

DATE: January 31, 2007

In re:

SSN: -----

Applicant for Security Clearance

ISCR Case No. 06-11054

ECISION OF ADMINISTRATIVE JUDGE

NOREEN A. LYNCH

APPEARANCES

FOR GOVERNMENT

Emilio Jaksetic, Esq., Department Counsel

FOR APPLICANT

Pro se

SYNOPSIS

Applicant is a 37-year-old associate systems engineer working for a defense contractor. He had four alleged debts listed in the statement of reasons (SOR) totaling approximately \$11,100. He began his debt repayment plan in 2005. He currently has no legally enforceable, delinquent debts. His debt problems resulted from medical emergencies and periods of unemployment. For the last two years he has shown his financial responsibility by not generating any new delinquent debt. Applicant has mitigated security concerns arising under financial considerations. Clearance is granted.

STATEMENT OF THE CASE

On October 18, 2004, Applicant applied for a security clearance and submitted a Security Clearance Application (SF 86). On September 29, 2006, the Defense Office of Hearings and Appeals (DOHA) issued a Statement of Reasons (SOR) to him, pursuant to Executive Order 10865, *Safeguarding Classified Information Within Industry*, 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 why, under Guideline F (Financial Considerations) of the revised Adjudicative Guidelines issued on December 29, 2005, and implemented by the Department of Defense, effective September 1, 2006, DOHA could not make the preliminary affirmative finding under the Directive that it is clearly consistent with the national interest to continue a security clearance for Applicant. The revised guidelines were provided to Applicant when the SOR was issued. Applicant answered the SOR on October 18, 2006, and elected to have a hearing before an administrative judge. The case was assigned to me on November 17, 2006. I scheduled a hearing for December 20, 2006.

The hearing was convened as scheduled on December 20, 2006 to consider whether it is clearly consistent with the national interest to grant or continue a security clearance for Applicant. Three government exhibits (Ex. 1-3) were admitted. Applicant's eight exhibits (Ex. A-H) were admitted into the record without objection. Testimony was taken from Applicant and one witness (a senior supervisor at the company where Applicant works) on Applicant's behalf, as reflected in the hearing transcript (Tr.) received on January 3, 2007.

FINDINGS OF FACT

Applicant's admissions to the allegations in the SOR, ¶ 1.a through 1.d are incorporated herein. He denied allegation 1.e because he had no information on such an account.⁽¹⁾ In addition, after a thorough and careful review of the evidence and exhibits, I make the following findings of fact:

Applicant is a 37-year-old associate systems engineer working for a defense contractor. He is married, and has two children.⁽²⁾ He held a security clearance for many years without incident in the military, law enforcement, and government. Applicant earned a high school diploma and graduated from college in 2002.⁽³⁾

In 1987, at age 17, Applicant joined the United States Navy. He served six years, and was honorably discharged in 1993. He pursued his degree in electrical engineering after he left the military, and from 1994 until 1999, he worked as a correctional officer to support himself. In August 1995, while he was in school, he married. His wife had two children, and Applicant adopted them as his own.⁽⁴⁾

Early in his marriage, his wife experienced a series of serious medical conditions that ultimately put them in an untenable financial situation. The couple were living within their means but without a large safety margin. His wife had severe asthma attacks that required hospital stays during 1995, 1996, 1997, and 1998.⁽⁵⁾ During the early years of the marriage, Applicant worked, but experienced short periods of unemployment while he attended school. When his wife became ill she could not work, reducing the family of four to one income. As a result, Applicant could not meet all his financial obligations. He paid his car loan and all necessities, but made a choice to defer four credit accounts. However, he was determined to complete his college education to improve his long term financial prospects.⁽⁶⁾

In 1996, finances became a problem. A credit card debt to Navy Federal Credit Union, worth approximately \$1,700 became delinquent and was charged off as a bad debt in 2000. Applicant's BNA Mastercard, worth approximately \$3,200 was also charged off. His First USA Visa, worth approximately \$5,000. was charged off.⁽⁷⁾ A credit card debt to SWBT, worth approximately \$1,200 was charged of as a bad debt.⁽⁸⁾

In 1997, he sought counseling from a credit bureau and put together a plan and a realistic budget. He could not pursue a debt consolidation plan because the monthly payment equaled his entire paycheck and left no money for his daily necessities. The medical bills were overwhelming from his wife's numerous hospitalizations, doctor visits, prescriptions, and copays. Applicant decided to contact a bankruptcy attorney to explore more options. He did not consider filing for bankruptcy but wanted to know his legal options and general information concerning collection accounts. He tried to work with creditors and to make payments on the Navy Federal credit card and the MBNA card.⁽⁹⁾

