

DATE: October 20, 2006

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In re:

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SSN: -----

Applicant for Security Clearance

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ISCR Case No. 05-04482

## DECISION OF ADMINISTRATIVE JUDGE

JACQUELINE T. WILLIAMS

### APPEARANCES

#### FOR GOVERNMENT

Julie R. Edmunds, Esq., Department Counsel

#### FOR APPLICANT

*Pro Se*

### SYNOPSIS

Applicant is 47 years old and is employed by a defense contractor. His field security officer submitted an adverse information report, and the resulting investigation revealed that Applicant has a history of not meeting his financial obligations. His delinquent debts total more than \$30,000, including credit card debt, unpaid utility accounts, and a tax liability of approximately \$14,000, which is owed to the Internal Revenue Service. Moreover, he used his company credit card for personal expenses, which resulted in formal counseling, as well as a wage garnishment. Applicant has not mitigated security concerns. Clearance is denied.

### STATEMENT OF THE CASE

On April 7, 2006, the Defense Office of Hearings and Appeals (DOHA) issued a Statement of Reasons (SOR) <sup>(1)</sup> to Applicant, pursuant to Executive Order 10865, *Safeguarding Classified Information Within Industry*, dated 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 under Guideline F (Financial Considerations) and Guideline E (Personal Conduct) why 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 or revoked.

In a sworn, written statement, dated April 28, 2006, Applicant responded to the SOR allegations and elected to have his case decided on the written record in lieu of a hearing. <sup>(2)</sup> Department Counsel submitted the Government's written case on July 12, 2006. A complete copy of the file of relevant material (FORM) <sup>(3)</sup> was provided to Applicant, and he was afforded an opportunity to file objections and submit material in refutation, extenuation, or mitigation. He had 30 days to respond to the FORM, and his response was due on August 13, 2006. He chose not to respond. The case was assigned to me on August 28, 2006.

## FINDINGS OF FACT

Applicant admitted the factual allegations pertaining to financial considerations under Guideline F cited in the SOR, subparagraphs 1.a through 1.h, 1.j, and 1.l through 1.n, and personal conduct under Guideline E cited in the SOR, subparagraph 2.a. He denied the factual allegations pertaining to financial considerations, subparagraphs 1.i and 1.k. Those admissions are incorporated herein as findings of fact. After a complete and thorough review of the evidence in the record, and upon due consideration of same, I make the following findings of fact:

Applicant is 47 years old and is employed by a defense contractor.<sup>(4)</sup> He retired from a 10-year military career in the Navy, and he has held a security clearance in the past. His wife works, and both their adult daughter and her son live with them. His daughter is going through a divorce. Applicant is supporting her, by paying her attorney's fees and her living expenses, until she starts to receive child support.

Since early 2000, Applicant has had a history of financial difficulties.<sup>(5)</sup> His spouse was handling the family finances. Due to inadequate family income, she paid whichever creditor called to say a bill was delinquent. Applicant eventually learned that some of the household bills were not routinely being paid. After learning that he was overextended and their income exceeded expenses, Applicant personally started paying the bills. However, there was still a financial shortfall due to inadequate income to cover his family's expenses.

A December 30, 2005 credit bureau report, which serves as the basis for the allegations in the SOR, indicated that Applicant has 13 delinquent debts, totaling approximately \$37,288. The debts at issue are as follows:

¶ **1.a/Telephone debt (\$253.00)** This debt was turned over for collection. Applicant states that this bill was paid in full.<sup>(6)</sup> The record is devoid of evidence of payment.

¶ **1.b/Collection debt (\$450.00)** This debt was turned over for collection. Applicant planned on paying this bill in May 2006 via Western Union.<sup>(7)</sup> The record is devoid of evidence of payment.

¶ **1.c/Bank debt (\$1,631.00)** Applicant indicates that this is the same account as ¶ 1.g *infra*. This debt was turned over for collection. Applicant is attempting to make payment arrangements once he discovers who owns this account.<sup>(8)</sup> Debt is still outstanding.

¶ **1.d/Bank debt (\$6,820.00)** Applicant indicates this is the same account as ¶ 1.j *infra*. This debt was turned over for collection. Applicant is making payments on this account, although he acknowledges that the account is in arrears.<sup>(9)</sup> The record is devoid of evidence of payment. Debt is still outstanding.

¶ **1.e/Charged-off debt (\$3,777.00)** This debt was charged off. Applicant started making payments on the account, but acknowledges that the account is in arrears. The record is devoid of evidence of payment. Debt is still outstanding.

¶ **1.f/Telephone debt (\$23.00)** This debt was turned over for collection. Applicant states this account was paid in full. The record is devoid of evidence showing payment. Debt is still outstanding.

