

DATE: December 31, 2005

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In Re:

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SSN: -----

Applicant for Security Clearance

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ISCR Case No. 04-07763

## **DECISION OF ADMINISTRATIVE JUDGE**

**ELIZABETH M. MATCHINSKI**

### **APPEARANCES**

#### **FOR GOVERNMENT**

Daniel F. Crowley, Esq., Department Counsel

#### **FOR APPLICANT**

Thomas Albin, Esq.

### **SYNOPSIS**

Applicant's credit report of July 2005 reflects two unpaid delinquencies, a charged off credit card balance of \$4,102 and another in collection with \$5,014 owed. Financial considerations concerns are mitigated where Applicant has a history of timely payment of his financial obligations, and his ex-wife is making payments on the latter debt, which she incurred during their marriage. Applicant did not knowingly falsify his September 2002 security clearance application by denying any delinquent debts over 180 days. Clearance is granted.

### **STATEMENT OF THE CASE**

On January 13, 2005, the Defense Office of Hearings and Appeals (DOHA) issued a Statement of Reasons (SOR) to the Applicant. The SOR detailed reasons under Guideline F, financial considerations, and Guideline E, personal conduct, 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. [\(1\)](#) Specifically, the government alleged Applicant owed delinquent debt totaling \$11,514 to two creditors and falsified his September 2002 security clearance application (SF 86) by denying any delinquent debt over 180 days within the last seven years.

On January 31, 2005, Applicant answered the SOR, denying the indebtedness alleged and indicated that his spouse was making payments on the debt in SOR ¶ 1.b. He also denied any falsification of his SF 86. Applicant requested a hearing and the case was assigned to me on July 8, 2005. On July 20, 2005, I scheduled a hearing for August 9, 2005.

At the hearing, nine government exhibits were admitted, Exhibit 4 over Applicant's objection. Applicant and his ex-wife testified, and he submitted three exhibits, as reflected in a transcript received on August 26, 2005. [\(2\)](#)

### **FINDINGS OF FACT**

After a thorough consideration of the evidence of record, I make the following factual findings:

Applicant is a 59-year-old divorced father of two sons, who has been employed by the same defense contractor since July 1978. He seeks to retain the secret-level security clearance he has held since December 1979 for his duties as a detail production planner.

With his project winding down at work, Applicant switched from electronics on ship to shift work in the design department in order to stay employed in 1997. Applicant's spouse, whom he married in 1975, started frequenting the gambling casinos while Applicant was at work. She incurred debt on several credit card accounts on which Applicant was either a co-maker or authorized user. She also ran up debt on credit cards solely in his name, including on the account alleged in SOR ¶ 1.b. Applicant did not rely on credit except on temporary travel duty for his employer. He was unaware of the extent of their indebtedness, as she handled the family's finances and kept the delinquencies from him.

In July 1999, a bank obtained a judgment against Applicant in the amount of \$2,389.03 on an individual account in Applicant's name that she used. Applicant's wages were garnisheed to recover the debt. That same lender had charged off past due balances totaling \$8,883 on two other credit card accounts on which Applicant was listed as a co-maker. In August 1999, another lender obtained a judgment against Applicant (listed as co-maker on the card) and his spouse to collect on a DISCOVER card past due balance of \$1,206.

In 2001, Applicant and his spouse separated. Her gambling was a significant factor in the dissolution of their marriage, which was effective in April 2002. In the divorce decree, Applicant retained the marital residence in return for a lump sum payment by him to her of \$26,000. Each agreed to be responsible for their respective debts, as listed on financial affidavits. <sup>(3)</sup> A handwritten entry on the divorce decree <sup>(4)</sup> reads as follows:

There remain outstanding 4 credit card debts which the parties have not received documentation from for the past 3 years. Should these debts resurface the parties agree that they shall split each debt 50/50. (Ex. B)

Applicant paid his debts following the divorce. He also paid off his ex-spouse's secured debt so that he could refinance his mortgage, but did not pay off her other debts. In September 2002, he took out a 30-year mortgage loan of \$108,944, to be repaid at \$1,018 per month.

In conjunction with a periodic reinvestigation of his secret-level security clearance, Applicant executed a security clearance application (SF 86) on September 18, 2002. He reported his wages had been garnisheed in 2001 to recover a \$1,100 debt, but responded negatively to question 38 concerning whether he had been over 180 days delinquent on any debts in the last 7 years, since he had never missed any payments on debts he had personally incurred.

A subsequent check of Applicant's credit on September 27, 2002, disclosed bad debts in excess of \$20,000. Applicant was listed as a co-maker on several of the delinquent accounts, including on a MasterCard debt of \$5,482, a DISCOVER card debt of \$1,784, and a bank card debt of \$4,102 (SOR ¶ 1.a.). The credit bureau reported a \$6,174 credit card balance (originally \$7,414) in collection on an account opened in his name (SOR ¶ 1.b.). Applicant's ex-spouse was repaying that debt at \$40 per month.

In August 2003, the DISCOVER card judgment was satisfied. A subsequent check of Applicant's credit on September 12, 2003, revealed Applicant was making timely payments on his mortgage and credit card accounts. The old delinquent credit card debts that Applicant's ex-spouse had incurred were still reported as bad debts on his credit report, including those in SOR ¶¶ 1.a. and 1.b.