Based on the attorney's advice, he formulated a plan for repayment in 1997. He initially paid the smaller near term debts to improve his credit rating and benefit from better interest rates. Applicant made a conscious choice to repay them in a lump sum. His business judgment was to limit the damage from the four delinquent credit accounts and keep his credit rating in a good position, by paying on all other debts. His concern was to protect his overall credit rating and stability based on financial advice.⁽¹⁰⁾ This plan was thwarted in part due to an injury his wife received at work in 1997. For nearly six months she had no income. At that point, he could not continue to pay on the credit card accounts.⁽¹¹⁾ He destroyed his credit cards in 1997.

From 1998 until 2002, when Applicant graduated from college, he and his wife made ends meet. In 2000, Applicant had periods of unemployment. He worked as a research aide in 2002 and 2003. This did not provide a large income, but he was gainfully employed.⁽¹²⁾ During this period of time, Applicant stayed in contact with the creditors. He provided address changes. He did not consider any settlement offers because he wanted to pay an account in a lump sum. Unfortunately, he never had the amount that would suffice as a lump sum settlement. He at no time believed he abandoned his debts, nor did he claim to use the statute of limitations as a defense. He believed he kept his financial damage controlled and isolated. He received notifications that three of his credit accounts had been transferred to a collection group. At that time he contacted First USA, but was referred to Chase. Despite repeated requests, he has not received information or clarification on the one First USA account. Admittedly, Applicant has not made any payments

on these four delinquent credit accounts to date. [\(13\)](#)

In 2002, after graduating from college, Applicant again sought credit counseling because he wanted to repay his delinquent debts from 1996. He obtained a credit report and met with the counselors to discuss options. He learned that two accounts were transferred to a collection agency. Since he was adamant that bankruptcy was an irresponsible vehicle, he adhered to his repayment plan. His rationale compelled him to at all costs keep his credit rating high and deal with the debts that were legally unenforceable due to the statute of limitations when he could pay them in a lump sum. He relied on advice to stay away from high interest rate pay off plans. He was hyper vigilant against falling prey to unethical or illegal collection procedures. He also required the exact amount of the debt in writing with a note that there would be no further collection attempts. [\(14\)](#)

When Applicant completed his application for security clearance, he reported the information on the four delinquent accounts with full knowledge that it was off his credit report. He was truthful and complete in answering the questions by listing several other delinquent debts from 2003, not listed in the SOR, that were also not showing on his credit report. In 2004, Applicant started his current employment as an engineer. His wife was looking for a job. His salary almost doubled. However, his move from his home to another state created many moving and initial start up expenses. His salary permitted him to stay afloat financially and start his repayment plan. In March 2005, he began payments on delinquent debt. He paid \$2,500 toward the debt until September 2005. [\(15\)](#) At that time, his wife was injured in a near fatal automobile accident. He was forced to stop the repayment plan and use his savings to pay for medical expenses. Applicant's wife could not work and he was now reduced to one income. She has undergone three major surgeries. The latest surgery was in June 2006. [\(16\)](#) He used any savings to stay financially afloat.

Applicant is highly recommended by his employer. He is rated as an outstanding engineer and a reputable person. He has the full support of his manager, a former Navy commander with 30 years experience. His three years of employment are unblemished. He received a performance bonus for 2006. He has excellent potential and opportunity for advancement in the defense industry. [\(17\)](#)

Applicant earns approximately \$3,000 net a month. [\(18\)](#) Today, Applicant lives frugally and has not acquired any significant debt other than his home mortgage. His 2006 credit bureau report does not note any past due or delinquent accounts. [\(19\)](#) He is current on his mortgage and his car loan. His student loans are in forbearance. His credit rating is approaching excellent. He is financially stable. His only delinquent debts are the four credit accounts that are nearly 10 years old. He accepts responsibility for paying those debts, despite the fact that the statute of limitations has run and they are no longer legally enforceable.