¶ **1.g/Bank debt (\$1,168.00)** Applicant indicates that this is the same account as ¶ 1.c *supra*. This debt was charged off. Applicant is attempting to make payment arrangements once he discovers who owns this account. Debt is still outstanding.

¶ **1.h/Bank debt (\$3,777.00)** This debt has been transferred or sold to another creditor for collection. Applicant started making payments, but acknowledges that the account is in arrears. The record is devoid of evidence showing payment. Debt is still outstanding.

¶ **1.i/Utility debt (\$82.00)** This debt was turned over for collection. Applicant denies that he owes on this account because the account was paid upon termination of electric service. However, he allegedly made a payment on this account on April 28, 2006, but it still appears on his credit report.

¶ **1.j/Bank debt (\$6,795.00)** Applicant indicates that this is the same bill as ¶ 1.d *supra*. This debt was charged off. Applicant is attempting to make payment arrangements once he discovers who owns this account. Debt is still outstanding.

¶ **1.k/Store credit debt (\$121.00)** This debt was charged off. He denies this account is his.

¶ **1.l/IRS (\$10,601.17)** This debt is owed for income tax for tax years 2000 to 2003. Applicant is making payments of \$500.00 on the 28th of April and May 2006. In June 2006, payments were thereafter increased to \$1,000.00 per month. [\(10\)](#)

¶ **1.n/Credit card debt (\$1,780.67)** On July 23, 2002, Applicant authorized deductions from his paycheck to pay off this employee credit card debt. He made a lump sum payment of \$594.55 on August 15, 2002, and six equal bimonthly payments for \$296.78 starting on August 15, 2002. [\(11\)](#)

On July 23, 2003, Applicant received formal counseling from his employer for misuse of the company credit card for personal expenses not related to his employment. Applicant admits the counseling, and states that his behavior was an error in judgment. When his debts exceeded his income, he used his company credit card for his private and personal household expenses. Because of his limited income, he did not have the money to pay the lender. Eventually, a wage garnishment stated in ¶ 1.n was enforced

Applicant's family's monthly net income is \$6,097.00 and their total monthly expenses are \$5,986.00, which leaves a positive net remainder of \$111.00 each month.

## 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. [\(12\)](#) The government has the burden of proving controverted facts. [\(13\)](#) The burden of proof is something less than a preponderance of evidence. [\(14\)](#) 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. [\(15\)](#) Additionally, an applicant has the ultimate burden of persuasion to obtain a favorable clearance decision. [\(16\)](#)

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

Based upon consideration of the evidence, I find the following adjudicative guidelines 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.

**Guideline E (Personal Conduct):** *The Concern:* Conduct involving questionable judgment, untrustworthiness, unreliability, lack of candor, dishonesty, or unwillingness to comply with rules and regulations could indicate that the person may not properly safeguard classified information.

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

## CONCLUSIONS

I have carefully considered all the facts in evidence and the legal standards, and I reach the following conclusions.

### **Financial Considerations**

Under Guideline F, a security concern exists for an individual who is financially overextended. This person is at risk of having to engage in illegal or unethical acts to generate funds to meet financial obligations. Similarly, an individual who is financially irresponsible may also be irresponsible, unconcerned, negligent, or careless in properly handling and safeguarding classified information.

Applicant has a history of financial difficulties going back as far as early 2000. There are 13 debts totaling approximately \$37,288 at issue. Thus, Financial Considerations Disqualifying Conditions (FC DC) E2.A6.1.2.1 (*a history of not meeting financial obligations*), E2.A6.1.2.2 (*deceptive or illegal financial practices such as embezzlement, employee theft, check fraud, income tax evasion, expense account fraud, filing deceptive loan statements, and other intentional financial breaches of trust*), and FC DC E2.A6.1.2.3 (*inability or unwillingness to satisfy debts*) apply.

Various conditions can mitigate security concerns arising from financial difficulties. Applicant's has 13 delinquent debts, totaling \$37,288, of which approximately \$10,601 is for past due federal tax for years 2000 to 2003. He denied the \$82.00 utility debt, ¶ 1.i, which he contends was paid off on April 28, 2006. He avers that the \$121.00 credit card debt, ¶ 1.k, is not his debt and not his responsibility. He alleges that the telephone debt of \$253.00, ¶ 1.a, was paid off, but he proffered no evidence. Moreover, he is timely making payments to IRS for back taxes of approximately \$10,601.00. Additionally, a wage garnishment for an initial debt of more than \$1,721.00 is in place for the misuse of his company credit card because he charged personal items, which were unrelated to his employment.

