was largely current in his financial obligations, although he owed for his school ring on a debt delinquent since April 1997. By that December, a credit card had been cancelled due to his failure to pay a \$1,811 balance and a department store account was \$111 past due. His financial difficulties increased after his layoff in January 2000, and he stopped making payments on his student loan that May. Although gainfully employed since July 2000 (with the exception of the February/March 2001 time frame) earning a salary of at least \$50,000, Applicant allowed his financial difficulties to mount to where he owed as of his April 2003 DSS interviews more than \$15,000 in undisputed consumer credit debt in addition to \$5,500 in defaulted student loan debt. Disqualifying conditions E2.A6.1.2.1. and E2.A6.1.2.3. must be considered in evaluating Applicant's current security suitability.

The Directive provides for mitigation where the financial indebtedness was incurred due to conditions largely beyond the person's control (*see* E2.A6.1.3.3.). His unexpected layoff in January 2000 with six or seven months of subsequent unemployment, the costs of caring for a new baby since February 2002, and unforeseen automobile expenditures in 2002, all contributed to his financial difficulties. Furthermore, Applicant's efforts to resolve those debts alleged in subparagraphs 1.a., 1.e., and 1.i. predate the issuance of the SOR and are viewed credibly (*see* MC E2.A6.1.3.6). Yet he also could have done more to address his old debts. He purchased \$1,400 in furniture in 2002 while making no effort to contact several of his creditors. Despite a \$56,500 annual salary in 2003, Applicant was going to have to borrow money to make the installment payments promised on his \$2,225.00. Reportedly living paycheck to paycheck, Applicant has no funds on which to draw in an emergency and no concrete plan in place to address his delinquencies in the near future. Applicant also showed at the hearing that he does not have a good grasp of his financial situation, as he testified he made no payments on the debt alleged in 1.a., even though he had issued a check for half of the balance owed in May 2003. Applicant's persistent financial problems preclude me from concluding that it is clearly consistent with the national interest to grant him access to classified information. SOR subparagraphs 1.a. (he owes at least half of the debt

if the check cleared), 1.b., 1.c., 1.d., 1.f., 1.g., 1.h., 1.k., and 1.l. are resolved against Applicant. Since the debts alleged subparagraphs 1.e. and 1.i. have been satisfied, favorable findings are warranted with respect to 1.e. and 1.i. Subparagraph 1.j. is also concluded for Applicant as the evidence of his liability is not convincing.

Security significant Personal Conduct, Guideline E, concerns are raised where an applicant has not been completely candid with the Government about matter relevant and material to his or her personnel security application and investigation. (*See* DC E2.A5.1.2.2.). On his April 27, 2001 SF 86, Applicant responded affirmatively to the inquiries concerning any financial delinquencies currently over 90 days past due or in the last 7 years over 180 days late. However, Applicant listed only one debt--the credit card debt alleged in SOR subparagraph 1.d.--even though he knew other accounts were past due. A \$1,811 credit card debt (subparagraph 1.b.) had been in collection since December 1999. The \$698 debt owed a nationwide retailer (subparagraph 1.g.) had been in collection since October 2000. His school ring debt of \$217 had been in collection since April 1997 (subparagraph 1.i.). Telephone charges of \$388 had been written off to profit and loss (subparagraph 1.h.). Applicant having admitted when he was interviewed by the DSS agent in April 2003 that he did not include all his debts, in part because he feared the impact on his security clearance, DC E2.A5.1.2. applies here.

To his credit, Applicant was candid about his financial delinquencies when he was interviewed by a DSS agent in April 2003 and at his hearing in January 2004. The Directive provides for mitigation where there is a prompt, good faith effort to correct the falsification before being confronted with the facts. Applicant's correction, coming two years after he completed his SF 86, was not prompt. Before he met with the DSS investigator, Applicant had obtained a copy of his credit report and contacted the creditor to whom it was reported he owed the \$3,609 for cellular phone service. If he was uncertain as to the extent of his indebtedness, the credit report provided sufficient information about his debts to prompt some action on his part to not only have removed any entries that were inaccurate, but to inform the Department of Defense of his financial status. There is no evidence of any attempt at rectification prior to his April 8, 2003 interview. Subparagraph 2.a. as amended is resolved against him.

## FORMAL FINDINGS

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

### 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

Subparagraph 1.e.: For the Applicant

Subparagraph 1.f.: Against the Applicant

Subparagraph 1.g.: Against the Applicant

Subparagraph 1.h.: Against the Applicant

Subparagraph 1.i.: For the Applicant

Subparagraph 1.j.: For the Applicant

Subparagraph 1.k.: Against the Applicant

Subparagraph 1.l.: Against the Applicant

Paragraph 2. Guideline E: AGAINST THE APPLICANT

Subparagraph 2.a. (as amended): 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.

**Elizabeth M. Matchinski**

**Administrative Judge**

- 1.
2. Applicant told the DSS agent that he moved in with his fiancée and her son (born in 1995) in November 2001. (Ex. 2). However, his June 2001 credit report indicates he was living at that address (Ex. 5), and he testified at his hearing he has been together with his significant other for five years, and she contributed about \$500 per month to the household expenses when he was unemployed. (Tr. 64-65).
3. These debts were not alleged in the SOR and not explored at the hearing. They may well be the student loans but that was not clarified.
4. The letter from the creditor (Ex. B), dated December 4, 2003, indicates the account was paid in full but not when it was paid.
5. While it is clear Applicant had unexpected car expenses, Applicant's testimony is confusing as to when and even how many cars he bought. When initially asked about any current car loan, Applicant testified he had no loan. A Mitsubishi Eclipse used for commuting until November 2003 blew its engine so he bought a 1993 Eagle Vision for \$1,000 cash. Yet he added in explanation he had a 1999 Dodge Intrepid on which he had been making payments that was stolen and totaled so that's the reason he bought the Eagle Vision, and the Eclipse broke down afterwards. (Tr. 72-74). He subsequently testified he had a motor vehicle accident (a car that was totaled) in November 2002 and indicated he bought four vehicles in 2001 [sic] (Tr. 82):  
  
Then the car was totaled, I had to buy another car and, like I said, we had two cars, we totaled one, we bought another one. That's when I bought the '99 Dodge Intrepid, and it was totaled, and I ended up buying the Eagle Vision. Then the Mitsubishi Eclipse I also bought, and that one, also, the engine went, and I ended up buying another. So basically, four cars in 2001 that I had to purchase.  
  
Applicant's March 2003 credit report includes an installment loan taken out in December 2002 for \$7,965 (Ex. 4).
6. There is no evidence that this check cleared. Applicant testified on direct examination the creditor contacted him in August 2003 and he had set up a couple of payments that he did not make. He also denied receiving any documentation from the creditor regarding the payment plan (Tr. 45-46), but did provide evidence after the hearing that he tendered at least one check for half of the balance.
7. If payment was made on the check dated May 6, 2003, Applicant still owes \$1,112.50 on the account.