

DATE: January 31, 2007

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In Re:

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SSN: -----

Applicant for Security Clearance

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ISCR Case No. 06-13473

**ECISION OF ADMINISTRATIVE JUDGE**

**CLAUDE R. HEINY**

**APPEARANCES**

**FOR GOVERNMENT**

Richard A. Stevens, Esq., Department Counsel

**FOR APPLICANT**

*Pro Se*

**SYNOPSIS**

Applicant accumulated delinquent debts between 1999 and 2003. His inability to repay the debts arose largely from circumstances beyond his control, including periods of unemployment in

2001, 2002, and 2003. Since obtaining his current job, he has paid more than \$6,700 on his student loan obligation. Applicant has mitigated the security concerns arising from his financial difficulties. Clearance is granted.

**STATEMENT OF THE CASE**

On June 30, 2006, the Defense Office of Hearings and Appeals (DOHA) issued a Statement of Reasons (SOR) to Applicant, stating that DOHA could not make the preliminary affirmative finding [\(U\)](#) it is clearly consistent with the national interest to grant or continue a security clearance for Applicant. The SOR set forth reasons why a security clearance could not be granted or continued due to Financial Considerations security concerns.

On July 27, 2006, Applicant answered the SOR and requested a hearing. On September 18, 2006, I was assigned the case. On September 18, 2006, a Notice of Hearing was issued for the hearing held on October 19, 2006. On October 31, 2006, DOHA received a copy of the transcript (Tr.). The record was kept open to allow Applicant to submit additional documents, which were received on October 25, 2006. Department Counsel having no objections, the documents were admitted into evidence.

**FINDINGS OF FACT**

The SOR alleges security concerns for Financial Considerations. Applicant admits owing the 22 accounts listed in the SOR, which had been placed for collection or charged off and total approximately \$72,000. The admissions are incorporated herein as findings of fact. After a thorough review of the entire record, I make the following additional findings of fact:

Applicant is a 47-year-old man who has worked in production support for a defense contractor since January 2004, and is seeking to obtain a security clearance. Applicant works in a warehouse. His coworkers consider him to be honest and trustworthy. (App Ex A and B)

In 1989, Applicant obtained a job with a defense contractor and obtained a security clearance. To further his career, Applicant began to attend college at night. In 1996, he graduated with an associate's degree. (Tr. 27) In October 2002, Applicant had the opportunity to continue his education and took a layoff to continue his education. In December 2000, Applicant received his B.B.A. in general business. (Tr. 27)

Applicant obtained student loans to attend college between 1992 and 2000. Of the 22 past due obligations 12 of them are student loans totaling approximately \$45,000. Weekly payment is made on the student loans directly from his employer. In September 2006, his weekly deduction for student loan payment varied between \$84 and \$101. (App Ex D) The amount varies because he pays 15% of his after-tax income to the student loans and his weekly salary varies depending on the amount of overtime worked. (Tr. 32) Applicant frequently works overtime. Since obtaining his current job in January 2004, Applicant has paid approximately \$6,700 on his student loan obligation. Applicant paid \$821.91 in 2004, \$2,957 in 2005, and \$2,912 as of September 2006. (App Ex D) Applicant first started repaying his student loans six months after leaving school. (Tr. 31)

In 1999, Applicant and his wife separated and in March 2000 divorced, ending their ten-year marriage, although they had been together much longer. There were three children of this marriage, all in high school at the time, and are now in college. Applicant is the father of a total of five adult children. He has no current or past due child support obligation.

In August 1999, Applicant purchased a 1990 car for \$15,367 requiring \$392 monthly payments for five years. In early 2001, the car developed engine trouble and he took the car to be repaired. When he could not afford to repair the vehicle, he hoped to use it as a trade-in. When it could not be used as a trade in, the creditor came and repossessed it within the last year. (Tr. 48) In December 2005, the creditor transferred a \$10,000 deficit obligation on the car to a collection agency.

After obtaining his degree, Applicant obtained a job but in October 2001 became unemployed due to company downsizing. (Tr. 28) Applicant did odd jobs for six to nine months before being hired by a new company. He worked at this company until October 2002, when he was laid off due to a downturn in the economy. Applicant then did construction work and carpenter work. (Tr. 29) In January 2004, he obtained his present job with the same company he worked for in 1989.

