

DATE: June 26, 2006

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In Re:

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SSN: -----

Applicant for Security Clearance

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ISCR Case No. 05-06504

## **DECISION OF ADMINISTRATIVE JUDGE**

**MARTIN H. MOGUL**

### **APPEARANCES**

#### **FOR GOVERNMENT**

Candace Le'i, Esq., Department Counsel

#### **FOR APPLICANT**

*Pro Se*

### **SYNOPSIS**

Applicant has had a history of financial difficulties. He recently filed for bankruptcy, but thus far none of his debts has been discharged. Based on his current financial situation and his history of financial irresponsibility, Applicant has failed to demonstrate a stable and mature outlook about his finances. Mitigation has not been shown. Clearance is denied.

### **STATEMENT OF THE CASE**

On February 16, 2006, the Defense Office of Hearings and Appeals (DOHA), pursuant to Executive Order 10865 and Department of Defense Directive 5220.6 (Directive), dated January 2, 1992, issued a Statement of Reasons (SOR) to 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 Applicant and recommended referral to an Administrative Judge to determine whether clearance should be denied or revoked.

In a signed and sworn statement, dated March 15, 2006, Applicant responded in writing to the SOR allegations. He requested a clearance decision based on a hearing record.

On April 28, 2006, this case was assigned to this Administrative Judge to conduct a hearing and issue a written decision. A Notice of Hearing was issued to the parties on May 4, 2006, and the hearing was held on May 23, 2006.

At the hearing, Department Counsel offered seven documentary exhibits (Government Exhibits 1 through 7), and no witnesses were called. Applicant offered three documentary exhibits, (Applicant Exhibits A through C), and offered his own testimony. The transcript (Tr) was received on June 5, 2006.

### **FINDINGS OF FACT**

In the SOR, the Government alleges that a security risk may exist under Adjudicative Guideline F (Financial

Considerations) of the Directive. The SOR contains 11 allegations, 1.a. through 1.k., under Guideline F. In his Response to the SOR (RSOR), Applicant admitted all of the SOR allegations except 1.k. The admitted allegations are incorporated herein as Findings of Fact.

After a complete and thorough review of the evidence in the record, including Applicant's Answer to the SOR, the documents and the live testimony, and upon due consideration of that evidence, I make the following additional Findings of Fact:

Applicant is 37 years old, unmarried and has no children. He is an employee of a defense contractor, and he seeks a DoD security clearance in connection with his employment in the defense sector.

### **Paragraph 1 (Guideline F - Financial Considerations)**

The SOR alleges that Applicant currently has ten overdue debts, 1.a. through 1.j, under Adjudicative Guideline F. While Applicant has filed a Chapter 7 Bankruptcy on March 15, 2006, (Exhibit 7), there has been no evidence that the Bankruptcy Court will accept this bankruptcy filing or that any of the debts listed on the bankruptcy will be discharged. The debts will be discussed in the order that they were listed in the SOR.

1.a. This overdue debt to Creditor 1 is listed in the SOR in the amount of \$447. Applicant admitted that this debt is due and owing, and I find that at this time he owes the entire amount stated.

1.b. This overdue debt to Creditor 2 is listed in the SOR in the amount of \$12,829. Applicant admitted that this debt is due and owing, and I find that at this time he owes the entire amount stated.

1.c. This overdue debt to Creditor 3 is in the amount of \$446. While Applicant admitted that this debt is due and owing, I find that this debt is the same as that cited in allegation 1.a., because the creditor is the same as that listed in 1.a. and the amount is \$1 less. Therefore, Applicant does not owe this debt as alleged in 1.c.

1.d. This overdue debt to Creditor 4 is listed in the SOR in the amount of \$447. Applicant admitted that this debt is due and owing, and I find that at this time he owes the entire amount stated.

1.e. This overdue debt to Creditor 5 is listed in the SOR in the amount of \$972. Applicant admitted that this debt is due and owing, and I find that at this time he owes the entire amount stated.

1.f. This overdue debt to Creditor 6 is listed in the SOR in the amount of \$1,601. Applicant admitted that this debt is due and owing, and I find that at this time he owes the entire amount stated.

1.g. This overdue debt to Creditor 7 is listed in the SOR in the amount of \$389. Applicant admitted that this debt is due and owing, and I find that at this time he owes the entire amount stated.

1.h. This overdue debt to Creditor 8 is listed in the SOR in the amount of \$1,638. Applicant admitted that this debt is due and owing, and I find that at this time he owes the entire amount stated.

1.i. This overdue debt to Creditor 9 is listed in the SOR in the amount of \$385. Applicant admitted that this debt is due and owing, and I find that at this time he owes the entire amount stated.

