

DATE: January 31, 2007

In re:

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SSN: -----

Applicant for Security Clearance

ISCR Case No. 05-012631

**DECISION OF ADMINISTRATIVE JUDGE**

**CLAUDE R. HEINY**

**APPEARANCES**

**FOR GOVERNMENT**

Richard A. Stevens, Esq., Department Counsel

**FOR APPLICANT**

*Pro Se*

**SYNOPSIS**

Even though Applicant was notified the government intended to revoke his clearance due to seven debts listed as bad debts or accounts in collection, he has taken no steps to pay or resolve these debts. Applicant has failed to mitigate security concerns about his delinquent debts. Clearance is denied.

**STATEMENT OF THE CASE**

On April 19, 2006, the Defense Office of Hearings and Appeals (DOHA) issued a Statement of Reasons (SOR) to Applicant stating that DOHA could not make the preliminary affirmative finding [\(1\)](#) it is clearly consistent with the national interest to grant or continue a security clearance for Applicant. The SOR set forth reasons why a security clearance could not be granted or continued due to financial considerations security concerns.

On June 29, 2006, Applicant answered the SOR and requested a hearing. On November 1, 2006, I was assigned the case. On November 11, 2006, a Notice of Hearing was issued for the hearing held on November 27, 2006. On December 8, 2006, DOHA received the transcript (Tr.). The record was kept open to allow Applicant to submit documents, which were received on December 15, 2006. Department Counsel having no objections, the documents were admitted into evidence as Applicant's Exhibit (App Ex) A.

**FINDINGS OF FACT**

The SOR alleges security concerns for financial considerations. Applicant admits he has five unpaid accounts that are in collection or are bad debts. The unpaid obligations total approximately \$16,000. The admissions are incorporated herein as findings of fact. After a thorough review of the entire record, I make the following findings of fact.

Applicant is a 36-year-old systems specialist who has worked for a defense contractor since October 2004, and he is seeking to obtain a security clearance. A coworker who has known Applicant for 20 years and was in combat and hostile

situations with him. The coworker believes Applicant to be a strong person, a hard worker, an asset to the coworker's family, a person who matures every day, and a person the coworker would lay down his life for. (Tr. 80)

Applicant has been deployed overseas twice. Prior to his first deployment, he had a medical procedure conducted. Before having the procedure conducted, the doctor's office contacted his insurance carrier to determine the procedure was covered. After being assured it would be covered by his insurance, Applicant made his co-payment and underwent the procedure. Later he was informed the procedure was not covered and he owed \$734 (SOR 1.C). He has attempted to contact his insurance company, but has not been able to speak to the right person related to his claim. (Tr. 45) Applicant denies owing this debt.

In January 1999, Applicant traded in his vehicle. When he did so, he was current on the monthly payments. Applicant alleges there was a delay in getting the title from the lien holder. The debt of \$1,974 (SOR 1.d) resulted from the delay.

In July 2000, Applicant lost his job as a route truck manager after three years with the company. (Tr. 57) The company was undergoing cutbacks and lay offs. Applicant is eligible for rehiring. When laid off he was making \$33,000 a year. With the loss of income, Applicant could no longer afford the \$1,000 mortgage and land payments on his home and so moved. Applicant had taken over payments from another and that person re-assumed the obligation. (43) Applicant decided to go to college. A year later, Applicant graduated with honors and obtained his certification. (Tr. 75)

Applicant was unable to find a job in his career field so he took a job as a pipefitter's helper in the oil fields. The job paid \$16 per hour and \$55 per diem. The job was anticipated to last two years. In 2004, to save on motel bills, which Applicant estimated to be \$500 weekly, Applicant purchased a fifth-wheel recreation vehicle (RV) for \$30,000, with \$478 monthly payments, and a new 3/4 ton pickup for \$42,000 with \$6,500 down and \$811 monthly payments to pull the RV. The job lasted only six months.

Applicant struggled to make monthly payments. He took a job at less pay per hour, but with greater career potential. He obtained a job overseas with a contractor, which currently pays \$47,000 annually. (Tr. 35) Additionally, he receives a federal tax break on his income earned overseas. When deployed, he works in excess of 80 hours per week and sees a 60% increase in pay. He has been deployed overseas twice. The first time for seven months and the second time for five months. (Tr. 35)

Since getting the job, he has been able to pay off his house note and a 1998 pickup on which \$13,854 was owed. (App Ex A) The home has an assessed value of \$48,000. (Tr. 57) Applicant spent \$20,000 on his 100-year-old house rebuilding the bathroom, redoing the plumbing, putting in new windows and doors, and putting on a new roof. On his return from overseas, he intends to repay the overdue creditors.

