

DATE: December 21, 2005

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In re:

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SSN: -----

Applicant for Security Clearance

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ISCR Case No. 04-09610

## **DECISION OF ADMINISTRATIVE JUDGE**

**HENRY LAZZARO**

### **APPEARANCES**

#### **FOR GOVERNMENT**

Melvin Howry, Esquire, Department Counsel

#### **FOR APPLICANT**

*Pro Se*

### **SYNOPSIS**

Applicant has failed to take responsible actions to resolve many of the numerous delinquent debts listed in the statement of reasons. He has failed to mitigate the security concerns caused by the financial considerations present in this case. Clearance is denied.

### **STATEMENT OF THE CASE**

On January 6, 2005, the Defense Office of Hearings and Appeals (DOHA) issued a Statement of Reasons (SOR) to Applicant stating it was unable to find it is clearly consistent with the national interest to grant or continue a security clearance for Applicant. [\(1\)](#) The SOR, which is in essence the administrative complaint, alleges a security concern under Guideline F (financial considerations). Applicant submitted a response to the SOR that was received by DOHA on March 14, 2005, admitted some and denied other SOR allegations, and requested a hearing.

The case was assigned to me on July 7, 2005. A notice of hearing was issued on July 27, 2005, scheduling the hearing for August 16, 2005. The hearing was conducted as scheduled. The government submitted seven documentary exhibits that were marked as Government Exhibits (GE) 1-7, and admitted into the record without objection. Applicant testified at the hearing, called two witnesses to testify on his behalf, and submitted nine documentary exhibits that were marked as Applicant's Exhibits (AE) 1-9, and admitted into the record without objection. The transcript was received by DOHA on August 25, 2005.

### **FINDINGS OF FACT**

Applicant's admissions to the allegations contained in the SOR are incorporated herein. In addition, after a thorough review of the pleadings, exhibits, and testimony, I make the following findings of fact:

Applicant is 50 years old, and has been employed by a defense contractor as a mechanical engineer since August 2003. He was self-employed from June 1993 until July 2002, and was employed by a temporary agency as a senior technician

from July 2002 until August 2003.

Applicant possessed a secret security clearance from 1974 until 1979, and again from 2003 until the issuance of the SOR in this case. There have not been any allegations made that he ever mishandled classified information. The security manager for his present employer testified Applicant has been entrusted with classified information in the past, and his conduct with such information has not presented any reason to question his ability to safeguard classified information in the future. Applicant's manager testified that Applicant's handling of classified material has been above reproach. Overall, Applicant is considered to be a key team member of the project on which he has been working, and he is respected by his peers and supervisors.

Applicant graduated from high school in 1973, and completed about two years of college work in the early 1980s. He served in the U.S. Army from January 1974 until October 1979, and attained the rank of Specialist 5 (paygrade E-5). He was married in May 1974, and has four adult children from that marriage. That marriage ended in divorce in May 2001. Applicant testified the divorce was amiable and did not have any substantial impact on his economic well-being.

Applicant was diagnosed with cancer in 1999, and underwent treatment from November of that year until June 2000 that prevented him from working. He was self-employed in the small electronics repair field at the time. After returning to work, Applicant experienced a business downturn because the cost of items such as televisions and VCRs decreased to the point that consumers stopped having those items repaired and instead simply replaced them with new items. He was forced to close his business in July 2002.

The SOR lists 19 collection accounts, totaling more than \$17,300.00. The largest account, SOR subparagraph 1.a, in the amount of \$9,521.00, resulted from the foreclosure on a mortgage on Applicant's home that was guaranteed by the Veteran's Administration (VA). He testified that, faced with greatly diminished income while he was undergoing treatment for cancer, he discussed his options with a VA representative, and decided the prudent course of action was to give up the home in order to save his business. The deficit listed in subparagraph 1.a is from a second mortgage on the home that was not guaranteed by the VA.

Applicant believed there would be sufficient proceeds after the sale of the house to satisfy the loan secured by the second mortgage, and was unaware of the deficit owing until his security application process commenced. He testified he has attempted to make arrangements to repay this debt, but, because his ex-wife has listed the debt in a bankruptcy she filed, he has been unable to take any action to resolve the delinquency.

