

DATE: March 26, 2007

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In re:

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SSN: -----

Applicant for Security Clearance

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ISCR Case No. 06-15860

**ECISION OF ADMINISTRATIVE JUDGE**

**CAROL G. RICCIARDELLO**

**APPEARANCES**

**FOR GOVERNMENT**

J. Theodore Hammer, Esq., Department Counsel

**FOR APPLICANT**

*Pro Se*

**SYNOPSIS**

Applicant is 44 years old and has worked for a federal contractor as a aircraft electrical specialist since 2001. He had his debts discharged in bankruptcy in 2001, and again has accumulated more than \$23,000 in delinquent debts owed to 14 creditors. In responding to questions on his security clearance application he intentionally and deliberately failed to list he had overdue debts of 90 and 180 days. Applicant failed to provide evidence to mitigate the security concerns raised under Guideline F (Financial Considerations) and Guideline E (Personal Conduct). Clearance is denied.

**STATEMENT OF CASE**

On August 30, 2006, the Defense Office of Hearings and Appeals (DOHA) issued to Applicant a Statement of Reasons (SOR) stating it was unable to find that it is clearly consistent with the national interest to grant or continue a security clearance. [\(U\)](#) The SOR, which is in essence the administrative complaint, alleges security concerns under Guideline F, (Financial Considerations) and Guideline E (Personal Conduct).

In a sworn statement dated October 5, 2006, Applicant responded to the SOR allegations. Applicant elected to have his case decided on the written record. Department Counsel submitted the government's file of relevant material (FORM) on December 21, 2006. The FORM was mailed to Applicant on December 27, 2006, and received on January 8, 2007. Applicant was afforded an opportunity to file objections and submit material in refutation, extenuation, or mitigation. Applicant had no response. The case was assigned to me on February 28, 2007.

**FINDINGS OF FACT**

Applicant is 44 years old and has worked as an aircraft electrical specialist for a federal contractor since February 2001. He has been married since 1986. He has one child. Applicant served in the U.S. Air Force from 1986 to 1995. He was discharged with a General Discharge. He was previously investigated for a security clearance, but it is unclear from the record whether he was ever granted a security clearance.

Applicant filed for bankruptcy protection under Chapter 7 on November 1, 2000. His listed liabilities were approximately \$48,432, and his assets were approximately \$34,211. On February 26, 2001, certain dischargeable debts were discharged. Applicant did not provide a copy of his bankruptcy documents that specifically lists the debts that were discharged. Therefore, it could not be discerned what specific debts had been legitimately discharged in bankruptcy.

Applicant admitted he owed the debts in SOR ¶¶ 1.b, 1.c, 1.d, 1.f, 1.g, 1.h, 1.i and 1.s. No information was provided that he has paid these debts. The delinquent debts listed in SOR ¶¶ 1.l, 1.n, 1.q, he stated were debts discharged in his bankruptcy of February 2001. He did not provide an accounting of the debts discharged in bankruptcy to verify what debts were covered. Applicant's credit report supports that the debt in SOR ¶ 1.p was discharged in bankruptcy. (2) SOR ¶ 1.l appears to have a zero balance on his latest credit report. (3) The debt listed in SOR ¶ 1.e, he stated was being paid through a payroll deduction of \$125 per pay period. He stated he had been paying this debt since September 2004, and owed a balance of \$7,048. The SOR balance is listed as \$10,524. Applicant failed to provide any proof of a payroll deduction and his stated current balance. He admitted he owed the debt in SOR ¶ 1.j and stated he is paying \$177 a month, and the account will be paid off in October 2006. The SOR balance is \$925. He failed to provide proof of payment or satisfaction. The delinquent debts listed in SOR ¶¶ 1.k, 1.m, 1.o, and 1.r, are all charged off accounts totaling \$10,728. Applicant stated he was unfamiliar with these debts and because they were charged off he did not know who to make payment arrangements with. Applicant did not provide any information about what actions he may have taken to contact the creditors, obtain address information from the credit bureau or any other actions to attempt to make any contact with the creditors and satisfy these debts. Applicant has not provided any documents to support any payments he may have made to creditors or to support debts that may have been discharged in bankruptcy. Applicant has more than \$23,000 in delinquent debt to 14 creditors that he has not paid.

