

DATE: August 28, 2006

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In re:

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SSN: -----

Applicant for Security Clearance

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ISCR Case No. 05-15474

## **DECISION OF ADMINISTRATIVE JUDGE**

**MICHAEL H. LEONARD**

### **APPEARANCES**

#### **FOR GOVERNMENT**

Robert E. Coacher, Esq., Department Counsel

#### **FOR APPLICANT**

*Pro Se*

### **SYNOPSIS**

Applicant failed to present sufficient evidence to explain, extenuate, or mitigate the security concern arising from his long-standing history of financial irresponsibility. He currently has six delinquent accounts in a collection or charged-off status for more than \$8,000. At this time, the record evidence is insufficient to establish a track record of prudent and responsible financial management that is consistent with holding a security clearance. Clearance is denied.

### **STATEMENT OF THE CASE**

Applicant is challenging the Defense Department's preliminary decision to deny or revoke his security clearance. Acting under the relevant Executive Order and DoD Directive, [\(1\)](#) on February 6, 2006, the Defense Office of Hearings and Appeals (DOHA) issued a statement of reasons (SOR) detailing the basis for its decision. The SOR--which is in essence the administrative complaint-- alleges a security concern under Guideline F for financial considerations. Applicant replied to the SOR on March 6, 2006, and requested a hearing. The case was assigned to me April 5, 2006. Thereafter, a notice of hearing was issued scheduling the hearing for May 22, 2006. Applicant appeared without counsel and the hearing took place as scheduled. DOHA received the transcript June 1, 2006.

At the hearing, I left the record open until June 30, 2006, to allow Applicant to submit additional documentary evidence. Applicant's posthearing's submissions are marked and admitted without objections as Applicant's Exhibits F, G, and H. On July 11, 2006, on my own motion and without objections by Department Counsel, I left the record open until July 31, 2006, to allow Applicant to submit additional documentary evidence. In particular, I informed Applicant such matters might include: (1) documentary proof that Applicant and his wife received a \$10,000 bequest from a will in probate; (2) documentary proof-of-payment of any of the debts in the SOR; and (3) any other matter relevant and important to Applicant's case. Additional matters were received and they are marked and admitted without objections as Applicant's Exhibit I.

### **FINDINGS OF FACT**

In his written reply to the SOR, Applicant admitted to the delinquent debts alleged in the SOR except for subparagraphs 1.d, 1.g, 1.h, and 1.j. His admissions are incorporated herein as findings of fact. In addition, after considering the record evidence as a whole, I make the following findings of fact.

1. Applicant is a 38-year-old married man who is seeking a security clearance for his employment with a company engaged in defense contracting. He works as a network administrator. His annual salary for 2005 was \$48,000; his current annual salary is \$50,000. He has worked for this company since about October 2003.

2. Applicant has a history of financial problems. In June 1999, Applicant and his wife filed for relief under Chapter 7 of the bankruptcy code. The amended summary of schedules indicated total assets of \$75,337.67 compared with total liabilities of \$106,646.11. (2) The process resulted in Applicant and his wife relinquishing both their house and car. (3) In October 1999, the bankruptcy court granted a discharge releasing Applicant and his wife from all dischargeable debts.

3. He completed his security-clearance application in October 2003. (4) In doing so, he disclosed his 1999 Chapter 7 bankruptcy, a 1997 wage garnishment by the IRS for \$20,000, and a 2002 repossession. Subsequently, during the background investigation in May 2005, Applicant provided a written statement to a special investigator. (5) He addressed the details of his financial situation, including the Chapter 7 bankruptcy and the IRS wage garnishment. He indicated the primary cause of his problems was financial irresponsibility.

4. The SOR concerns ten delinquent debts for a total of more than \$11,000. The debts are based on charged-off, collection, or past-due accounts. The table below summarizes each debt, its current status, and cites to the relevant part of the administrative record.

<b>SOR Allegation</b>	<b>Current Status</b>	<b>Record</b>
¶ 1.a-\$420 charged-off account.	Unpaid.	Exhibit I (credit report).
¶ 1.b-\$1,752 collection account.	Unpaid.	Exhibit I (credit report).
¶ 1.c-\$5,105 charged-off account.	Unpaid.	Exhibit I (credit report).
¶ 1.d-\$669 past-due account.	Placed for collection in Dec. 2005, and remains unpaid. May be same account as ¶ 1.a.	Exhibit I (credit report).
¶ 1.e-\$320 charged-off account.	Paid.	R. 46; Exhibit I (note & security agreement and credit report).
¶ 1.f-\$396 collection account.	Paid.	Exhibit I (cashier's check).
¶ 1.g-\$675 medical collection account.	Unpaid.	Exhibit I (credit report).
¶ 1.h-\$154 collection account.	Unpaid.	Exhibit I (credit report).
¶ 1.i-\$2,321 charged-off account.	Paid.	Exhibit I (credit report).
¶ 1.j-\$15 charged-off account.	Paid.	Exhibit I (receipt and credit report).

To sum up, the table shows Applicant has paid four of the ten delinquent accounts for a total of about \$3,052. The other five or six delinquent accounts remain unpaid for a total of about \$8,775. This accounting is consistent with or similar to Applicant's most recent credit report (Exhibit I), which shows four collection accounts and two profit & loss (charged-off) accounts with balances due for a total of about \$8,779.