Applicant submitted evidence that he had paid five of the collection accounts, <sup>(2)</sup> totaling \$4,030.00, and claims to have paid two others, totaling \$462.00, although there is no proof of payment of the larger of the two accounts. He disputes he is liable on five other collection accounts, totaling \$873.00, either because he claims he cannot verify through the creditors that the accounts belong to him <sup>(3)</sup> or, in one instance, because he claims the charge is for dental service that was rendered to a girlfriend who he referred to the dentist/creditor. Applicant did not submit any proof that he actually disputed the accounts with credit reporting agencies, but instead relied upon the fact that they do not appear on his most recent credit report.

Applicant has six collection accounts, totaling \$2,466.00, that remain outstanding. He has attempted to negotiate settlements with the creditors on a couple of those accounts, and had a court order entered on one of them that required it be paid in full on the day of the hearing. In his SOR response, Applicant asserted most of these accounts would be paid before the hearing.

The SOR lists two accounts, totaling \$1,155.00, that have been charged off as bad debts, and a judgment against Applicant in the amount of \$225.00. None of these accounts have been satisfied. Lastly, the SOR lists a student loan in the amount of \$3,569.00 that was 180 days delinquent. The creditor on that loan agreed to forebear collection on the account beginning in February 2005, and continuing until September 2005.

Applicant obtained some of the money to pay off the accounts that have been satisfied from his 401K plan. He expresses a continuing intent to repay the remaining creditors whose accounts he does not dispute, along with the girlfriend's dental bill that he does dispute. He attributes his failure to more quickly resolve his debts to helping his ex-wife with a

down payment on a car, his daughter's college expenses, and insufficient wages while employed as a temporary.

## POLICIES

The Directive sets forth adjudicative guidelines to consider when evaluating a person's eligibility to hold a security clearance. Chief among them are the Disqualifying Conditions (DC) and Mitigating Conditions (MC) for each applicable guideline. Additionally, each clearance decision must be a fair and impartial commonsense decision based upon the relevant and material facts and circumstances, the whole person concept, and the factors listed in Â¶ 6.3.1 through Â¶ 6.3.6 of the Directive. Although the presence or absence of a particular condition or factor for or against clearance is not outcome determinative, the adjudicative guidelines should be followed whenever a case can be measured against this policy guidance. Considering the evidence as a whole, Guideline F, pertaining to financial considerations, with its respective DC and MC, is most relevant in this case.

## BURDEN OF PROOF

The sole purpose of a security clearance decision is to decide if it is clearly consistent with the national interest to grant or continue a security clearance for an applicant.<sup>(4)</sup> The government has the burden of proving controverted facts.<sup>(5)</sup> The burden of proof in a security clearance case is something less than a preponderance of evidence<sup>(6)</sup>, although the government is required to present substantial evidence to meet its burden of proof.<sup>(7)</sup> "Substantial evidence is more than a scintilla, but less than a preponderance of the evidence."<sup>(8)</sup> Once the government has met its burden, the burden shifts to an applicant to present evidence of refutation, extenuation, or mitigation to overcome the case against him.<sup>(9)</sup> Additionally, an applicant has the ultimate burden of persuasion to obtain a favorable clearance decision.<sup>(10)</sup>

No one has a right to a security clearance<sup>(11)</sup> and "the clearly consistent standard indicates that security clearance determinations should err, if they must, on the side of denials."<sup>(12)</sup> Any reasonable doubt about whether an applicant should be allowed access to classified information must be resolved in favor of protecting national security.<sup>(13)</sup>

## CONCLUSIONS

Under Guideline F, a security concern exists when a person has significant unpaid debts. An individual who is financially overextended is at risk of having to engage in illegal or unethical acts to generate funds to meet financial obligations.

Applicant incurred numerous delinquent accounts, including 19 that were submitted for collection, two that were charged off as bad debts, one that resulted in a judgment being entered against him, and one that was more than 180 days past due. Disqualifying Condition (DC) 1: *A history of not meeting financial obligations*: and DC 3: *Inability or unwillingness to satisfy debts* apply in this case.

Most, if not all, of Applicant's financial problems arose from his lost income while receiving cancer treatment, and a failed business. Accordingly, Mitigating Condition (MC) 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. Further, Applicant is entitled to application of MC 6: *The individual initiated a good-faith effort to repay overdue creditors or otherwise resolve debts*, at least as to those creditors who he has satisfied.

