

DATE: July 6, 2006

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In re:

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SSN: -----

Applicant for Security Clearance

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CR Case No. 05-00377

## DECISION OF ADMINISTRATIVE JUDGE

ARTHUR E. MARSHALL, JR.

### APPEARANCES

#### FOR GOVERNMENT

Pamela C. Benson, Esq., Department Counsel

#### FOR APPLICANT

*Pro se*

### SYNOPSIS

Applicant is a 45-year-old male working for a defense contractor. Approximately five to six years ago, he underwent a period of unemployment and underemployment which caused him to acquire debt. After returning to work, he continued to ignore his creditors until some of the debts became barred from collection under the state Statute of Limitations. He claims that a number of the accounts noted on his credit report are listed erroneously, but has provided no proof he has disputed them. Applicant has failed to mitigate security concerns. Clearance is denied.

### STATEMENT OF THE CASE

On May 6, 2004, Applicant applied for a security clearance and submitted a Security Clearance Application (SF 86). On September 16, 2005, the Defense Office of Hearings and Appeals (DOHA) issued a Statement of Reasons (SOR) to Applicant, pursuant to Executive Order 10865, *Safeguarding Classified Information Within Industry*, February 20, 1960, as amended and modified, and Department of Defense Directive 5220.6, *Defense Industrial Personnel Security Clearance Review Program* (Directive), dated January 2, 1992, as amended and modified. The SOR detailed reasons why, under Guideline F (Financial Considerations), 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 a clearance should be granted, continued, denied, or revoked.

In a notarized statement, dated October 10, 2005, Applicant responded to the SOR allegations, and elected to have his case decided on the written record in lieu of a hearing. Department Counsel prepared the government's written case on April 14, 2006. A complete copy of the file of relevant material (FORM) [\(1\)](#) was provided to Applicant, and he was afforded an opportunity to file objections and submit material in refutation, extenuation, or mitigation. Any such submissions were due by May 27, 2006. Applicant's response to the FORM, dated May 21, 2006, was timely received on May 26, 2006. The case was assigned to me on June 9, 2006.

### FINDINGS OF FACT

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

Applicant is a 45 year old male working for a defense contractor.<sup>(2)</sup> He is married, has a high school diploma, and has received some post-secondary education. From 1978 through 2000, he served in the U.S. Air Force as a master sergeant [E-7]. Applicant has provided few additional facts of significance regarding his life, career, and financial responsibilities, other than noting that at some point five or six years ago, he experienced a period of unemployment and underemployment which impacted both his income and his ability to pay bills.

Credit reports, dated June 10, 2004, and July 20, 2005, indicate that Applicant has a number of delinquent accounts. The SOR specifically questions 11 such accounts, listed as allegations 1.a. through 1.k. With regard to the alleged debts set forth as 1.a., 1.b., 1.c., and 1.h., amounting to approximately \$29,000, he admits his indebtedness. In his defense, he states that his debt was acquired when he "was unemployed and/or underemployed, and could not find enough work that would allow [him] to satisfy [these] debts. Before [he became unemployed, he] paid [his bills] on time, every month. [He] tried to send what [he] could, but it was not enough, and [he] seriously fell behind in [his] payments."<sup>(3)</sup> Applicant stresses that, at the time, he was doing all he could to "stay in [his] home, and pay daily and routine monthly living expenses."<sup>(4)</sup> He further notes that he has not heard from these creditors in "a very long time," and that he is aware the debts were written off.<sup>(5)</sup> He concludes by stating that the debts are past his state's Statute of Limitations for collection, and that they will be removed from his credit report sometime in 2006.<sup>(6)</sup>

With regard to the debts listed in SOR allegations 1.d., 1.e., 1.i., and 1.j., amounting to approximately \$38,000, Applicant denies any liability. He states: "[I do] not know who they are, have never had any dealings with [the companies noted], have never spoken to a representative from [these companies], have never signed any documentation with [them], and have never ever received any correspondence from [them]."<sup>(7)</sup> He concludes his argument by stating that he is working with the credit bureaus to remove these accounts from his credit report.

Allegation 1.f. of the SOR concerns an account placed for collection by a communications company in the amount of \$1,270 in about October 2001. Applicant had a contract for service with this company. When he informed the company that he was unhappy with the service and that he could no longer pay for it, he asked for a final bill. He paid the next bill, but bills kept coming. He was told that he could not just pay a termination fee, but had to continue payments for the duration of the contract. Applicant feels that this is unfair and that he should not be indebted to the creditor. Moreover, he notes that collection is now barred by his state's Statute of Limitations.

