

DATE: February 20, 2007

In re:

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SSN: -----

Applicant for Security Clearance

ISCR Case No. 05-04933

**DECISION OF ADMINISTRATIVE JUDGE**

**ELIZABETH M. MATCHINSKI**

**APPEARANCES**

**FOR GOVERNMENT**

John B. Glendon, Esq., Department Counsel

**FOR APPLICANT**

*Pro Se*

**SYNOPSIS**

Applicant, who has a history of financial delinquency since the early 1990s, was granted a Chapter 7 bankruptcy discharge of \$37,969.53 in unsecured debt in July 2005. He failed to make payments on a car loan debt reaffirmed in the bankruptcy, and the vehicle was repossessed in August 2005. Financial considerations are unmitigated where he waited until June 2006 to contact the creditor about repayment and is still negotiating with the creditor on repayment terms that he can afford. 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. As required by Department of Defense Directive 5220.6 ¶ E3.1.2 (Jan. 2, 1992), as amended, DOHA issued a Statement of Reasons (SOR) on December 5, 2005, detailing the basis for its decision-security concerns raised under Guideline F (financial considerations) of the adjudicative guidelines. Applicant answered the SOR on January 3, 2006, and elected to have a hearing before an administrative judge. The case was assigned to me on May 31, 2006.

Pursuant to notice dated June 30, 2006, I convened a hearing on August 2, 2006, to consider whether it is clearly consistent with the national interest to grant or continue a security clearance for Applicant. Six government exhibits (Ex. 1-6) and two Applicant exhibits (Ex. A, B) were admitted, and testimony was taken from Applicant, as reflected in the hearing transcript (Tr.) received on August 11, 2006.

**FINDINGS OF FACT**

DOHA alleged under Guideline F, financial considerations, that Applicant was granted a Chapter 7 bankruptcy discharge on July 1, 2005 (SOR ¶ 1.a), and owed about \$9,509 on a debt reaffirmed in the Chapter 7 bankruptcy (SOR ¶ 1.b). In his answer to the SOR, Applicant admitted the bankruptcy, which he contended should not be held against him for purposes of determining his suitability for access since the debts had been discharged. He cited his divorces in 1995

and 2001, and his loss of employment in 2004 as factors that led to the bankruptcy. Applicant also acknowledged the \$9,509 debt, and averred he was in the process of arranging repayment terms.

Applicant's admissions to the Chapter 7 bankruptcy filing and discharge, and to owing on the debt reaffirmed in the bankruptcy, are incorporated as findings of fact. After a thorough consideration of the pleadings, exhibits, and transcript, I make the following additional findings.

Applicant is a 37-year-old high school graduate, who was hired by a defense contractor in May 2005, after about 16 years of military service. Applicant is a member of human and systems integration design team developing the Navy's next generation destroyer. He is seeking to retain the secret-level security clearance that he has held since he began with the defense firm.

Applicant entered on active duty in the United States Navy in June 1988. Careless with his credit, Applicant overextended himself financially while he was in the Navy. He and his first wife, whom he married in 1991, relied on retail credit to furnish their marital home, and they spent beyond their means. They divorced in 1994 following the birth of their daughter. <sup>(1)</sup> Applicant attended consumer credit counseling from mid-1994 to sometime in 1995, and repaid his debt through a debt consolidation with payments taken directly from his military pay through 1998.

Applicant was married to his second wife from July 1998 to mid-2001. <sup>(2)</sup> In March 2000, he purchased a computer on credit. Applicant and his second wife had an altercation in April 2000 that led to their separation. She took the computer with her and he made no payments on the \$1,626 balance after May 2000. Contacted by the creditor about the debt, Applicant explained that his soon-to-be ex-wife had taken the computer. He was told that since the account was in his name, he was solely responsible for the charged-off debt.

While his divorce was pending, Applicant ran up about \$2,500 in charges on a military exchange credit card for living expenses during the late 2000/early 2001 time frame. He made monthly payments of \$11.65 on the debt until 2005.

In September 2001, Applicant married his current spouse. He and his third wife have two children, who were born in 2002 and 2004. Both Applicant and his spouse brought unresolved debt into the marriage. Although he and his spouse did not use consumer credit cards, they got behind on their vehicle loans, cable television, medical and utility bills, and magazine/book subscriptions over the next three years. In about December 2001, they voluntarily surrendered her 1997 Mazda MX6 to the creditor, leaving them with a balance owed of \$10,075.55. In November 2003, their 1999 Nissan was repossessed. Between 2001 and March 2005, Applicant and his spouse accumulated medical debt of \$4,213.48. Applicant and his spouse did not pay their patient share of 27 different bills ranging in amount from \$2.36 to \$461.13. Applicant understood he was responsible for his share of the medical expenses, and at least with respect to the smaller debts, did not see the need to pay them ("My total reason was just a lack of care, to be honest. It was a \$2 bill, I didn't see the necessity to throw a 38-cent stamp, pay for a check, send it off, and then some of these bills have gone up from \$2 to \$70 and so it was total negligence on my part." Tr. 52). They ran up cable television charges of \$11,834 to one creditor. <sup>(3)</sup> Unpaid telephone services amounted to \$1,621.90, largely costs incurred when they were apart due to his deployments.