In October 1999, Applicant sublet his apartment to a relative. He owes \$289 (SOR 1.b) in cleaning costs on the apartment when the apartment was vacated. Applicant used a credit card (SOR 1.a) for travel expenses and for eye surgery on which \$2,985 is owed. Between 2003 and 2006, Applicant used another credit card (SOR 1.e) to pay for food, fuel, and living expenses. There is a \$4,894 bad debt owing. Applicant purchased tires on a discount store credit card (SOR 1.f). He made payments on this debt for almost two years on which \$943 is owed. Applicant used a credit card (SOR 1.g) to purchase a computer, camcorder, and other electronics. He owes \$6,758 on this debt.

Applicant owes approximately \$8,800 on his student loans. He is current with this \$86 monthly payment. He has been making payments on this obligations since being hired at this current job. Applicant has \$14,500 in his retirement savings plan to which he contributes 17% of his pay monthly (Tr. 32), \$500 in the credit union, and \$6,300 in two bank accounts. (App Ex A) It is not possible to tell if the last page of App Ex A, which lists a balance of \$25,000, represents a saving account or the amount owed on his RV.

Applicant was in the National Guard for nine years. At age 15, Applicant took on the responsibility of working 35 to 40 hours a week to help pay the bills after his stepfather's death in a tragic accident. (Tr. 85) Applicant has three sons age 10, 8, and 7. His wife does not work outside the home and home schools the children.

## POLICIES

The Directive sets forth adjudicative guidelines to be considered when evaluating a person's eligibility to hold a security clearance. Disqualifying Conditions (DC) and Mitigating Conditions (MC) are set forth for each applicable guideline. Additionally, each decision must be a fair and impartial commonsense decision based upon the relevant and material facts and circumstances, the whole person concept, and the factors listed in Section 6.3 of the Directive. The adjudicative guidelines are to be applied by administrative judges on a case-by-case basis with an eye toward making determinations that are clearly consistent with the interests of national security. The presence or absence of a particular condition or factor for or against clearance is not determinative of a conclusion for or against an applicant. However, the adjudicative guidelines should be followed whenever a case can be measured against this policy guidance. Considering the evidence as a whole, I conclude the relevant guidelines to be applied here is Guideline F, financial considerations.

### **BURDEN OF PROOF**

The sole purpose of a security clearance decision is to decide if it is clearly consistent with the national interest to grant or continue a security clearance for an applicant. Initially, the Government must establish, by substantial evidence, that conditions exist in the personal or professional history of the applicant which disqualify, or may disqualify, an applicant from being eligible for access to classified information. The burden of proof in a security clearance case is something less than a preponderance of evidence, although the government is required to present substantial evidence to meet its burden of proof. Substantial evidence is more than a scintilla, but less than a preponderance of the evidence. All that is required is proof of facts and circumstances which indicate an applicant is at risk for mishandling classified information, or that an applicant does not demonstrate the high degree of judgment, reliability, or trustworthiness required of persons handling classified information. Additionally, the government must prove controverted facts alleged in the SOR. Once the government has met its burden, the burden shifts to an applicant to present evidence to refute, extenuate or mitigate the government's case. Additionally, an applicant has the ultimate burden of persuasion to obtain a favorable clearance decision. (2)

As noted by the United States Supreme Court in *Department of Navy v. Egan*, 484 U.S. 518, 528 (1988), "no one has a 'right' to a security clearance." A person who has access to classified information enters into a fiduciary relationship with the government based on trust and confidence. The government, therefore, has a compelling interest in ensuring each applicant possesses the requisite judgment, reliability and trustworthiness of one who will protect the national interests. The "clearly consistent with the national interest" standard compels resolution of any reasonable doubt about an applicant's suitability for access to classified information in favor of protecting national security. Security clearance determinations should err, if they must, on the side of denials.

### **CONCLUSIONS**

The Government has satisfied its initial burden of proof under Guideline F, financial considerations. A person's relationship with his creditors is a private matter until evidence is uncovered demonstrating an inability or unwillingness to repay debts under agreed upon terms. Absent evidence of strong extenuating or mitigating circumstances, an applicant with a history of serious or recurring financial difficulties is in a position of risk that is inconsistent with the holding of a security clearance. An applicant is not required to be debt free, but is required to manage his finances so as to meet his financial obligations.

