

DATE: December 27, 2006

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In re:

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SSN: -----

Applicant for Security Clearance

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CR Case No. 05-07747

**DECISION OF ADMINISTRATIVE JUDGE**

**LEROY F. FOREMAN**

**APPEARANCES**

**FOR GOVERNMENT**

Nichole L. Noel, Esq., Department Counsel

**FOR APPLICANT**

*Pro se*

**SYNOPSIS**

Applicant has two delinquent credit card accounts with unpaid balances totaling more than \$47,000. The delinquencies were due in part to two failed business ventures financed with credit cards. One business closed in 2000, and the other was started in 2001 and failed almost immediately. He took no action to resolve the delinquent accounts until August 2006, after he learned his security clearance was in jeopardy. He has not mitigated the security concern based on financial considerations. Clearance is denied.

**STATEMENT OF THE CASE**

On June 19, 2006, the Defense Office of Hearings and Appeals (DOHA) issued a Statement of Reasons (SOR) detailing the basis for its preliminary decision to deny Applicant a security clearance. This action was taken under Executive Order 10865, *Safeguarding Classified Information within Industry* (Feb. 20, 1960), as amended and modified, and Department of Defense Directive 5220.6, *Defense Industrial Personnel Security Clearance Review Program* (Jan. 2, 1992), as amended and modified (Directive). The SOR alleged security concerns raised under Guideline F (Financial Considerations) of the Directive.

Applicant answered the SOR in writing on July 19, 2006, and elected to have a hearing before an administrative judge. The case was assigned to me on October 26, 2006, and heard on November 17, 2006, as scheduled. I kept the record open until November 30, 2006, to permit Applicant to submit additional documentary evidence. I received his additional evidence on November 30, 2006. It was admitted in evidence without objection from Department Counsel, and it is incorporated in the record as Applicant's Exhibit (AX) G. Department Counsel's response to AX G is attached to the record as Hearing Exhibit I. DOHA received the hearing transcript (Tr.) on December 5, 2006.

**FINDINGS OF FACT**

Applicant's admissions in his answer to the SOR and at the hearing are incorporated into my findings of fact. I make the following findings:

Applicant is a 52-year-old manufacturing engineer for a defense contractor. He is the production operations manager for international programs (Tr. 31). He has worked for his current employer since June 1984 and held a clearance since November 1983. He was married in August 1974 and divorced in February 1990. He remarried in February 1995 and was divorced in February 2001. He has three adult children who are financially independent (Tr. 47).

The SOR alleges two delinquent credit card accounts, one for about \$29,677 (SOR ¶ 1.a) and the other for about \$19,429 (SOR ¶ 1.b). Applicant admits both debts, which have been charged off as bad debts.

Applicant opened the credit card account in SOR ¶ 1.a in the early 1990s. In 2001, he opened a business selling nutritional supplements (Tr. 34). He charged his initial marketing expenses and initial purchase of products to the account (Tr. 35). He was unable to sell the products and unable to make the payments on the account, which were more than \$600 per month (GX 2 at 2-3). He testified this business venture "was a failure from the get go" and an exercise of poor judgment (Tr. 32). He estimates that about \$10,000 of the balance due is attributable to the business and the remainder is attributable to personal expenses (Tr. 45). The date of last activity on this account was July 2003 (GX 5 at 4).

On September 1, 2006, Applicant sent a written message by facsimile transmission to the law firm representing the creditor in SOR 1.a, stating he was willing to discuss the account with the firm (AX B at 2). After the hearing, he was informed by the law firm that the account had been transferred to a collection agency. The collection agency referred Applicant to another law firm. Applicant has contacted the second law firm, but no settlement agreement has yet been reached (AX G at 2).

Applicant opened the credit card account in SOR ¶ 1.b in the late 1990s. In 1993, he used this account to finance a motorcycle service business and a motorcycle racing team (Tr. 36). He closed the business in early 2000 (Tr. 36). When the creditor increased the interest rate, the payments rose to almost \$600 per month, and Applicant could not make the payments (GX 2 at 1; Tr. 36-38). He estimates that about \$10,000 of the balance due on this account is attributable to the business and the remaining \$9,000 is attributable to personal expenses (Tr. 46). There was no activity on this account after September 2002 (GX 5 at 2), until he made four consecutive monthly payments of \$400, starting in August 2006 (AX C, D, E, and F).

In January 2005, Applicant submitted a personal financial statement to a security investigator (GX 3 at 3). It reflected monthly net income of \$5,642; expenses of \$2,847; debt payments totaling \$2,070 on ten installment and credit card accounts with a total outstanding balance of about \$66,569; and a net remainder of \$725.90. The payments on the ten accounts were all current. No real estate, savings, investments, or other assets were listed. The financial statement did not include the two debts alleged in the SOR.

Applicant also discussed a delinquent credit card debt of \$308 with the security investigator. In February 2006, this account was settled by rolling the balance over into the account alleged in SOR ¶ 1.b (GX 2 at 2; GX 5 at 3).

