

DATE: March 27, 1997

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In Re:

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SSN: -----

Applicant for Security Clearance

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ISCR Case No. 96-0750

DECISION OF ADMINISTRATIVE JUDGE

JOHN R. ERCK

APPEARANCES

FOR THE GOVERNMENT

Peregrine D. Russell-Hunter

Department Counsel

FOR THE APPLICANT

*Pro Se*

STATEMENT OF THE CASE

On October 15, 1996, the Defense Office of Hearings and Appeals (DOHA), pursuant to Executive Order 10865, "*Safeguarding Classified Information Within Industry*," dated February 20, 1960, as amended and modified, and Department of Defense Directive 5220.6 "*Defense Industrial Personnel Security Clearance Review Program*" (Directive) dated January 2, 1992, as amended by Change 3, dated February 13, 1996, issued a Statement of Reasons (SOR) to Applicant which detailed reasons why DOHA could not make a preliminary determination that it was clearly consistent with the national interest to grant or continue a security clearance for him.

A copy of the SOR is attached to this Decision and included herein by reference.

The Applicant responded to the SOR in writing on October 24, 1996, and requested a hearing before a DOHA Administrative Judge. The case was assigned to this Administrative Judge on January 15, 1997, and on February 24, 1997, a hearing was convened for the purpose of considering whether it was clearly consistent with the national security to grant, continue, deny, or revoke Applicant's security clearance. The Government's case consisted of five exhibits and no witnesses; Applicant relied on his own testimony and two exhibits. A transcript of the proceedings was received on March 6, 1997.

FINDINGS OF FACT

Applicant has admitted all of the factual allegations set forth in the SOR, except for the factual allegation set forth under subparagraph 1.d., which he has denied. I have accepted Applicant's admissions and incorporate them as part of my findings of fact. After a complete and thorough review of the evidence in the record, and upon due consideration of the same, I make the following additional findings of fact:

Applicant is 27 years old and has been employed by his current employer since March 1995. In this first attempt to obtain a security clearance, he is applying for a clearance at the secret level. A preliminary determination could not be made because of financial considerations.

Applicant began to fall behind in his financial obligations in 1989 while he was still in college. When he graduated from college in May 1991, he was married, had two children, and owed more than \$27,000.00 in education loans. At that time Applicant had also become indebted to Creditor A for \$923.00, to Creditor B for \$1879.00, and Creditor C for \$195.00. In the time since graduating from college, Applicant's indebtedness has increased even more. He now owes Creditor D more than \$4268.00 for rent on an apartment which he and his ex-wife occupied prior to their separation in March 1992. He owes Creditor E \$300.00 on a judgment entered against him for unpaid rent on an apartment (this judgment was originally \$878.50) which he occupied during 1994. He owes Creditor E an additional \$3193.50 for another judgment entered against him after he vacated the same apartment before the lease had expired. Applicant owes Creditor F \$143.00 for an indebtedness incurred prior to June 1994. He owes Creditor G \$126.14 for an indebtedness referred for collection by the telephone company. And Applicant owes Creditor H \$115.00 for an indebtedness referred for collection by the cable company.

Some of his financial difficulty, Applicant attributes to two periods of unemployment. He was unemployed from October to December 1991 (Gov. Exh. 1), and from October to November 1994 (Tr. 42). He disputes his obligations to Creditor's D and E. The obligation to Creditor D was for an apartment in which he and his ex-wife were living prior to their separation. He asserts that she assumed and then reneged on her obligation to pay the rent (Gov. Ex. 2, Tr. 51,82, Ans. to SOR); however, he does not proffer any evidence of such an agreement, nor does he offer evidence of a subsequent settlement with Creditor D under which he would be relieved of one-half of the obligation (Tr. 52). Applicant claims that his indebtedness to Creditor E was incurred through his rent of an apartment that was not fit for occupancy. Because of the apartment's condition, Applicant moved out before the lease had expired. He testified that he has no recollection of receiving "notice" before

these judgments were entered against him (Tr. 69-70). Consequently, he did not present evidence of the apartment's condition before the court entered its judgment against him.

Recently, Applicant has sought the services of Consumer Credit Counseling and arranged to have payments totaling \$154.00 monthly (Tr. 31) made through them to Creditor's A (with an outstanding balance [OB] of \$923.00 ), C (OB of \$195.00), E (OB of \$879.50), F (OB of \$143.00), and G (OB of \$80.33), (see App. Exh. B). He has been trying to make monthly payments of \$50.00 on his education loans (OB of \$27,000.00<sup>(1)</sup>), but because of other pressing financial obligations, he has made only eight payments since April 1995. Applicant is not currently making payments to Creditor's B (OB of \$4268.99) and D (OB of 1879.50).

Applicant provides financial support for four biological children and one stepchild.

### **POLICIES**

The Adjudicative Guidelines of the Directive are not a set of inflexible rules of procedure. Instead, they are to be applied by Administrative Judges on a case-by-case basis with an eye toward making determinations with reasonable consistency that are clearly consistent with the interests of national security. In making those overall common sense determinations, Administrative Judges must consider, assess, and analyze the evidence of record, both favorable and unfavorable, not only with respect to the relevant Adjudicative Guidelines but in the context of the factors set forth in section F.3. of the Directive as well. In that vein, the government not only has the burden of proving any controverted fact(s) alleged in the SOR, it must also demonstrate that the facts proven have a nexus to an applicant's lack of security worthiness.

The following Adjudicative Guidelines are deemed applicable to the instant matter.