Financial considerations become a security concern 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. Additionally, an individual who is financially irresponsible may also be irresponsible, unconcerned, or careless in their obligations 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.

The Applicant admits owing five debts totaling approximately \$16,000 that are either bad debts or accounts in collection. Disqualifying Conditions (DC) 1 (E2.A6.1.2.1 *A history of not meeting financial obligations*) and DC 3 (E2.A6.1.2.3 *Inability or unwillingness to satisfy debts*) apply.

Applicant had the doctor check with Applicant's insurance carrier before his medical procedure was performed. He was told the procedure was covered and Applicant made his co-payment. Now the insurance carrier will not pay. I believe

Applicant's explanation and find for him as to this debt. (SOR 1.c)

In May 2006, Applicant was notified the government intended to revoke his clearance due to seven debts listed as bad debts or accounts in collection. Although aware of the government's concern, Applicant has taken no steps to pay or resolve the debts listed in the SOR. To his credit he has paid off his home, paid off a second vehicle, is current on his student loan obligation, and paid to make home improvements, but none of these obligations were of concern when the SOR was issued. Applicant has taken no meaningful steps to address the debts of concern except to say he will pay them when he returns from overseas.

None of the Mitigating Conditions (MC) apply in the Applicant's favor. MC 1 (E2.A6.1.2.1 *The behavior was not recent*) does not apply because the conduct is recent since the debts remain unpaid. MC 2 (E2.A6.1.2.2 *It was an isolated incident*) does not apply because there are six debts.

In 2000, Applicant was laid off his job and chose to return to school for a year. Following graduation, he was unable to find a job in his career but obtained one in the oil fields. Along with the oil field job he chose to purchase a \$42,000 pick up and \$30,000 vehicle. The job did not last as long as anticipated. The loss of jobs are factors beyond his control. However, since October 2004, he has been employed and currently makes \$47,000. While deployed overseas, his income rose 60%. His job has allowed him to pay off debts not listed in the SOR, to establish a retirement account, and fund savings accounts. He has prioritized the payments of his debts. But Applicant chose not to pay even the smallest debt of concern to the government, which was \$289 (SOR 1.b). His loss of jobs was beyond his control, but it has been two years since obtaining his current job. Therefore, 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)*) is not the determining factor in deciding the case.

There has been no showing Applicant has received financial counseling nor is there any indication his financial difficulties are under control. For MC 6 (E2.A6.1.2.6 *The individual initiated a good-faith effort to repay overdue creditors or otherwise resolve debts*) to apply there must be an "ability" to repay the debts, the "desire" to repay, and evidence of a good-faith effort to repay. A systematic, concrete method of handling his debts is needed, which is not present here. It appears Applicant has the ability to pay these debts and desires to pay these debts at some future date, but there is no actual payment on the debts.

In reaching my conclusions I have also considered: the nature, extent, and seriousness of the conduct; Applicant's age and maturity at the time of the conduct; the circumstances surrounding the conduct; Applicant's voluntary and knowledgeable participation; the motivation for the conduct; the frequency and recency of the conduct; presence or absence of rehabilitation; potential for pressure, coercion, exploitation, or duress; and the probability that the circumstance or conduct will continue or recur in the future. After weighing the disqualifying and mitigating conditions and evaluating the evidence in the context of the "whole person," I conclude Applicant has not mitigated the security concern based on financial considerations.

Applicant's loyalty and patriotism are not at issue in these proceedings. Section 7 of Executive Order 10865 specifically provides that industrial security clearance decisions will be "in terms of the national interest and shall in no sense be a determination as to the loyalty of the applicant concerned." Security clearance decisions cover many characteristics of an applicant other than loyalty and patriotism. Nothing in this decision should be construed to suggest I have based this decision, in whole or in part, on any express or implied decision as to Applicant's loyalty, or patriotism.

### **FORMAL FINDINGS**

Formal Findings as required by Section 3, Paragraph 7, of Enclosure 1 of the Directive are hereby rendered as follows:

Paragraph 1 Financial Considerations: AGAINST APPLICANT

Subparagraph 1.a: Against Applicant

Subparagraph 1.b: Against Applicant

Subparagraph 1.c: For Applicant

Subparagraph 1.d: Against Applicant

Subparagraph 1.e: Against Applicant

Subparagraph 1.f: Against Applicant

Subparagraph 1.g: Against Applicant

**DECISION**

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

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**Claude R. Heiny**

**Administrative Judge**

**1. Required by Executive Order 10865, as amended, and Department of Defense Directive 5220.6 (Directive), dated January 2, 1992, as amended.**

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