In November 2005, Applicant submitted another personal financial statement in response to DOHA interrogatories (GX 4 at 3-4). It reflected monthly net income of \$5,841; expenses of \$3,788, debt payments totaling \$1,855 on ten accounts with a total outstanding balance of about \$66,915, and a net remainder of \$198.90. The payments on the ten accounts were all current. Bank savings of \$35,000 were listed. This financial statement also did not include the debts alleged in the SOR. Applicant testified he pays more than the minimum each month, but he does not pay the balance in full, resulting in interest charges each month (Tr. 48-49). His credit bureau report dated June 14, 2006, reflected that the total outstanding balance on the same ten installment and credit card accounts was \$65,229 (GX 5).

Applicant lives in a rental apartment and does not own a home. He has a 401(k) retirement plan but currently is not contributing to it. At the hearing, he did not know the balance in his 401(k) account (Tr. 43), but it probably is about \$30,000, based on his personal financial statement executed in November 2005. He has about \$5,000 in bank savings. He owns a 1999 Cadillac and a 2001 Kawasaki motorcycle, and he is making monthly payments on both (Tr. 43-44).

A friend and co-worker who has known Applicant for 20 years regards him as honest, trustworthy, reliable, caring, and "willing to go the extra mile" for a good cause (AX A). His facility security officer stated he has had access to classified

information for about 20 years without incident (AX G at 3).

Another friend and co-worker who has known Applicant for about 22 years testified that Applicant conducts himself professionally and carefully protects classified information (Tr. 53). This witness was not familiar with Applicant's business-related financial problems (Tr. 55). When asked to describe Applicant's lifestyle, he testified: "He's kind of flashy, but I admire him. He's got a lot of good things I like to do and have a good time and live life to the fullest, so he's a guy I look up to." (Tr. 53.) When asked about Applicant's spending habits, he testified: "I'd say he's pretty much in the middle. I don't think he spends too much on anything or doesn't skimp on anything, but he's pretty much average, middle-of-the-road kind of guy." (Tr. 56).

## POLICIES

"[N]o one has a 'right' to a security clearance." *Department of the Navy v. Egan*, 484 U.S. 518, 528 (1988). As Commander in Chief, 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." *Id.* at 527. The President has authorized the Secretary of Defense or his designee to grant applicants eligibility for access to classified information "only upon a finding that it is clearly consistent with the national interest to do so." Exec. Or. 10865, *Safeguarding Classified Information within Industry* § 2 (Feb. 20, 1960), as amended and modified. Eligibility for a security clearance is predicated upon the applicant meeting the security guidelines contained in the Directive. 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).

The Directive sets forth adjudicative guidelines for determining eligibility for access to classified information, and it lists the disqualifying conditions (DC) and mitigating conditions (MC) for each guideline. Each clearance decision must be a fair, impartial, and commonsense decision based on the relevant and material facts and circumstances, the whole person concept, and the factors listed in the Directive ¶¶ 6.3.1 through 6.3.6.

In evaluating an applicant's conduct, an administrative judge should consider: (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 applicant'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. Directive ¶¶ E2.2.1.1 through E2.2.1.9.

A person granted access to classified information enters into a special relationship with the government. The government must be able to have a high degree of trust and confidence in persons with access to classified information. However, the decision to deny an individual a security clearance is not necessarily a determination as to the loyalty of the applicant. *See* Exec. Or. 10865 § 7. It is merely an indication the applicant has not met the strict guidelines the President and the Secretary of Defense have established for issuing a clearance.

Initially, the government must establish, by substantial evidence, conditions in the personal or professional history of the applicant which disqualify, or may disqualify, the applicant from being eligible for access to classified information. *See Egan*, 484 U.S. at 531. "Substantial evidence" is "more than a scintilla but less than a preponderance." *See v. Washington Metro. Area Transit Auth.*, 36 F.3d 375, 380 (4th Cir. 1994). "[T]he Directive presumes there is a nexus or rational connection between proven conduct under any of the Criteria listed therein and an applicant's security suitability." ISCR Case No. 95-0611 at 2 (App. Bd. May 2, 1996) (quoting DISCR Case No. 92-1106 (App. Bd. Oct. 7, 1993)).

Once the government establishes a disqualifying condition by substantial evidence, the burden shifts to the applicant to rebut, explain, extenuate, or mitigate the facts. ISCR Case No. 01-20700 at 3; *see* 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). "[S]ecurity clearance determinations should err, if they must, on the side of denials." *Egan*, 484 U.S. at 531; *see* Directive ¶ E2.2.2.

