

DATE: November 20, 2006

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In re:

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SSN: -----

Applicant for Trustworthiness Determination

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P Case No. 05-17036

## **DECISION OF ADMINISTRATIVE JUDGE**

**JUAN J. RIVERA**

### **APPEARANCES**

#### **FOR GOVERNMENT**

Candace Lei, Esq., Department Counsel

#### **FOR APPLICANT**

*Pro Se*

### **SYNOPSIS**

Applicant has a history of failing to meet his financial obligations dating back to 1997. As of the date he answered the SOR, he had seven accounts, totaling approximately \$21,008, that have been delinquent for many years. Except for a dismissed 1998 Chapter 13 bankruptcy filing, he presented no evidence of efforts to settle, to pay, or to otherwise revolve his delinquent debts. Applicant's evidence is insufficient to show he is in control of his finances, is not overextended, and that he has a track record of financial responsibility. Eligibility for assignment to public-trust position is denied.

### **STATEMENT OF THE CASE**

On May 21, 2006, the Defense Office of Hearings and Appeals (DOHA) issued Applicant a Statement of Reasons (SOR) alleging facts which raise security concerns under Guideline F (Financial Considerations). The SOR informed Applicant that, based on information available to the Government, DOHA adjudicators could not make a preliminary affirmative finding that it is clearly consistent with the national interest to grant his eligibility for a public-trust position. [\(1\)](#)

On April 10, 2006, Applicant answered the SOR (Answer), admitted allegations 1.a, 1.d, 1.g, and 1.h. He denied allegations 1.b, 1.c, 1.e, and 1.f, and requested a clearance decision based on the written record without a hearing. On May 4, 2006, Department Counsel prepared a File of Relevant Material (FORM) which was mailed to Applicant on May 10, 2006. He acknowledged receipt of the FORM on June 5, 2006, and did not object to anything contained in the FORM or submit additional information for consideration within the 30-day period provided to him. On July 14, 2006, the case was assigned to another administrative judge. Due to scheduling concerns, the case was reassigned to me on July 19, 2006.

### **FINDINGS OF FACT**

Applicant's admissions are incorporated herein as findings of facts. After a thorough review of the pleadings and the

evidence, I make the following additional findings of facts:

Applicant is a 54-year-old, computer analyst working for a government contractor. He is divorced and apparently has no children.<sup>(2)</sup> He enlisted in the U.S. Army in April 1972 and was honorably discharged in April 1974 at the rank of E-4. It is not clear from Applicant's Office of Personnel Management Public Trust Position Application (SF 85P)<sup>(3)</sup> whether he served on active duty or in the Army Reserve.<sup>(4)</sup> In 1999, Applicant was hired as a computer operator by a Department of Defense (DOD) contractor, and now works as an Operations Analyst for the same employer. There is no evidence Applicant has mishandled or compromised classified information while in the Army or at his current job.

As a result of his employment, in October 2003, Applicant submitted an SF 85P. In his answers to SF 85P question 19, Applicant disclosed he filed for Chapter 13 bankruptcy in August 1997.<sup>(5)</sup> The subsequent background investigation addressed Applicant's 1997 bankruptcy filing,<sup>(6)</sup> his March 2004 credit bureau report (CBR),<sup>(7)</sup> and his February and May 2006 CBRs.<sup>(8)</sup>

Applicant stated he was forced to file for bankruptcy protection because he lost his job and was unemployed for one and one-half years. At the time he lost his job, he was financially overextended with a substantial amount of debt. Based on the advice of his attorney, he filed for Chapter 13 bankruptcy protection in May 1997. Applicant's Schedule F (Creditors Holding Unsecured Nonpriority Claims) shows that he listed 11 delinquent debts owing approximately \$47,924, for delinquent credit card debt, consumer credit lines, and telephone services. In December 1998, the court found Applicant had failed to make his bankruptcy payments, declared him in default, and dismissed the bankruptcy. SOR allegations 1.b, 1.c, and 1.e concern delinquent debts that were included in Applicant's 1997 bankruptcy filing and were not discharged.

