

DATE: August 15, 2006

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In re:

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SSN: -----

Applicant for Security Clearance

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ISCR Case No. 04-10636

**DECISION OF ADMINISTRATIVE JUDGE**

**MICHAEL J. BRESLIN**

**APPEARANCES**

**FOR GOVERNMENT**

Richard A. Stevens, Esq., Department Counsel

**FOR APPLICANT**

Jennifer J. Sherwood, Esq.

**SYNOPSIS**

Applicant held a high-level security clearance for about 19 years as an active-duty service member and a civilian employee of a defense contractor. He has a history of failing to meet his financial obligations, resulting from over-extending the family's credit. He was discharged in bankruptcy in April 2000, but accrued additional delinquent debts between about 2003 and 2005. Applicant began repaying overdue accounts before the initiation of this action. He has obtained financial counseling, his financial situation is stable, and he has made real progress toward resolving delinquencies. I conclude Applicant mitigated the security concerns arising from his history of failing to meet his financial obligations. Clearance is granted.

**STATEMENT OF THE CASE**

On January 14, 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 Department of Defense Directive 5220.6, *Defense Industrial Personnel Security Clearance Review Program* (Jan. 2, 1992), as amended (the "Directive"). On July 14, 2005, DOHA issued a Statement of Reasons (SOR) detailing the basis for its decision. The SOR alleges security concerns raised under Guideline F, Financial Considerations, of the Directive.

Applicant answered the SOR in writing on August 18, 2005. He elected to have a hearing before an administrative judge.

I received the case assignment on May 11, 2006. With the concurrence of Applicant and Department Counsel, I convened the hearing on July 6, 2006. The government introduced Exhibits 1 through 4. Applicant's counsel presented Exhibits A through K and the testimony of two witnesses. Applicant also testified on his own behalf. On July 11, 2006, Applicant provided an additional document admitted as Exhibit L, without objection. DOHA received the transcript of the hearing (Tr.) on July 14, 2006.

**FINDINGS OF FACT**

Applicant denied the allegations in ¶¶ 1.b, 1.c, 1.d, 1.h, 1.I, and 1.k of the SOR, but admitted the remaining allegations, with explanations. (Applicant's Answer to SOR, dated August 18, 2005.) 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 was born in June 1969. (Ex. 1 at 1.) In August 1987, Applicant enlisted in the U.S. Air Force, where he served as a computer systems operator. (Ex. 1 at 2.) He held a security clearance while in the Air Force; in 1995 he received a high-level clearance. (Ex. 1 at 8.) While in the Air Force, Applicant rose to the rank of Staff Sergeant (E-5). He left active duty in November 2000. (Ex. 1 at 2.)

He married in February 1997. (Ex. 1 at 3.) Four children were born of the marriage. (Tr. at 53.) Applicant and his wife accumulated a significant amount of credit card debt. (Ex. 2 at 1.) Applicant's wife lost her job and could not find new employment for some time. (Ex. 2 at 1.) As a result, they fell behind in several payments.

Applicant was unable to make the required payments on his automobile, and returned it to the seller as a voluntary repossession. (Ex. 1 at 9; Ex. 2 at 1.) After resale, the seller claimed a \$14,000.00 deficiency. (Ex. 2 at 1.)

In January 2000, Applicant filed for bankruptcy under Chapter 7 of the bankruptcy code. (Ex. 1 at 9; Ex. 3.) His liabilities totaled almost \$40,000.00. (Ex. 3 at 4.) The bankruptcy court discharged the debts in April 2000. (Ex. 3 at 34.)

In February 2001, Applicant began working for his present employer, a defense contractor, as a system support engineer. (Ex. 1 at 2; Tr. at 51.) Applicant is a team leader at work supporting a command control system and supervises six individuals. (Tr. at 39-40, 50.) He has held a high level security clearance for 19 years. (Tr. at 51.) His supervisor, the noncommissioned officer in charge of the command and control system on a military installation, describes Applicant as hard working, dependable, and thorough. (Tr. at 21.) He does not believe Applicant poses any security threat. (Tr. at 22.) Another supervisor testified that in his opinion Applicant did not pose a risk to national security. (Tr. at 31, 41.) A co-worker described him as "honest, trustworthy, and dependable." (Ex. A at 1, 5.)

In about 2000, Applicant and his wife entered into a two-year land contract, renting a home with the opportunity to purchase it after the rental period. In November 2002, they attempted to negotiate the purchase but could not obtain the requisite financing, and were required to relocate on short notice. Applicant did not pay rent for two months in order to use the funds to acquire a new home. (Ex. 2 at 2; Tr. at 99.) Applicant later paid \$1,500.00 toward the outstanding debt, but the landlord sued for the balance and obtained a judgment for \$650.00. (Tr. at 98; Ex. 2 at 2.) In April 2003, the landlord garnished Applicant's checking account in the amount of about \$1,000.00 (judgment and fees); the reduction in funds caused about 15 checks to be dishonored including checks for rent. (Tr. at 99; Ex. 2 at 2.) The dishonored checks generated additional costs for bank fees, and resulted in Applicant and his family having to move to a new apartment, incurring additional expenses. (Tr. at 99-100.)

Applicant and his wife fell behind on other debts, including payments for day care services. Ultimately, Applicant and his wife found that the cost of day care made it unprofitable for her to work outside the home. (Tr. at 87.) Also, a vehicle they were leasing broke down while traveling, requiring two- to three-thousand dollars in repairs; Applicant was unwilling to make the repairs and the additional payments. The creditor repossessed the car and obtained a deficiency judgment. (Tr. at 58-59.) They fell behind on payments for other, smaller bills.

