

DATE: October 7, 2005

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In re:

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SSN: -----

Applicant for Security Clearance

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ISCR Case No. 04-08359

## **DECISION OF ADMINISTRATIVE JUDGE**

**MICHAEL J. BRESLIN**

### **APPEARANCES**

#### **FOR GOVERNMENT**

Sabrina Redd, Esq., Department Counsel

#### **FOR APPLICANT**

*Pro Se*

### **SYNOPSIS**

Applicant works for a defense contractor as a mail handler and courier. In 1987, Applicant was the victim of a near-fatal automobile accident, which resulted in extensive medical bills and inability to work much of the time over the next five years. Applicant attempted to resolve the delinquent debts through Chapter 13 bankruptcy actions, but his inability to work made him unable to maintain the required payments. Additionally, Applicant's wife divorced him, generating numerous additional debts. Applicant later discharged his debts in bankruptcy and resolved most of his unpaid debts, mitigating the security concerns. Clearance is granted.

### **STATEMENT OF THE CASE**

On September 9, 2003, Applicant submitted an application for a security clearance. The Defense Office of Hearings and Appeals (DOHA) declined to grant or continue a security clearance for Applicant under Executive Order 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 (the "Directive"). On April 27, 2005, DOHA issued a Statement of Reasons (SOR) detailing the basis for its decision. The SOR alleges security concerns raised under Guideline F of the Directive, Financial Considerations.

Applicant answered the SOR in writing on May 17, 2005. He elected to have a hearing before an administrative judge.

The case was assigned to me on August 1, 2005. With the concurrence of Applicant and Department Counsel, I convened the hearing on September 14, 2005. The government introduced Exhibits 1 through 11. Applicant offered Exhibits A through D and testified on his own behalf. I kept the record open for two weeks to allow Applicant to submit additional matters. Applicant provided, without objection, a document admitted as Ex. E on September 14, 2005. DOHA received the final transcript of the hearing (Tr.) on September 27, 2005.

### **FINDINGS OF FACT**

Applicant denied the factual allegations in ¶¶ 1.a and 1.c of the SOR. Applicant's Answer to SOR, dated May 17, 2005. He admitted the factual allegations in ¶¶ 1.b, 1.d, 1.e, 1.f, and 1.g of the SOR. *Id.* Those admissions are incorporated herein as findings of fact. After a complete and thorough review of the evidence in the record, I make the following additional findings of fact.

Applicant is 57 years old. Ex. 1 at 1; Tr. at 28. He has worked for a defense contractor for about 25 years, and currently serves as a mail handler and courier Tr. at 24. Applicant's duties include transporting classified matters. Tr. at 25.

In about 1969, Applicant entered active duty in the U.S. Navy, and served for about two years as a boatswain's mate. Tr. at 29, 53; Ex. 1 at 3. Applicant believes he held a security clearance during this time. Tr. at 53.

Applicant began working for his present employer in about 1980. Tr. at 24. He served in various capacities, but principally as a mail handler and courier. *Id.* He was granted a security clearance in about 1982 to perform his duties. *Id.* at 29, 54.

Applicant was married in 1984. Ex. 1 at 2. His son was born in April 1985. *Id.*

In 1987, while driving to work, Applicant was the victim of a near-fatal car accident. Tr. at 25. While sitting in his stopped vehicle, he was struck from the rear by a vehicle traveling about 50 or 60 miles an hour. Tr. at 30. He suffered a broken left leg and ankle, fractures of the jaw and skull, and back and neck injuries. Tr. at 30. He spent 11 months on crutches during his recuperation, and required multiple surgeries over the following years. Tr. at 25. Because of his injuries, Applicant was unable to work in the shop where he was normally assigned and lost income. Tr. at 26. His security clearance was pulled because he was reassigned to a position that no longer required it. Tr. at 29-30, 54. Sometime later, physicians diagnosed Applicant as suffering from a brain tumor, requiring further surgery. *Id.*

In the five years following his accident, Applicant underwent five surgeries. Tr. at 25. During this time, his disability insurance, automobile insurance, and unemployment compensation was insufficient to pay all his bills. Tr. at 30-31. He was occasionally transferred ("surplused") to different shops within the company. Tr. at 26. At times he could not perform the required duties because of his injuries or recuperation, and was not paid. *Id.* Additionally, Applicant's wife lost her job with a federal executive agency and was employed only intermittently for several years. Tr. at 50-51. This loss of income and his medical bills resulted in Applicant's inability to pay substantial debts. *Id.*

