

DATE: October 24, 2006

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In Re:

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SSN: -----

Applicant for Security Clearance

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ISCR Case No. 05-02499

**DECISION OF ADMINISTRATIVE JUDGE**

**JOHN GRATTAN METZ, JR**

**APPEARANCES**

**FOR GOVERNMENT**

Daniel F. Crowley, Esquire, Department Counsel

**FOR APPLICANT**

*Pro Se*

**SYNOPSIS**

Applicant mitigated the security concerns raised by his adverse financial history by demonstrating 1) that his financial difficulties were largely due to circumstances beyond his control, 2) that he had dealt responsibly with his creditors as his means permitted, 3) that he had begun to deal with his delinquent accounts before the SOR was issued, and 4) that all the debts alleged in the SOR had been addressed well before the hearing. Clearance granted.

**STATEMENT OF THE CASE**

Applicant challenges the 5 August 2005 Defense Office of Hearings and Appeals (DOHA) Statement of Reasons (SOR) recommending denial or revocation of his clearance because of financial considerations. <sup>(1)</sup> Applicant answered the SOR on 24 September 2005, and requested a hearing. The case was assigned to me 1 December 2005, and I convened a hearing 31 January 2006. DOHA received the transcript (Tr.) on 8 February 2006.

**PROCEDURAL ISSUES**

At the hearing, I gave Applicant until the close of business 10 February 2006, to provide copies of records that he had not brought to the hearing (Tr. 68-70). Applicant timely responded with financial records, to which Department Counsel interposed no objection. Accordingly, I admit Applicant's post-hearing submission as Applicant's Exhibit (A.E.) E.

**FINDINGS OF FACT**

Applicant admitted the Guideline F (Financial) SOR allegations except 1.c., which he proved was paid in February 2005. <sup>(2)</sup> Accordingly, I incorporate his admissions as findings of fact. Although he admitted the medical debt at 1.b., he asserted a dispute with his podiatrist, and demonstrated to my satisfaction that the podiatrist had attempted to charge Applicant for a pair of faulty orthotics that Applicant did not take possession of and refused to pay for. <sup>(3)</sup>

Applicant--a 53-year-old security officer for a defense contractor--seeks access to classified information. He has not previously held a clearance.

The August 2005 SOR alleges, and Applicant admits, that he had a Chapter 13 bankruptcy plan dismissed for default in March 2002 (1.a.) and had a substantial child support arrearage (1.d.). Before 1998, Applicant's finances took a turn for the worse when he experienced some health issues and lost one of two jobs he was working at the time. In April 1998, he filed for Chapter 13 bankruptcy protection, largely to forestall foreclosure on his house and repossession of his automobile.

Applicant paid on the Chapter 13 plan for nearly four years. During that time, he took out a second mortgage to deal with other financial issues. However, when he experienced unexpected attorneys fees related to his mortgages, he and his wife decided they would be better off selling their house and paying off the mortgages, which they did in May 2002 (A.E. C). With their mortgages paid, Applicant allowed the Chapter 13 plan to go into default, and the case was closed in June 2002. Applicant paid his car loan (the only other debt listed in the plan) outside the plan.

Applicant's health and employment issues also caused him to fall behind on his child support payments for his two children from a previous marriage. The payment issue was also complicated because Applicant was working in one state and the support payments were due to a different state. At one point, his total indebtedness was nearly \$30,000. However, by the time the SOR was issued, the indebtedness had been reduced to just over \$17,000. Applicant's records (A.E. E) document that he had reduced the balance to just over \$10,000 by the end of 2005, and had been making regular payments (including an amount for arrears) by payroll deduction since May 2005. He is also having his federal income tax refunds applied to the balance.

Applicant's pastor, who has known him for 15 years, knows him to be an honest and trustworthy individual.

### **POLICIES AND BURDEN OF PROOF**

The Directive, Enclosure 2 lists adjudicative guidelines to be considered in evaluating an Applicant's suitability for access to classified information. Administrative Judges must assess both disqualifying and mitigating conditions under each adjudicative issue fairly raised by the facts and circumstances presented. Each decision must also reflect a fair and impartial common sense consideration of the factors listed in Section 6.3. of the Directive. The presence or absence of a disqualifying or mitigating condition is not determinative for or against Applicant. However, specific adjudicative guidelines should be followed whenever a case can be measured against them, as they represent policy guidance governing the grant or denial of access to classified information. Considering the SOR allegations and the evidence as a whole, the relevant, applicable, adjudicative guideline is guideline F (Financial Considerations).

Security clearance decisions resolve whether it is clearly consistent with the national interest to grant or continue an Applicant's security clearance. The government must prove, by something less than a preponderance of the evidence, controverted facts alleged in the SOR. If it does so, it establishes a *prima facie* case against access to classified information. Applicant must then refute, extenuate, or mitigate the government's case. Because no one has a right to a security clearance, the Applicant bears a heavy burden of persuasion.

Persons with access to classified information enter into a fiduciary relationship with the government based on trust and confidence. Therefore, the government has a compelling interest in ensuring each Applicant possesses the requisite judgement, reliability, and trustworthiness of those who must protect national interests as their own. The "clearly consistent with the national interest" standard compels resolution of any reasonable doubt about an Applicant's suitability for access in favor of the government.<sup>(4)</sup>

### **CONCLUSIONS**

The Government established a case for disqualification under Guideline F, but Applicant mitigated the security concerns. The government demonstrated the applicability of Disqualifying Conditions 1 and 3.<sup>(5)</sup> However, Applicant established the clear applicability of Mitigating Conditions 3 and 6.<sup>(6)</sup> Applicant experienced financial problems because of health issues and under-employment. He and his wife filed for chapter 13 bankruptcy protection, under the

circumstances a responsible act. They paid on the plan for nearly four years. When unexpected financial problems occurred in 2002, they elected to sell their home and pay off their mortgages, and paid their automobile loan outside the plan. Under these circumstances, allowing the plan to default in June 2002 lacks security significance. In similar fashion, Applicant fell behind in his child support payments, but took steps to address his arrears once he had the means. He has reduced his outstanding balance by more than two-thirds by the date of the hearing, and has been paying his current obligation plus arrears by payroll deduction since May 2005. Applicant's finances otherwise appear to be under control. Consequently, I conclude that Applicant is unlikely to experience financial problems in the future. Accordingly, I resolve Guideline F for Applicant.

### **FORMAL FINDINGS**

Paragraph 1. Guideline F: FOR THE APPLICANT

Subparagraph a: For the Applicant

Subparagraph b: For the Applicant

Subparagraph c: For the Applicant

Subparagraph d: 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 granted.

**John G. Metz, Jr.**

**Administrative Judge**

1. Required by Executive Order 10865 and Department of Defense Directive 5220.6, as amended (Directive).
2. Consequently, I find SOR 1.c. for Applicant.
3. Consequently, I find SOR 1.b. for Applicant.
4. *See, Department of the Navy v. Egan*, 484 U.S. 518 (1988).
5. E2.A6.1.2.1. A history of not meeting financial obligations; E2.A6.1.2.3. Inability or unwillingness to satisfy debts;
6. E2.A6.1.3.3. The conditions that resulted in the behavior were largely beyond the person's control (e.g. loss of employment. . . ); E2.A6.1.3.6. The individual initiated a good-faith effort to repay overdue creditors or otherwise resolve debts.