

DATE: January 27, 2007

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In re:

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SSN: -----

Applicant for Security Clearance

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ISCR Case No. 06-09650

## **CISION OF ADMINISTRATIVE JUDGE**

**ERIN C. HOGAN**

### **APPEARANCES**

#### **FOR GOVERNMENT**

Robert E. Coacher, Department Counsel

#### **FOR APPLICANT**

*Pro Se*

### **SYNOPSIS**

At the time the SOR was issued, Applicant had approximately nine delinquent accounts with a total approximate balance of \$14,504. After the SOR was issued, he disputed three of the debts with a credit reporting agency. They were deleted from the credit report. The majority of the debts remain unresolved. Applicant failed to mitigate the security concerns arising from his financial situation. Clearance is denied.

### **STATEMENT OF CASE**

On August 17, 2006, the Defense Office of Hearings and Appeals (DOHA) issued to Applicant a Statement of Reasons (SOR) stating they were unable to find that it is clearly consistent with the national interest to grant or continue a security clearance. [\(1\)](#) The SOR, which is in essence the administrative complaint, alleges security concerns under Guideline F, Financial Considerations.

In a sworn statement dated September 5, 2006, Applicant responded to the SOR allegations and requested a hearing. The case was assigned to another administrative judge on October 16, 2006, and transferred to me on October 20, 2006. A notice of hearing was issued on November 14, 2006, scheduling the hearing for December 4, 2006. The hearing was conducted on that date. The government submitted three exhibits that were marked as Government Exhibits (Gov Ex) 1-3, and admitted without objection. Applicant testified on his behalf, and submitted four exhibits which were marked as Applicant Exhibits (AE) A-D and admitted without objection. DOHA received the hearing transcript (Tr.) on December 12, 2006.

### **FINDINGS OF FACT**

In his SOR response, Applicant admits to all of the allegations in the SOR. Applicant's admissions are incorporated herein. In addition, after a thorough and careful review of the pleadings, exhibits, and testimony, I make the following findings of fact:

Applicant is a 30 year old employee of a defense contractor seeking to obtain a security clearance. He is an unmanned aerial vehicle system specialist and has been employed with his current employer since August 2004. He has attended some college courses. From August 1996 to August 2000, he served on active duty in the United States Army as unmanned aerial vehicle operator. He separated with an honorable discharge at the rank of E-4. (2) He is married and has one daughter, age four. His daughter is being tested to assess whether she has autism. (3) He and his wife are expecting their second child in April 2007. (4)

On September 20, 2004, Applicant submitted a security clearance application. (5) He disclosed that he had delinquent debts on his security clearance application. A subsequent background investigation disclosed the following delinquent debts: a \$341 credit card account charged off in March 1999 (SOR ¶ 1.a); a \$2,002 credit card account placed for collection in January 2000 (SOR ¶ 1.b); a \$1,287 credit card account charged off in March 2000 (SOR ¶ 1.c); a \$68 video rental store account placed for collection in July 2000 (SOR ¶ 1.d); a \$6,001 account related to a voluntary automobile repossession placed for collection in June 2001 (SOR ¶ 1.e); a \$189 electric bill charged off in June 2001 (SOR ¶ 1.f); a \$308 telephone account placed for collection in September 2001 (SOR ¶ 1.g); a \$2,372 credit card account placed for collection in January 2002 (SOR ¶ 1.h); and a \$1,936 credit card account placed for collection in October 2003 (SOR ¶ 1.i). (6)

On June 30, 2006, Applicant responded to interrogatories sent to him from the Defense Office of Hearings and Appeals. The interrogatories asked him what he had done to resolve each delinquent debt. Applicant indicated that he had done nothing. He stated that he could not pay these bills until he gets his clearance so he can go to Iraq. (7)

