

DATE: February 20, 2007

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In re:

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SSN: -----

Applicant for Security Clearance

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ISCR Case No. 06-17332

## **DECISION OF ADMINISTRATIVE JUDGE**

**CAROL G. RICCIARDELLO**

### **APPEARANCES**

#### **FOR GOVERNMENT**

Braden Murphy, Esq., Department Counsel

#### **FOR APPLICANT**

Pro Se

### **SYNOPSIS**

Applicant is a 47-year-old engineer who has worked for a federal contractor since October 2004. From 2002 to October 2004, he was unemployed and underemployed. This caused him to use credit cards to meet the needs of his large family. In December 2004, his daughter was diagnosed with cancer, and in March 2005, he was diagnosed with a serious medical condition. All of these events seriously affected Applicant's finances. He reaffirmed his credit card debts and intends on repaying them. He cut all unnecessary expenses, such as cable television, a home phone, and reduced other expenses. Applicant is working on a plan to either sell his house and use the equity to repay the debts or take a personal loan from a relative. Applicant has mitigated the security concerns raised by 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. As required by Department of Defense Directive 5220.6 ¶ E3.1.2 (Jan. 2, 1992), as amended, DOHA issued a Statement of Reasons (SOR) on November 6, 2006, detailing the basis for its decision-security concerns raised under Guideline F (financial considerations) of the revised Adjudicative Guidelines (AG) issued on December 29, 2005, and implemented by the Department of Defense effective September 1, 2006. The revised guidelines were provided to Applicant when the SOR was issued. Applicant answered the SOR in writing on November 23, 2006, and elected to have a hearing before an administrative judge. The case was assigned to me on December 15, 2006. The Notice of Hearing was dated January 4, 2007 and Applicant received it on January 9, 2007. Applicant waived the 15 day written notice requirement. With the consent of the parties, I convened a hearing on January 23, 2007, to consider whether it is clearly consistent with the national interest to grant or continue a security clearance for Applicant. The Government offered five exhibits that were marked as GE 1-5 and admitted without objection. Applicant testified and offered five exhibits that were admitted without objection and marked AE A-E. DOHA received the hearing transcript (Tr.) on January 31, 2007.

### **FINDINGS OF FACT**

Applicant is a 47-year-old electrical engineer who has worked for a federal contractor since October 2004. He is married and the father of six children ranging in age from 17 to 5 years. Prior to May 2002, Applicant's income was reduced because his company was waiting for money from their capital investors so the company could pay its workers. (1) During the contract from May 2002 to September 2002, Applicant worked and did not receive any pay, based on the promise he would be paid. The company he was working for never received the money it was waiting for. (2) Applicant next secured a job as a contract engineer and worked from September 2002 until May 2003 on a nine month contract. Again, during this period he was earning much less income than he had previously earned. (3) In May 2003 he was again unemployed for a short period before securing another contract engineering job from September 2003 to October 2004. (4) He was barely making ends meet and was using his credit cards to pay for living expenses. Applicant worked short term contracts as an engineer while he was attempting to find higher paying employment. He was underemployed during those contracts and was making a fraction of what he had been accustomed to earning.

Applicant was using his credit cards to assist in paying his living expenses. During 2003 and 2004, Applicant negotiated repayment and resolution of delinquent debts not listed in the SOR. He contacted his other creditors and promised he would repay his debts and not file bankruptcy. Applicant testified: "I have told them I am willing to do everything I can to come up with the funds to get them paid off, because I do not like charged off debt." (5) He went on to state: "I have always done the honorable thing to pay my debts. It's hurt us greatly to keep these hanging out, but I have also kept the creditors status (sic) and informed of my intentions and plans for repayment." (6)

In December 2004, shortly after Applicant had found full-time employment, his 14-year-old daughter was diagnosed with cancer. Although he had medical insurance, he still incurred additional medical expenses for items not covered, co-payments, and other collateral unreimbursable expenses associated with treating a catastrophic illness. Her illness put a financial strain on his already difficult financial situation and recovery plan. A few months later, in March 2005, Applicant was diagnosed with an aneurysm and was in intensive care for nine days, at the same time his daughter was hospitalized during her cancer treatment. This medical situation caused him to incur even greater medical expenses. (7)