To renew the secret clearance granted to him in November 1992, Applicant executed a security clearance application on September 25, 2002. He did not list any financial delinquencies in response to question 38 concerning any financial delinquencies over 180 days in the last seven years or question 39 regarding any debts currently over 90 days delinquent, even though he had not made any payments on the computer since May 2000. In January 2003, Applicant was promoted to first class petty officer. In April 2004, Applicant was discharged from the Navy because of weight issues. <sup>(4)</sup>

In August 2004, he went to work in sales for a small cellular phone company. With the \$11,000 earned in that job, his total wages for 2004 amounted to about \$31,000. Easier to resolve their debts through bankruptcy rather than consumer credit counseling (Tr. 53), Applicant and his spouse stopped paying on several accounts. In early March 2005, they consulted with an attorney about filing for bankruptcy. They were told to stop paying on their debts, although by then several accounts were seriously delinquent ("Prior to that, I was just delinquent in debts and I couldn't pay them." Tr. 76). On or about March 21, 2005, Applicant and his spouse filed for Chapter 7 bankruptcy listing \$37,969.53 in

unsecured nonpriority claims and \$8,000 in secured debt (SOR ¶ 1.a). The secured debt was for a 2000 Dodge Caravan Applicant and his spouse had purchased for \$13,193 in August 2002. The loan had an interest rate of 19 1/2 percent due to Applicant's poor credit, making the monthly payments \$335. Behind in his car payment as of his bankruptcy filing, Applicant reaffirmed the debt in the bankruptcy (SOR ¶ 1.b). Twenty-nine of the 46 listed unsecured nonpriority debts were for amounts less than \$200. Living only on his income, Applicant and his spouse reported that their monthly expenses exceeded their income by \$1,995.31. On July 1, 2005, Applicant and his spouse were granted a discharge of their listed unsecured debt, including \$4,213.48 in medical debt, \$1,626 for the computer bought in 2000, \$2,229.35 in military exchange debt incurred by him in late 2000/early 2001, and unpaid cable television costs of \$11,952.40. (5)

Although they had reaffirmed their automobile loan debt for the Dodge Caravan in the bankruptcy, Applicant and his spouse stopped making their car loan payments as they failed to understand that payments had to continue on reaffirmed debts. In August 2005, the car was repossessed, leaving him with a deficiency balance of \$9, 509 (SOR ¶ 1.b). After the repossession, Applicant contacted his bankruptcy attorney and was told he had to pay the debt. Applicant's mother-in-law financed the purchase of a 2002 model-year minivan for Applicant and his spouse's use. Applicant pays the \$277 monthly car payment through automatic deduction from his and his spouse's joint checking account.

In May 2005, Applicant began working for the defense firm. Since he needed a secret-level clearance for his duties, the investigation into his background continued. An August 16, 2005, check of Applicant's credit revealed the involuntary automobile repossession. Applicant was also reported to owe \$1,626 for the computer he bought in March 2000, and \$45 for a supermarket debt in collection since October 2000. (Ex.5)

On August 16, 2005, DOHA forwarded financial interrogatories to Applicant, asking him to furnish documentation of his payment of the three outstanding debt balances listed on his credit report. In response on August 30, 2005, Applicant directed DOHA to his bankruptcy discharge, and he provided a copy of the Form B18 documenting the discharge. He also provided a personal financial statement showing a monthly net remainder of \$908.47 after payment of expenses. He reported his spouse was earning a net salary of \$420 per month for daycare services.

DOHA sent a second set of financial interrogatories to Applicant on September 8, 2005, asking him to provide a complete copy of his bankruptcy records, and documentation reflecting that the deficiency balance of his car loan (SOR ¶ 1.b) was being resolved or had been discharged. On October 7, 2005, Applicant furnished his bankruptcy petition, and indicated he was working with the lender to arrange for repayment or a pay off balance of the car debt.

Applicant did nothing to resolve the car debt at that time as "[he] was still trying to figure out how [he] was going to get all [his] finances in line with respect to what [he] had today, not with respect to what was in the past." (Tr. 28) A check of Applicant's credit on April 10, 2006, indicated the car debt had been charged off with a balance of \$7,200. Applicant testified that the car had been sold for \$1,100 after it was repossessed. (Tr. 59) The computer debt was still listed on his credit report with a balance owed of \$1,626 as of July 2004. (Ex. 6)

While looking into procuring a mortgage in July 2006, Applicant learned that the computer debt was on his credit report as an unpaid balance. He contacted his bankruptcy attorney, and was told to submit his bankruptcy records to the three credit reporting agencies to have them remove the debt. He had not done so by early August 2006.

