

DATE: December 29, 2006

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In re:

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SSN: -----

Applicant for Security Clearance

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CR Case No. 06-13599

## **DECISION OF ADMINISTRATIVE JUDGE**

**CAROL G. RICCIARDELLO**

### **APPEARANCES**

#### **FOR GOVERNMENT**

Melvin Howry, Esq., Department Counsel

#### **FOR APPLICANT**

Pro Se

### **SYNOPSIS**

Applicant is a 41-year-old chief chef for a maritime ship. He experienced financial difficulty when he and his girlfriend broke up and he was required to pay all of the monthly expenses instead of sharing them. He got behind in credit card payments and was underemployed for a period of time which exacerbated the situation. Applicant initiated repayment plans on several debts and despite having his pay reduced, because he was unable to work for eight months due to an injury, he continued to make the payments. As certain debts get paid off he intends to initiate repayment on others. Applicant has successfully mitigated the security concerns under Guideline F, financial considerations. Clearance is granted.

### **STATEMENT OF THE CASE**

The Defense Office of Hearings and Appeals (DOHA) declined to grant or continue a security clearance for Applicant. On July 18, 2006, under the applicable Executive Order<sup>(1)</sup> and Department of Defense Directive,<sup>(2)</sup> DOHA issued a Statement of Reasons (SOR), detailing the basis for its decision-security concerns raised under Guideline F, (financial considerations) of the Directive. Applicant answered the SOR in writing on September 14, 2006, and elected to have a hearing before an administrative judge. In his answer, Applicant denied all of the allegations under Guideline F except ¶¶ 1.c, 1.f, 1.g, and 1.h. The case was assigned to me on November 1, 2006. A notice of hearing was issued on November 13, 2006, scheduling the hearing for December 6, 2006. I conducted the hearing as scheduled to consider whether it is clearly consistent with the national interest to grant or continue a security clearance. The Government offered six exhibits for admission in the record and were marked as Government Exhibits (GE) 1-6. The exhibits were admitted into evidence without objection. Applicant testified on his own behalf and did not offer any other exhibits beyond what he provided in his answer. The record was held open to allow Applicant to submit documentation, which he did in a timely manner. It was marked as AE A. The Government did not object and it was admitted. DOHA received the hearing transcript (Tr.) on December 15, 2006 and I received it on December 19, 2006.

### **FINDINGS OF FACT**

Applicant's admissions to the allegations in the SOR, 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 41 years old and is a chief chef who works on maritime ships. Applicant admits he owes most of the debts listed on the SOR. From 1997 to 2000, he lived with his girlfriend in a different state and they shared common living expenses. When they broke up he no longer was sharing expenses and had to pay the total amount on rent and other necessities. He found it difficult to manage his finances because he was underemployed, making only \$9.00 an hour and barely meeting expenses. He had credit cards and maintained payments on them for a period of time, but then got behind and defaulted on them.

Applicant took out a student loan in 1996, listed in SOR ¶¶ 1.i, 1.j, 1.k and 1.l, and paid on it for four years until he defaulted on it in 2000. In June 2006, he resumed making payments on the loan and was advised by the loan company that if he continued to make consistent monthly payments for a year they would remove the account from delinquency status. He has consistently made monthly payments of \$200 since June 2006 by automatic deduction. (3)

The following is the status of the debts listed in the SOR. Applicant set up a payment plan and has been making consistent monthly payments on the debt listed in SOR ¶ 1.a. It is a credit card debt that is now completely paid. (4) The judgment listed in SOR ¶ 1.b is a joint debt that is owed by a former roommate and Applicant. The roommate failed to pay his share of the rent which resulted in both people being evicted and a judgment was entered for the amount owed. Applicant admits the judgment is owed and he intends to seek out the roommate to pay his share of the debt, but has not done so yet. The debt in SOR ¶ 1.c is also a joint debt for cable television owed by Applicant and his former roommate. Applicant intends to pay this debt. Applicant disputes the debt in SOR ¶ 1.d as being a duplicate debt with ¶ 1.c, or not his debt at all because of the location where the debt originated. He has not followed up on this debt, but intends to pay it if he cannot resolve it. The debt in SOR ¶ 1.e is a credit card debt that Applicant set up a repayment plan approximately a year ago and has been consistently making monthly payments of \$50 through an automatic deduction. The debts listed in SOR ¶¶ 1.f, 1.g, and 1.h, Applicant admits he owes, but has not paid yet.

Applicant intends on paying all of his debts. He is systematically reducing certain debts and when he completes their payment, he intends to start paying on the other debts. Applicant had a neck operation in May 2006, and has been receiving reduced pay since then. (5) Despite the reduction in his pay for the past eight months he has continued to make consistent payments to resolve the debts as listed above. He currently lives at his parents' house to reduce his expenses and drives a late model car. He has been cleared by his doctor to resume work and will now be receiving full pay. (6) He has a better paying job. He intends on continuing his efforts to repay all of his debts. Although some remain delinquent, he is determined to resolve all of them now that he will be working with full pay. He understands the important of resolving his debts and is committed to doing so. He is working hard to be considered for a promotion a his present job, which would increase his pay and allow him to expedite his repayment plans and start paying off other debts. He does not have any credit cards.

