

DATE: November 30, 2006

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In re:

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SSN: -----

Applicant for Security Clearance

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CR Case No. 05-04732

## **DECISION OF ADMINISTRATIVE JUDGE**

**CAROL G. RICCIARDELLO**

### **APPEARANCES**

#### **FOR GOVERNMENT**

Eric Borgstrom, Esq., Department Counsel

#### **FOR APPLICANT**

*Pro Se*

### **SYNOPSIS**

Applicant is 48 years old and worked for a federal contractor for two and half years as a painter, until he was laid off in April 2006. Applicant accumulated debt while he was married because he and his wife lived beyond their means. They were recently divorced. Applicant sought credit counseling three years ago and has aggressively been repaying his debts despite the financial hardship the divorce and unemployment caused. He is not debt free, but has shown a good faith effort that he intends to satisfy the remaining debts in the future. Applicant has successfully mitigated the security concerns raised under Guideline F, financial considerations. Clearance is granted.

### **STATEMENT OF THE CASE**

The Defense Office of Hearings and Appeals (DOHA) declined to grant or continue a security clearance for Applicant. On February 6, 2006, under the applicable Executive Order<sup>(1)</sup> and Department of Defense Directive,<sup>(2)</sup> DOHA issued a Statement of Reasons (SOR), detailing the basis for its decision-security concerns raised under Guideline F (financial considerations) of the Directive. Applicant answered the SOR in writing on March 13, 2006, and elected to have a hearing before an administrative judge. In his Answer, Applicant admitted all of the allegations under Guideline F. The case was assigned to another administrative judge on June 28, 2006, and reassigned to me on October 2, 2006. A notice of hearing was issued on October 13, 2006, scheduling the hearing for November 2, 2006. I conducted the hearing as scheduled to consider whether it is clearly consistent with the national interest to grant or continue a security clearance. The Government offered eight exhibits for admission in the record and were marked as Government Exhibits (GE) 1-8. The exhibits were admitted into evidence without objection. Applicant testified on his own behalf and offered eleven exhibits for admission in the record. They were marked as Applicant's Exhibits A-K and were admitted into evidence without objection. The record was left open so Applicant could submit additional documents, which he did in a timely manner, and they were marked as AE L and M. Government Counsel had no objections and they were admitted. DOHA received the hearing transcript (Tr.) on November 16, 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 pleadings, exhibits, and testimony, I make the following findings of fact:

Applicant is 48 years old, recently divorced after 18 years of marriage, and has one child who is emancipated. He worked for his present employer, a federal contractor, for approximately two and a half years. He was laid off from employment in April 2006. He had been receiving payments from unemployment insurance that recently expired. He has been taking educational courses through his former employer in hopes of obtaining better employment once the issues relating to this case are resolved. He has two future interviews for potential employment.

Applicant admitted that while married he and his wife were living beyond their means. He was separated from his wife for two years, they lived separately during that time, and then divorced. He supported his wife during the separation and paid child support. He incurred approximately \$6,000 in attorney's fees for his divorce. His child support was \$800 a month. He paid the mortgage on the marital home for a period and then could not afford to do so. He became delinquent in his debts. Approximately three years ago, Applicant sought credit counseling. He set up payment plans for most of his debts. The following table lists his debts and their current status.

Debt	Nature & Amount	Current Status	Record
SOR 1 a.	Judgment for damages, due to a car accident by his former wife. Current balance approximately \$500.	Applicant made consistent payments for two years until he became unemployed. Anticipates repaying balance by mid-2007.	AE A, AE B, Tr. 20.
SOR 1.b.	Judgment for medical expense for \$729.	Paid.	AE B, AE H, Tr. 22-23.
SOR 1.c.	Credit card debt, \$1,925. Divorce decree makes wife responsible for this debt.	Not responsible.	AE G at 13, Tr. 23.
SOR 1.d.	Applicant's wife's vehicle totaled in accident. Owed \$6,203. Sold to collection.	Paid.	AE C, Tr. 24-25..
SOR 1.e.	Phone services debt, charged off, owed \$120.	Paid.	AE B, Tr. 25.
SOR 1.f.	Phone services debt, charged off, owed \$469.	Paid.	AE B, Tr. 26..
SOR 1.g.	Arrearage for child support. Owed \$1,738.	Paid \$100/week from paycheck to cover arrearage on back support. No current child support due. Current arrearage balance \$217. Will be paid off soon..	AE D, AE M, Tr. 27-29.
SOR 1. h.	Phone service, collection, owed \$194.	Paid. No final letter provided.	AE A, AE B, Tr. 30

On Applicant's credit report there were two accounts with very similar names. One was for an auto loan with monthly installment payments. (3) The other appears to be for a revolving credit card account. (4) Applicant believed the account alleged in SOR ¶ 1.d was the one he paid. The Government contends that the account in SOR ¶ 1.d is for a different account that remains unpaid. I find Applicant credible in his honest confusion regarding the accounts. After the hearing, Applicant researched the account and learned it had been used by his ex-wife. He contacted the credit card company and offered to set up a monthly payment plan, but they refused, and wanted a lump sum payment, which he could not pay. Once Applicant is employed full time he intends to satisfy the debt.

In the past three years, Applicant has consistently followed a debt reduction plan. He followed the guidance and

direction of his credit counselor and consolidated his debts and in a systematic way has paid each off.<sup>(5)</sup> Applicant intends to continue paying off his debts, regain his credit worthiness, and hopes to buy a house in the future.

