

DATE: November 14, 2006

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In re:

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SSN: -----

Applicant for Security Clearance

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CR Case No. 06-05641

**DECISION OF ADMINISTRATIVE JUDGE**

**NOREEN A. LYNCH**

**APPEARANCES**

**FOR GOVERNMENT**

Gina L. Marine, Esq., Department Counsel

**FOR APPLICANT**

*Pro Se*

**SYNOPSIS**

Applicant is a 45-year-old employee of a defense contractor who has delinquent debts totaling \$31,063, despite filing for bankruptcy in 1990, 1997, and 1998. He provided no explanation or documentation to mitigate the security concerns arising from his financial difficulties. Clearance is denied.

**STATEMENT OF THE CASE**

On July 21, 2005, Applicant submitted his security clearance application.<sup>(1)</sup> On April 18, 2006, the Defense Office of Hearings and Appeals (DOHA) issued a Statement of Reasons (SOR) to Applicant.<sup>(2)</sup> The SOR detailed reasons why DOHA could not make the preliminary affirmative finding under the Directive that it is clearly consistent with the national interest to grant or continue a security clearance for Applicant because of security concerns arising under Guideline F (Financial Considerations).

In a sworn, written statement, dated May 15, 2006, Applicant responded to the allegations in the SOR. He elected to have his case decided on the written record in lieu of a hearing. Department Counsel submitted the government's written case on September 22, 2006. Applicant was provided a complete copy of the file of relevant material (FORM)<sup>(3)</sup>, along with notice of his opportunity to file objections and submit material to refute, extenuate, or mitigate the government's case. Applicant received the FORM on October 4, 2006. He submitted an additional sworn response on October 20, 2006. The case was assigned to me on November 1, 2006.

**FINDINGS OF FACT**

Applicant admitted the factual allegations pertaining to financial matters under Guideline F (subparagraphs 1.a. through 1.l.) of the SOR, with the exception of 1.d., 1.e., and 1.f.<sup>(4)</sup> Those admissions are incorporated as findings of fact. After a complete and thorough review of the evidence in the record, I make the following additional findings of fact:

Applicant is a married, 45-year-old employee of a defense contractor.<sup>(5)</sup> He has been employed with the same company since September 1980, maintaining a Confidential clearance. His current position title is a "chipper" in a shipyard. He has two adopted children.<sup>(6)</sup>

In September 1990, Appellant filed for Chapter 7 bankruptcy. This resulted in the discharge of an unknown amount of debt in December 1990. The record does not contain the discharge documents. Seven years later, Applicant petitioned for Chapter 13 bankruptcy, but it was dismissed on February 5, 1998. On January 4, 1999, Applicant petitioned for another Chapter 7 bankruptcy. His debt of \$8,736 was discharged in April 1999.<sup>(7)</sup>

Applicant did not report any period of unemployment on his security application. He did not present any information or facts concerning the origin of his debts. His outstanding unpaid debts are as follows: ¶ 1.d, a balance owed after a repossession of his automobile in the amount of \$16,547; ¶ 1.e, a collection account in the amount of \$11,353; ¶ 1.f, a civil judgement in the amount of \$1,250; ¶ 1.g, collection account in the amount of \$158.00; ¶ 1.h, a civil judgement card in the amount of \$125; ¶ 1.i, charged off collection account in the amount of \$558; ¶ 1.j, charged off account in the amount of \$41; ¶ 1.k, collection account in the amount of \$998; ¶ 1.l, collection account in the amount of \$33. The debts and the judgments are reflected on Applicant's 2005 and 2006 credit reports.<sup>(8)</sup>

Applicant's monthly (gross) salary is not reflected in the record. He did not provide a personal financial statement nor explanation or evidence of payments or a structured repayment plan for the delinquent debts. He reports he thought the Calvary and HSBC accounts were in the latest bankruptcy and he does not owe that amount. Applicant claimed he did not know about some of the creditors including Knox and Dominion. Finally, he stated he would try to resolve the debts for the medical providers. He reported the delinquent accounts, but he has not paid even the smallest debt listed on his recent credit report.<sup>(9)</sup>

## POLICIES

Enclosure 2 of the Directive sets forth adjudicative guidelines to be considered in the evaluation of security suitability. In addition to brief introductory explanations for each guideline, the adjudicative guidelines are divided into those that may be considered in deciding whether to deny or revoke an individual's eligibility for access to classified information (disqualifying conditions) and those that may be considered in deciding whether to grant an individual's eligibility for access to classified information (mitigating conditions).

An administrative judge need not view the adjudicative guidelines as inflexible ironclad rules of law. Instead, acknowledging the complexities of human behavior, these guidelines, when applied in conjunction with the factors set forth in the Adjudicative Process provision set forth in Section

E.2.2, Enclosure 2, of the Directive, are intended to assist the administrative judge in reaching fair and impartial common sense decisions. Because the entire process is a conscientious scrutiny of a number of variables known as the "whole person concept," all available, reliable information about the person, past and present, favorable and unfavorable, should be considered in making a meaningful decision.

The Adjudicative Process factors to consider are: (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 individual'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. Protecting national security is the paramount concern in reaching a decision in any case, and is dependent upon the primary standard that issuance of a clearance must be clearly consistent with the interest of national security.

