

DATE: February 10, 1998

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In Re:

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SSN: -----

Applicant for Security Clearance

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ISCR Case No. 97-0413

**DECISION OF ADMINISTRATIVE JUDGE**

**PAUL J. MASON**

**APPEARANCES**

**FOR GOVERNMENT**

Melvin A. Howry, Esq., Department Counsel

**FOR APPLICANT**

Pro se

**STATEMENT OF THE CASE**

On June 11, 1997, the Defense Office of Hearings and Appeals (DOHA), pursuant to Executive Order 10865 and Department of Defense Directive 5220.6 (Directive), dated January 2, 1992, issued a Statement of Reasons (SOR) to Applicant, which detailed reasons why DOHA could not make the preliminary affirmative finding under the Directive that it is clearly consistent with the national interest to grant or continue a security clearance for Applicant and recommended referral to an Administrative Judge to determine whether clearance should be denied or revoked. The SOR is attached. Applicant filed his Answer to the SOR on July 14, 1997.

The case was received by the undersigned on August 20, 1997. A notice of hearing was issued on September 24, 1997, and the case was heard on October 22, 1997. The Government and Applicant submitted documentary evidence. Testimony was taken from Applicant. The transcript was received on November 13, 1997.

**RULINGS ON PROCEDURE**

At the hearing, the Government moved to amend 1b of the SOR by substituting the name of one credit card for the name of another credit card. The motion was granted. (Tr. 17)

**FINDINGS OF FACT**

The following Findings of Fact are based on Applicant's Answer to the SOR, the documents and the live testimony. The SOR alleges financial considerations. Applicant's admissions shall be incorporated in the following Findings of Fact. Applicant is 42 years old and employed by a defense contractor as a training director. He seeks a secret level clearance.

Applicant's financial indebtedness totals approximately \$33,622.00 to six creditors. Applicant owes creditor 1a (credit card) a debt of \$5,288.00, charged off in September 1993. Applicant owes creditor 1b (credit card) a debt totaling \$24,932.99, which was charged off in December 1993. <sup>(1)</sup> Applicant owes creditor 1c (cellular phone) a debt of \$356.02

for an account charged off in approximately April 1994.<sup>(2)</sup> Applicant owes creditor 1d (collection agency) a debt of \$174.00 which was placed in collection on January 14, 1994.<sup>(3)</sup>

Applicant owes creditor 1e (credit card) \$2,068.00 for an account charged off in March 1994. Applicant owes creditor 1f (collection agency) \$854.00 for an account placed in collection by a doctor in June 1994.

Applicant's salary was approximately \$85,000 in 1990 and 1991. However he lost his job in December 1992 because his employer reduced the employee workforce. He did not make any adjustments to his financial obligations because he had always been able to land a better paying job in the past. In early 1993, he eventually took another position paying about 50% less in salary and after six months on the job, had to undergo emergency surgery. In August 1993, Applicant was using most of his savings and a substantial part of his retirement to pay current debts. At about the same time, he decided that his child support, auto, and mortgage, were his primary debts to keep current on before addressing any other debts. In October 1993, Applicant took a job as a school teacher, paying him approximately \$25,000 a year,<sup>(4)</sup> and did not want to think about the debts. By the end of 1993, Applicant had sold his house at a loss and was applying the remainder of his savings and investment funds to his revolving charge accounts. He testified he cleared some accounts and referenced GE-4 for verification.<sup>(5)</sup>

Applicant taught school until June 1995 when he obtained some additional training and transferred from the sales field to the technical field.

In his sworn statement to Defense Security Services (DSS) in January 1997, Applicant was equivocal about his intentions to pay off the debts. He stated that if he did not owe so much to creditor 1b, then he would consider paying off the other creditors. However, He stated, "If I am found at fault and have to pay them (creditor 1b), I will probably file for bankruptcy." (GE-5) In his sworn statement to DSS in April 1997, he essentially articulated the same position which was, he would pay the other creditors if he could extricate himself from the lawsuit by creditor 1b.