### 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 this policy guidance.

The sole purpose of a security clearance determination is to decide if it is clearly consistent with the national interest to (7)

grant or continue a security clearance for an applicant. The government has the burden of proving controverted facts. (8) The burden of proof is something less than a preponderance of evidence. (9) 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. (10) Additionally, an applicant has the ultimate burden of persuasion to obtain a favorable clearance decision. (11)

No one has a right to a security clearance (12) and "the clearly consistent standard indicates that security clearance determinations should err, if they must, on the side of denials." (13) Any reasonable doubt about whether an applicant should be allowed access to sensitive information must be resolved in favor of protecting such sensitive information. (14) The decision to deny an individual a security clearance is not necessarily a determination as to the loyalty of an applicant. (15) 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 guideline most pertinent to the evaluation of the facts in this case:

Guideline F- Financial Considerations-a security concern exists 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. Similarly, an individual who is financially irresponsible may also be irresponsible, unconcerned, or careless in their obligation 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.

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. The government has established a *prima facie* case for disqualification under Guideline F.

Based on all the evidence, 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*), apply in this case. Applicant accumulated significant delinquent debts that was placed for collection or charged off due to his failure to pay it.

I have considered all the Financial Considerations Mitigating Conditions (FC MC), and especially considered FC MC E2.A6.1.3.1 (*The behavior was not recent*), FC MC E2.A6.1.3.2 (*It was an isolated incident*), 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)*), and FC MC E2.A6.1.3.6 (*The individual initiated a good-faith effort to repay overdue creditors or otherwise resolve debts*).

Applicant has delinquent debts that have not yet been paid, are still owed and are recent debts. Therefore, FC MC E2.A6.1.3.1 does not apply. The number of debts negates the application of FC C E2.A6.1.3.2. Applicant was underemployed for a period of time and had difficulties meeting his expenses. He had a roommate that did not fulfill his share of the financial obligations. Although both of these things contributed to Applicant's financial problems, they were not the main cause. His medical problems occurred after he was already in debt and were not the cause, but did hamper the rate at which Applicant has been able to reduce his overdue debt. I find viewing the totality of the facts in this regard that FC MC E2.A6.1.3.3 does not apply. However, Applicant has been making a significant effort to repay his overdue debts. Prior to receiving the SOR, he contacted the loan company on his student loan and resumed a repayment plan. He initiated a repayment plan with a credit card company that he has now satisfied and has been paying on another for over a year. He maintained his repayment plans despite his salary being reduced to two-thirds of his full pay due to a medical injury. He anticipates with his full pay resumed he will be able to expedite payments and systematically pay off his other debts as he satisfies others. He understand he has outstanding debt and is committed to repaying all of them. I find

he is initiating a good-faith effort to repay his overdue creditors and resolve his debts. He also intends on resolving the judgment against him and his former roommate. Although his actions in that regard could be more assertive, I found him credible in his desire to resolve all of his debts and accompanying credit problems. Therefore, I find FC MC E2.A6.1.3.6 applies.

In all adjudications, the protection of our national security is the paramount concern. The objective of the security-clearance process is the fair-minded, commonsense assessment of a person's life to make an affirmative determination that the person is eligible for a security clearance. 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 considered the whole person in evaluating the case. I considered that Applicant started repayment plans and contacted creditors prior to his security clearance being an issue. I considered that he has been making consistent monthly payments on the plans he has set up, despite that he has not been receiving full pay due to a medical problem. I considered that Applicant was underemployed for a period of time and now has a good paying job. I considered he had paid his student loans up until he was underemployed and resumed a repayment plan when he obtained better employment. I also found Applicant credible in his intention to repay all of his debts. Therefore, I am persuaded by the totality of the evidence in this case, that it is clearly consistent with the national interest to grant Applicant a security clearance. Accordingly, Guideline F is decided for 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: FOR APPLICANT

Subparagraphs 1.a-1.l: For Applicant

### **DECISION**

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

Carol G. Ricciardello

Administrative Judge

1. Exec. Or. 10865, *Safeguarding Classified Information within Industry* (Feb. 20, 1960) as amended and modified.
2. Department of Defense Directive 5220.6, *Defense Industrial Personnel Security Clearance Review Program* (Jan. 2, 1992), as amended and modified.
3. Answer.
4. Answer, AE A.
5. Tr. 48-49.
6. Answer.
7. ISCR Case No. 96-0277 at 2 (App. Bd. Jul 11, 1997).
8. ISCR Case No. 97-0016 at 3 (App. Bd. Dec. 31, 1997); Directive, Enclosure 3, ¶ E3.1.14.

9. *Department of the Navy v. Egan*, 484 U.S. 518, 531 (1988).

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

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

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

13. *Id.*

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

15. Executive Order 10865 § 7.