Based upon a consideration of the evidence as a whole, I find the following adjudicative guidelines pertinent to an evaluation of the facts of this case:

**Guideline F - Financial Consideration: An individual who is financially overextended is at risk of having to engage in illegal acts to generate funds.**

Initially, the Government must present evidence to establish controverted facts in the SOR that disqualify or may disqualify the applicant from being eligible for access to classified information.<sup>(10)</sup> If the government meets its burden, the heavy burden of persuasion then falls upon the applicant to present evidence in refutation, explanation, extenuation, or mitigation sufficient to overcome the doubts raised by the government's case, and to ultimately demonstrate that it is clearly consistent with the national interest to grant or continue the applicant's clearance.<sup>(11)</sup>

A person who seeks access to classified information enters into a fiduciary relationship with the government predicated upon trust and confidence. It is a relationship that transcends normal duty hours and endures throughout off-duty hours as well. It is because of this special relationship that the government must be able to repose a high degree of trust and confidence in those individuals to whom it grants access to classified information. Decisions under this Directive include, by necessity, consideration of the possible risk that an applicant may deliberately or inadvertently fail to protect or safeguard classified information. Such decisions entail a certain degree of legally permissible extrapolation as to potential, rather than actual, risk of compromise of classified information. Any doubt about whether an applicant should be allowed access to classified information must be resolved in favor of national security.<sup>(12)</sup>

One additional comment is worthy of note. Applicant's allegiance, loyalty, and patriotism are not at issue in these proceedings. Section 7 of Executive Order 10865 specifically provides that industrial security clearance decisions shall 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 allegiance, 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 allegiance, loyalty or patriotism.

### CONCLUSIONS

Upon consideration of all the facts in evidence, and after application of all appropriate adjudicative factors, I conclude the following with respect to each allegation set forth in the SOR.

#### **Financial Considerations**

The government has established its case under Guideline F. Applicant accumulated debt over a period of 15 years. He has a history of not meeting his financial obligations, leading to numerous judgments and delinquent debts. I conclude the available evidence is sufficient to raise Financial Considerations Disqualifying Condition (FC DC) E2.A.6.1.2.1 (*a history of not meeting financial obligations*), and FC DC E2.A6.1.2.3 (*inability or unwillingness to satisfy debts*).

The security concerns arising from Applicant's financial difficulties can be mitigated. However, the delinquent debts remain unpaid over a period of years and are recent. Thus, Financial Considerations Mitigating Condition (FC MC) E2.A6.1.3.1 (*the behavior is not recent*) and FC MC E2.A6.1.3.2 (*it was an isolated incident*) do not apply in this case.

Applicant has been employed and does not provide any evidence to suggest that medical or other events beyond his control contributed to his longstanding debt. Thus, he failed to establish 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, a business turndown, unexpected medical emergency, or a death, divorce, or separation)*).

Applicant did not receive financial counseling or establish a debt repayment program. He did attempt to resolve his debt through bankruptcy. This is a legally permissible method of resolving debt. However, despite three attempts he has post bankruptcy debt in the amount of approximately \$31,063. FC MC E2.A6.1.3.4 (*the person has received or is receiving counseling for the problem and there are clear indications that the problem is being resolved or is under control*) does not apply.

Finally, Applicant did not provide any proof of payment or a structured plan to resolve his debts beyond a statement that he would try to resolve the medical debts. He has not met his burden of proof to show any good-faith efforts to repay overdue creditors. FC MC E2.A6.1.3.6 (*the individual initiated a good-faith effort to repay overdue creditors or otherwise resolve debts*) does not apply.

I balanced all the factual circumstances and applied them to the adjudicative criteria established in the Regulation in light of the whole person concept. I conclude Applicant has not mitigated the security concerns arising from the financial considerations, and it is accordingly decided against Applicant.

### **FORMAL FINDINGS**

Formal findings for or against Applicant on the allegations set forth in the SOR, as required by Section E3.1.25 of Enclosure 3 of the Directive, are:

Paragraph 1, Guideline F: 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

Subparagraph 1.h: Against Applicant

Subparagraph 1.I: Against Applicant

Subparagraph 1.j: Against Applicant

Subparagraph 1.k: Against Applicant

Subparagraph 1.l: 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.

**Noreen A. Lynch**

**Administrative Judge**

1. Item 5 (Applicant's Security Clearance Application (SF 86), dated September 13, 2005) at 1-24.
2. This action was taken under Executive Order 10865, dated February 20, 1960, as amended, and DoD Directive 5220.6, dated January 2, 1992, as amended and modified (Directive).
3. The government submitted seven items in support of its contentions.
4. Item 3 (Applicant's Answer, dated May 15, 2006) at 1-2.
5. Item 4 (Applicant's Security Clearance Application (SF 86), dated January 12, 2004 ) at 1-7.
6. *Id* at 14.

7. *Id.* at 1-2.

8. Item 6 (Credit report, dated March 15, 2006) at 1-3; and Item 7 (Credit report, dated September 26, 2005) at 1-8.

9. Applicant's response to FORM, dated October 20, 2006) at 1-3.

10. Directive, ¶ E3.1.14.

11. ISCR Case No. 94-1075 (August 10, 1995) at 3-4; Directive, Enclosure 3, ¶ E3.1.15.

12. Directive, Enclosure 2, ¶ E2.2.2