Applicant has presented a picture of an individual who is inept in handling his finances and when he was financially strapped, he used his company credit card to bail him out of his dire situation. While supporting his daughter and grandchild could account for some negligent financial issues, his wife's controlling of the finances cannot excuse their financial difficulties. Moreover, Applicant has not explained why he is so financially extended in the first place. Applicant would greatly benefit from financial counseling. Given these circumstances, I cannot find that Financial Considerations Mitigating Conditions (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)*), 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*), or FC MC E2.A6.1.3.6 (*the individual initiated a good faith effort to repay overdue creditor*) apply. Applicant has not mitigated the Government's case. Accordingly, allegations 1.a through 1.n of the SOR are concluded against Applicant.

### **Personal Conduct**

Personal conduct is always a security concern because it asks the central question whether the person's past conduct justifies confidence the person can be trusted to properly safeguard classified information. Having financial problems is the type of personal conduct which causes security concerns. While there are no express disqualifying conditions under personal conduct guideline that cover judgment lapses associated with financial difficulties, the core judgment and

reliability concern of the guideline is implicit in Applicant's past troubles with finances.

Here, Applicant used his company credit card for his own personal expenses when he realized that his debt was out of control and there was no other outlet to maintain his existent lifestyle. Thus, in October 2003, his wages were garnished by his employer for the debt owed to the company credit card company. Moreover, he received formal counseling from his employer pertaining to the misuse of the company credit card and all the responsibilities that go along with it. Consequently, Personal Conduct Disqualifying Condition E2.A5.1.1 (*reliable, unfavorable information provided by associates, employers, coworkers, neighbors, and other acquaintances*) and E2.A5.1.5. (*a pattern of dishonesty or rule violations, including violation of any written or recorded agreement made between the individual and the agency*) applies. Based on the record before me, none of the available Personal Conduct Mitigating Conditions apply in this case. Under these circumstances, Applicant has failed to mitigate or overcome the Government's case. The evidence leaves me with doubts as to Applicant's security eligibility and suitability. Accordingly, allegations 2.a. and 2.b of the SOR are concluded against Applicant.

I have considered all the evidence in this case. I have also considered the "whole person" concept in evaluating Applicant's risk and vulnerability in protecting our national interests. Here, at age 47, Applicant should be a mature adult. However, he does not fully understand how his delinquent debt continued to mount, since he did not monitor his family's spending. As a matter of fact, he owes more than \$30,000 in debt. The debts he disputes represent an insignificant amount. He was able to come to an agreement and executed a payment plan with the IRS. Moreover, his use of his company credit card for personal items not only resulted in a formal reprimand but also resulted in a wage garnishment. The absence of financial counseling is apparent in this case. I conclude that Applicant has not mitigated security concerns because of his financial situation and personal conduct by the misuse of his company credit. It is clearly not consistent with the national interest to grant Applicant a security clearance. For the reasons stated, I conclude Applicant is not suitable or access to classified information.

### **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

Subparagraph 1.m: Against Applicant

Subparagraph 1.n: Against Applicant

Paragraph 2. Guideline E (Personal Conduct): AGAINST APPLICANT

Subparagraph 2.a: Against Applicant

### **DECISION**

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

Jacqueline T. Williams

Administrative Judge

1. Applicant's field security office submitted an adverse information report to the Department of Defense (DoD) on October 23, 2003, which required an investigation by DoD. Thus, because this is not a new application or reinvestigation, there is no new security clearance application (SF 86). *See* Item 4 (Adverse Information Report, dated October 21, 2003).

2. Item 3 (Applicant's Answer, dated April 28, 2006).

3. The Government submitted eight items in support of the allegations listed in the SOR.

4.

5. Item 5 (Signed, sworn statement, dated October 28, 2004).

6. Item 3, *supra*, note 2 at 1.

7. *Id.*

8. *Id.*

9. *Id.*

10. *See* Item 3, *supra*, note 2.

11. Item 7 (Memorandum re: Oral Reprimand of Applicant, dated July 23, 2002, from personnel file of his employer).

12. ISCR Case No. 96-0277 (July 11, 1997) at p. 2.

13. ISCR Case No. 97-0016 (December 31, 1997) at p. 3; 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 (August 10, 1995) at pp. 3-4; Directive, Enclosure 3, ¶ E3.1.15.

16. ISCR Case No. 93-1390 (January 27, 1995) at pp. 7-8; Directive, Enclosure 3, ¶ E3.1.15.

17. *Egan*, 484 U.S. at 531.

18. *Id.*

19. *Id.*; Directive, Enclosure 2, ¶ E2.2.2.

20. Executive Order 10865 § 7.