1.j. This overdue debt to Creditor 10 is listed in the SOR in the amount of \$6,455. Applicant admitted that this debt is due and owing, and I find that at this time he owes the entire amount stated.

1.k. The Government alleges that Applicant has a net remainder of \$43 a month, yet he has made no attempt to make any payments on his overdue debts. I find that Applicant has made no payments on any of his overdue debts.

Applicant explained that his debt for allegation 1.j. was as a result of his taking over the payment of a debt of his mother. His debt of \$12,829, as alleged in 1.b, was because he did not need a vehicle that he had purchased, so he failed to make payments on it, and it was repossessed. He could give no explanation for the reason that he did not attempt to

sell the vehicle or resolve his payment in a responsible manner. Applicant gave no explanation as to why he had incurred the other overdue debts, and he failed to introduce any tangible evidence that in the future he would be more fiscally responsible.

## **POLICIES**

Enclosure 2 of the Directive sets forth adjudicative guidelines that must be carefully considered in evaluating an individual's security eligibility and making the overall common sense determination required. The Administrative Judge must take into account the conditions raising or mitigating security concerns in each area applicable to the facts and circumstances presented. 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, as the guidelines reflect consideration of those factors of seriousness, recency, motivation, *etc.*

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.

Each adjudicative decision must also include an assessment of: (1) the nature, extent, and seriousness of the conduct; (2) the circumstances surrounding the conduct, and the extent of knowledgeable participation; (3) how recent and frequent the behavior was; (4) the individual's age and maturity at the time of the conduct; (5) the voluntariness of participation; (6) the presence or absence of rehabilitation and other pertinent behavioral changes; (7) the motivation for the conduct;

(8) the potential for pressure, coercion, exploitation, or duress; and (9) the likelihood of continuation or recurrence (See Directive, Section E2.2.1. of Enclosure 2).

## **BURDEN OF PROOF**

Initially, the Government must prove controverted facts alleged in the Statement of Reasons. If the Government meets that burden, the burden of persuasion then shifts to Applicant to establish his security suitability through evidence of refutation, extenuation or mitigation sufficient to demonstrate that, despite the existence of disqualifying conduct, it is nevertheless clearly consistent with the national interest to grant or continue the security clearance. Assessment of Applicant's fitness for access to classified information requires evaluation of the whole person, and consideration of such factors as the recency and frequency of the disqualifying conduct, the likelihood of recurrence, and evidence of rehabilitation.

A person who seeks access to classified information enters into a fiduciary relationship with the U.S. Government that is predicated upon trust and confidence. Where facts proven by the Government raise doubts about Applicant's judgment, reliability, or trustworthiness, Applicant has a heavy burden of persuasion to demonstrate that he or she is nonetheless security worthy. As noted by the United States Supreme Court in *Department of the Navy v. Egan*, 484 U.S. 518, 531 (1988), "the clearly consistent standard indicates that security-clearance determinations should err, if they must, on the side of denials."

## **CONCLUSIONS**

Having considered the evidence of record in light of the appropriate legal precepts and factors, I conclude the following:

With respect to Guideline F, the Government has established that Applicant has had a history of financial difficulties. The evidence has shown that Applicant has taken no action to pay off these debts, and while Applicant has recently filed a Chapter 7 Bankruptcy, there has been no evidence that the Bankruptcy Court will accept this bankruptcy filing or that any of the debts listed on the bankruptcy will be discharged. Based on his tenuous financial situation and his history of financial irresponsibility, Applicant has failed to demonstrate a stable and mature outlook about his finances. I, therefore, resolve Guideline F against Applicant.

Regarding the Disqualifying Conditions (DC) under Guideline F, I conclude both DC E2.A6.1.2.1., and DC E2.A6.1.2.3 apply, because of Applicant's history of not meeting financial obligations and his current inability to satisfy his debts. I find that none of the Mitigating Conditions (MC) apply.

**FORMAL FINDINGS**

Formal Findings as required by Section E3.1.25 of Enclosure 3 of the Directive are hereby rendered as follows:

**Financial Considerations, Guideline F: Against Applicant**

Subparagraph 1.a.: Against Applicant

Subparagraph 1.b.: Against Applicant

Subparagraph 1.c.: For Applicant

Subparagraph 1.d.: Against Applicant

Subparagraph 1.e.: Against Applicant

Subparagraph 1.f.: Against Applicant

Subparagraph 1.g.: Against Applicant

Subparagraph 1.h.: Against Applicant

Subparagraph 1.i.: Against Applicant

Subparagraph 1.j.: Against Applicant

Subparagraph 1.k.: Against Applicant

**DECISION**

In light of all the circumstances and facts presented by the record in this case, it is clearly not consistent with the national interest to grant or continue a security clearance for Applicant.

Martin H. Mogul

Administrative Judge