

DATE: December 27, 2006

---

In re:

-----

SSN: -----

Applicant for Security Clearance

---

ISCR Case No. 06-06244

## **DECISION OF ADMINISTRATIVE JUDGE**

**JACQUELINE T. WILLIAMS**

### **APPEARANCES**

#### **FOR GOVERNMENT**

Robert E. Coacher, Esq., Department Counsel

#### **FOR APPLICANT**

*Pro Se*

### **SYNOPSIS**

Applicant is a 28-year-old electrical engineer employed by a defense contractor since March 2005. He has seven outstanding debts totaling approximately \$19,567. He married in April 2004, his wife became pregnant in July 2004, and two months later she lost her job. A two-family income became a one-family income. Subsequently, several debts were incurred, which became delinquent and unpaid. Applicant is seeking a better paying job, which will enable him to more quickly recover from his financial hardship, which is evidence of a future promise to pay his debts rather than a concrete payment of some part of the debts. Applicant has not mitigated the financial considerations security concerns. Clearance is denied.

### **STATEMENT OF THE CASE**

On May 5, 2005, Applicant applied for a security clearance and completed a Security Clearance Application (SF 86).<sup>(1)</sup> On June 22, 2006, the Defense Office of Hearings and Appeals (DOHA) issued a Statement of Reasons (SOR) to Applicant, pursuant to Executive Order 10865, *Safeguarding Classified Information Within Industry*, dated February 20, 1960, as amended and modified, and Department of Defense Directive 5220.6, *Defense Industrial Personnel Security Clearance Review Program* (Directive), dated January 2, 1992, as amended and modified. The SOR detailed reasons under Guideline F (Financial Considerations) 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, and recommended referral to an Administrative Judge to determine whether a clearance should be granted or revoked.

Applicant responded to the SOR allegations in a signed and date-stamped document received by DOHA, Columbus, OH, on July 10, 2006, and elected to have his case decided on the written record in lieu of a hearing.<sup>(2)</sup> Department Counsel submitted the Government's written case on August 17, 2006. A complete copy of the file of relevant material (FORM)<sup>(3)</sup> was provided to Applicant, and he was afforded an opportunity to file objections and submit material in refutation, extenuation, or mitigation. He had 30 days to respond to the FORM. He chose not to respond. The case was assigned to me on November 1, 2006.

## FINDINGS OF FACT

Applicant admitted the factual allegations pertaining to financial considerations under Guideline F cited in the SOR, subparagraphs 1.a through 1.g. Those admissions are incorporated herein as findings of fact. After a complete and thorough review of the evidence in the record, and upon due consideration of same, I make the following findings of fact:

Applicant is a 28-year-old electrical engineer who has worked for a defense contractor since March 2005. He received his bachelor of science in engineering from a well-known university in April 2004. He married in April 2004 and their child was born in April 2005.

A March 22, 2006, credit bureau report, which serves as the basis of the allegations in the SOR, indicated that Applicant has seven delinquent debts, totaling approximately \$19,567.12. The debts at issue are these:

¶ **1.a/Telephone debt (\$333.00)** This account was charged off as a bad debt in about August 2004. As of March 22, 2006, this debt had not been satisfied.

¶ **1.b/Bank debt (\$1,259.00)** This account was charged off as a bad debt in September 2004. As of March 22, 2006, this debt had not been satisfied.

¶ **1.c/Bank debt (\$7,969.00)** This account was charged off as a bad debt in October 2004. As of March 22, 2006, this debt had not been satisfied.

¶ **1.d/Collection account (\$1,972.00)** This account was placed for collection in November 2004. As of March 22, 2006, this debt had not been satisfied.

¶ **1.e/Credit card debt (\$1,529.00)** This account was charged off as a bad debt in November 2004. As of March 22, 2006, this debt had not been satisfied.

¶ **1.f/Bank credit card (\$5,471.12)** This account was charged off as a bad debt on March 17, 2005. As of November 2005, this debt had not been satisfied.

¶ **1.g/Bank credit card (\$1,034.00)** This account was placed for collection in December 2005. As of March 22, 2006, this debt had not been satisfied.

Applicant indicated that his financial situation took a downturn when his wife became pregnant in July 2004. Subsequently, in August 2004, she lost her job and was unable to find other employment. As a result, a two-family income became a one-family income and the above-mentioned debts were incurred, which became delinquent and unpaid. Their child was born in April 2005. The record is devoid of information as to whether his wife has returned to work. Applicant indicated in his SF 86 that his current employment is a better paying job, which will enable him too more quickly recover from his financial hardship and pay off these delinquent debts. There is no evidence that any payments have been made on these outstanding debts.

## POLICIES

Enclosure 2 of the Directive sets forth adjudicative guidelines to be considered in evaluating a person's eligibility to hold a security clearance. Included in the guidelines are disqualifying conditions (DC) and mitigating conditions (MC) applicable to each specific guideline. Additionally, each security clearance decision must be a fair and impartial commonsense decision based on the relevant and material facts and circumstances, the whole-person concept, along with the factors listed in the Directive. Specifically these are: (1) the nature and seriousness of the conduct and surrounding circumstances; (2) the frequency and recency of the conduct; (3) the age of the applicant; (4) the motivation of the applicant, and the extent to which the conduct was negligent, willful, voluntary, or undertaken with knowledge of the consequences; (5) the absence or presence of rehabilitation; and (6) the probability that the circumstances or conduct will continue or recur in the future. Although the presence or absence of a particular condition or factor for or against

clearance is not outcome determinative, the adjudicative guidelines should be followed whenever a case can be measured against the policy guidance.