At the hearing, Applicant provided sufficient evidence to support payment of the debt alleged in SOR ¶ 1.d. (8) After the SOR was issued, he formally disputed the debts alleged in SOR ¶¶ 1.b, 1.c and 1.e with a credit reporting agency. These accounts were deleted from his credit report. (9) He initially listed these three debts on his September 20, 2004, security clearance application. (10) He also admitted to the debts in his answer to the SOR. Although there is no indication why the debts were deleted from his credit report, it appears they were deleted based on the passage of time rather than the debts being resolved. He admits that he still owes all of the remaining debts. (11) He hopes to pay off these accounts from the extra money he earns when he is stationed in Iraq. He needs a security clearance to be stationed in Iraq. (12)

Applicant's financial problems began while on active duty in the Army. He made several poor financial choices. In 1997, he bought a car he could not afford which he ultimately voluntarily turned into the dealer. He learned after the dealer resold that car that he owed \$4,000. He did not pay this account, and with interest accruing the account grew to approximately \$6,000. (13) This account which is alleged in SOR ¶ 1.e was removed from his credit report after he disputed it. He also over extended himself in credit card debt. (14) Upon marrying in 2002, he became more financially disciplined. In August 2006, he and his wife consulted a mortgage lender. They would like to buy a home but currently the terms of a loan would not be favorable based on Applicant's credit history. (15)

Applicant claims that it was difficult for him to repay his accounts because of decision he made to transfer jobs. In July 2002, he transferred to another job and was laid off three months later in October 2002. This occurred when his wife was eight months pregnant. He took another job with lesser pay so he could support the family. (16)

In his current position, Applicant works 40 hours a week and makes \$22.20 per hour. His wife does not work. She just finished her undergraduate degree and is completing an internship. (17) Applicant describes their current financial situation as "just getting by." He pays \$750 a month in rent, and has a \$325 monthly car payment. (18) His employer provides health insurance. (19) No further information was provided about his finances.

## POLICIES

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 (20)

information." In Executive Order 10865, *Safeguarding Classified Information Within Industry* (Feb. 20, 1960), the President set out guidelines and procedures for safeguarding classified information within the executive branch.

To be eligible for a security clearance, an applicant must meet the security guidelines contained in the Directive. Enclosure 2 of the Directive sets forth personnel security guidelines, as well as the disqualifying conditions and mitigating conditions under each guideline. The adjudicative guideline at issue in this case is:

Guideline F, Financial Considerations: An individual who is financially overextended is at risk of having to engage in illegal acts to generate funds. <sup>(21)</sup>

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

"The adjudicative process is an examination of a sufficient period of a person's life to make an affirmative determination that the person is eligible for a security clearance." <sup>(22)</sup> An administrative judge must apply the "whole person concept," and consider and carefully weigh the available, reliable information about the person. <sup>(23)</sup> An administrative judge should consider the following factors: (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. <sup>(24)</sup>

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>(25)</sup> Thereafter, the applicant is responsible for presenting evidence to rebut, explain, extenuate, or mitigate the facts admitted by the applicant or proven by Department Counsel. The applicant has the ultimate burden of persuasion as to obtaining a favorable clearance decision. <sup>(26)</sup> "Any doubt as to whether access to classified information is clearly consistent with national security will be resolved in favor of the national security." <sup>(27)</sup>

A person granted access to classified information enters into a special relationship with the government. 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. The decision to deny an individual a security clearance is not a determination as to the loyalty of the applicant. It is merely an indication that the applicant has not met the strict guidelines the President has established for issuing a clearance.

## CONCLUSIONS

With respect to Guideline F, the government established its case. Applicant has a history of financial problems. Since 1999, he has incurred nine delinquent accounts with an approximate balance of \$14,504. His financial problems support the application of 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*).