Applicant also denied liability for the account noted as allegation 1.g. It is a debt to a credit recovery entity that was placed in collection in about January 2002 in the approximate amount of \$32,201. Applicant denies knowledge of this account and this entity. He notes that he is working with the credit reporting agencies to have this entry removed from his credit report. He furthers states: "Except for my home and my vehicle, I have never owed any company that much money."<sup>(8)</sup>

The final debt at issue is alleged under subparagraph 1.k. of the SOR. It is a debt for approximately \$1,257.83 for a cellular phone account. Applicant denies any recognition of the collection agent handling the matter for the communications company. Although he concedes he once had service with the communications company, he states he ended his prior service with them with a zero balance. He further notes that he currently has service with that company, and argues that if he had such a large balance, the company would not have permitted him to reinitiate service. He has requested the credit bureau to remove this entry.

The final allegation raised is made in SOR subparagraph 1.l., which states that, based on Applicant's Personal Financial Statement of July 15, 2004, he is financially capable of paying the debts cited due to a monthly net remainder of \$2,048 after expenses. He denies the accuracy of his financial statement, noting that he was under duress from the embarrassment of being questioned about his financial and personal histories.

In Applicant's answer to the FORM, he expresses his contrition at having an imperfect financial history, but stresses that

prior to a time of financial difficulty five to six years ago, his credit was perfect. He further stresses that today, aside from the unenforceable and unknown debts cited in the SOR, his current financial situation is solid. Regarding those debts dating from a period of unemployment and/or underemployment, he emphasizes that those which are time barred under state law are unenforceable. As to the remainder, he argues: 1) the government cannot know the extent of his financial debt, stated by Department Counsel to be approximately \$103,900, based on a credit report because such reports have been "proven over the years not to be an exact science; 2) some of the debts noted are duplicates of each other<sup>(9)</sup>; 3) the accounts he does not recognize are from "zombie companies," "companies that dig up old charged off debts, and then try to squeeze a consumer by adding the 'new' debt to their credit reports"<sup>(10)</sup>; and 4) "zombie companies" tack on all kinds of "bogus and outrageous fees in an effort to frighten consumers and force them to pay up."<sup>(11)</sup>

## POLICIES

Enclosure 2 of the Directive sets forth adjudicative guidelines to be considered in evaluating a person's eligibility to hold a security clearance. Included in the guidelines are disqualifying conditions (DC) and mitigating conditions (MC) applicable to each specific guideline. Additionally, each security clearance decision must be a fair and impartial commonsense decision based on the relevant and material facts and circumstances, the whole-person concept, along with the factors listed in the Directive. Specifically these are: (1) the nature and seriousness of the conduct and surrounding circumstances; (2) the frequency and recency of the conduct; (3) the age of the applicant; (4) the motivation of the applicant, and the extent to which the conduct was negligent, willful, voluntary, or undertaken with knowledge of the consequences; (5) the absence or presence of rehabilitation; and (6) the probability that the circumstances or conduct will continue or recur in the future. 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.

The sole purpose of a security clearance determination is to decide if it is clearly consistent with the national interest to grant or continue a security clearance for an applicant.<sup>(12)</sup> The government has the burden of proving controverted facts.<sup>(13)</sup> The burden of proof is something less than a preponderance of evidence.<sup>(14)</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>(15)</sup> Additionally, an applicant has the ultimate burden of persuasion to obtain a favorable clearance decision.<sup>(16)</sup>

No one has a right to a security clearance<sup>(17)</sup> and "the clearly consistent standard indicates that security clearance determinations should err, if they must, on the side of denials."<sup>(18)</sup> Any reasonable doubt about whether an applicant should be allowed access to sensitive information must be resolved in favor of protecting such sensitive information.<sup>(19)</sup> The decision to deny an individual a security clearance is not necessarily a determination as to the loyalty of an applicant.<sup>(20)</sup> 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 security clearance.

Based upon consideration of the evidence, I find the following adjudicative guideline most pertinent to the evaluation of the facts in this case:

**Guideline F - Financial Considerations.** *The Concern:* 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.<sup>(21)</sup>

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

## CONCLUSIONS

I have carefully considered all the facts in evidence and the legal standards. The government has provided substantial evidence that Applicant accrued a number of debts over the years. Although Applicant stresses that they are no longer enforceable under state law, the total of those debts include nearly \$29,000 in admitted debt which was neglected for a number of years. Consequently, Financial Considerations Disqualifying Condition (FC DC) E2.A6.1.2.1 (*a history of not meeting financial obligations*) and FC DC E2.A6.1.2.3 (*inability or unwillingness to satisfy debts*) apply.

With the government's case established, the burden shifts to Applicant to present evidence of refutation, extenuation, or mitigation to overcome the case against him. Here, Applicant admits to approximately \$29,000 in debt which was neglected until it became unenforceable under the applicable state Statute of Limitations. Although he denies liability for the remaining debt and states he is working on having the "zombie" debts removed from his credit report, he has submitted no documentation that such action has been initiated. Consequently, there is no proof that those debts have been addressed and rebutted. Therefore, neither FC MC E2.A6.1.3.1 (*the behavior was not recent*) nor FC MC E2.A6.1.3.2 (*it was an isolated incident*) applies.