POLICIES

The revised Adjudicative Guidelines (AG) set forth set forth both disqualifying conditions and mitigating conditions 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, extent and seriousness of the conduct and surrounding circumstances; (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 extent to which participation is voluntary, (6) the presence or absence of rehabilitation and other permanent 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. 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 this 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. [\(20\)](#) The government has the burden of proving controverted facts. [\(21\)](#) The burden of proof is something less than a preponderance of evidence. [\(22\)](#) 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

her. (23) Additionally, an applicant has the ultimate burden of persuasion to obtain a favorable clearance decision. (24)

No one has a right to a security clearance (25) and "the clearly consistent standard indicates that security clearance determinations should err, if they must, on the side of denials." (26) Any reasonable doubt about whether an applicant should be allowed access to sensitive information must be resolved in favor of protecting such sensitive information. (27) The decision to deny an individual a security clearance is not necessarily a determination as to the loyalty of an applicant. (28) 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 security clearance.

CONCLUSIONS

I have carefully considered all the facts in evidence and the legal standards. Based upon consideration of the evidence, I find Guideline F of the revised AG most pertinent to the evaluation of the facts in this case. That guideline reads in pertinent part:

Guideline F - Financial Considerations. The Concern: *Failure or inability to live within one's means, satisfy debts, and meet financial obligations may indicate poor self-control, lack of judgment, or unwillingness to abide by rules and regulations, all of which can raise questions about an individual's reliability, trustworthiness and ability to protect classified information. An individual who is financially overextended is at risk of having to engage in illegal acts to generate funds.* (29)

In this matter, the government provided substantial evidence that Applicant accrued four delinquent debts that are now ten years old. He admits they are still outstanding debts. Consequently, Financial Considerations Disqualifying Condition (FC DC), AG ¶ 19(a), (*inability or unwillingness to satisfy debts*) and FC DC, ¶ 19(c), (*a history of not meeting financial obligations*) apply.

With the government's case established, the burden shifts to Applicant to present evidence of refutation, extenuation, or mitigation to overcome the case against him. Several incidents occurred in Applicant's life since his 1995 marriage over which he had no control. His wife's many medical emergencies, loss of her income and his periods of unemployment are not in dispute. Such incidents contributed to Applicant's acquisition of delinquent debt. He never questioned the legitimacy of the debts despite the fact that they are now legally unenforceable. In 1997, he began his quest for sound financial counseling that would address the debt and allow him to keep his family stable. He paid what debts he could and researched all the options. He refused to consider bankruptcy. His repayment plan consisted of paying near term smaller debts first. Therefore, FC MC, AG ¶ 20(b), (*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) and the individual acted responsibly under the circumstances*) applies.

Applicant's four credit card debts became delinquent in 1996 in a short period of time. Applicant admitted that he made a conscious choice and some hard financial decisions when confronted with his periods of unemployment and his wife's medical emergencies. His goal to keep his finances as stable as possible and keep a good credit rating was firm. He did not deviate from his plan, although he realized it may not be perceived as the best route. He realized that the financial situation would be scrutinized by security officials and still he kept his eye on his repayment plan. This repayment plan meant he would not settle the accounts until he had the lump sum. The bad debts occurred over a period of a few months almost ten years ago. He has managed to not incur other delinquencies despite more medical emergencies. His credit rating is good. He completed his degree and has a professional engineering position with a good income and chance for advancement. He was open and honest during his security application process. He has maintained a security clearance for years without incidence. Therefore, Financial Considerations Mitigating Condition (FC C), ¶ AG 20(a), (*the behavior happened so long ago, was so infrequent, or occurred under such circumstances that it is unlikely to recur and does not cast doubt on the individual's current reliability, trustworthiness, or good judgment*) applies.

Applicant received financial counseling several times. He could not avail himself of a debt consolidation plan in 1997

because he did not have the income to make the monthly payment. He did not want to avail himself of bankruptcy. He never ignored the creditors. Taking advice from a bankruptcy attorney, he learned as much as possible about collections and how it could affect him financially. After receiving advice from a credit bureau, he decided to repay all near term debt before tackling the larger, older debt. Also, he feared certain payment plans (due to high interest rates), and insisted on a plan that would allow him to pay each delinquent account in a lump sum. He began repayment in 2005 on other debts totaling \$2,500. Due to a near fatal accident that his wife had and more medical bills, he stopped the repayment plan temporarily. He now is situated to pay the first of the four credit card debts in full. FC MC, AG ¶ 20(c) (*the person has received or is receiving counseling for the problem and/ or there are clear indications that the problem is being resolved or is under control*) does apply to some extent.

