

DATE: February 26, 2007

In Re:

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SSN: -----

Applicant for Security Clearance

CR Case No. 06-14576

**DECISION OF ADMINISTRATIVE JUDGE**

**THOMAS M. CREAN**

**APPEARANCES**

**FOR GOVERNMENT**

Julie R. Edmunds, Esq., Department Counsel

**FOR APPLICANT**

*Pro Se*

**SYNOPSIS**

Applicant is a security guard for a defense contractor. His debts were discharged by Chapter 7 bankruptcies in 1998 and 2004. He filed for a Chapter 13 bankruptcy in 2005, but that petition was dismissed for Applicant's failure to make the appropriate payments to the bankruptcy trustee. He has six delinquent debts that he made no effort to resolve. Applicant has not mitigated security concerns for financial considerations. Clearance is denied.

**STATEMENT OF THE CASE**

On August 18, 2006, the Defense Office of Hearing and Appeals (DOHA) issued a Statement of Reasons (SOR) detailing the basis for its decision to deny a security clearance for Applicant. The action was taken under Executive Order 10865, *Safeguarding Classified Information within Industry* (February 20, 1990), as amended, and Department of Defense Directive 5220.6, *Defense Industrial Personnel Security Clearance Review Program* (January 2, 1992), as amended (Directive). Applicant acknowledged receipt of the SOR on August 25, 2006. The SOR alleges security concerns under Guideline F (Financial Considerations) of the Directive.

Applicant answered the SOR in writing on August 31, 2006. He admitted five of the allegations and denied four of them under Guideline F, and provided some explanation for his delinquent debts. He elected to have the matter decided on the written record in lieu of a hearing.

Department Counsel submitted the Government's written case on November 9, 2006. Applicant received a complete file of relevant material (FORM) on November 21, 2006, and provided the opportunity to file objections and submit material to refute, extenuate, or mitigate the disqualifying conditions. His response was due December 27, 2006. As of January 30, 2007, he had not responded. The case was assigned to me on January 30, 2007.

**FINDINGS OF FACT**

After a thorough review of the pleadings, exhibits, and information provided by Applicant in response to the FORM, I

make the following essential findings of fact.

Applicant is a 41-year-old security guard for a defense contractor. He is not married. Applicant submitted a security clearance application as part of his employment on January 18, 2005.<sup>(1)</sup> A review of his financial situation reveals Applicant's debts were discharged in two separate bankruptcies. He filed a third bankruptcy petition, but it was dismissed. He still has delinquent debts.

Applicant admits he filed a Chapter 7 bankruptcy and his debts of approximately \$28,449, were discharged on July 10, 1998.<sup>(2)</sup> Applicant again filed for Chapter 7 bankruptcy on April 13, 2004, and his debts were discharged on July 22, 2004.<sup>(3)</sup> Subsequently, Applicant encountered delinquent debt and he did not have the ability to pay his bills when due. He filed a Chapter 13 bankruptcy on October 10, 2005, listing debts of over \$107,000, mainly for a mortgage, vehicle loan, and property taxes. His assets were over \$104,000, and included his house.<sup>(4)</sup> This bankruptcy was

dismissed on October 23, 2006, because Applicant's failed to make the required monthly payments of \$220 to the trustee.<sup>(5)</sup>

Applicant's latest credit report lists six delinquent debts. Delinquent debt 1 is to Finance Center Credit Union for \$4,622, and is past due 120 days. Applicant states this debt was discharged in one of his previous bankruptcies, but he did not present information that this debt was discharged. Delinquent debt 2 is to Duvera for \$3,528, placed for collection. Applicant acknowledges this debt. Delinquent debt 3 is to Credit Management for \$91, placed for collection. Delinquent debt 4 is to Household Services Bank for \$548, and is over 120 days past due. Delinquent debt 5 is to Bank of New York for \$2,304, past due over 90 days. Applicant denied knowing of these debts and stated that they should not be on his credit report. He presented no documentation of any inquiry or attempt to learn about these debts. He has not presented any information that he challenged these debts with the credit reporting agency. Delinquent debt 6 is for past due property taxes of \$1,201. Applicant stated he paid the tax but presented no information to show the taxes were paid.<sup>(6)</sup>

## 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 information."<sup>(7)</sup> Eligibility for a security clearance is predicated upon the applicant meeting the security guidelines contained in the Directive.<sup>(8)</sup>

The Directive sets out the adjudicative guidelines for making decisions on security clearances. Enclosure 2 of the Directive sets forth adjudicative guidelines for determining eligibility for access to classified information, and it lists the disqualifying conditions and mitigating conditions for each guideline. Each clearance decision must be fair, impartial, and a commonsense decision based on the relevant and material facts and circumstances, the whole person concept, and the factors listed in the Directive ¶ 6.3.1 through ¶ 6.3.6.

