

DATE: December 27, 2006

---

In Re:

-----

SSN: -----

Applicant for Security Clearance

---

ISCR Case No. 05-16897

**DECISION OF ADMINISTRATIVE JUDGE**

**MATTHEW E. MALONE**

**APPEARANCES**

**FOR GOVERNMENT**

Emilio Jaksetic, Esquire, Department Counsel

**FOR APPLICANT**

*Pro Se*

**SYNOPSIS**

Applicant has delinquent debts in excess of \$150,000, which resulted from a failed real estate and rental property venture between 1996 and 2000. This debt is what remains from over \$1 million in assets, the rest of which he was able to liquidate. Applicant has not acted to pay or resolve these debts on advice from his attorney. Applicant's personal finances are otherwise excellent, and he has significant financial assets and income that make it unlikely he would resort to illegal acts to generate funds to satisfy the debts from his failed business. Clearance is granted.

**STATEMENT OF THE CASE**

After reviewing the results of Applicant's background investigation, adjudicators for the Defense Office of Hearings and Appeals (DOHA) were unable to make a preliminary affirmative finding<sup>(1)</sup> it is clearly consistent with the national interest to give Applicant a security clearance. On February 28, 2006, DOHA issued to Applicant a Statement of Reasons (SOR) alleging facts that raise security concerns addressed in the Directive under Guideline F (financial considerations).

Applicant timely responded to the SOR, admitted with explanation, all but five of the 17 allegations therein, and requested a hearing. This case was originally assigned to another administrative judge on May 25, 2006, but transferred to me on June 9, 2006. I convened a hearing on August 2, 2006, at which the parties appeared as scheduled. The government presented four exhibits (Gx1 - 4), and Applicant testified in his own behalf and introduced a single 16-page exhibit (Ax A). DOHA received the transcript (Tr) on August 10, 2006.

**FINDINGS OF FACT**

Applicant's admissions in response to the SOR are incorporated herein as facts. After a thorough review of the pleadings, transcript, and exhibits, I make the following additional findings of fact:

Applicant is 57 years old and has worked for the same company since 1982 as a quality and safety inspector. He has held a security clearance without incident the entire time, and now earns about \$115,000 annually. His personal assets include a home with a mortgage of about \$180,000, but which is now worth at least \$500,000. He also recently bought an unimproved lot for \$25,000, using a loan from his 401(k) plan. The lot is now worth at least \$100,000. Applicant recently sold a different lot and realized a \$52,000 profit after settlement. He also has retirement savings and investment plans worth at least \$500,000, and a collection of classic automobiles conservatively valued at \$110,000. After monthly expenses, Applicant estimates he has about \$1,600 remaining. <sup>(2)</sup>

Applicant was married to his first wife twice. They were married the first time in 1969, and re-married in 1982, but divorced again in 1995. They had two sons, both now in their 30's. Applicant married his current wife in 1999. They have two children under six years old. <sup>(3)</sup>

In the 1990s, Applicant lived and worked in another state. Around 1996, he and his two sons went into business together, buying houses to use as rental property. Applicant intended that his sons would manage the business and realize income from it. At one point, he owned 23 such properties, which Applicant estimates totaled about \$1.1 million dollars in value. The business worked well for the first few years, as Applicant and his sons realized about 95% occupancy and few major tenant problems. However, the business began to fail in 2000, when Applicant was transferred to his current location, and after he and his sons had a falling out over Applicant's new wife. Over the next two years, Applicant was able to sell off or resolve through foreclosure about \$800,000 worth of properties, and he spent at least \$100,000 of his own money trying to keep current on the mortgages of his unoccupied properties as he tried to wind up the business.

Applicant still owes several significant debts as a result of the failure of his rental property enterprise. Collection companies are seeking from Applicant a total of about \$2,400 in unpaid utility bills (SOR ¶¶ 1.a - 1.d). He owes about \$143,000 in debts remaining from mortgage foreclosures and home equity loans acquired during the business (SOR ¶¶ 1.h - 1.k, 1.m, 1.n), and a civil judgment, still unpaid, for \$6,750 was entered against Applicant in February 2002 (SOR ¶ 1.l). Credit reports obtained during Applicant's background investigation show seven other properties were foreclosed, but there is no indication he owes anything on those accounts. <sup>(4)</sup> Finally, Applicant returned a truck he had bought for use by his sons in managing the properties. He and the lender agreed to a settlement of the remaining debt whereby Applicant paid about half what was owed (SOR ¶ 1.p). <sup>(5)</sup>