In the past years, Applicant's resolve was to pay all his current bills and concentrate scarce resources toward necessities and honor his immediate creditors. He received advice concerning a consolidation loan in 1997 but did not have sufficient income to implement the plan. Granted, he was employed but he still decided it was financially sound to make a lump payment sum. The settlement offers he received were not within his reach. In 2005, he began paying his debts. This good-faith effort was temporarily suspended due to his wife's accident and more medical bills. He now will continue with his plan. Therefore, FC MC, ¶ 20(d), (*the individual initiated a good-faith effort to repay overdue creditors or otherwise resolve debts*) applies to a small degree.

The issue before me is not whether Applicant is still legally liable for any or all of his outstanding debts, but whether he has presented sufficient evidence of extenuation, mitigation or changed circumstances to warrant a favorable security clearance decision. His remaining unpaid debt does not constitute a security risk. In 2005, he began repayment of his delinquent debt and due to the unforeseen accident, his plan was temporarily suspended. He has a professional position with a good income and stands ready to proceed with his repayment plan.

I have considered both the record and Applicant in light of the "whole person" concept. He is an earnest, mature man who served his country. He maintained a security clearance for many years without adverse incident. He is currently in a professional position in the defense contractor industry. He persevered to complete his education and support his family through the times of medical emergencies and period of unemployment. He did his best to seek financial solutions that would work for him in the long term. His testimony at the hearing was candid and straightforward. At the hearing he acknowledged the financial delinquencies would be considered a negative. He is open, honest and has not hidden the situation. He firmly believes he is handling his debt properly and his plan meets state and federal guidelines. He believes this is a reasonable way to resolve the debts. He has not incurred any other delinquent debt in two years. His financial circumstances have improved. The potential for pressure, coercion, exploitation, or duress is low. He is current on his financial obligations, and has a very positive employment history since 2004. Changes resulting from counseling and greater awareness of financial responsibilities will result in a continuously improving trend of financial circumstances.

In sum, the likelihood of new debt problems is low. Applicant's financial case shows his willingness to utilize his repayment plan to resolve his delinquent debts, even though he is not legally required to pay them because of the state statute of limitations. However, four SOR debts remain unpaid and not resolved (except by applying the statute of limitations). After weighing the disqualifying and mitigating conditions, and all the facts and circumstances, in the context of the whole person, I conclude he has mitigated the security concerns pertaining to financial considerations. Clearance is granted.

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): FOR APPLICANT

Subparagraph 1.a. For Applicant

Subparagraph 1.b. For Applicant

Subparagraph 1.c. For Applicant

Subparagraph 1.d. For Applicant

Subparagraph 1.e. For Applicant

DECISION

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

Noreen A. Lynch.

Administrative Judge

1. Applicant's response to the SOR, dated October 18, 2006.
2. Government Ex. 1 (Security Clearance Application, dated October 18, 2004) at 1-12; Tr. 11-13.
3. *Id.* at 3-5.
4. *Id.*
5. Government Ex. 2 (Applicant's response to Interrogatories, dated July 7, 2006) at 5; Applicant Ex. E.
6. *Id.*
7. Response to SOR, *supra*, note 3 at 1.
8. *Id.*
9. Tr.15-19.
10. Tr. 54-58.
11. Tr. 66.
12. Ex. 1, *supra* note 2 at 4-6.
13. Ex. 2, *supra* note 5 at 5.
14. Tr. 56-58.
15. Applicant Ex. F (Bank checking statement, dated March 2005) at 1-4.
16. Applicant Ex. A-D (Medical information, including procedures, notes, and statements) at 1-9.
17. Testimony of witness at Tr. 39-45.
18. Government Ex. 2 (Personal Financial Statement, dated 2006) at 1.
19. Government Ex. 3 (Credit Bureau Report, dated September 15, 2006)at 1-3.
20. ISCR Case No. 96-0277 at 2 (App. Bd. Jul 11, 1997).
21. ISCR Case No. 97-0016 at 3 (App. Bd. Dec 31, 1997); Directive, Enclosure 3, ¶ E3.1.14.
22. *Department of the Navy v. Egan*, 484 U.S. 518, 531 (1988).

23. ISCR Case No. 94-1075 at 3-4 (App. Bd. Aug 10, 1995); Directive, Enclosure 3, ¶ E3.1.15.

24. ISCR Case No. 93-1390 at 7-8 (App. Bd. Jan 27, 1995); Directive, Enclosure 3, ¶ E3.1.15.

25. *Egan*, 484 U.S. 518, at 531.

26. *Id.*

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

28. Executive Order 10865 § 7.

29. AG ¶ 18.