Applicant sought out financial counseling. Tr. at 48. The agency advised him to contact an attorney to pursue bankruptcy. Tr. at 48. Applicant filed for bankruptcy protection in December 1991. Answer to SOR, dated May 15, 2005, at 2. He filed for bankruptcy under Chapter 13, the Wage Earner's Plan, which required him to make regular payments to the bankruptcy trustee to discharge his debts. While Applicant was working he made the required payments to the trustee. Tr. at 26, 32. However, when he was "surplused" to another shop and was unable to perform the duties, he lost pay. *Id.* Applicant was unable to make the required payments and the bankruptcy action was dismissed. *Id.*

In April 1994, Applicant re-filed for bankruptcy under Chapter 13. Answer to SOR, *supra*, at 2. He was able to make the payments for awhile, but was unable to continue when he lost his income. The bankruptcy action was dismissed in July 1994. *Id.* Applicant attempted bankruptcy again in August 1994, but was again unable to make the required payments. The action was dismissed in January 1995.

In January 1995, Applicant again filed for bankruptcy under Chapter 13. In April 1995, the action was converted to a Chapter 7 bankruptcy, which was discharged in January 1996. Ex. D. As a result of the bankruptcy action, Applicant lost his home to foreclosure. Ex. 8 at 20-21.

The financial stress was an extreme hardship on Applicant's family. Tr. at 27. Applicant's wife filed for divorce in about 1994; the proceeding was lengthy and contested. *Id.* The numerous additional expenses arising from the divorce adversely impacted Applicant's financial situation. Tr. at 50. The divorce became final in 2001. Ex. 1 at 2.

After his divorce, Applicant moved into an apartment building. Tr. at 27. About three weeks later, there was a labor dispute at work and the employees (including Applicant) went out on strike for about eight weeks. Because of the

unexpected loss of income, Applicant fell behind in his payments to the apartment. Tr. at 27, 33-34. In October 2001, the apartment management initiated a lawsuit for the delinquent rent. Ex. 5 at 1; Tr. at 35. In late October 2001, when Applicant returned to work, he paid the debt and settled the lawsuit. Ex. 5 at 2; Ex. B; Tr. at 35.

Applicant later decided to move out of his apartment before the expiration of his lease. Tr. at 35. The apartment management charged Applicant for breaking the lease and initiated a second lawsuit for damages, resulting in a judgment. Ex. 6; Tr. at 35-36. Applicant negotiated with them for sometime, and in December 2004 settled the debt for the payment of one month's rent. Tr. at 37, 41; Ex. C; Ex. E. The judgment continued to appear on Applicant's credit reports thereafter; Applicant has formally challenged the erroneous entry. Tr. at 38-39.

In August 2004, DOHA sent Applicant a list of questions regarding his finances. Ex. 4. Applicant answered the questions and supplied a Personal Financial Statement. *Id.* at 7. The financial statement indicated Applicant's current expenses exceeded his income each month. *Id.* At the hearing Applicant indicated his input for his current expenses was only an estimate; he testified that he was able to break even each month Tr. at 47. Applicant submitted a credit report dated May 2005 indicating he was then current on his credit accounts. Ex. A.

In March of 2005, the employees at Applicant's company went out on strike for two weeks over a labor dispute. The loss of income created problems for Applicant, who is currently two months behind on an automobile financing loan. Tr. at 27, 45. He anticipates being able to catch up on that debt within the next few months. Tr. at 52.

### POLICIES

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." *Department of the Navy v. Egan*, 484 U.S. 518, 527 (1988). In Executive Order 10865, *Safeguarding Classified Information Within Industry* (Feb. 20, 1960), the President set out guidelines and procedures for safeguarding classified information within the executive branch.

To be eligible for a security clearance, an applicant must meet the security guidelines contained in the Directive. Enclosure 2 of the Directive sets forth personnel security guidelines, as well as the disqualifying conditions and mitigating conditions under each guideline. The adjudicative guideline at issue in this case is:

Guideline F, Financial Considerations - An individual who is financially overextended is at risk of having to engage in illegal acts to generate funds. Directive ¶ E2.A6.1.1.

Conditions that could raise a security concern and may be disqualifying, as well as those which could mitigate security concerns pertaining to this adjudicative guideline, are set forth and discussed in the conclusions below.

