

DATE: September 3, 1997

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In Re:

Applicant for Security Clearance

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ISCR Case No. 97-0278

**DECISION OF ADMINISTRATIVE JUDGE**

**JOHN G. METZ, JR.**

**APPEARANCES**

**FOR THE GOVERNMENT**

Matthew E. Malone, Esquire

Department Counsel

**FOR THE APPLICANT**

*Pro Se*

**STATEMENT OF THE CASE**

On 14 April 1997, the Defense Office of Hearings and Appeals (DOHA) issued a Statement of Reasons (SOR) to Applicant, stating that DOHA could not make the preliminary affirmative finding<sup>(1)</sup> that it is clearly consistent with the national interest to grant or continue a security clearance for Applicant. On 2 May 1997, Applicant answered the SOR and requested an administrative decision on the record. Applicant did not respond to the Government's File of Relevant Material (FORM)--issued 12 June 1997; the record in this case closed 23 July 1997, the day the response was due at DOHA. The case was originally assigned to a different administrative judge, but was reassigned to me because of workload considerations on 13 August 1997. I received the case on 13 August 1997 to determine whether clearance should be granted, continued, denied or revoked.

The SOR is attached to this Decision and incorporated by reference.

**FINDINGS OF FACT**

Applicant admitted all the allegations of the SOR, except for subparagraphs l.o. and q.; accordingly, I incorporate those admissions as findings of fact.<sup>(2)</sup>

Applicant--a 51-year old employee of a defense contractor--seeks a secret clearance.

Applicant has a history of financial irresponsibility. The SOR alleges 14 debts--totaling over \$23,000.00--falling past due between November 1990 and June 1992. Applicant has made no payment on any of the bad debts.

Applicant's financial difficulties began in the late 1980s when he and his spouse began to mishandle their finances.<sup>(3)</sup> Applicant filed for Chapter 13 protection in late November 1990; he made five weekly payments on the plan beginning in January 1991, and one payment by payroll deduction in March 1991. However, he stopped making payments and by July 1991 was \$4,200.00 behind on his payments. He attempted to convert the Chapter 13 proceeding to a Chapter 7

bankruptcy but did not comply with the procedural requirements for converting to Chapter 7. Both the Chapter 13 and Chapter 7 proceedings were dismissed in October 1991. Although it appears Applicant did not know the Chapter 7 had been dismissed, he took no action to ensure that his debts had been discharged.

In his answer to the SOR, Applicant claims to have contacted four credit bureaus to ascertain the status of his debts, and--on the advice of counsel--to have contacted the creditor on the smallest of his debts. However, the record is silent on the results of those contacts. There is no evidence to suggest that Applicant has taken any steps to address his indebtedness, either by paying the acknowledge debts or pursuing bankruptcy protection.

### **POLICIES**

Enclosure 2 of the Directive sets forth adjudicative guidelines to be considered in evaluating an individual's security eligibility. The Administrative Judge must take into account the conditions raising or mitigating security concerns in each area applicable to the facts and circumstances presented. Each adjudicative decision must also assess the factors listed in Section F.3. and in Enclosure (2) of the Directive. Although the presence or absence of a particular condition for or against clearance is not determinative, the specific adjudicative guidelines should be followed whenever a case can be measured against this policy guidance, as the guidelines reflect consideration of those factors of seriousness, recency, motivation, *etc.*

Considering the evidence as a whole, the following adjudication policy factors are most pertinent to this case:

### **FINANCIAL CONSIDERATIONS (CRITERION F)**

An individual who is financially overextended is at risk of having to engage in illegal acts to generate funds. Unexplained affluence is often linked to proceeds from financially profitable criminal acts.

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

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

Conditions that could mitigate security concerns include:

None.

### **Burden of Proof**

Initially, the Government must prove controverted facts alleged in the Statement of Reasons. If the Government meets that burden, the burden of persuasion then shifts to the applicant to establish his security suitability through evidence of refutation, extenuation or mitigation sufficient to demonstrate that, despite the existence of disqualifying conduct, it is nevertheless clearly consistent with the national interest to grant or continue the security clearance.

A person who seeks access to classified information enters into a fiduciary relationship with the Government predicated upon trust and confidence. Where 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 or she is nonetheless security worthy. As noted by the United States Supreme Court in *Department of the 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."

### **CONCLUSIONS**

The Government has established its case under criterion F. The record evidence clearly establishes Applicant's indebtedness and his irresponsible handling of that indebtedness. The initial indebtedness was the result of the Applicant's financial irresponsibility. Although Applicant attempted to resolve the indebtedness in 1991, by pursuing

first Chapter 13, then Chapter 7 protection, he was not successful. Even if he did not know that his Chapter 7 petition had been dismissed, he is responsible for ensuring that those debts were either discharged in bankruptcy or paid. His indifference to the status of his bankruptcy petitions is further indication of his financial irresponsibility. Further, Applicant has taken little effective action to address his debts since his DIS interview in December 1996 (Item 6). The activity described in his answer to the SOR is inadequate to address the debt, and the absence of follow-up information in response to the Government's FORM, leads me to conclude that Applicant has made no meaningful effort to address his debts. I conclude from Applicant's inaction that he has no real intent to deal with his indebtedness, either by paying the debts or by discharging them in bankruptcy. I find criterion F. against Applicant.

### **FORMAL FINDINGS**

Paragraph 1. Criterion F: Against THE APPLICANT

Subparagraph a: Against the Applicant

Subparagraph b: Against the Applicant

Subparagraph c: Against the Applicant

Subparagraph d: Against the Applicant

Subparagraph e: Against the Applicant

Subparagraph f: Against the Applicant

Subparagraph g: Against the Applicant

Subparagraph h: Against the Applicant

Subparagraph i: Against the Applicant

Subparagraph j: Against the Applicant

Subparagraph k: Against the Applicant

Subparagraph l: Against the Applicant

Subparagraph m: Against the Applicant

Subparagraph n: Against the Applicant

Subparagraph o: Against the Applicant

Subparagraph p: Against the Applicant

Subparagraph q: 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 grant or continue a security clearance for Applicant.

**John G. Metz, Jr.**

**Administrative Judge**

1. Required by Executive Order 10865, as amended and Department of Defense Directive 5220.6, dated January 2, 1992--and amended by Change 3 dated 16 February 1996 (Directive).
2. He also questions the amount of indebtedness in subparagraphs 1.e. and m., although he does not aver a different amount owed. Record evidence establishes the amount of debt alleged in subparagraphs 1.e. and m., as well as the debt and amount alleged in subparagraph 1.o.
3. ". . . There are a lot of excuses I could make for these debts, but the root cause was my lack of self control and shirking of responsibility." Item 6.