## CONCLUSIONS

### **Guideline F (Financial Considerations)**

Under this guideline, "[a]n individual who is financially overextended is at risk of having to engage in illegal acts to generate funds." Directive ¶ E2.A6.1.1. A person who fails or refuses to pay long-standing debts or is financially irresponsible may also be irresponsible or careless in his or her duty to protect classified information. Two disqualifying conditions (DC) under this guideline could raise a security concern and may be disqualifying in this case. DC 1 applies where an applicant has a history of not meeting his or her financial obligations. Directive ¶ E2.A6.1.2.1. DC 3 applies where an applicant has exhibited inability or unwillingness to satisfy debts. Directive ¶ E2.A6.1.2.3. The two delinquent debts alleged in the SOR and admitted by Applicant raise DC 1 and DC 3.

Since the government produced substantial evidence to establish DC 1 and DC 3, the burden shifted to Applicant to produce evidence to rebut, explain, extenuate, or mitigate the facts. Directive ¶ E3.1.15. Applicant has the burden of proving a mitigating condition, and the burden of disproving it is never shifted to the government. *See* ISCR Case No. 02-31154 at 5 (App. Bd. Sep. 22, 2005).

A security concern based on financial problems can be mitigated by showing the delinquent debts were not recent (MC 1) or the indebtedness was an isolated incident (MC 2). Directive ¶¶ E2.A6.1.3.1, E2.A6.1.3.2. Applicant has two delinquent debts that are not yet resolved. I conclude MC 1 and MC 2 are not established.

Security concerns arising from financial problems can be mitigated by showing they are the result of conditions "largely beyond the person's control" (MC 3). Directive ¶ E2.A6.1.3.3. Even if Applicant's financial difficulties initially arose due to circumstances beyond his control, it is appropriate to consider whether he acted in a reasonable manner when dealing with his financial difficulties. ISCR Case No. 02-02116 at 4 (App. Bd. Sep. 25, 2003). Applicant's two business failures were circumstances beyond his control, but his decision to finance a speculative nutritional supplement business with a credit card on which he already had a substantial outstanding balance was, as he admits, poor judgment. He closed the motorcycle service business in early 2000, and the date of last activity on the credit card account related to this business was in September 2002. The nutritional supplement business was a failure from the start, and the date of last activity on the credit card account was July 2003. Applicant knew in January 2005 that his delinquent accounts raised a security concern, but he took no significant action to resolve them until he received the SOR in June 2006. I conclude he did not act reasonably when dealing with his business failures. Accordingly, I conclude MC 3 is not established.

A mitigating condition (MC 4) applies when an applicant "has received or is receiving counseling for the problem and there are clear indications that the problem is being resolved or is under control." Directive ¶ E2.A6.1.3.4. MC 4 is not established because Applicant has not sought financial counseling.

A security concern arising from financial problems can be mitigated by showing a good-faith effort to resolve debts (MC 6). Directive ¶ E2.A6.1.3.6. The concept of good faith "requires a showing that a person acts in a way that shows reasonableness, prudence, honesty, and adherence to duty or obligation." ISCR Case No. 99-0201, 1999 WL 1442346 at \*4 (App. Bd. Oct. 12, 1999). Evidence of past irresponsibility is not mitigated by payment of debts only under pressure of qualifying for a security clearance. As noted above, Applicant took no action to resolve the delinquent debts until he received the SOR. I conclude MC 6 is not established.

### **Whole Person Analysis**

In addition to considering the specific disqualifying and mitigating conditions under each guideline, I have also considered: (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 applicant'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. *See* Directive ¶¶ E2.2.1.1 through E2.2.1.9.

Although Applicant recently made contact with the law firm handling the delinquent account in SOR ¶ 1.a, no

settlement agreement has been reached and the likelihood of such an agreement cannot be determined. To his credit, Applicant began making monthly payments on the delinquent account in SOR ¶ 1.b, but he did so only after receiving the SOR. In February 2006, he resolved a small delinquent debt of \$308 (not alleged in the SOR), but he did so by rolling it over into the delinquent account alleged in SOR ¶ 1.b.

Applicant is a mature adult, holding a responsible position with a major defense contractor. He has held a clearance for 23 years without incident. However, he has more than \$47,000 in delinquent credit card debt. He also has more than \$65,000 in credit card and installment debt that is not delinquent. After a lifetime of gainful employment, his only assets appear to be about \$35,000 in savings and retirement accounts, a seven-year-old automobile, and a five-year-old motorcycle. There is no evidence of financial counseling or lifestyle change directed toward putting his financial house in order. His indebtedness makes him vulnerable to pressure, coercion, exploitation, or duress. He has not demonstrated the financial discipline that would be necessary to resolve his financial problems.

After weighing the disqualifying and mitigating conditions under Guideline F, and evaluating all the evidence in the context of the whole person, I conclude Applicant has not mitigated the security concerns based on based on his financial situation. Accordingly, I conclude he has not carried his burden of showing that it is clearly consistent with the national interest to continue his security clearance.

### **FORMAL FINDINGS**

The following are my conclusions as to each allegation in the SOR:

Paragraph 1. Guideline F: AGAINST APPLICANT

Subparagraph 1.a: Against Applicant

Subparagraph 1.b: Against Applicant

### **DECISION**

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

LeRoy F. Foreman

Administrative Judge