Beginning in about 2004, before the initiation of this action, Applicant and his wife attended financial courses sponsored by their church which provided credit counseling services and budgeting advice. (Tr. at 84, 86.) In addition, one of the deacons in the church provided personal assistance with their budgeting. (*Id.*) Applicant's wife took a part-time job in the evenings to generate additional income. (Tr. at 85.) They discontinued using credit cards in order to maintain their budget. (*Id.*) Most significantly, Applicant's counsel provided considerable assistance resolving delinquent debts.

The current status of the debts alleged in the SOR is shown in the table below.

¶	Account	Status	Evidence

1.a	Collection agency \$1,099.00 Judgment	Unpaid	Ex. 4 at 1; Tr. at 78-79.
1.b	Daycare-Judgment 860.00	Paid	Ex. B.
1.c	Exterminator 256.00 Judgment	Disputed	Tr. at 79-83.
1.d	Collection Agency 268.00	Disputed	Tr. at 56-57.
1.e	Collection Agency- 5,440.00 Judgment	Settled	Ex. L (Judgment vacated); Ex. C at 2 (Settlement agreement)
1.f	Medical bill 82.00	Paid	Ex. D.
1.g	Cable Service 323.00	Settled	Tr. at 66; Ex. E (Settlement agreement).
1.h	Sanitation Service 48.00	Paid	Ex. F; Tr. at 69.
1.I	Cable Service 367.00	Unpaid	Tr. at 67-68.
1.j	Telephone Service 142.00	Paid	Ex. G; Tr. at 70-71.
1.k	Medical bill 167.00	Paid	Ex. H.
1.l	Hospital bill 126.00	Paid	Ex. I; Tr. at 74-75.
1.m	Credit Card account 869.00	Settled	Tr. at 75-77; Ex. J.

Applicant has not addressed the two debts in ¶¶ 1.a and 1.I simply because he has applied his available resources to other obligations. Applicant and his wife are current on all their regular bills. (Tr. at 87.) They have a surplus of about \$700.00 per month which they have used to eliminate delinquent debts. (Tr. at 88.) They also have substantial funds in an employee retirement plan that could be used to pay a debt if necessary. (Tr. at 89.) Applicant is active in his church and derives substantial support from that community. His fellow church-members praise his character and integrity. (Ex. A at 2-5.)

### 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 potentially disqualifying and mitigating conditions under each guideline.

"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

The security concern under Guideline F, Financial Considerations, is that "An individual who is financially overextended is at risk of having to engage in illegal acts to generate funds." (Directive ¶ E2.A6.1.1.) The Directive sets out specific conditions that could raise a security concern and may be disqualifying, as well as those which could mitigate security concerns.

Paragraph E2.A6.1.2.1 of the Directive provides that it may be disqualifying if the evidence reveals "[a] history of not meeting financial obligations." Similarly, under ¶ E2.A6.1.2.3, an "[i]nability or unwillingness to satisfy debts" may be disqualifying. Applicant failed to meet some significant financial obligations between about 1999 and 2005. He is unable to pay all his delinquent debts in full at this time, although he has paid most of the delinquent accounts and has reached settlement agreements in others. I conclude the available evidence raises these potentially disqualifying conditions.

Security concerns arising from an applicant's financial difficulties can be mitigated. Under the Directive, ¶ E2.A6.1.3.1, it may be mitigating where "the behavior was not recent." The behavior in question is his failure to pay or otherwise resolve the delinquent debts. Applicant paid most of the debts. Two debts remain unresolved only because he has dedicated his available resources to other obligations. I find this potentially 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 had several delinquent debts that arose at different times; therefore, this was not an isolated incident. I conclude this mitigating condition is not a factor.

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)." Some conditions beyond Applicant's control contributed to his financial problems, such as his wife's temporary loss of employment. However, Applicant has not demonstrated that the unemployment deprived the family of a substantial amount of funds; therefore I am not persuaded that such problems were a very significant part of his financial problems. I conclude this mitigating condition is raised only in part.

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. Applicant has received financial and budgetary counseling through his church and his attorney. More significantly, it appears that most of the delinquent debts have been paid or are substantially resolved. The evidence raises this mitigating condition.

Paragraph E2.A6.1.3.6 of the Directive states it may be mitigating where, "[t]he individual initiated a good-faith effort to repay overdue creditors or otherwise resolve debts." Applicant began paying his overdue bills before the initiation of this action. He is disputing two of the debts listed in the SOR. He provided documentary evidence that he paid or is paying nine of the eleven remaining listed debts. The two bills remaining unpaid total less than \$1,500.00. I recognize that Applicant must work within his financial means to resolve his delinquent debts. I find Applicant has acted reasonably under the circumstances. I conclude this potentially mitigating condition applies.

### **The "Whole Person" Concept**

I considered the potentially disqualifying and mitigating circumstances in light of the "whole person" concept. Applicant is a mature individual with many years of service to this country as a service member and an employee of a defense contractor. He held a high-level security clearance for about 19 years. The delinquent debts arose from simply over-extending the family's credit, rather than from gambling or some other misconduct. Applicant began repaying overdue accounts before the initiation of this action. He has obtained financial counseling. His financial situation is stable and he has made real progress toward eliminating delinquencies. (Directive, ¶ E2.2.1.6.) I am persuaded there is little likelihood of continuation or reoccurrence of financial problems. (Directive, ¶ E2.1.1.4.) I conclude Applicant mitigated the security concerns arising from his history of failing to meet his financial obligations.

### **FORMAL FINDINGS**

My conclusions as to each allegation in the SOR are:

Paragraph 1, Guideline F: FOR APPLICANT

Subparagraph 1.a-1.n: 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