As to the civil judgment, Applicant asserts he and his lawyer have tried without success to contact the plaintiffs <sup>(6)</sup> to arrange a settlement. Also, Applicant was unaware of the foreclosure debts until he was interviewed during his background investigation. The collection agencies who hold the utility debts have refused Applicant's efforts to negotiate lower payments given that the collectors bought these accounts receivable for much less than the amount they are trying to collect. Applicant's attorney advised him not to pay the collection agencies or the other debts related to the foreclosure of his properties. Applicant allowed at hearing that he now questions the wisdom of that advice, and may start paying the debts because he has the resources to do so. <sup>(7)</sup>

### **POLICIES AND BURDEN OF PROOF**

The Directive sets forth adjudicative guidelines <sup>(8)</sup> to be considered in evaluating an applicant's suitability for access to classified information. Security clearance decisions must reflect consideration of both disqualifying and mitigating conditions under each adjudicative issue applicable to the facts and circumstances of each case. Each decision must also reflect a fair and impartial common sense consideration of the factors listed in Section 6.3 of the Directive. <sup>(9)</sup> The presence or absence of a disqualifying or mitigating condition is not determinative of a conclusion for or against an applicant. However, specific applicable guidelines should be followed whenever a case can be measured against them as they represent policy guidance governing the grant or denial of access to classified information.

A security clearance decision is intended to resolve whether it is clearly consistent with the national interest <sup>(10)</sup> for an applicant to either receive or continue to have access to classified information. The government bears the initial burden of producing admissible information on which it based the preliminary decision to deny or revoke a security clearance

for an applicant. Additionally, the government must be able to prove controverted facts alleged in the SOR. If the government meets its burden, the burden then shifts to the applicant to refute, extenuate or mitigate the government's case. Because no one has a "right" to a security clearance, an applicant bears a heavy burden of persuasion.<sup>(11)</sup> 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 judgement, reliability and trustworthiness of one who will protect the national interests as his or her own. The "clearly consistent with the national interest" standard compels resolution of any reasonable doubt about an applicant's suitability for access in favor of the government.<sup>(12)</sup>

## CONCLUSIONS

**Financial Considerations.** The government alleged Applicant should be disqualified because there is a significant amount of debt attributable to him from the remnants of his failed rental property enterprise. With the exception of SOR ¶¶ 1.e, 1.f, 1.g, and 1.o, the government presented sufficient information to support the allegations in the SOR. I accept Applicant's testimony that he has no knowledge of and does not owe the debt listed in SOR ¶ 1.g. Further, the debts listed in SOR ¶¶ 1.e and 1.f are duplicates of those listed in SOR ¶¶ 1.c and 1.a, respectively. SOR ¶ 1.c is also duplicated in SOR ¶ 1.o. Nonetheless, the government's information in support of the remaining allegations raises security concerns addressed in the Directive under Guideline F. Specifically, an applicant who is financially overextended through delinquent debt and poor personal financial management may be at risk of engaging in illegal acts to generate funds to resolve their fiscal difficulties.<sup>(13)</sup> These facts further warrant consideration of Guideline F disqualifying condition (DC) 1.<sup>(14)</sup> He has a history of not meeting financial obligations, but only in the sense the debts at issue have existed for up to six years now. He otherwise has paid his debts and met his financial obligations. I have specifically concluded that DC 3<sup>(15)</sup> does not apply here, because available information shows Applicant acted to pay or resolve a large portion of his real estate obligations, and he has the means to do pay the debts listed in the SOR.

In response, the Applicant presented information sufficient to warrant application of Guideline F mitigating condition (MC) 3.<sup>(16)</sup> The debts listed stemmed directly from a business downturn he could not have foreseen. Additionally, Applicant has addressed directly the central issues to be resolved under Guideline F - whether Applicant is overextended financially, and, if so, whether he is at risk for engaging in illegal acts to generate funds with which to resolve his financial problems. It appears from all of the available information that Applicant is not financially overextended despite, carrying more than \$100,000 in unpaid obligations. Against the debts listed in the SOR, which are his only known delinquencies, he presents about \$1.3 million in assets and a positive monthly cash flow.