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. An administrative judge must apply the "whole person concept," and consider and carefully weigh the available, reliable information about the person.<sup>(9)</sup> An administrative judge should consider: (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 applicant'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 of recurrence.<sup>(10)</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 necessarily a determination as to

<sup>(11)</sup>

the loyalty of the applicant. 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.

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>(12)</sup> Thereafter, Applicant is responsible for presenting evidence to rebut, explain, extenuate, or mitigate facts.<sup>(13)</sup> An applicant "has the ultimate burden of demonstrating that it is clearly consistent with the national interest to grant or continue his security clearance."<sup>(14)</sup> The government is under no duty to present evidence to disprove any Adjudicative Guideline mitigating condition, and an Administrative Judge cannot assume or infer that any particular mitigating condition is applicable merely because the government does not present evidence to disprove that particular mitigating condition.<sup>(15)</sup> "[T]he Directive presumes there is a nexus or rational connection between proven conduct under any of the criteria listed therein and an applicant's security suitability."<sup>(16)</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>(17)</sup>

Based upon a 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 for an individual who is financially irresponsible. 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.

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 section below.

### CONCLUSIONS

I carefully considered all facts in evidence and the legal standards discussed above. I reach the following conclusions regarding the allegations in the SOR.

The Government has established its case under Guideline F. Applicant's bankruptcy petitions and delinquent debts reported in credit reports and partly admitted by Applicant, bring the matter within Financial Considerations Disqualifying Conditions E2.A6.1.2.1 (*A history of not meeting financial obligations*), and E2.A6.1.2.3 (*An inability or unwillingness to satisfy debts*). Applicant accumulated delinquent debts and twice had his debts discharged by a Chapter 7 bankruptcy. About a year after the second Chapter 7 bankruptcy discharge, Applicant again accumulated delinquent debt and filed a Chapter 13 bankruptcy petition. That petition was dismissed because Applicant did not make the required payments to the bankruptcy trustee. Bankruptcy is a legal and permissible means of resolving indebtedness. However for security clearance purposes, the reasons behind the bankruptcy should be examined to determine Applicant's security worthiness. Applicant's financial history shows he has not met his financial obligations and that unwilling or unable to satisfy his debts. I conclude the above disqualifying conditions have been established.

I have considered Financial Consideration Mitigating Conditions E2.A6.1.3.1 (*The behavior was not recent*), and E2.A6.1.3.2 (*It was an isolated incident*). Applicant had delinquent debt as early as 1998 when he filed his first petition for bankruptcy. The debts range from unpaid or late credit card payments, home mortgage, vehicle repossessions, and unpaid property taxes. Some of these debts remain unpaid today. The debts are recent and not isolated, since they are long standing, not paid, and from various sources. The mitigating conditions do not apply.

Applicant admits filing Chapter 7 bankruptcy twice in six years. He admits that within 18 months of the last Chapter 7 bankruptcy, he filed a Chapter 13 bankruptcy. That petition was dismissed for failing to make the required payments to the trustee. He still has six debts delinquent. Applicant claimed, but presented no evidence that two of these debts were included in the earlier bankruptcy discharges. He did not know about three of the debts, and presented no information on any attempt to inquire about them, or prove why they were not his. He admits the sixth debt and it has not been paid. Applicant has presented no evidence concerning a good-faith effort to pay his outstanding delinquent debts. Financial

Considerations Mitigating Condition E2.A6.1.3.6 (*The individual initiated a good-faith effort to repay overdue creditors or otherwise resolve debts*) does not apply. I conclude Applicant has not met his burden of mitigating the security concerns for financial considerations.

I carefully considered all of the circumstances in light of the "whole person" concept. I have considered that Applicant had debts discharged in bankruptcy, but that he continued to accumulate delinquent debts. He presented no positive information to impact a decision on his security worthiness. I conclude Applicant is not eligible for access to classified information.

### **FORMAL FINDINGS**

Formal findings for or against Applicant on the allegations 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.: Against 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 of the circumstances presented by the record in this case, it is not clearly consistent with the national security to grant or continue a security clearance for Applicant. Clearance is denied.

Thomas M. Crean

Administrative Judge

1. Item 4.

2. Item 5.

3. Item 6.

4. Item 7.

5. Item 8.

6. Item 9; Item 3.

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

8. Directive ¶ E2.2.1.

9. *Id.*

10. Directive ¶¶ E2.2.1.1 through E2.2.1.9.

11. *See* Exec. Or. 10865 § 7.

12. Directive ¶ E3.1.14.

13. ISCR Case No. 01-20700 at 3 (App. Bd. Dec. 19, 2002); *see* Directive ¶ E3.1.15.

14. ISCR Case No. 01-20700 at 3 (App. Bd. Dec. 19, 2002).

15. ISCR Case No. 99-0597 (App. Bd. Dec 13, 2000).

16. ISCR Case No. 95-0611 at 2 (App. Bd. May 2, 1996) (quoting DISCR Case No. 92-1106 (App. Bd. Oct. 7, 1993))

17. *Egan*, 484 U.S. at 531; *see* Directive ¶ E2.2.2.