After his failed bankruptcy attempt, Applicant did not contact any of the creditors included in the failed bankruptcy. As of April 2006, the date he answered the SOR, Applicant had not attempted to pay, settle, or otherwise resolve any of the delinquent debts included in the bankruptcy. He claimed he did not understand the meaning of having the bankruptcy dismissed. In his letter to the administrative judge, dated April 10, 2006, Applicant implied that the statute of limitations applies to those debts he listed in his 1997 bankruptcy filing.<sup>(9)</sup> He presented no evidence to show that any of the debts he listed in his 1997 bankruptcy filing are now unenforceable.

The March 2004 CBR shows Applicant had four delinquent debts that had been referred for collection or charged off as bad debt. One of the debts concerned SOR allegation 1.c, a 1999 collection account for \$2,894. Another concerned SOR allegation 1.d, an \$827 collection account opened in 1995. Applicant's May 2006 CBR shows two 2006 accounts in collection, owing \$54 and \$56, and the debt alleged in SOR subparagraph 1.d, as a collection for \$827.

In May 2004, as part of his background investigation, Applicant provided a statement to a government investigator in which he stated he has been continuously employed since 1997 and that he has been able to pay all his current debts on time.

The SOR charges eight allegations, one concerns the dismissed bankruptcy filing, and the remaining seven allegations concern delinquent debts that have been in collection for many years. After considering Applicant's limited evidence, I find that SOR allegations 1.b, 1.c, 1.d, 1.e, 1.f, 1.g, and 1.h, are Applicant's outstanding debts. He failed to present evidence to show that he has paid off, or that he has made any effort to resolve any of these debts. Furthermore, there is no information as to how he intends to prevent his financial difficulties from happening again.

## POLICIES

The Directive sets forth adjudicative guidelines which must be considered in evaluating an Applicant's eligibility for access to classified information. The administrative judge must take into account both disqualifying and mitigating conditions under each adjudicative guideline applicable to the facts and circumstances of the case. The guidelines are not viewed as inflexible ironclad rules of law. The presence or absence of a disqualifying or mitigating condition is not determinative of a conclusion for or against an Applicant. Each decision must reflect a fair and impartial common sense consideration of the factors listed in Section 6.3 of the Directive, and the whole person concept. Having considered the

record evidence as a whole, I conclude Guideline F (Financial Considerations)<sup>(10)</sup> is the applicable relevant adjudicative guideline.

### **BURDEN OF PROOF**

The purpose of a security clearance decision is to determine whether it is clearly consistent with the national interest to grant or continue an applicant's eligibility for access to classified information.<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 to ensure each applicant possesses the requisite judgement, reliability and trustworthiness of one who will protect the national interests as his or her own.

The government has the initial burden of proving controverted facts alleged in the SOR. To meet its burden, the government must establish by substantial evidence<sup>(12)</sup> a prima facie case that it is not clearly consistent with the national interest for the applicant to have access to classified information. The responsibility then shifts to the applicant to refute, extenuate or mitigate the government's case. Because no one has a right to a security clearance, the applicant carries a heavy burden of persuasion.<sup>(13)</sup> 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.<sup>(14)</sup>

### **CONCLUSIONS**

Under Guideline F (Financial Considerations), a security concern exists when a person has significant unpaid debts. An individual who is financially overextended is at risk to engage in illegal or unethical acts to generate funds to meet financial obligations.<sup>(15)</sup> Similarly, an individual who is financially irresponsible may also be irresponsible, unconcerned, or careless in his obligation to protect classified information. Behaving responsibly or irresponsibly in one aspect of life can often indicate how a person may behave in other aspects of life.

Applicant has a history of failing to meet his financial obligations dating back to 1997. In 2004, he was confronted by a government investigator about his financial problems, and was made aware of the government's concerns about his financial situation. He stated his intent not to pay off delinquencies he had included in his bankruptcy.