On December 10, 2003, Applicant was interviewed by a Defense Security Service special agent about the bad debts that appeared on his credit report. Applicant acknowledged the bank MasterCard and Visa accounts, the DISCOVER card, and the debts in ¶ 1.a. and 1.b., surmising that the obligations were his ex-wife's responsibility. Applicant indicated that he would deal with the creditors if they ever contacted him, but he did not intend to contact them.

By September 2004, the balance of the debt in SOR ¶ 1.b. had been reduced because of payments to \$5,374. Applicant's credit record was updated to reflect the payment of the DISCOVER card after charge off. The debt in SOR ¶ 1.a. was listed as a charge off balance of \$4,102. Applicant's ex-spouse had made no payments on that debt as the creditor had made no attempt to collect and she received no response to her status inquiry. A subsequent check of Applicant's credit

on July 7, 2005, reported the debt as still owed, and the balance of SOR ¶ 1.b. to be \$5,014. Applicant was also reported to have a past due balance of \$103 on an account of his ex-spouse's where Applicant's name had been removed.

As of July 23, 2005, Applicant's gross earnings for the year amounted to \$50,774.75. He has no financial problems and is current with his mortgage and other expenses. Applicant has about \$330,000 in a stock savings investment plan at 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 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). Eligibility for a security clearance is predicated upon the applicant meeting the security guidelines contained in the Directive. 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.

Enclosure 2 of the Directive sets forth personnel 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.

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

**Financial Considerations.** 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. (¶ E2.A6.1.1.)

**Personal Conduct.** 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.A5.1.1.)

## CONCLUSIONS

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

Under Guideline F, financial considerations, 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 more susceptible to mishandling or compromising classified information. Applicant's credit reports confirm several financial accounts on which he was listed as co-maker, authorized user, or sole owner (SOR ¶ 1.b.), were written off to profit and loss in 1998. The debts were incurred by Applicant's ex-spouse largely without his knowledge, as she gambled excessively when Applicant was at work. Disqualifying conditions ¶ E2.A.6.1.2.1. *A history of not meeting financial obligations*, ¶ E2.A6.1.2.3. *Inability or unwillingness to satisfy debts*, <sup>(5)</sup> and ¶ E2.A6.1.2.5. *Financial problems that are linked to gambling . . . or other issues of security concern*, apply as the debts fell delinquent during their marriage and on accounts he had legal responsibility to pay.

Mitigating condition ¶ 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*) applies with regard to the incurring of the debt. Security concerns may still be raised where there is any evidence of disregard or unwillingness to repay debts (*see* ¶ E2.A6.1.2.3.), and those debts alleged in the SOR are not satisfied. However, Applicant's spouse credibly testified that she has assumed responsibility for repayment of the debts following their divorce, and she has been making payments on the debt in SOR ¶ 1.b. Applicant paid the debts he was responsible for, and even took care of his ex-spouse's secured debt after their divorce so that he could refinance his mortgage. There is a basis to apply ¶ E2.A6.1.3.6. *The individual initiated a good-faith effort to repay overdue creditors or otherwise resolve debts*, in his favor.

Apart from a status inquiry by his spouse, no effort has been made to address the debt in SOR ¶ 1.a. Revocation of the clearance he has held since 1979 is not warranted where he did not knowingly incur the debt, was listed as a co-maker on the account, and he pays his financial obligations, including his mortgage, within agreed upon terms. SOR ¶¶ 1.a. and 1.b. are resolved in his favor.

Applicant's SF 86 contains a negative response to question 38 concerning delinquencies more than 180 days in the past seven years, even though the debt in SOR ¶ 1.b. was incurred on his account and had been delinquent since 1999. Under the personal conduct guideline, DC ¶ 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*, is potentially security disqualifying, but only if the omission of the delinquent debt was intentional.

Applicant denies any intentional falsification of the relevant financial inquiry. He testified that after the divorce, he paid off all the accounts that he could, and he thought his spouse had made contact with her creditors through her gambling program. (*See* Tr. 54) Applicant further testified that he inquired at the time whether his financials would be looked at as an individual or as a family and it was apparently based on the advice he received that he responded "No" to question 38. (Tr. 56-57) It is not clear in the record whom he spoke with, so I am unable to conclude that he relied on the advice of authorized personnel. (*See* ¶ E2.A5.1.3.4. *Omission of material facts was caused or significantly contributed to by improper or inadequate advice of authorized personnel, and the previously omitted information was promptly and fully provided.*) However, since the SF 86 had been completed after their divorce and Applicant's spouse had assumed responsibility for her debts, Applicant's denial of question 38 is understandable. The government having failed to prove that he deliberately falsified his SF 86, SOR ¶ 2.a. is resolved in his favor as well.

## 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: FOR THE APPLICANT

Subparagraph 1.a: For the Applicant

Subparagraph 1.b: For the Applicant

Paragraph 2, Guideline E: FOR THE APPLICANT

Subparagraph 2.a: For the Applicant

## DECISION

In light of all 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.

**Elizabeth M. Matchinski**

**Administrative Judge**

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2. The original of Applicant Exhibit C was forwarded after the hearing for inclusion in the record.
3. The divorce papers entered as Exhibit B do not include the financial affidavits.
4. It is not clear by whom or when this information was entered, although both parties initialed it.
5. ¶ E2.A6.1.2.3. applies to the extent Applicant is unwilling to repay the debts incurred by his ex-spouse during their marriage.