Applicant argues that the debts at issue were acquired during an undefined period of unemployment and underemployment. To the extent Applicant was unemployed at some unspecified point or points five or six years ago, FC MC 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 to a limited extent.

There is no evidence that Applicant has received financial counseling. Consequently, FC MC E2.A6.1.3.4 (*the 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*) does not apply.

With the exception of the debt alleged in the SOR at subparagraph 1.h., there is no evidence that Applicant ever attempted to contact his creditors or resume payment on his debts after the end of his period of unemployment. Instead, he continued to ignore at least some of his creditors until the obligations became barred from collection by a state Statute of Limitations. That law does not absolve him, however, for failing to initiate some effort during the several intervening years during which those accounts were simply ignored. Therefore, FC MC E2.A6.1.3.6 (*[t]he individual initiated a good-faith effort to repay overdue creditors or otherwise resolve debts*) does not apply.

I have considered both the record evidence and Applicant in light of the "whole person" concept. He is a mature, married man. Following a period of financial instability five to six years ago, he returned to work. He is now financially stable. During his period of unemployment, however, he apparently chose to ignore his creditors, rather than work out payment plans, consider repayment schedules, request extensions, consult a credit counselor, or otherwise honor his obligations. After he regained his financial footing, he apparently chose to continue to neglect his creditors until his state's Statute of Limitations relieved him of any legal responsibility for the debts. As for the accounts he describes as "zombies," there is no denying that errors arise on a credit report or that opportunistic companies exist. He has failed, however, to provide any documentation that he has initiated a formal dispute regarding their entry on his credit report, or to describe his initial actions to investigate what these entries are before concluding they were not his debts.

It is true that the government cannot know precisely the extent of Applicant's debt, his current financial situation, or whether his debt ever exceeded a total of \$100,000, based solely on his credit reports. Such estimates are subject to error, as are credit reports. A debt even one-tenth that amount, however, is sufficient to raise security concerns. Moreover, it is the Applicant's burden, not the government's, to demonstrate error. Here, Applicant has admitted to nearly \$30,000 in debts that were neglected for so long that they are now barred by a state Statute of Limitations. Although they may no longer be enforceable, they are highly indicative of how he addresses his obligations, during both times of financial difficulty and financial stability. Such financial neglect raises serious issues of judgment, trustworthiness, and reliability. By failing to carry his burden in this matter, Applicant has failed to mitigate security concerns regarding his finances. Clearance is denied.

### **FORMAL FINDINGS**

Formal Findings for or against Applicant on the allegations set forth in the SOR, as required by Section E3.1.25 of Enclosure 3 of the Directive, are:

Paragraph 1. Guideline F (Financial Considerations): AGAINST APPLICANT

Subparagraph 1.a. Against Applicant

Subparagraph 1.b. Against Applicant

Subparagraph 1.c. Against 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

Subparagraph 1.l. Against Applicant

**DECISION**

In light of all of the circumstances in this case, it is not clearly consistent with the national interest to grant a security clearance for Applicant. Clearance is denied.

Arthur E. Marshall, Jr.

Administrative Judge

1. The FORM included seven items to support the government's contentions.
2. Applicant's position is noted as "Lead II."
3. Item 3 (Applicant's Answer to the SOR, dated October 10, 2005) at 2-3.
4. *Id.*
5. *Id.*
6. With regard to 1.h., he additionally notes that two years ago he tried to contact this creditor to make payments, but was told that the debt had been written off and the account sold. He also adds that he does not know to what entity the account was sold.
7. Item 2, *supra*, footnote 2.
8. *Id.* at 3.
9. Applicant's Answer to the FORM (dated May 21, 2006) at 3. (Applicant states that the account noted at SOR allegation 1.d. is the same as that noted at 1.h. and that the debt entered at allegation 1.g. is the same debt as listed at 1.i. He does not, however, show how the \$767 debt noted at 1.d. is the same debt noted for \$\$678.47 at 1.h., or how the

delinquency for \$32,201 noted at allegation 1.g. is the same as the debt alleged at 1.i. for \$19,679.28).

10. *Id.*
11. *Id.*
12. ISCR Case No. 96-0277 at 2 (App. Bd. Jul 11, 1997).
13. ISCR Case No. 97-0016 at 3 (App. Bd. Dec 31, 1997); Directive, Enclosure 3, ¶ E3.1.14.
14. *Department of the Navy v. Egan*, 484 U.S. 518, 531 (1988).
15. ISCR Case No. 94-1075 at 3-4 (App. Bd. Aug 10, 1995); Directive, Enclosure 3, ¶ E3.1.15.
16. ISCR Case No. 93-1390 at 7-8 (App. Bd. Jan 27, 1995); Directive, Enclosure 3, ¶ E3.1.15.
17. *Egan*, 484 U.S. 518, at 531.
18. *Id.*
19. *Id.*; Directive, Enclosure 2, ¶ E2.2.2.
20. Executive Order 10865 § 7.
21. Directive, Enclosure 2, ¶ E2.A6.1.1