At the hearing, Applicant used a series of graphs (AE-1) to explain his yearly earnings and debts since 1990, the sudden reduction in income in 1993, and also, the growing percentage of his debts to his earnings over those years. Applicant reiterated that his lay-off in December 1992 and a medical emergency were the two reasons for the indebtedness. Then, Applicant stated his intention was to make more money and save more, and when the time came, although he did not know when the time was, he would start paying on the debts.

A Personal Financial Statement (PFS-DSS Form 154) was prepared with GE-5. The statement reflects a monthly remainder of \$1,260.00, after expenses. Applicant's monthly remainder, after payment of expenses, is a lot less because of a verified debt to the Internal Revenue Service (IRS), ongoing car repairs and all the expenses of raising two children.

Applicant implied that pride or embarrassment prevented him from seeking some kind of counseling service to assist him in seeking solutions to his financial problems. Applicant believes the responsible action to take is to pay off the debts when he is able.

## **POLICIES**

Enclosure 2 of the Directive sets forth policy factors which must be given binding consideration in making security clearance determinations. These factors must be considered in every case according to the pertinent criterion; however, the factors are in no way automatically determinative of the decision in any case nor can they supersede the Administrative Judge's reliance on his own common sense. Because each security case presents its own unique facts and circumstances, it should not be assumed that the factors exhaust the entire realm of human experience or that the factors apply equally in every case. In addition, the Judge, as the trier of fact, must make critical judgments as to the credibility of witnesses. Factors most pertinent to evaluation of the facts in this case are:

### **Financial Considerations (Criterion F)**

#### **Factors Against Clearance:**

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

#### Factors for Clearance:

None.

#### **General Policy Factors (Whole Person Concept)**

Every security clearance case must also be evaluated under additional policy factors that make up the whole person concept. Those factors (found at page 2-1 of Enclosure 2 of the Directive) include: (1) the nature, extent, and seriousness of the conduct; (2) the circumstances surrounding the conduct; (3) the frequency and recency of the conduct; (4) the individual's age and maturity at the time of the conduct; (5) the voluntariness of participation; (6) the presence or absence of rehabilitation and other behavioral changes; (7) the motivation for the conduct; and, (8) the likelihood of continuation or recurrence.

#### **Burden of Proof**

As set forth in the Directive, every personnel security determination must be a fair and impartial overall commonsense decision based upon all available information, both favorable and unfavorable, and must be arrived at by applying the standard that the granting (or continuance) of a security clearance under this Directive may only be done upon a finding that to do so is clearly consistent with the national interest. In reaching determinations under the Directive, careful consideration must be directed to the actual as well as the potential risk involved that an applicant may fail to properly safeguard classified information in the future. The Administrative Judge can only draw those inferences or conclusions that have a reasonable and logical basis in the evidence of record. The Judge cannot draw inferences or conclusions based on evidence which is speculative or conjectural in nature.

The Government must establish all the factual allegations under financial considerations (Criterion F) which establishes doubt about a person's judgment, reliability and trustworthiness. While a rational connection, or nexus, must be shown between an applicant's adverse conduct and his ability to effectively safeguard classified information, with respect to the sufficiency of proof of a rational connection, objective or direct evidence is not required.

Then, the Applicant must remove that doubt with substantial evidence in refutation, explanation, mitigation or extenuation which demonstrates that the past adverse conduct is unlikely to repeat itself and Applicant presently qualifies for a security clearance.

#### **CONCLUSIONS**

The Government has established a case of financial matters within the scope of Criterion F. Applicant has a history of not meeting financial obligations. Applicant argues that the majority of his financial history reflects that he has met most of his financial obligations over the years. Applicant's argument would be persuasive if the record reflected payment of all, or almost all his debts, both old and new, both large and small, in a timely and responsible manner. Rather, the record shows that nineteen debts have been maintained in a non-delinquent status, but Applicant has taken absolutely no action to improve or correct the delinquent status of six other debts.

At the hearing, Applicant testified he was willing to pay the debts but could not say when. His willingness would constitute some credible evidence in his favor if he had not furnished a different position in his sworn statements in January and June 1997, when he stated he would only pay the other creditors if he was able to remove himself for the lawsuit filed by creditor 1b. The inconsistent positions undermine the credibility of Applicant's intentions to resolve his indebtedness.