Applicant has three credit card bills listed in the SOR that are delinquent. (8) They were used for necessities while he was underemployed and during his family's medical crises. He and his wife decided they would sell their house, take the equity from the sale, and pay off the credit card bills. He has hired a realtor in furtherance of this plan. In the event this financial plan is not practical, a family member has agreed to lend him the money to repay the debts.

Applicant's wife does not work, but his 17 year old son is employed. Applicant has reduced his expenses by eliminating a vehicle. He drives a 1967 vehicle and the family car will be paid off in August 2008. He reduced his car insurance, disconnected his home phone, and only uses a cell phone with basic service to reduce payments. He canceled cable television and canceled the use of a storage unit. Applicant has made changes to reduce his monthly living expenses. He has two children that wear braces that cost approximately \$440 a month.

Applicant did not seek to consolidate his loans through a credit agency; he researched the viability of the process and felt the fees associated with the plan could be applied to his debts and he had already negotiated with his creditors. Applicant contacted the creditors to whom he owes money. He kept them advised of his address and phone number and his intention to repay his debts. The creditors were unwilling to accept any payment except a lump sum payoff, albeit at a reduced settlement amount. The lump sum payments were not feasible for Applicant to pay at that time. Approximately two years ago, Applicant took his income tax refund and paid off his wife's student loan. He had previously paid off his own student loan. He has not had any financial counseling, but he and his wife have a budget. Applicant has more than \$17, 400 in delinquent debt listed in the SOR. He has an additional debt not listed.

Applicant's co workers attest to his dedication as a husband, father and a valued employee who takes his responsibilities seriously. (9) He is considered honest and trustworthy, with the highest level of integrity. (10) He is a valued expert and plays a critical role in the program he works on. (11) He has handled confidential information and has not had any adverse issues arise. (12)

## **POLICIES**

"[N]o one has a 'right' to a security clearance." (13) As Commander in Chief, 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." (14) The President authorized the Secretary of Defense or his designee to grant applicants eligibility for access to classified information " only upon a finding that it is clearly consistent with the national interest to do so." (15) An applicant "has the ultimate burden of demonstrating that it is clearly consistent with the national interest to grant or continue his security clearance." (16) "The clearly consistent standard indicates that security clearance determinations should err, if they must, on the side of denials." (17) Any reasonable doubt about whether an applicant should be allowed access to sensitive information must be resolved in favor of protecting such sensitive information. (18) The decision to deny an individual a security clearance is not necessarily a determination as to the loyalty of an applicant. (19) 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. (20)

The revised Adjudicative Guidelines set forth potentially disqualifying conditions (DC) and mitigating conditions (MC) under each guideline. In evaluating the security worthiness of an applicant, the administrative judge must also assess the adjudicative process factors listed in ¶ 6.3 of the Directive to be considered in evaluating a person's eligibility to hold a security clearance. 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 revised adjudicative guidelines should be followed whenever a case can be measured against this policy guidance.

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 are a concern because 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. Compulsive gambling is a concern as it may lead to financial crimes including espionage. Affluence that cannot be explained by known sources of income is also a security concern. It may indicate proceeds from financially profitable criminal acts.

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) 19. (a) (*inability or unwillingness to satisfy debts*) and FC DC 19(c) (*a history of not meeting financial obligations*), apply in this case. Applicant accumulated delinquent debts that he failed to pay. He admits he owes the debt and it remains delinquent.