Further, Applicant has the resources to easily pay the listed debts, but has not done so on advice of his attorney. Whether that advice is sound is subject to debate, but it reasonably accounts for Applicant's relative inaction regarding the listed debts. However, it also appears Applicant took what action he could when his business was failing and resolved the great majority of his financial problems. The facts herein constitute the only known financial difficulty Applicant has had, and he otherwise has managed his personal finances in a sound and prosperous manner. Based on all of the foregoing, I conclude there is little likelihood he is at risk to act against the national interests to resolve his debts.

**Whole Person.** I have assessed the facts presented in this record and have applied the appropriate adjudicative factors, pro and con, under Guideline F. I have also reviewed the record before me in the context of the whole person factors listed in Directive, Section 6.3. I conclude that Applicant is a mature, responsible person as evidenced by the fact he has worked most of his adult life with the same company, and has held a clearance without incident for more than 20 years. Notwithstanding the debts from his failed business, it appears he has always addressed his finances in a prudent manner, resulting in financial security and no other unpaid obligations. The government does not inquire about a person's finances to ensure he is debt free. Rather, this information must be viewed in its proper context; namely, to assess whether there is an unacceptable security risk posed by an applicant's financial condition. The presence of unpaid debts, regardless of the amount, does not, without more, create such a risk. The examination must also consider an applicant's judgment and responsiveness when faced with such financial adversity. Indeed, circumstances may exist where a person with far less debt is at far greater risk of improper conduct because he has failed to act prudently or the debts resulted from his own poor judgment. That is not the case here.

A fair and commonsense assessment<sup>(17)</sup> of Applicant's financial problems, taken in the context of all of the information before me shows that the Applicant has satisfactorily addressed the government's reasonable doubts about his ability to protect classified information, and to exercise the requisite good judgment and discretion expected of one who holds a security clearance. In light of all available information about Applicant's finances, I conclude Applicant has satisfactorily addressed the government's concerns in this regard.

### **FORMAL FINDINGS**

Formal findings regarding each SOR allegation are as follows:

Paragraph 1, Guideline F (Financial): FOR THE APPLICANT

Subparagraph 1.a: For the Applicant

Subparagraph 1.b: For the Applicant

Subparagraph 1.c: For the Applicant

Subparagraph 1.d: For the Applicant

Subparagraph 1.e: For the Applicant

Subparagraph 1.f: For the Applicant

Subparagraph 1.g: For the Applicant

Subparagraph 1.h: For the Applicant

Subparagraph 1.I: For the Applicant

Subparagraph 1.j: For the Applicant

Subparagraph 1.k: For the Applicant

Subparagraph 1.l: For the Applicant

Subparagraph 1.m: For the Applicant

Subparagraph 1.n: For the Applicant

Subparagraph 1.o: For the Applicant

Subparagraph 1.p: For the Applicant

Subparagraph 1.q: For the Applicant

### **DECISION**

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

Matthew E. Malone

Administrative Judge

1. Required by Executive Order 10865, as amended, and by DoD Directive 5220.6 (Directive), as amended.

2. Ax. A.
3. Applicant's current wife is 36 years old.
4. Gx. 2, Gx. 4.
5. Applicant's response to the SOR; Tr., 42. Also, the debt is listed in a credit report generated in 2004 (Gx. 4), but does not appear in a more recent credit report (Gx. 2).
6. Plaintiffs financed the sale of a property to Applicant. The debt is the remainder due after they foreclosed on the mortgage of the property.
7. Tr., 57 - 59.
8. Directive, Enclosure 2.
9. Commonly referred to as the "whole person" concept, these factor are as follows:
  1. Nature and seriousness of the conduct and surrounding circumstances.
  2. Frequency and recency of the conduct.
  3. Age of the applicant.
  4. Motivation of the applicant, and the extent to which the conduct was negligent, willful, voluntary, or undertaken with knowledge of the consequences involved.
  5. Absence or presence of rehabilitation.
  6. Probability that the circumstances or conduct will continue or recur in the future;
10. *See Department of the Navy v. Egan*, 484 U.S. 518 (1988).
11. *See Egan*, 484 U.S. at 528, 531.
12. *See Egan*; Directive E2.2.2.
13. Directive, E2.A6.1.1.
14. Directive, E2.A6.1.2.1. A history of not meeting financial obligations;
15. Directive, E2.A6.1.2.3. Inability or unwillingness to satisfy debts;
16. Directive, 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).
17. Directive, E2.2.3.