In late June 2006, Applicant contacted the creditor owed the auto loan debt. He was advised that he had to pay off the debt in a lump sum. In early July, after he was notified of the date for his security clearance hearing, Applicant again inquired of the company whether there was any way he could "expunge" the debt. (Tr. 65) The creditor proposed repayment at \$510 per month, which Applicant could not afford. Applicant countered with an offer of \$200 per month. As of early August 2006, Applicant had received a letter from the creditor indicating that his account was under review and a payment plan would be forthcoming. Applicant assumes the creditor is going to agree to repayment at \$200 per month.

Applicant has one active credit card account which he opened in February 2006. As of March 2006, the account had a current balance of \$169. (Ex. 6) As of August 2006, the balance was \$233. (Tr. 63) Applicant's child support obligation for his daughter from his first marriage is \$388 per month, which is for her school tuition. Applicant does not have a personal savings account. As of August 2, 2006, he had about \$500 in a checking account. Applicant's spouse is paid

\$224 per month by the state for daycare services provided in their home. Applicant and his spouse have bundled their cable television, telephone, and internet costs with the same provider at a rate of \$145 per month.

Applicant acknowledges that he "hid, previously, a lot behind the Navy and its Service Sailor Acts." (Tr. 78) Since the bankruptcy, Applicant's spouse has continued to handle their bills as she has throughout their marriage. Applicant pays more attention to ensuring that their obligations get paid than he did in the past. He estimates he and his spouse have about \$700 left over each month after paying their expenses. As of late August 2006, he was scheduled to begin paying \$133 per month in preschool costs for his daughter born in 2002.

Applicant has demonstrated loyalty and integrity to his employer and to the Navy in his work in human and systems integration. Applicant's supervisor attests to Applicant possessing a strong work ethic, and to setting a positive example for his coworkers. In the opinion of another contractor working on the destroyer project, Applicant has conducted himself professionally and been trustworthy.

## 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 authorized the Secretary of Defense or his designee to grant applicants eligibility for access to classified information "only upon a finding that it is clearly consistent with the national interest to do so." Exec. Or. 10865, *Safeguarding Classified Information within Industry* § 2 (Feb. 20, 1960). 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 (App. Bd. Dec. 19, 2002).

The Adjudicative Guidelines set forth potentially 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 the applicant has not met the strict guidelines the President and the Secretary of Defense have established for issuing a clearance.

## CONCLUSIONS

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

An individual who is financially overextended is at risk of having to engage in illegal acts to generate funds. ¶ E2.A6.1.1 Applicant has a history of financial problems since his first marriage in 1991 when he relied on credit to furnish the marital home. While he resolved that debt with the assistance of a consumer credit organization in the mid-1990s, he abused credit extended to him by the military exchange following his second divorce. As reflected in their joint March 2005 bankruptcy filing, Applicant and his third wife accumulated about \$37,969.53 in unsecured debt between them. Applicant had an obligation to ensure that their obligations were paid, even those debts incurred when he was deployed, and whether he or his spouse handled the bills. Under Guideline F, disqualifying conditions ¶ E2.A6.1.2.1. *A history of not meeting financial obligations*, and ¶ E2.A6.1.2.3. *Inability or unwillingness to satisfy debts*, are implicated.

Apart from having to pay child support for his daughter from his first marriage, his recent financial problems are unrelated to his previous divorces. Applicant's discharge from the Navy because of weight issues was likely expected by him. While his subsequent unemployment from April 2004 to August 2004 is an extenuating circumstance contemplated in mitigating condition (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)*, his recent financial problems are due in large part to his own negligence. Of the 46 unsecured nonpriority debts listed on his bankruptcy petition, 29 were for small amounts, less than \$200. Applicant did not think it was worth the trouble to mail in a payment even when he could afford to do so.