I have considered all the Financial Considerations Mitigating Conditions (FC MC), and especially considered FC MC 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*), FC MC 20 (b) (*the conditions that resulted in the financial problem 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), FC MC 20 (c) (the person received or is receiving counseling for the problem and/or there are clear indications that the problem is being resolved or is under control), FC MC 20 (d) (the individual initiated a good-faith effort to repay overdue creditors or otherwise resolve debts).*

Although Applicant's debts remain unpaid, he has continued to maintain contact with the creditors and is committed to repaying all of his debts. The circumstances that led to Applicant's financial problems were beyond his control. He lost his job and was repeatedly unemployed, underemployed, and was not paid for a period of time when he was employed. The debts he accumulated were for living expenses to support his large family. They were not caused by frivolous or irresponsible spending. Shortly after regaining full-time employment, Applicant's daughter was diagnosed with cancer and the family incurred additional medical expenses. Three months later Applicant also was diagnosed with a serious medical condition. These two medical crises put an additional strain on his family's finances. The behavior is recent because the debts remain unpaid. However, the behavior is the type that is not likely to recur, and it does not cast doubt on Applicant's reliability, trustworthiness, or judgment. To the contrary, Applicant has contacted his creditors to ensure they are aware that he intends to repay his debts. He refused to file for bankruptcy and wants to repay his creditors. He actively negotiated repayment to satisfy other debts.

This is not a person who is ignoring his debts, or living beyond his means with no intention to repay his debts. Applicant fell on hard times and is now working on a viable plan to get his finances back on track. This is a father who did what he had to do to care for his seriously ill daughter. His unemployment, underemployment and medical issues were beyond his control and he has acted responsibly and proactively under the circumstances. I find FC MC (a) and (b) apply. Applicant did not seek debt consolidation because he had negotiated settlements on some of his debts and did not want to pay an additional fee. Applicant intends on either using the equity in his home upon its sale or obtaining a personal loan to resolve the remaining debt. He is working on which option would be best for his family. I find FC MC 20 (c) and (d) apply in that he is working to resolve his debt and there are clear indications the problem is under control.

### **The Whole Person**

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 Applicant's credibility, demeanor and responsiveness when testifying. I found Applicant to be very credible, forthright and honest about his situation. I considered that based on a series of events beyond Applicant's control he developed financial problems. He managed to pay off some of his debts and has some remaining. Applicant has been conscientious to his creditors, keeping them informed as to his financial status and promising he will pay off the debt. Applicant has reduced his spending and expenses so he can save money. He lives within his means and does not want to discharge the debts in bankruptcy. Applicant has acted responsibly during a difficult period for he and his family. I have considered the financial consideration security concerns raised under Guideline F and find Applicant was not living beyond his means, but rather has take steps to reduce his expenses due to his financial situation. There is nothing to indicate he lacks self-control in his spending habits or exercises poor judgment. To the contrary, considering the issues he was confronted with, he acted quite responsibly and exercised good judgment. Under the circumstances that these debts were incurred, I do not find his finances pose a security concern. 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**

The following are my conclusions as to each allegation in the SOR:

Paragraph 1. Guideline F: FOR APPLICANT

Subparagraph 1.a: For Applicant

Subparagraph 1.b: For Applicant

Subparagraph 1.c: 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. Tr. 22.
2. *Id.*
3. *Id.*
4. *Id.*
5. Tr. 23.
6. *Id.*
7. Tr. 25-27.
8. Applicant has an additional delinquent credit card debt listed in his credit report. Although this debt is not considered for purposes of disqualification, it is considered when reviewing his ability to repay his debts and in analyzing the whole person.
9. AE A.
10. *Id.*; AE B; AE C.
11. AE D.
12. *Id.*; AE E.
13. *Department of the Navy v. Egan*, 484 U.S. 518, 528 (1988).
14. *Id.* at 527.
15. Exec. Or. 10865, *Safeguarding Classified Information within Industry* § 2 (Feb. 20, 1960).
16. ISCR Case No. 01-20700 at 3 (App. Bd. Dec. 19, 2002).
17. *Id.*
18. *Id.*; Directive, Enclosure 2, ¶ E2.2.2.
19. Executive Order 10865 § 7.
20. *See* Exec. Or. 10865 § 7.