Some of Applicant's delinquent debts appear to be for medical purposes. Most of these debts are for relatively small amounts. (4) None have been paid. Applicant did not provide any information as to a potential inability to repay these debts based on conditions beyond his control. No evidence was provided regarding Applicant's actions to repay his overdue debts. No evidence was provided to show if he has received any type of financial counseling or if he has a plan for resolving his delinquent debts. No evidence was provided to show a good-faith effort to repay his delinquent debts.

Applicant applied for a security clearance in September 2005. In response to question 28a and 28b on Applicant's Electronic Questionnaire for Investigations Processing (e-Qip), executed on September 27, 2005, he answered "No." Those questions asked if "[i]n the last 7 years have you been over 180 days delinquent on any debts" and "[a]re you currently over 90 days delinquent on any debt(s)." Applicant stated he did not consider discharged debts from his bankruptcy and charged off debts to be owed. He also stated that "to the best of my knowledge all of my current debts at that time were either paid or less than 90 days delinquent." (5) Some of Applicant's delinquent debts were sent to collection agencies prior to him executing his e-Qip and were over 180 and 90 days delinquent. (6) Applicant admitted he owed many of the debts in SOR, specifically the debt in ¶ 1.s that he acknowledged was for cable television dating back to 2002 and ¶ 1.b which is an electric bill that he acknowledged was a final bill for a residence he vacated in January 2002. (7) Based on the documentary evidence and Applicant's admissions that he owed many of the delinquent debts and the number of debts, it is not credible to believe that he was unaware that he had any debts over 90 or 180 days delinquent when he filled out his eQip. I find Applicant intentionally and deliberately provided false answers to questions on his e-Qip.

## 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 grant or continue a security clearance for an applicant.<sup>(8)</sup> The government has the burden of proving controverted facts.<sup>(9)</sup> The burden of proof is something less than a preponderance of evidence.<sup>(10)</sup> 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.<sup>(11)</sup> Additionally, an applicant has the ultimate burden of persuasion to obtain a favorable clearance decision.<sup>(12)</sup>

No one has a right to a security clearance<sup>(13)</sup> and "the clearly consistent standard indicates that security clearance determinations should err, if they must, on the side of denials."<sup>(14)</sup> Any reasonable doubt about whether an applicant should be allowed access to sensitive information must be resolved in favor of protecting such sensitive information.<sup>(15)</sup> The decision to deny an individual a security clearance is not necessarily a determination as to the loyalty of an applicant.<sup>(16)</sup> 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 all 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.

Guideline E-Personal Conduct is a security concern when an individual's conduct involves questionable judgment, untrustworthiness, unreliability, lack of candor, dishonesty, or unwillingness to comply with rules and regulations that could indicate that the person may not properly safeguard classified information.

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.

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 had his debts discharged in bankruptcy in 2001. Since then he has accumulated at least \$23,000 in delinquent debts to at least 14 creditors that remain unpaid.

I have considered all of 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)*), 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 is under control*), 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 many debts that remain delinquent and therefore are recent. FC MC E2.A6.1.3.1 and FC MC E2.A6.1.3.2 do not apply. Applicant acknowledged many of his debts, claimed some of the debts were discharged in bankruptcy or

he was making payments on them. He failed to provide any substantiation to his position. He has other debts that he acknowledged he owes but provided no information that he is paying them. He did not provide any information to show that his financial condition and delinquencies were based on behavior beyond his control. No evidence was provided to show he has or is receiving financial counseling or the problem is being resolved or is under control. Applicant did not provide information that he has initiated a good-faith effort to repay his creditors. Applicant had his debts discharged in bankruptcy in 2001. Bankruptcy is a legitimate and legal means to resolve overwhelming debt and start anew. In this case, after having a clean financial slate, Applicant has returned to the same financial turmoil with many unpaid delinquent debts. Applicant was aware that his delinquent debts were a security concern at least since he received the SOR, yet he has not paid even the smallest delinquent debt. While applicable law does not require an individual to be debt free, it is essential that one exhibit an effort to resolve delinquent obligations.<sup>(17)</sup> Applicant has not done so. "A person who is unwilling to fulfill his legal obligations does not demonstrate the high degree of good judgment and reliability required of persons granted access to classified information."<sup>(18)</sup> I find FC MC E2.A6.1.3.3, FC MC E2.A6.1.3.4 and FC MC E2.A6.1.3.6 do not apply.