Applicant is single and has no dependents. He has been employed by his present employer for over two years, and was previously employed by a temporary agency for about a year. He asserted in his response to the SOR that he would satisfy most of the delinquent accounts months before the hearing was held. However, despite his apparent ability and promise to pay the accounts, they remain delinquent.

The only evidence Applicant submitted concerning the largest collection account in the amount of \$9,521.00, SOR subparagraph 1.a, is a letter dated eight days before the hearing addressed to the creditor supposedly recounting a conversation he had in March 2005, and a copy of an envelope without a stamp on it. The next largest account in the amount of \$3,569.00, SOR subparagraph 1.w, is still owing despite the creditor having agreed to forebear collection on

the account through September 2005, and will be another large debt will have to deal with when the forbearance expires.

Two of the accounts Applicant claims to have paid in 2002, appear as unpaid collection accounts on a recent credit report. Additionally, while Applicant claims to have successfully disputed some accounts with credit reporting agencies, apparently based upon his continuing assertion that the accounts do not belong to him, he admitted his liability for several of those accounts in a statement he provided in December 2003 (GE 3).

Although Applicant's financial problems arose from factors outside his control, and he has taken steps to satisfy some creditors, he still has a substantial number of delinquent accounts outstanding that he has done little or nothing to resolve. Based on Applicant's testimony, statements, and SOR response, I am not convinced he has any intention of ever paying many of those debts.

Considering all relevant and material facts and circumstances present in this case, including the whole person concept, the factors listed in Â¶ 6.3.1 through Â¶ 6.3.6 of the Directive, and the applicable disqualifying and mitigating conditions, I find Applicant has failed to overcome the case against him or satisfy his ultimate burden of persuasion. Guideline F is decided against Applicant.

### **FORMAL FINDINGS** (14)

SOR Â¶ 1-Guideline F: Against Applicant

Subparagraph a: Against Applicant

Subparagraph b: For Applicant

Subparagraph c: Against Applicant

Subparagraph d: For Applicant

Subparagraph e: Against Applicant

Subparagraph f: Against Applicant

Subparagraph g: For Applicant

Subparagraph h: Against Applicant

Subparagraph i: For Applicant

Subparagraph j: Against Applicant

Subparagraph k: Against Applicant

Subparagraph l: Against Applicant

Subparagraph m: For Applicant

Subparagraph n: Against Applicant

Subparagraph o: Against Applicant

Subparagraph p: Against Applicant

Subparagraph q: Against Applicant

Subparagraph r: For Applicant

Subparagraph s: Against Applicant

Subparagraph t: Against Applicant

Subparagraph u: Against Applicant

Subparagraph v: Against Applicant

Subparagraph w: Against 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.

Henry Lazzaro

Administrative Judge

1. This action was taken under Executive Order 10865 and DoD Directive 5220.6, dated January 2, 1992, as amended and modified (Directive).
2. Applicant submitted copies of a money order and a check, dated May 29, 2002 and June 29, 2002 respectively, as evidence that he had paid the collection accounts listed in SOR subparagraphs 1.k and 1.l. However, both of those accounts are listed as unpaid collection items in the credit report dated June 28, 2005 (GE 7).
3. Although Applicant disputed liability for the accounts listed in SOR subparagraphs 1h, 1.i, and 1.j in his testimony (Tr. p. 73) and response to the SOR, he admitted liability for those accounts in a statement he provided to an investigator for the Defense Security Service in December 2003 (GE 3).
4. ISCR Case No. 96-0277 (July 11, 1997) at p. 2.
5. ISCR Case No. 97-0016 (December 31, 1997) at p. 3; Directive, Enclosure 3, Item E3.1.14.
6. *Department of the Navy v. Egan* 484 U.S. 518, 531 (1988).
7. ISCR Case No. 01-20700 (December 19, 2002) at p. 3 (citations omitted).
8. ISCR Case No. 98-0761 (December 27, 1999) at p. 2.
9. ISCR Case No. 94-1075 (August 10, 1995) at pp. 3-4; Directive, Enclosure 3, Item E3.1.15.
10. ISCR Case No. 93-1390 (January 27, 1995) at pp. 7-8; Directive, Enclosure 3, Item E3.1.15
11. *Egan*, 484 U.S. at 528, 531.
12. *Id* at 531.
13. *Egan*, Executive Order 10865, and the Directive.
14. **Based on the conflicting evidence, only those accounts for which Applicant submitted clear proof of payment or that were listed in a credit report as having been paid are found "For Applicant."**