In January 2004, Applicant started his current job with a yearly salary of \$29,000. Applicant states his initial salary, at \$14 per hour, was "hardly enough to pay (his) bills." (Tr. 29) Applicant's wage benefit statement accompanied his answer to the SOR. It indicates for the last two quarters of 1999 Applicant's income was \$18,838. In 2000 he made \$34,390. In 2001, he made \$20,127. In 2002, he made \$22,930. During 2001 and 2002, he had one quarter with zero income and zero income is showing for 2003 on his wage benefit statement. During the periods of unemployment, Applicant was collecting \$1,200 per month unemployment compensation. (Tr. 37) The figures previously listed do not include any unemployment compensation received. From January 2003 until he started his current job in January 2004, he worked doing contract labor, which does not appear on the wage benefit statement. (Tr. 73) During 2004 and 2005, in addition to his full time job, Applicant worked part-time in a convenience store. (Tr. 49)

Four of the accounts (SOR 1.r through SOR 1.u) totaling \$6,500 represent accounts charged off by the same creditor on a credit card account. Additionally, a \$456 telephone bill (SOR 1.n), a \$992 department store debt (SOR 1.o), a \$6,754 credit card collection (SOR 1.p), a \$103 telephone bill (SOR 1.q), and a \$107 electric bill (SOR 1.v) remain unpaid.

Applicant has \$2,751 in a retirement account. (App Ex E) He is now making \$16.24 per hour. Applicant's current wife has an annual salary of \$15,600.

Applicant has decided to prioritize his debts by paying his home and student loans first. His house payment is \$407 per month on a house he purchased in August 1997 for \$27,000. As of October 2006, Applicant owed \$2,187 on the house (App Ex F) and he anticipates having his home paid for in April or May 2007. The current fair market value of the house is \$39,000. (Tr. 65) Once the house is paid, the monthly mortgage payment will be available to pay his other

creditors. After paying his house payment, student loans, insurance, utilities, telephone bill, church tithes, and groceries, Applicant has no funds currently available to pay his other creditors. (Tr. 34)

### **POLICIES**

The Directive sets forth adjudicative guidelines to be considered when evaluating a person's eligibility to hold a security clearance. Disqualifying Conditions (DC) and Mitigating Conditions (MC) are set forth for each applicable guideline. Additionally, each decision must be a fair and impartial commonsense decision based upon the relevant and material facts and circumstances, the whole person concept, and the factors listed in Section 6.3 of the Directive. The adjudicative guidelines are to be applied by administrative judges on a case-by-case basis with an eye toward making determinations that are clearly consistent with the interests of national security. The presence or absence of a particular condition or factor for or against clearance is not determinative of a conclusion for or against an applicant. However, the adjudicative guidelines should be followed whenever a case can be measured against this policy guidance. Considering the evidence as a whole, I conclude the relevant guideline to be applied here is Guideline F, Financial Considerations.

### **BURDEN OF PROOF**

The sole purpose of a security clearance decision is to decide if it is clearly consistent with the national interest to grant or continue a security clearance for an applicant. Initially, the Government must establish, by substantial evidence, that conditions exist in the personal or professional history of the applicant which disqualify, or may disqualify, an applicant from being eligible for access to classified information. The burden of proof in a security clearance case is something less than a preponderance of evidence, although the government is required to present substantial evidence to meet its burden of proof. Substantial evidence is more than a scintilla, but less than a preponderance of the evidence. All that is required is proof of facts and circumstances which indicate an applicant is at risk for mishandling classified information, or that an applicant does not demonstrate the high degree of judgment, reliability, or trustworthiness required of persons handling classified information. Additionally, the government must prove controverted facts alleged in the SOR. Once the government has met its burden, the burden shifts to an applicant to present evidence to refute, extenuate or mitigate the government's case. Additionally, an applicant has the ultimate burden of persuasion to obtain a favorable clearance decision. <sup>(2)</sup>

As noted by the United States Supreme Court in *Department of Navy v. Egan*, 484 U.S. 518, 528 (1988), "no one has a 'right' to a security clearance." 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 in ensuring each applicant possesses the requisite judgment, reliability and trustworthiness of one who will protect the national interests. 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. Security clearance determinations should err, if they must, on the side of denials.

### **CONCLUSIONS**

A person's relationship with his creditors is a private matter until evidence is uncovered demonstrating an inability or unwillingness to repay debts under agreed upon terms. Absent evidence of strong extenuating or mitigating circumstances, an applicant with a history of serious or recurring financial difficulties is in a position of risk that is inconsistent with the holding of a security clearance. An applicant is not required to be debt free, but is required to manage his finances so as to meet his financial obligations.

