

DATE: February 21, 2007

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In re:

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SSN: -----

Applicant for Security Clearance

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ISCR Case No. 06-20099

**DECISION OF ADMINISTRATIVE JUDGE**

**CAROL G. RICCIARDELLO**

**APPEARANCES**

**FOR GOVERNMENT**

Braden Murphy, Esq., Department Counsel

**FOR APPLICANT**

Pro Se

**SYNOPSIS**

Applicant is a 49-year-old aircraft maintenance mechanic who has worked for a federal contractor since January 2005. He was unemployed for a period of time and accumulated delinquent debts. He has not taken any action to pay, research, dispute or otherwise resolve his delinquent debts. Applicant failed to mitigate the security concerns raised under Guideline F, financial considerations. Clearance is denied.

**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 1, 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 14, 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 is dated January 4, 2007. Applicant did not receive the written notice until January 10, 2007. Department Counsel had discussed the proposed hearing date with Applicant on December 19, 2006 and Applicant agreed to the date. In addition, he waived the 15 day written notice requirement at the hearing. Therefore, with the consent of the parties, I convened a hearing on January 22, 2007, to consider whether it is clearly consistent with the national interest to grant or continue a security clearance for Applicant. DOHA received the hearing transcript (Tr.) on January 31, 2007.

**FINDINGS OF FACT**

Applicant is a 49-year-old aircraft mechanic who has worked for a federal contractor since January 2005. He is a high school graduate and earned two associates degrees in the aviation field. He has been divorced once and is separated from his second wife for six years. He has an 18 year old daughter from his first marriage. She will graduate from high

school this year. He was ordered to pay child support in 1991 and it has been garnished since then. The payments will cease when she graduates from high school.

Applicant was unemployed from March 2003 to July 2003, and January 2004 to April 2004. During these periods of unemployment he fell behind in his child support payments and is approximately \$1,500 in arrears. While Applicant was unemployed he attended school to further his education and potentially be eligible for a better paying job. He fell further behind in his debts while attending school. He obtained student loans to attend school, owes \$14,000 on his loans, and his first payment is due in February 2007.<sup>(1)</sup> It was deferred for a period and his payments will be \$163 a month.<sup>(2)</sup> After Applicant pays his expenses he has very little money left over. He claims he will "just do the best"<sup>(3)</sup> and get a part-time job. He did not get one in anticipation of his budget short-fall.<sup>(4)</sup>

The two judgments in SOR ¶¶ 1. a and 1.b are for rent due on an apartment where Applicant was evicted.<sup>(5)</sup> He disputes the judgments, but acknowledges being in court for a hearing. He does not feel he owes the money, has not paid the judgments, and stated he does not have the time or money to resolve them.<sup>(6)</sup>

The debts listed in SOR ¶¶ 1.c,<sup>(7)</sup> 1.d,<sup>(8)</sup> 1.e,<sup>(9)</sup> 1.h,<sup>(10)</sup> 1.i,<sup>(11)</sup> 1.j,<sup>(12)</sup> 1.o,<sup>(13)</sup> 1.p,<sup>(14)</sup> 1.q,<sup>(15)</sup> and 1.r,<sup>(16)</sup> Applicant denies he owes. He is unaware of what these debts are for. He has not contacted any of the collection companies, nor has he researched when the debts were incurred and for what. He admits to having obtained a credit report approximately 10 years ago and is aware of how to obtain one. He stated he did not know how to contact the creditors, but acknowledged there are phone numbers and addresses listed at the bottom of the credit reports provided by the Government.

The debt listed in SOR ¶ 1.f<sup>(17)</sup> is for a cell phone bill. Applicant had an account with the cell phone company and permitted a friend to be added to his plan. The friend did not pay his share of the bill. Applicant disputes the amount on the bill and has not paid any of it. The debt in SOR ¶ 1.g is a cable television bill. Applicant claims he paid the bill and returned the cable box.<sup>(18)</sup> He did not have any documentation to support his claim. The debt in SOR ¶¶ 1.k and 1.l are two credit card debts that Applicant acknowledges, but has not paid.<sup>(19)</sup> The debt in SOR ¶ 1.m is a debt to a credit union that Applicant acknowledges, but has not paid.<sup>(20)</sup> The debt in SOR ¶ 1.n is a store credit card account held jointly with his wife.<sup>(21)</sup> He had been paying on it and believes his wife charged extra items. He has not paid the account. The debt in SOR ¶ 1.s is for a new vehicle he purchased in 1999 and financed for \$13,000.<sup>(22)</sup> He fell behind on the payments while attending school and voluntarily returned the vehicle.<sup>(23)</sup> He does not believe he owes the amount listed, but has not contacted the creditor to dispute or resolve the debt, nor has he made any payment toward the debt. The debt listed in SOR ¶ 1.t is for arrears in his child support payments.<sup>(24)</sup> Applicant acknowledges this debt and has an additional amount taken out of his check through garnishment to satisfy the arrearage.<sup>(25)</sup>

Many of Applicant's debts were sold to collection agencies. Applicant has not contacted the original creditors or the collectors. He had a copy of a credit report provided by the Government listing the creditors with phone numbers and addresses. He did not use this resource to contact his creditors. He does not believe a credit report is sufficient to prove he owes these debts, but has also failed to do anything about the debts that he acknowledges he owes. He was aware by the questions he was required to answer on his security clearance application (SCA) that the Government was concerned about his finances. He also knew he had more debts than he reported on his SCA. He did not think of his finances as "a big concern."<sup>(26)</sup>

Applicant has not sought credit counseling. He claims he wants to pay off his delinquent debts, but has not made any inquiries regarding them.