### **FINANCIAL CONSIDERATIONS**

(Criterion F)

**Conditions that could raise a security concern and may be disqualifying:**

- (1) A history of not meeting financial obligations;
- (3) Inability or unwillingness to satisfy debts;

**Conditions that could mitigate security concerns:**

None

**Burden of Proof**

The Government has the burden of proving any controverted fact(s) alleged in the Statement of Reasons. If the Government establishes its case, the burden of persuasion shifts to the applicant to establish his security suitability through evidence which refutes, mitigates, or extenuates the disqualifying conduct and demonstrates that it is clearly consistent with the national interest to grant or continue his security clearance.

A person who seeks access to classified information enters into a fiduciary relationship with the Government predicated upon trust and confidence. Where the facts proven by the Government raise doubts about an applicant's judgment, reliability or trustworthiness, the applicant has a heavy burden of persuasion to demonstrate that he is nonetheless security worthy. As noted by the United States Supreme Court in *Department of Navy v. Egan*, 484 U.S. 518, 531 (1988), "the clearly consistent standard indicates that security clearance determinations should err, if they must, on the side of denials." As this Administrative Judge understands that Court's rationale, doubts are to be resolved against an applicant.

**CONCLUSIONS**

Having considered the record evidence in accordance with the appropriate legal precepts and factors, this Administrative Judge concludes that the Government has established its case with regard to Criteria F. In reaching my decision, I have considered the evidence as a whole, including each of the factors enumerated in Section F.3, as well as those referred to in the section dealing with the Adjudicative Process, both in the Directive.

The Government has met its burden with respect to Criterion F. The evidence establishes that Applicant has had serious financial problems for at least seven years and will continue to have them for the foreseeable future. He is currently delinquent on obligations totaling more than \$38,000.00. Even assuming that he continues to be gainfully employed and continues to receive regular salary increases, his current financial obligations, together with those obligations on which he has become delinquent, ensure that he will remain behind in his financial obligations into the foreseeable future and beyond.

There is evidence that certain of the mitigating conditions under Criterion F are present in some measure. Applicant was unemployed on two occasions, he has received counseling for his financial problems, and he has initiated a good faith effort to repay some of his overdue creditors. On closer examination, there is insufficient evidence of any of the conditions to allay the concerns raised by Applicant's chronic financial problems. While Applicant's unemployment on two different occasions certainly prevented him from repaying his debts in a timely manner, unemployment did not cause his problem. Applicant was experiencing financial problems before the periods of unemployment and he has continued to fall in arrears on financial obligations incurred at times when he has been gainfully employed. Applicant recently received counseling for his financial problems. However, because the debt payment program arranged by the counseling service does not cover all of his obligations, there is no evidence upon which to conclude that his problem "is being resolved or is under control." Finally Applicant has initiated a repayment program through the debt counseling service. While I do not question his sincerity and his desire to pay down his obligations, his past performance does not inspire confidence that he will follow through and systematically reduce his indebtedness. Previously, he had undertaken to pay down his educational loans at the rate of \$50.00 per month. In the past 22 months while regularly employed, he has been able to make that minimum payment less than one-half of the time.

Confidence that Applicant will be able to meaningfully address his substantial delinquent financial obligations is diminished further by evidence that he did not or could not pay his monthly telephone bill. If he was unable to remain current on an obligation that is payable monthly--usually in relatively small amounts--for a service he was then receiving, it is unlikely that he will summon the discipline and resources to make payments on obligations incurred 5-10 years ago--for products and services that do not impact on his current well being.

Finally, Applicant has demonstrated an ineptitude or disinterest in dealing with financial matters that has doubtless contributed to his current predicament and will probably continue to exacerbate his problems in the future. He claims that his ex-wife assumed the responsibility of paying the rent on the apartment after he moved out in March 1992 (Tr. 82), but he has been unable to proffer any evidence of that agreement, or of a subsequent offer by the creditor to hold him accountable for only one-half of the outstanding obligation. As a consequence, the entire indebtedness of more than \$4,000.00 remains his obligation. If he has had a legitimate reason for not paying on this obligation, he has had sufficient time to produce evidence which supports his inaction. On the basis of the evidence, I am not prepared to conclude that Applicant is lying about who is responsible for this obligation. Rather I am prepared to conclude that Applicant is inattentive to his finances and indifferent to the DoD's concerns about them. Further evidence of this character trait is present in Applicant's actions after he moved into an apartment which was not properly maintained. I do not expect Applicant to pay rent for living quarters which were not suitable for occupancy, but I do expect him to present evidence of the apartment's condition in his own defense when the landlord seeks a judgment for back rent. Because he did not, Applicant was obligated for paying the rent on an apartment which he could not and did not occupy, and he became obligated for paying rent on the housing he occupied after vacating the derelict premises.

Applicant has not heretofore demonstrated the financial discipline necessary to meaningfully address his substantial indebtedness. Until he does, his financial problems will not be satisfactorily resolved by making small monthly payments to a handful of delinquent creditors through Consumer Credit Counseling. Criterion F. is concluded against Applicant.

### **FORMAL FINDINGS**

Formal Findings as required by Section 3, Paragraph 7, of Enclosure 1 of the Directive are hereby rendered as follows:

#### Paragraph 1 (Criterion F) AGAINST THE APPLICANT

Subparagraph 1.a. Against the Applicant

Subparagraph 1.b. Against the Applicant

Subparagraph 1.c. Against the Applicant

Subparagraph 1.d. Against the Applicant

Subparagraph 1.e. Against the Applicant

Subparagraph 1.f. Against the Applicant

Subparagraph 1.g. Against the Applicant

Subparagraph 1.h. Against the Applicant

Subparagraph 1.i. Against the Applicant

Subparagraph 1.j. Against the 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 continue Applicant's security clearance.

**John R. Erck**

**Administrative Judge**

1. This is an approximate number. At the time the SOR was issued, the outstanding balance was \$27,193.25. It cannot be ascertained from the record whether this amount reflects Applicant's eight \$50.00 payments.