Financial considerations become a security concern when a person has significant delinquent debts. An individual who is financially overextended is at risk of having to engage in illegal or unethical acts to generate funds to meet financial obligations. Additionally, an individual who is financially irresponsible may also be irresponsible, unconcerned, or careless in their obligations to protect classified information. Behaving responsibly or irresponsibly in one aspect of life provides an indication of how a person may behave in other aspects of life.

The Government has satisfied its initial burden of proof under Guideline F (Financial Considerations). The Applicant admits owing 22 debts totaling approximately \$72,000. Disqualifying Condition (DC) 1 (E2.A6.1.2.1 *A history of not*

*meeting financial obligations*) and DC 3 (E2.A6.1.2.3 *Inability or unwillingness to satisfy debts*) apply.

Applicant is currently paying on the 12 student loan obligations that totaled approximately \$45,000. Since getting his current job in January 2004, he had paid \$6,700 on these obligations. The payment is automatically 15% of his after tax income. I believe he will continue to pay these obligations. I find for him as to the student loans, which represents 62% of his total debt.

Applicant has not made arrangement to repay the remaining seven creditors. The biggest of these debts is the \$12,000 (SOR 1.a) repossession debt following engine trouble to his car. Applicant's ability to repay his debts was impacted by his periods of unemployment. Applicant's wage details show no income for the third quarter of 2001, the first quarter of 2002, and no income for 2003. Applicant acknowledges he was receiving some unemployment compensation and doing contract construction work during part of these periods. Such income would not have done much more than have met his living expenses. Periods of unemployment are conditions beyond Applicant's control. Mitigation Condition (MC) 3 (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.

Although Applicant divorced in March 2000, MC3 does not apply because the divorce occurred more than six and a half years ago and any negative impact on Applicant's current financial status is not shown by the record.

Unemployment was certainly a factor hindering his ability to repay his debts. Even more important is what he has done to pay his past due debts since getting his current job. As previously stated he is paying his student loans, he is making current mortgage payments, insurance payments, paying his utilities, and paying for groceries. He has done all that he could with the funds available to him. In addition to his full time job, he often had a part-time additional job during 2004 and 2005 which shows a good work ethic and a desire to meet his financial obligations.

Applicant has \$2,751 in a retirement account. Applicant owes approximately \$2,000 on his home which is worth \$39,000. His equity in the house of \$37,000 exceeds what he owes the seven unpaid creditors. In May 2007, his house will be completely paid for, at which time he can devote the \$400 he currently pays in house payments to the remaining creditors.

Based on his past conduct of paying his student loans, the equity in his home and retirement account, and the fact his home will soon be paid in full, I find Applicant is not at risk of having to engage in illegal or unethical acts to generate funds to meet financial obligations. He is not in a position of risk inconsistent with the holding of a security clearance. I find for Applicant as to financial considerations.

In reaching my conclusions I have also considered: the nature, extent, and seriousness of the conduct; Applicant's age and maturity at the time of the conduct; the circumstances surrounding the conduct; Applicant's voluntary and knowledgeable participation; the motivation for the conduct; the frequency and recency of the conduct; presence or absence of rehabilitation; potential for pressure, coercion, exploitation, or duress; and the probability that the circumstance or conduct will continue or recur in the future.

### **FORMAL FINDINGS**

Formal Findings as required by Section 3, Paragraph 7, of Enclosure 1 of the Directive are hereby rendered as follows:

Paragraph 1 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  
Subparagraph 1.f: For Applicant  
Subparagraph 1.g: For Applicant  
Subparagraph 1.h: For Applicant  
Subparagraph 1.i: For Applicant  
Subparagraph 1.j: For Applicant  
Subparagraph 1.k: For Applicant  
Subparagraph 1.l: For Applicant  
Subparagraph 1.m: For Applicant  
Subparagraph 1.n: For Applicant  
Subparagraph 1.o: For Applicant  
Subparagraph 1.p: For Applicant  
Subparagraph 1.q: For Applicant  
Subparagraph 1.r: For Applicant  
Subparagraph 1.s: For Applicant  
Subparagraph 1.t: For Applicant  
Subparagraph 1.u: For Applicant  
Subparagraph 1.v: For Applicant

**DECISION**

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

**Claude R. Heiny**

**Administrative Judge**

1. Required by Executive Order 10865, as amended, and Department of Defense Directive 5220.6 (Directive), dated January 2, 1992, as amended.
2. ISCR Case No. 93-1390 (January 27, 1995) at pp. 7-8; Directive, Enclosure 3, Item E3.1.15