## POLICIES

"[N]o one has a 'right' to a security clearance."<sup>(27)</sup> 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."<sup>(28)</sup> 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." (29) An applicant "has the ultimate burden of demonstrating that it is clearly consistent with the national interest to grant or continue his security clearance." (30) "The clearly consistent standard indicates that security clearance determinations should err, if they must, on the side of denials." (31) Any reasonable doubt about whether an applicant should be allowed access to sensitive information must be resolved in favor of protecting such sensitive information. (32) The decision to deny an individual a security clearance is not necessarily a determination as to the loyalty of an applicant. (33) 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. (34)

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 significant delinquent debts that he failed to pay. He admits some of the debts alleged, but has not made an effort to pay. Other debts alleged he has not researched to see if they are valid, but has ignored them, and other debts although he disputes the amount he owes, he has made no effort to resolve.

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), and FC MC 20 (e) (the individual has a reasonable basis to dispute the legitimacy of the past-due debt which is the cause of the problem and provides documented proof to substantiate the basis of the dispute or provides evidence of actions to resolve the issue.*

Applicant's debts are recent and remain unpaid. He has made no effort to repay them. His student loan deferment will end and he has not made realistic plans on how he will pay that debt along with his living expenses. Because of this it casts doubt about his ability to repay his student loans, his past debts and any new debts. I find FC MC 20 (a) does not apply. Applicant had periods of unemployment that were beyond his control. While unemployed he took on additional debt and has not repaid it. Since he has been employed full time he has not attempted to decrease his delinquent debts. FC MC 20 (b) partially applies in that his unemployment was beyond his control, and he is applauded for going back to school, however he failed to act responsibly by failing to follow through and minimally start a repayment plan to take care of his debts once employed. Therefore, I find based on all of the criteria in FC MC 20 (b) that it does not apply. Applicant has not sought any financial counseling or assistance in resolving his delinquent debts. I find FC MC 20 (c) does not apply. He has not initiated any efforts to repay any of his creditors, even the ones that he acknowledges he owes. Hence, FC MC 20 (d) does not apply. Applicant claims he does not know what certain debts are for that are listed on his credit report, but made no effort to research the debts, dispute them with the creditors, or otherwise resolve them. Therefore, I find FC MC 20 (e) does not apply.

### **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 that Applicant was unemployed for a period of time and got behind in his bills. I also considered what actions he has taken since being employed full time. I considered that Applicant has not resolved, researched or formally disputed or resolved his debts and does not have a repayment plan or any type of strategy to repay his debts. In addition, I considered that Applicant's student loan deferment will expire and he has not planned on how he will repay that debt. Applicant is repaying his child support arrearage. Therefore, I am persuaded by the totality of the evidence in this case, that it is clearly not consistent with the national interest to grant Applicant a security clearance. Accordingly, Guideline F is decided against Applicant.

### **FORMAL FINDINGS**

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

Paragraph 1. Guideline F: AGAINST APPLICANT

Subparagraph 1.a-1.s: Against Applicant

Subparagraph 1.t: For Applicant

### **DECISION**

In light of all of the circumstances 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. Tr. at 45.
2. Tr. at 81.
3. *Id.*
4. Tr. at 82.
5. Tr. at 19-20.
6. Tr. at 21.
7. Tr. at 22.
8. Tr. at 23.
9. *Id.*
10. Tr. at 27-28.
11. Tr. at 29.
12. Tr. at 29-30.
13. Tr. at 35.
14. Tr. at 35-36.
15. Tr. at 36.
16. Tr. at 37-38.
17. Tr. at 25-26, 62-63.
18. Tr. at 26.
19. Tr. at 31, 64.
20. Tr. at 31-32.
21. Tr. at 33-34.
22. Tr. at 65.
23. Tr. at 37-38.
24. Tr. at 39, 53-54.
25. Tr. at 40, 53-54.
26. Tr. at 69.
27. *Department of the Navy v. Egan*, 484 U.S. 518, 528 (1988).
28. *Id.* at 527.
29. Exec. Or. 10865, *Safeguarding Classified Information within Industry* § 2 (Feb. 20, 1960).

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

31. *Id.*

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

33. Executive Order 10865 § 7.

34. *See* Exec. Or. 10865 § 7.