Applicant has eliminated much of the financial pressure through a bankruptcy discharge in July 2005. While a discharge in bankruptcy is a legally permissible way to acquire a clean financial slate, it does not preclude an assessment of Applicant's overall financial history. ISCR Case No. 98-0349 at 3 (App. Bd. Feb. 3, 1999). There is no evidence that Applicant is falling behind on his current obligations, but the recency of his financial delinquencies must be taken into account when determining whether he can be counted on to comply with his financial obligations in the future. Furthermore, a bankruptcy discharge "does not substitute for evidence of a demonstrated track record of financial reform, a track record that is necessary to satisfy Applicant's burden of persuasion that it is clearly consistent with the national interest to grant or continue access to classified information." ISCR Case No. 98-0445 at 3 (App. Bd. Apr. 2, 1999). His handling of the debt in SOR ¶ 1.b undermines his reform. Applicant owes a \$7,200 deficiency balance on the automobile loan because of his failure to comply with the terms of the affirmation agreement. Even if he was under the mistaken impression that he did not have to make any payments on the loan pending discharge of the bankruptcy, Applicant knew as of Fall 2005 that he was legally responsible for a deficiency balance after repossession and resale of the vehicle. Yet, he did not inquire into repayment terms until June 2006.<sup>(6)</sup>

Although the Directive does not require that an applicant be debt free before he can be granted access, Applicant has not met MC ¶ E2.A6.1.3.4. *The person has received counseling for the problem and there are clear indications that the problem is being resolved or is under control*, or MC ¶ E2.A6.1.3.6. *The individual initiated a good-faith effort to repay overdue creditors or otherwise resolve debts*. As of August 2006, the auto lender had demanded monthly payments of \$510, which Applicant indicates he cannot afford, despite a reported net monthly remainder of about \$700.

### **Whole Person Analysis**

"The adjudicative process is an examination of a sufficient period of a person's life to make an affirmative determination that the person is eligible for a security clearance." ¶ E2.2.1. Applicant's financial irresponsibility was not limited to when he was a young sailor under the naive impression that everything would work out (¶ E2.2.1.4. *The individual's age and maturity at the time of the conduct*). He and his current spouse stopped paying on some of their obligations well in advance of their first consult with a bankruptcy attorney in March 2005 (¶ E2.2.1.1. *The nature, extent, and seriousness of the conduct*). Consumer credit counseling in the mid-1990s was ineffective in bringing about lasting, positive change in his financial habits (¶ E2.2.1.6. *The presence or absence of rehabilitation and other pertinent behavioral changes*). Applicant exhibited poor financial judgment recently in failing to timely address the car debt that he had reaffirmed in the bankruptcy (¶ E2.2.1.3. *The frequency and recency of the conduct*). Although he told DOHA in October 2005 that he was working out a payment plan or pay off amount with the creditor, he did not raise the issue with the creditor until June 2006, after the SOR was issued. Applicant shows some reform in that he now monitors his bills more closely to ensure that they are paid, but it is too soon to conclude that his financial problems are behind him (¶ E2.2.1.9. *The likelihood of continuation or recurrence*). Repayment of the car debt (SOR ¶ 1.b) is still being negotiated. Claims of being able to afford only \$200 per month have not been adequately explained where he also reports monthly discretionary income of \$700 per month. His work performance for the defense contractor is viewed favorably, but it is not enough to overcome the serious security concerns that persist because of his long history of financial mismanagement.

### **FORMAL FINDINGS**

The following are my conclusions as to each allegation in the SOR:

Paragraph 1. Guideline F: AGAINST APPLICANT

Subparagraph 1.a: Against Applicant

Subparagraph 1.b: Against Applicant

### **DECISION**

In light of all of the circumstances 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. Applicant indicated in his answer that he was divorced in 1995. He testified at his hearing that he was divorced from his first wife in 1994. (Tr. 33)
2. Applicant indicated on his security clearance application that he was married to his second wife from January 1995 to July 1998. (Ex. 1) At his hearing, he testified the SF 86 was incorrect, as he married his second wife in 1998 and divorced her in July 2001. (Tr. 32)
3. Applicant listed a joint cable television debt of \$11,834 on Schedule F of his March 2005 bankruptcy petition. (Ex. 2) He now disputes the amount of the debt ("I have to believe that's a mistake and it's just, just for the simple principles of how much cable costs and how long it would take to accrue that amount of debt, it just seems unfathomable to me."). (Tr. 73) Assuming costs as he testified to of "roughly \$97" per month since their marriage, the debt would have been on the order of about \$4,000 plus interest. Yet, Applicant also had an obligation to report accurately the debt balances on his bankruptcy petition and he testified the creditor had billed him for the \$11,834 (Tr. 75).
4. Applicant testified he was discharged in April 2004 after 16 years and four months of service (Tr. 35) Assuming he entered on active duty in June 1988, he was discharged just shy of 16 years.
5. Applicant and his spouse acknowledged at the time of filing that three debts totaling \$488 would not be discharged due to incomplete information about the accounts. (Ex. 2)
6. Applicant initially testified that after the repossession of his vehicle in August 2005, he contacted his lawyer who told him he had to find a way to pay the debt; that he didn't do anything about it until "approximately three months later when [he] contacted [the lender] on what [he] needed to do to pay off the debt." (Tr. 27-28) On cross examination, Applicant testified he did not discuss repayment terms with the lender until June 2006. (Tr. 65-67)