

DATE: September 28, 2006

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In re:

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SSN: -----

Applicant for Security Clearance

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CR Case No. 05-15478

## **DECISION OF ADMINISTRATIVE JUDGE**

**LEROY F. FOREMAN**

### **APPEARANCES**

#### **FOR GOVERNMENT**

Edward W. Loughran, Esq., Department Counsel

#### **FOR APPLICANT**

*Pro Se*

### **SYNOPSIS**

Applicant has nine delinquent medical bills that were turned over for collection between June 2001 and May 2002. Although the bills arose from unexpected accidents suffered by his children and his ability to pay them was hampered by periods of unemployment, he offered no evidence of any progress in resolving them, even though he has been steadily employed since December 2003 and now has substantial family income. Security concerns based on financial considerations are not mitigated. Clearance is denied.

### **STATEMENT OF THE CASE**

On March 17, 2006, the Defense Office of Hearings and Appeals (DOHA) issued a Statement of Reasons (SOR) detailing the basis for its preliminary decision to not grant a security clearance to Applicant. 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 alleges security concerns under Guideline F (Financial Considerations), and alleges nine delinquent medical bills totaling about \$27,593. Applicant answered the SOR in writing on April 17, 2006, admitted all the debts, and elected to have the case decided on the written record in lieu of a hearing. Department Counsel submitted the Government's written case on May 19, 2006. A complete copy of the file of relevant material (FORM) was provided to Applicant, and he was afforded an opportunity to file objections and submit material to refute, extenuate, or mitigate the disqualifying conditions. Applicant received the FORM on July 17, 2006, but did not submit any additional information. The case was assigned to me on August 29, 2006.

### **FINDINGS OF FACT**

Based on the entire record, I make the following findings of fact:

Applicant is a 39-year-old employee of a defense contractor. He was married in February 1987 and divorced in April 1995. He remarried in October 2003. He has never held a security clearance.

Applicant's employment history, as reported in his security clearance application, reflects that he was unemployed from October 2000 to November 2001, from December 2002 to July 2003, and from August 2003 to December 2003. He has been employed steadily since December 2003.

Applicant's credit report reflects nine delinquent medical bills totaling about \$27,593, all of which were turned over to collection agencies between June 2001 and May 2002. In his answer to the SOR, he attributed the delinquent debts to "unexpected accidents of [his] two children in the years past" that occurred during his periods of unemployment. He stated that his personal annual income was \$52,572, and his wife's income was almost equal to his.

In response to DOHA interrogatories, Applicant submitted a personal financial statement and a credit report, both dated February 15, 2006. In his personal financial statement, he reported net monthly income of \$5,407.18, expenses of \$3,163, debt payments of \$1,200, and a net monthly remainder of \$1,044. His personal financial statement also reflected three credit card accounts and a total credit card debt of about \$27,910, on which his payments were current. His credit report reflected only one credit card account, with a balance of \$6,342, on which payments were current. This discrepancy between Applicant's personal financial statement and his credit report is not explained in the FORM, but may be attributable to credit card accounts held by his spouse solely in her name.

In his answer to the SOR, Applicant stated he had engaged the services of a debt management service in April 2006, and he intended to "put together a comprehensive plan that will quickly clear up [his] debts." Although he had an opportunity to respond to the FORM by presenting evidence that his "comprehensive plan" was in effect, he submitted nothing.

### 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. "[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. Applicant's financial history establishes both 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 an isolated incident (MC 2). Directive ¶¶ E2.A6.1.3.1., E2.A6.1.3.2. Applicant has multiple 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 periods of unemployment and the medical expenses incurred by his children were circumstances beyond his control, but there is no evidence of reasonable steps to deal with his financial difficulties even though he has been steadily employed since December 2003 and now has substantial family income. 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. The record reflects that Applicant contacted a debt management agency, but there is no evidence the problem is being resolved or is under control. I conclude MC 4 is not established.

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). Although Applicant stated his intent to resolve his financial problems, there is no evidence he has carried out that intent. 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 the general adjudicative guidelines in the Directive ¶ E2.2.1. In considering the "nature, extent, and

seriousness of the conduct," I have considered that Applicant has numerous delinquent debts that were turned over for collection as early as June 2001. In considering "the frequency and recency" of his conduct, I have considered that none of his many delinquent debts have been resolved. I have considered that Applicant is a mature adult. Although he claims he is not vulnerable to pressure, coercion, exploitation, or duress, it is clear that he is heavily in debt, with more than \$27,000 in family credit card and personal credit card debt of at least \$6,342, in addition to the delinquent medical bills alleged in the SOR. Lastly, in considering the likelihood of continuation or recurrence, I have noted the absence of evidence that he has benefitted from the credit counseling he recently sought. 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 financial considerations. Accordingly, I conclude he has not carried his burden of showing that it is clearly consistent with the interests of national interest to grant him a security clearance.

### **FORMAL FINDINGS**

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

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

### **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 Applicant a security clearance. Clearance is denied.

LeRoy F. Foreman

Administrative Judge