## 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>(6)</sup> The government has the burden of proving controverted facts.<sup>(7)</sup> The burden of proof is something less than a preponderance of 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 sensitive information must be resolved in favor of protecting such sensitive information.<sup>(13)</sup> The decision to deny an individual a security clearance is not necessarily a determination as to the loyalty of an applicant.<sup>(14)</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 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-a security concern exists when a person has significant delinquent 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. Similarly, an individual who is financially irresponsible may also be irresponsible, unconcerned, or careless in their obligation to protect classified information. Behaving responsibly or irresponsibly in one aspect of life provides an indication of how a person may behave in other aspects of life.

Conditions that could raise a security concern and may be disqualifying, as well as those which would mitigate security concerns, pertaining to the adjudicative guideline is 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 established a *prima facie* case for disqualification under Guideline F.

Based on all the evidence, 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 in this case. Applicant has a history of delinquent debts that he was unable to pay for a period of time and others that remain delinquent.

I have considered all the Financial Considerations Mitigating Conditions (FC MC), and especially considered FC MC E2.A6.1.3.1 (*The behavior was not recent*), FC MC E2.A6.1.3.2 (*It was an isolated incident*), 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.A6.1.3.5 (*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*), and FC MC E2.A6.1.3.6 (*The individual initiated a good-faith effort to repay overdue creditors or otherwise resolve debts*). Applicant had many debts and a couple that he has not completely paid. Therefore they are recent. Consequently, FC MC E2.A6.1.3.1 and FC MC E2.A6.1.3.2 do not apply. Applicant admitted he and his now ex-wife lived beyond their means and got into financial trouble. His financial problems were exacerbated when he separated from his wife, had two households to support, child support payments, attorney's fees and became unemployed. Although he admits that he and his wife lived beyond their means for a period of time, the other extenuating conditions were largely beyond his control and created a more severe financial crisis. Therefore, I find FC MC E2.A6.1.3.3 applies. Applicant took charge of his finances three years ago and has aggressively pursued a payment plan that he has adhered to consistently. He has paid many of his delinquent debts and is making payments on others. He still has remaining debts that he is currently unable to pay due to his unemployment, but he has contacted the creditors and intends to satisfy the debts. Applicant's three-year history of paying his delinquent debts supports his testimony and intent to resolve his financial issues. He has consistently been working with a credit counselor, which indicates the problem is being resolved and under control. Although he is unable to completely pay off some of his debts at this time, he has contacted creditors and is attempting to resolve the debts. Based on his actions over the past three years I found his testimony credible. He has made a good faith effort and will continue to follow through on resolving the remaining debts. Therefore, I find FC MC E2.A6.1.3.5 and FC C E2.A6.1.3.6 apply. Applicant is not required to be debt free, but he is required to manage his finances in such a way as to meet his financial obligations. Applicant is attempting to do that.

### **The Whole Person**

In all adjudications, the protection of our national security is the paramount concern. The objective of the security-clearance process is the fair-minded, commonsense assessment of a person's life to make an affirmative determination that the person is eligible for a security clearance. Indeed, the adjudicative process is a careful weighing of a number of variables in considering the "whole person" concept. It recognizes that we should view a person by the totality of their acts, omissions, motivations and other variables. Each case must be adjudged on its own merits, taking into consideration all relevant circumstances, and applying sound judgment, mature thinking, and careful analysis.

I considered the whole person and specifically considered Applicant has for the past three years aggressively pursued paying off his debts and resolving his financial problems. I also considered the circumstances of how he got into debt, including living beyond his means, unemployment, separation, divorce, and attorney's fees, and that some of his debts remain unpaid. I found Applicant credible in that he intends to pay off the remaining debts in the future. Applicant is not debt-free and has outstanding debt, but he is not ignoring it and has contacted the creditors and is making a good-faith effort to resolve it. I find his financial situation does not create a security risk and he has successfully mitigated the security concerns under Guideline F, financial considerations. Therefore, I am persuaded by the totality of the evidence in this case that it is clearly consistent with the national interest to grant Applicant a security clearance. Accordingly, Guideline F is decided for Applicant.

### **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: FOR APPLICANT

Subparagraph 1.a: For Applicant

Subparagraph 1.b: For Applicant

Subparagraph 1.c: For Applicant

Subparagraph 1.d: For Applicant

Subparagraph 1.e: For Applicant

Subparagraph 1.f: For Applicant

Subparagraph 1.g: For Applicant

Subparagraph 1.h: For Applicant

### **DECISION**

In light of all of the circumstances in this case, it is clearly consistent with the national interest to grant or continue a security clearance for Applicant. Clearance is granted.

Carol G. Ricciardello

Administrative Judge

1. Exec. Or. 10865, *Safeguarding Classified Information within Industry* (Feb. 20, 1960) as amended and modified.
2. Department of Defense Directive 5220.6, *Defense Industrial Personnel Security Clearance Review Program* (Jan. 2, 1992), as amended and modified.
3. SOR ¶ 1.d, Tr. 37-46.
4. GE 7.
5. Tr. 31.-32.
6. ISCR Case No. 96-0277 at 2 (App. Bd. Jul 11, 1997).
7. ISCR Case No. 97-0016 at 3 (App. Bd. Dec. 31, 1997); Directive, Enclosure 3, ¶ E3.1.14.
8. *Department of the Navy v. Egan*, 484 U.S. 518, 531 (1988).
9. ISCR Case No. 94-1075 at 3-4 (App. Bd. Aug. 10, 1995); Directive, Enclosure 3, ¶ E3.1.15.
10. ISCR Case No. 93-1390 at 7-8 (App. Bd. Jan. 27, 1995); Directive, Enclosure 3, ¶ E3.1.15.
11. *Egan*, 484 U.S. at 531.
12. *Id.*
13. *Id.*; Directive, Enclosure 2, ¶ E2.2.2.
14. Executive Order 10865 § 7.