"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." Directive, ¶ E2.2.1. An administrative judge must apply the "whole person concept," and consider and carefully weigh the available, reliable information about the person. *Id.* An administrative judge should consider the following factors: (1) the nature, extent, and seriousness of the conduct; (2) the circumstances surrounding the conduct, to include knowledgeable participation; (3) the frequency and recency of the conduct; (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. *Id.*

Initially, the Government must present evidence to establish controverted facts in the SOR that disqualify or may disqualify the applicant from being eligible for access to classified information. Directive, ¶ E3.1.14. Thereafter, the applicant is responsible for presenting evidence to rebut, explain, extenuate, or mitigate the facts. 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 (App. Bd. Dec. 19, 2002). "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.

A person granted access to classified information enters into a special relationship with the government. The government must be able to repose a high degree of trust and confidence in those individuals to whom it grants access to classified information. The decision to deny an individual a security clearance is not a determination as to the loyalty of the applicant. Exec. Ord. 10865, § 7. It is merely an indication that the applicant has not met the strict guidelines the President has established for issuing a clearance.

### **CONCLUSIONS**

I considered carefully all the facts in evidence and the legal standards discussed above. I reach the following conclusions regarding the allegations in the SOR.

Paragraph E2.A6.1.2.1 of the Directive provides that it may be a disqualifying condition if the evidence reveals "[a] history of not meeting financial obligations." Similarly, ¶ E2.A6.1.2.3 indicates that an "[i]nability or unwillingness to satisfy debts" may be disqualifying. Applicant has a history of being unable to meet his financial obligations and an inability to satisfy his debts from about 1987 until 2004. I conclude the available evidence raises both these potentially disqualifying conditions.

Security concerns arising from Applicant's financial difficulties can be mitigated under certain circumstances. Under the Directive, ¶ E2.A6.1.3.1, it may be mitigating where "the behavior was not recent." The bulk of Appellant's delinquent debts arose after Applicant was the victim in an automobile accident in 1987. His difficult financial situation grew worse after his wife filed for divorce. Most of the delinquent debts, including the unpaid rent and the bills that formed the basis for his bankruptcy, are not recent. The debt listed in ¶ 1.b of the SOR is recent, however. This mitigating condition applies in part.

Paragraph E2.A6.1.3.2 of the Directive provides that it may be mitigating where the financial difficulty "was an isolated incident." Applicant's numerous delinquent debts arose over many years because of a variety of reasons. I conclude this mitigating condition does not apply.

Under ¶ E2.A6.1.3.3, it may be mitigating where, "[t]he 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)." Applicant's financial problems arose as a result of conditions beyond his control. First, the automobile accident in 1987 generated extensive unexpected medical bills. The severe injuries he suffered made him unable to work and caused a substantial loss of income for many years thereafter. The injuries also made him unable to follow through on his bankruptcy actions. Secondly, his divorce resulted in a loss of family income and generated numerous additional expenses. Third, the unexpected loss of income caused by labor strikes have made Applicant unable to pay some bills for short periods of time. I conclude this mitigating condition applies.

Proof that "[t]he person has received or is receiving counseling for the problem and there are clear indications that the problem is being resolved or is under control," may be mitigating, under ¶ E2.A6.1.3.4 of the Directive. Similarly, under ¶ E2.A6.1.3.6 of the Directive, it may be mitigating where "[t]he individual initiated a good-faith effort to repay overdue creditors or otherwise resolve debts." Applicant sought financial counseling before filing bankruptcy the first time. The bulk of his delinquent debts were resolved by the bankruptcy action completed in January 1996. He resolved the debt to his former landlord (SOR, ¶ 1.a.) before the initiation of this action. The only remaining delinquent debt is the two-month arrearage in his car payment, which Applicant expects to resolve soon. I find Applicant's financial problems are under control or are being resolved. I conclude this mitigating condition applies.

I considered the potentially disqualifying and mitigating circumstances in light of the "whole person" concept. I conclude Applicant has mitigated the security concerns arising from his history of failing to meet his financial obligations and inability to pay debts.

### **FORMAL FINDINGS**

My conclusions as to each allegation in the SOR are:

Paragraph 1, Guideline F: FOR APPLICANT

Subparagraph 1.a: For Applicant

Subparagraph 1.b: For Applicant

Subparagraph 1.c: For Applicant

Subparagraph 1.d: For Applicant

Subparagraph 1.e: For Applicant

Subparagraph 1.f: For Applicant

Subparagraph 1.g: 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.

Michael J. Breslin

Administrative Judge