I have considered all of the Personal Conduct Disqualifying Conditions and find PC DC E2.A5.1.2.2 (*The deliberate omission, concealment, or falsification of relevant and material facts from any personnel security questionnaire, personal history statement, or similar form used to conduct investigations, determine employment qualifications, award benefits or status, determine security clearance eligibility or trustworthiness, or award fiduciary responsibilities*) applies in this case. Applicant had numerous creditors with overdue debts that were well over 90 and 180 days. He admitted he owed many of the debts. His credit reports reflect debts assigned to collection companies prior to filling out his security clearance application. It is not credible to believe that Applicant was totally unaware that any of his numerous debts were past 90 or 180 due. Applicant had his debts discharged in bankruptcy in 2001. In 2005, he was again facing many undisputed creditors. He admitted two of his debts were from 2002. It is simply not conceivable that he believed that every one of his debts was current. The evidence does not support his position.

I have considered all of the Personal Conduct Mitigating Conditions (PC MC) and especially considered PC MC E2.A5.1.3.2 (*The falsification was an isolated incident, was not recent, and the individual has subsequently provided correct information voluntarily*), PC MC E2.A5.1.3.3 (*The individual made prompt, good-faith efforts to correct the falsification before being confronted with the facts*) and PC MC E2.A5.1.3.5 (*The individual has taken positive steps to significantly reduce or eliminate vulnerability to coercion, exploitation, or duress*) and conclude none apply. Applicant's falsifications were intentional and deliberate and directly related to his security clearance application and worthiness, thereby making the incident recent. There is no evidence he voluntarily provided correct information or made a good-faith effort to correct the falsifications before being confronted with the facts. There is no evidence of positive steps Applicant has taken to reduce his vulnerability to coercion, exploitation, or duress.

## **The Whole Person Analysis**

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 all the evidence provided and also considered the "whole person" concept in evaluating Applicant's risk and vulnerability in protecting our national interests. I considered the number of creditors Applicant owes and the amount that he owes. I considered that Applicant had his debts discharged in bankruptcy in 2001, only to find himself again with many delinquent debts. I considered that Applicant has not paid any of the small debts. I considered that Applicant has failed to provide any proof to substantiate his assertions. I find Applicant has failed to mitigate the security concerns raised by the financial considerations and personal conduct concerns. Therefore, I am persuaded by the totality of the evidence in this case, that it is not clearly consistent with the national interest to grant Applicant a security clearance. Accordingly, Guideline F and Guideline E are decided against 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 Financial Considerations (Guideline F) AGAINST APPLICANT

Subparagraph 1.a-1.k: Against Applicant

Subparagraph 1.l: For Applicant

Subparagraph 1.m-1.o: Against Applicant

Subparagraph 1.p: For Applicant

Subparagraph 1.q-1.s: Against Applicant

Paragraph 2 Personal Conduct (Guideline E) AGAINST APPLICANT

Subparagraph 2.a: Against Applicant

Subparagraph 2.b: 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.

Carol. G. Ricciardello

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. Item 7.
3. *Id.*
4. SOR ¶¶ 1.d for \$25; 1.f for \$200; and 1.g for \$104.
5. Answer.
6. Items 5,6 and 7.
7. Answer.
8. ISCR Case No. 96-0277 at 2 (App. Bd. Jul. 11, 1997).
9. ISCR Case No. 97-0016 at 3 (App. Bd. Dec. 31, 1997); Directive, Enclosure 3, ¶ E3.1.14.
10. *Department of the Navy v. Egan*, 484 U.S. 518, 531 (1988).
11. ISCR Case No. 94-1075 at 3-4 (App. Bd. Aug. 10, 1995); Directive, Enclosure 3, ¶ E3.1.15.
12. ISCR Case No. 93-1390 at 7-8 (App. Bd. Jan. 27, 1995); Directive, Enclosure 3, ¶ E3.1.15.
13. *Egan*, 484 U.S. at 531.

14. *Id.*

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

16. Executive Order 10865 § 7.

17. ISCR Case No. 04-10671 (App. Bd. May 1, 2000).

18. ISCR Case no. 98-0810 at 4 (App. Bd. June 8, 2000).