5. At the hearing, Applicant described his overall financial situation as "catching up," although a month before the hearing he would have described it as "desperate."<sup>(6)</sup> Asked to identify the root cause or causes of his 1999 Chapter 7 bankruptcy and current financial problems, Applicant candidly admitted that financial irresponsibility was the primary cause.<sup>(7)</sup>

6. During the hearing, and in his posthearing submissions, Applicant presented documentary information showing that his wife was named as a beneficiary in a will for the amount of \$10,000. Applicant and his wife planned to use this windfall to pay off their debts. It appeared this money would be distributed by June 27, 2006,<sup>(8)</sup> however, Applicant has not presented documentary information showing this money was in fact paid to his wife.

### **POLICIES**

The Directive sets forth adjudicative guidelines to consider when evaluating a person's security clearance eligibility, including disqualifying conditions (DC) and mitigating conditions (MC) for each guideline. In addition, each clearance decision must be a fair and impartial commonsense decision based on the relevant and material facts and circumstances, the whole-person concept, and the factors listed in ¶ 6.3.1 through ¶ 6.3.6 of the Directive. 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 those persons to whom it grants access to classified information. The decision to deny a person a security clearance is not a determination of an applicant's loyalty.<sup>(9)</sup> Instead, it is a determination that the applicant has not met the strict guidelines the President has established for granting a clearance.

### **BURDEN OF PROOF**

The only 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.<sup>(10)</sup> There is no presumption in favor of granting or continuing access to classified information.<sup>(11)</sup> The government has the burden of presenting witnesses and other evidence to establish facts alleged in the SOR that have been controverted.<sup>(12)</sup> An applicant is responsible for presenting witnesses and other evidence to refute, explain, extenuate, or mitigate facts that have been admitted or proven.<sup>(13)</sup> In addition, an applicant has the ultimate burden of persuasion to obtain a favorable clearance decision.<sup>(14)</sup>

No one has a right to a security clearance.<sup>(15)</sup> And as noted by the Supreme Court in *Department of Navy v. Egan*, "the clearly consistent standard indicates that security clearance determinations should err, if they must, on the side of denials."<sup>(16)</sup> Under *Egan*, Executive Order 10865, and the Directive, any doubt about whether an applicant should be allowed access to classified information will be resolved in favor of protecting national security.

### **CONCLUSIONS**

Under Guideline F,<sup>(17)</sup> a security concern typically exists for two different types of situations--significant unpaid debts or unexplained affluence. 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, negligent, or careless in properly handling and safeguarding classified information.

Here, based on the record evidence as a whole, the government established its case under Guideline F. As established above, Applicant has a history of not meeting financial obligations as well as inability or unwillingness to pay one's just debts.<sup>(18)</sup> What's notable here is Applicant's incurring of additional delinquent debt after the 1999 Chapter 7 bankruptcy. Although he had the benefit of a "fresh start," he now finds himself back in the same or similar situation with substantial bad debt. It appears the root cause, which Applicant is just beginning to address, is financial irresponsibility.

I reviewed the six mitigating conditions under the guideline and conclude none apply. Although he has paid or resolved four of the ten accounts in the SOR, it is too soon to determine if he has made a good-faith effort to repay or otherwise

resolve his financial problems.<sup>(19)</sup> Time will tell if he will follow through and take the necessary actions to clean up his financial house. Indeed, he currently has six delinquent accounts in a collection or charged-off status for more than \$8,000, which shows his financial irresponsibility is ongoing and not a thing of the past. At this time, the record evidence is insufficient to establish a track record of prudent and responsible financial management that is consistent with holding a security clearance. Accordingly, Guideline F is decided against Applicant.

To conclude, Applicant failed to present sufficient evidence to explain, extenuate, or mitigate the security concern arising from his history of not meeting financial obligations and inability or unwillingness to satisfy debts. And he has not met his ultimate burden of persuasion to obtain a favorable clearance decision. In reaching my decision, I have considered the whole-person concept, the clearly-consistent standard, and the appropriate factors and guidelines in the Directive.

### **FORMAL FINDINGS**

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

SOR ¶ 1-Guideline F: Against Applicant

Subparagraphs a-k: 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.

Michael H. Leonard

Administrative Judge

1. Executive Order 10865, dated February 20, 1960, as amended, and DoD Directive 5220.6, dated January 2, 1992, as amended (Directive).
2. Exhibit 3.
3. R. 56.
4. Exhibit 1.
5. Exhibit 2.
6. R. 64.
7. R. 76.
8. Exhibit G.
9. Executive Order 10865, § 7.
10. ISCR Case No. 96-0277 (July 11, 1997) at p. 2.
11. ISCR Case No. 02-18663 (March 23, 2004) at p. 5.
12. Directive, Enclosure 3, Item E3.1.14.
13. Directive, Enclosure 3, Item E3.1.15.

14. Directive, Enclosure 3, Item E3.1.15.

15. *Department of Navy v. Egan*, 484 U.S. 518, 528 (1988) ("it should be obvious that no one has a 'right' to a security clearance"); *Duane v. Department of Defense*, 275 F.3d 988, 994 (10<sup>th</sup> Cir. 2002) ("It is likewise plain that there is no 'right' to a security clearance, so that full-scale due process standards do not apply to cases such as Duane's.") (citations omitted).

16. 484 U.S. at 531.

17. Directive, Enclosure 2, Attachment 6.

18. Item E2.A6.1.2.1. A history of not meeting financial obligations; and Item E2.A6.1.2. 3. Inability or unwillingness to satisfy debts.

19. Item E2.A6.1.3.6. The individual initiated a good-faith effort to repay overdue creditors or otherwise resolve debts.