As of April 2006, when he submitted his response to the SOR, Applicant still had over 13 outstanding delinquencies owing more than \$47,924, most of which he has been carrying since his failed bankruptcy. Additionally, based on the two 2006 CBRs, he has three new debts in collection that remain unpaid. Applicant's financial problems are recent, not isolated, and ongoing. Applicant's unwillingness or inability to honor his financial obligations is evidenced by the delinquent debts he has been carrying for years, and his failure to show meaningful efforts to repay creditors or otherwise resolve his financial situation. Financial Considerations Disqualifying Condition (FC DC) E2.A6.1.2.1: *A history of not meeting financial obligations*; and FC DC E2.A6.1.2.3: *Inability or unwillingness to satisfy debts*, apply in this case.

Applicant raised one mitigating factor that may be considered as a circumstance beyond his control contributing to his inability to pay his debts -- i.e., he lost his job and was unemployed for one-and-one-half years. Financial Considerations Mitigating Condition (FC 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)*, applies.

Notwithstanding the circumstance beyond his control, Applicant's evidence is not sufficient to show he has dealt responsibly with his financial obligations. Other than his failed bankruptcy attempt, Applicant presented little evidence of paid debts, settlements, negotiations, payment plans, budgets, financial assistance/counseling, or that he has otherwise made meaningful efforts to resolve his financial situation. Furthermore, in light of Applicant's three recent delinquent debts, he failed to present sufficient evidence to show he is not overextended or that his financial problems will not be a concern in the future. I note that Applicant's CBRs show he is up to date on most of his current financial obligations. However, Applicant's financial history and lack of favorable evidence preclude a finding that he has established a track record of financial responsibility.

I have carefully weighed all evidence, and I applied the disqualifying and mitigating conditions as listed under the applicable adjudicative guidelines. I specifically considered Applicant's two years of honorable service to his country, his age, his job as operations analyst, Applicant's statements, his limited efforts to rectify his financial situation, and the fact that there is no evidence that he ever mishandled or caused the compromise of classified information. Considering all available information, and the whole person concept, I find Applicant has not mitigated the Guideline F security concern.

### **FORMAL FINDINGS**

Formal findings regarding each SOR allegation as required by Directive Section E3.1.25 are as follows:

Paragraph 1, Financial Considerations (Guideline F) AGAINST APPLICANT

Subparagraphs 1.a - 1.h: 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 Applicant's eligibility for assignment to a public-trust position. Eligibility is denied.

Juan J. Rivera

Administrative Judge

1. Required by Executive Order 10865, *Safeguarding Classified Information Within Industry* (Feb. 20, 1960, as amended, and Department of Defense Directive 5220.6, *Defense Industrial Personnel Security Clearance Review Program* (Jan. 2, 1992) (Directive), as amended.
2. Applicant disclosed no children in his Office of Personnel Management Public Trust Position Application, Standard Form (SF) 85P.
3. Gov. Item 4.
4. Office of Personnel Management Public Trust Position Application, Standard Form (SF) 85P.
5. In his response to question 20, Applicant failed to disclosed that he had debts over 180 days delinquent during the last seven years.
6. Gov. Item 7.
7. Gov. Item 10.
8. Gov. Items 8 and 9.
9. Gov. Item 3.
10. Directive, ¶ E2.A6.1.1.
11. *See Department of the Navy v. Egan*, 484 U.S. 518, 531 (1988).
12. ISCR Case No. 98-0761, at p. 2 (December 27, 1999)(Substantial evidence is more than a scintilla, but less than a preponderance of the evidence.); ISCR Case No. 02-12199, at p. 3 (April 3, 2006)(Substantial evidence is such relevant evidence as a reasonable mind might accept as adequate to support a conclusion in light of all the contrary evidence in the record.); Directive, ¶ E3.1.32.1.
13. *Egan*, 484 U.S. 518, at 528, 531.

14. *See Egan*; Directive, ¶ E2.2.2.

15. Directive, ¶ E2.A6.1.1.