Even though the debts did not recently become past due or convert to some other kind of delinquent status, the fact remains that Applicant still owes on the debts. Even though Applicant claims that the other 19 debts are in a current status, he offered no evidence to validate his claim.<sup>(6)</sup> In sum, other than through his testimony, Applicant has provided

no evidence demonstrating how he has maintained the other 19 debts (or any other ongoing debts) in a non-delinquent status.

Applicant's sudden loss of employment in December 1992 and unanticipated medical emergency, are conditions that mitigate the security concerns of financial problems, and may represent favorable evidence to extenuate the indebtedness. However, the loss of employment must be weighed and balanced against what Applicant has done since the time he lost his employment. Applicant is to be commended for his persistent efforts in obtaining other employment, but he should also have realized that the 50% reduction in pay would not permit him to carry the heavy economic load he shouldered before he lost his employment in December 1992. Instead of attempting to reduce his personal obligations to his family, along with his other obligations, he made no adjustments, and the debts to these six creditors became past due.

Applicant's unexpected medical emergency is a condition which also weighs in Applicant favor. However, the record fails to clearly demonstrate the degree to which the medical emergency contributed to Applicant's indebtedness.<sup>(7)</sup> Because there is little or no evidence of the seriousness of the medical condition, I do not attach much probative value and weight to the condition as being a substantial reason for the financial problems.

Applicant could have participated in counseling from a consumer credit service to help him regain control of his finances. Instead, Applicant decided to try not to think about the debts for an unknown time. Applicant's inaction for more than three years raises doubt about Applicant's judgment and whether he is a suitable candidate for security clearance.

Applicant's indebtedness is serious because more than \$33,000 is owed to six creditors. Although the debts were incurred in 1993 and 1994 time frame, Applicant still owes the debts and has given mixed signals on whether he will take action to repay the debts. Applicant was 39 or 40 when he became indebted, and since he became indebted, there is little evidence in the record showing behavioral changes to prevent a recurrence of debt problems in the future. Given the inaction by Applicant in addressing the debts, the absence of evidence of counseling, Applicant has failed to persuade me how or whether his financial problems will improve in the future. Accordingly, I find Criterion F against Applicant.

## **FORMAL FINDINGS**

Having weighed and balanced the specific policy factors with the general policy factors (whole-person concept), Formal Findings required by Paragraph 25 of Enclosure 3 of the Directive are:

Paragraph 1 (**financial matters**): AGAINST THE APPLICANT.

- a. Against the Applicant.
- b. Against the Applicant.
- c. Against the Applicant.
- d. Against the Applicant.
- e. Against the Applicant.
- f. Against the Applicant.
- g. Against the Applicant.

## **DECISION**

In light of all the circumstances presented by the record in this case, it is not clearly within the national interest to grant or continue a security clearance for Applicant.

Paul J. Mason

Administrative Judge

1. In his Answer, Applicant claimed he would be discharged from the lawsuit on July 16, 1997, but offered no evidence at the hearing about his discharge. In addition, her did not explain his sworn statement in GE-3, indicating he did not want to complicate the pending lawsuit by creditor 1b.
2. Applicant's claim that he provided timely notice of cancellation is not persuasive because he offered no evidence to support his claim.
3. Even though Applicant may have been deceived into believing the lab procedure was covered by insurance, the deception does not excuse him from the debt and/or taking some kind of legal action to establish the procedure was unauthorized.
4. School teaching was his first job after graduating from college.
5. Applicant offered no independent evidence he was maintaining current payments on any debt or that he had completely satisfied any debt. I cannot blindly accept that Applicant has been financially responsible with 19 other creditors, particularly when eight of the nineteen accounts are closed and the individual payment history is no longer available.
6. For example, some of the debts may be closed out accounts or accounts which have been closed and merged under more recent account numbers.
7. There is no evidence of how long the medical emergency lasted or whether the emergency was complicated by other medical problems, whether the medical emergency deprived Applicant from employment opportunities, and, whether the medical emergency was covered by insurance.