The sole purpose of a security clearance determination is to decide if it is clearly consistent with the national interest to grant or continue a security clearance for an applicant.<sup>(4)</sup> The Government has the burden of proving controverted facts.<sup>(5)</sup> The burden of proof is something less than a preponderance of evidence.<sup>(6)</sup> Once the Government has met its burden, the burden shifts to an applicant to present evidence of refutation, extenuation, or mitigation to overcome the case against

him.<sup>(7)</sup> Additionally, an applicant has the ultimate burden of persuasion to obtain a favorable clearance decision.<sup>(8)</sup>

No one has a right to a security clearance<sup>(9)</sup> and "the clearly consistent standard indicates that security clearance determinations should err, if they must, on the side of denials."<sup>(10)</sup> Any reasonable doubt about whether an applicant should be allowed access to sensitive information must be resolved in favor of protecting such sensitive information.<sup>(11)</sup> The decision to deny an individual a security clearance is not necessarily a determination as to the loyalty of an applicant.<sup>(12)</sup> It is merely an indication that the applicant has not met the strict guidelines the President and the Secretary of Defense have established for issuing a clearance.

Based upon consideration of the evidence, I find the following adjudicative guidelines most pertinent to the evaluation of the facts in the case:

**Guideline F (Financial Considerations):** *The Concern:* An individual who is financially overextended is at risk of having to engage in illegal acts to generate funds. Unexplained affluence is often linked to proceeds from financially profitable criminal acts.

Conditions that could raise a security concern and may be disqualifying, as well as those which would mitigate security concerns, pertaining to the adjudicative guideline are set forth and discussed in the conclusions below.

## CONCLUSIONS

I have carefully considered all the facts in evidence and the legal standards, and I reach the following conclusions.

Under Guideline F, a security concern exists for an individual who is financially overextended. The person 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 unconcerned, negligent, or careless in properly handling and safeguarding classified information. Applicant has a history of financial problems. The current delinquent debts listed on his credit report total approximately \$19,567. Thus, Financial Considerations Disqualifying Conditions (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.

Various conditions can mitigate security concerns arising from financial difficulties. Applicant's delinquent debts total \$19,567. Applicant indicated that his financial situation encountered major difficulties when his wife became pregnant in July 2004. Subsequently, in August 2004, she lost her job and was unable to find other employment. As a result, a two-family income became a one-family income and several debts were incurred, which became delinquent and unpaid. Their child was born in April 2005. Applicant indicated in his SF 86 that his current employment is a better paying job, which will enable him to more quickly recover from his financial hardship and pay off these delinquent debts. However, Applicant has not participated in financial counseling to explore how best to manage his money and pay off his delinquent debts. He has not contacted his overdue creditors to negotiate a repayment plan or otherwise resolve his debts. Thus, I find Financial Considerations Mitigating Conditions (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 downturn, unexpected medical emergency, or a death, divorce or separation)*) applies. However, 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*) and E2.A6.1.3.6 (*the individual initiated a good-faith effort to repay overdue creditors or otherwise resolve debts*) do not apply.

I have considered all the evidence in the case. I have also considered the "whole person" concept in evaluating Applicant's risk and vulnerability in protecting our national interests. More important, his finances do not pose an unacceptable or potential security risk. Armed with \$19,567 in delinquent debt, Applicant has not made any attempts to pay off his financial obligations. He is currently seeking a better paying job, which will enable him to more quickly recover from his financial hardship. However, a better paying job is a future promise to pay his debts rather than a concrete payment of some part of the debts. The record is devoid of any of the debts being partially paid off. In balancing all the information of record, I conclude Applicant has not mitigated the security concerns arising from his financial difficulties. Based on the evidence of record, it is not clearly consistent with the national interest to grant Applicant a security clearance. For the reasons stated, I conclude Applicant is not suitable for access to classified information.

### **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 (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 of the circumstances in the case, it is not clearly consistent with the national interest to grant or continue a security clearance for Applicant. Clearance is denied.

Jacqueline T. Williams

Administrative Judge

1. Item 4 (Security Clearance Application, dated May 5, 2005).
2. Item 3 (Applicant's Answer, signed and date stamped as received by DOHA, Columbus, OH, on July 10, 2006).
3. The Government submitted six items in support of the allegations in the SOR.
4. ISCR Case No. 96-0277 (July 11, 1997) at p. 2.
5. ISCR Case No. 97-0016 (December 31, 1997) at p. 3; Directive, Enclosure 3, ¶ E3.1.14.
6. *Department of the Navy v. Egan*, 484 U.S. 518, 531 (1988).
7. ISCR Case No. 94-1075 (August 10, 1995) at pp. 3-4; Directive, Enclosure 3, ¶ E3.1.15.
8. ISCR Case No. 93-1390 (January 27, 1995) at pp. 7-8; Directive, Enclosure 3, ¶ E3.1.15.

9. *Egan*, 484 U.S. at 531.

10. *Id.*

11. *Id.*; Directive, Enclosure 2, ¶ E2.2.2.

12. Executive Order 10865 § 7.