Several conditions could mitigate the security concerns raised by Applicant's financial delinquencies. Neither Financial Considerations Mitigating Conditions (FC MC) E2.A6.1.3.1 (*The behavior was not recent*); or FC MC E2.A6.1.3.2 (*It was an isolated incident*) applies. Applicant did not start to resolve his debts until after the SOR was issued. Three debts, SOR ¶¶ 1.b, 1.c and 1.e, were deleted from his credit report after he disputed them. However, he initially listed these debts on his security clearance application, and admitted they were his debts in response to the SOR. It appears they might have been taken off the credit report due to the passage of time rather than Applicant paying these accounts. Aside from the \$68 debt alleged in SOR ¶ 1.d, all the other delinquent debt remains outstanding. His financial troubles cannot be described as isolated due to the fact that he has several unresolved delinquent debts.

Applicant's ability to repay his debts were caused, in part, by incidents that were beyond his control. As such, 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*)), partially applies. Being laid off in October 2002, when his wife was eight months pregnant affected his ability to pay his delinquent accounts since he accepted a job which paid less than his previous job. However, most of these accounts became delinquent around 2000 when Applicant was single. He never took action to resolve these accounts until after the SOR was issued. As such, I give MC 3 little weight.

I cannot apply 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 under control*). Although Applicant consulted a mortgage lender about the possibility of purchasing a home, he never attended any formal financial counseling. It is unlikely that Applicant's debts will be resolved in the near future since he testified that he and his wife are just getting by.

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 because Applicant has taken no action to resolve most of his delinquent accounts. Applicant expects that he can pay these debts off after he gets his security clearance and is deployed to Iraq. However, a promise to pay in the future is not sufficient to mitigate the security concern under financial considerations. In order to be entrusted with a security clearance, it is Applicant's burden to mitigate the security concern under Guideline F. He has not made a good-faith effort to resolve his delinquent accounts.

Applicant has not met his burden to mitigate the security concern raised under financial considerations. Guideline F is decided against Applicant.

### **Whole Person Factors**

In all adjudications, the protection of our national security is the paramount concern. The objective of the trustworthy determination process is the fair-minded, common-sense assessment of a person's life to make an affirmative determination that the person is eligible for assignment to sensitive duties. Indeed, the adjudicative process is a careful weighing of a number of variables in considering the "whole person" concept. It recognizes that we should view a person by the totality of their acts, omissions, motivations and other variables. Each case must be adjudged on its own merits, taking into consideration all relevant circumstances, and applying sound judgment, mature thinking, and careful analysis.

I have considered all the evidence and the "whole person" in evaluating Applicant's security worthiness. It is premature to grant Applicant a security clearance because security concerns remain under the financial considerations regarding his unresolved delinquent accounts. Based on the evidence in the record, it is not clearly consistent with the national interest to grant Applicant 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: AGAINST APPLICANT

Subparagraph 1.a: Against Applicant

Subparagraph 1.b: Against Applicant

Subparagraph 1.c: Against Applicant

Subparagraph 1.d: For 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

## 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.

Erin C. Hogan

Administrative Judge

1. 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).
2. Tr. at 5, 31-32; Gov Ex 1.
3. Tr. at 24.
4. Tr. at 29.
5. Gov Ex 1.
6. Gov Ex 2, 3, AE A, B, C, and D.
7. Gov Ex 2.
8. Tr. at 17; Gov 2 at 3.
9. AE A.
10. Gov Ex 1 questions # 35 and 38.
11. Tr. at 16-21.
12. Tr. at 22.
13. Tr. at 18-20.
14. Tr. at 26.
15. Tr. at 26- 27.
16. Tr. at 27-28.
17. Tr. at 24-25.
18. *Id.*
19. Tr. at 24.
20. *Department of the Navy v. Egan*, 484 U.S. 518, 527 (1988).
21. Directive, ¶ E2.A6.1.1.

22. Directive, ¶ E2.2.1.

23. *Id.*

24. *Id.*

25. Directive, ¶ E3.1.14.

26. Directive, ¶ E3.1.15.

27. Directive, ¶ E.2.2.2.