

DATE: November 28, 2007

In re:

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SSN: -----

Applicant for Security Clearance

ISCR Case No. 06-25426

**DECISION OF ADMINISTRATIVE JUDGE  
MARC E. CURRY**

**APPEARANCES**

**FOR GOVERNMENT**

Richard A. Stevens, Esq., Department Counsel

**FOR APPLICANT**

*Pro Se*

**SYNOPSIS**

\_\_\_\_ Applicant's accrual of \$62,000 of delinquent debt and his failure to disclose it on his security clearance application creates security concerns that he failed to mitigate at the hearing. Clearance is denied.

**STATEMENT OF THE CASE**

On July 13, 2007, the Defense Office of Hearings and Appeals (DOHA) issued Applicant a Statement of Reasons (SOR) explaining why it was not clearly consistent with the national interest to grant or continue a security clearance. This action was taken under Executive Order 10865, dated February 20, 1960, as amended, and DoD Directive 5220.6, dated January 2, 1992, as amended. He answered the SOR on August 31, 2007, and requested a hearing.

The case was assigned to me on October 4, 2007. That day, DOHA issued a notice of hearing scheduling it for October 23, 2007. During the hearing, I received six government exhibits, 15 Applicant exhibits, and Applicant's testimony. DOHA received the transcript on October 31, 2007.

### **FINDINGS OF FACT**

I have incorporated Applicant's SOR admissions (subparagraphs 1.a through 1.c, 1.e, 1.f, 1.h, 1.m, 2.c, and 2.d), into the findings of fact. In addition, I make the following findings of fact.

Applicant is a 50-year-old man with three children, ages 14, 10, and 8 from a marriage that ended in divorce in 2004. He has physical custody of them. He is a U.S. Air Force veteran, serving from 1975 through his honorable discharge in 1978. He received a bachelor of science degree in business management in 1984. Since 2002, he has worked as a subcontract administrator for an aeronautical company.<sup>1</sup>

According to Applicant's employer, he is "a competent performer and valued team player."<sup>2</sup> A coworker described him as a man with high ethical standards and moral convictions.<sup>3</sup>

Applicant is also highly respected in his community. He is a youth league basketball coach who is considered a father figure by many of his players.<sup>4</sup>

Applicant's financial problems began after the birth of his first child in 1993 when his wife stopped working full time. Beginning in 1995, he attempted to compensate for the decreased income by claiming more federal income tax deductions.<sup>5</sup> His paychecks increased, but he was unable to pay the increased income tax debt when due. He was also unable to pay his income taxes for the tax years 1996 and 1997.

Applicant's financial problems were exacerbated when his wife stopped working entirely in 1999. In March 2000, they filed for Chapter 13 bankruptcy protection.<sup>6</sup> In 2001, Applicant was laid off from work, and was unemployed for the next 14 months. Although he sought to lessen the impact of the unemployment by working at a variety of odd jobs, he began to get "further and further into

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<sup>1</sup>See generally, Exhibits A through E.

<sup>2</sup>Exhibit B, 2006 Performance Evaluation.

<sup>3</sup>Exhibit I.

<sup>4</sup>Exhibit L.

<sup>5</sup>Tr. 42, 70.

<sup>6</sup>Exhibit 3 at 3.

debt.”<sup>7</sup> In August 2003, the bankruptcy petition was dismissed because they failed to make payments, as the bankruptcy plan required.<sup>8</sup>

In November 2002, Applicant began working for his current employer. Ten months later, he and his wife separated. Their divorce was finalized in September 2004.<sup>9</sup>

Currently, Applicant owes approximately \$62,000 of delinquent, unpaid debt. Approximately \$18,700 comprises federal income tax debt for tax years 1995 through 1997 (SOR subparagraph 1.a). A lien in this amount was entered against his property in 2005. The remaining delinquencies include four utilities (SOR subparagraphs 1.b, 1.c, 1.h, and 1.j), the deficiency owed on a 2004 car repossession (SOR subparagraph 1.l), five credit cards (SOR subparagraphs 1.d through 1.g, and 1.i), and two bank loans.<sup>10</sup>

Applicant disputed the delinquencies listed in SOR subparagraphs 1.d, 1.g, and 1.i. He provided no evidence that he either notified or attempted to locate the corresponding creditors.

In February 2007, Applicant entered an installment agreement to satisfy his tax debt listed in SOR subparagraph 1.a.<sup>11</sup> It is unclear from the record, how much he has satisfied thus far. He had entered an installment agreement in 2003, but could not adhere to it.<sup>12</sup> He anticipates that he will successfully execute the new plan because his ex-wife is contributing. She did not help him with the first installment plan.<sup>13</sup>

In July 2007, Applicant satisfied SOR subparagraph 1.j.<sup>14</sup> He has made no progress toward the satisfaction of the remaining delinquencies. He has not enrolled in credit counseling.

Applicant did not disclose either the 2004 car repossession, the 2005 income tax lien, or any of his other outstanding delinquencies on his September 2005 security clearance application, as required in response to Sections 27 and 28. He omitted this information because he was “scared,”<sup>15</sup> and did not want to lose his job.<sup>16</sup>

### **POLICIES**

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<sup>7</sup>Tr. 31.

<sup>8</sup>*Id.*

<sup>9</sup>Exhibit M at 19.

<sup>10</sup>Tr. 50.

<sup>11</sup>Answer at 7.

<sup>12</sup>Tr. 37.

<sup>13</sup>Tr. 67.

<sup>14</sup>Letter from Creditor to Applicant, dated July 31, 2007, as listed in Answer at 7.

<sup>15</sup>Tr. 55.

<sup>16</sup>Tr. 78.

The adjudicative guidelines, as revised December 29, 2005, and implemented September 1, 2006, apply to the analysis of this case. In addition to brief introductory explanations for each guideline, they are divided into those that may be considered in deciding whether to deny or revoke an individual's eligibility for access to classified information (disqualifying conditions) and those that may be considered in deciding whether to grant an individual's eligibility for access to classified information (mitigating conditions).

Because the entire process is a scrutiny of a number of variables known as the "whole person concept," all available, reliable information about the person, past and present, favorable and unfavorable, should be considered in making a meaningful decision. 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.

Since the protection of national security is the paramount consideration, the final decision in each case must be reached by applying the standard that the issuance of the clearance is "clearly consistent with the national interest."<sup>17</sup> In reaching this decision, I have drawn only those conclusions that are based on the evidence contained in the record.

The Government is responsible for presenting evidence to establish facts in the SOR that have been controverted. The applicant is responsible for presenting evidence to rebut, explain, extenuate, or mitigate facts admitted by the applicant or proven by the Government, and has the ultimate burden of persuasion as to obtaining a favorable security decision.

## **CONCLUSIONS**

### **Financial Considerations**

"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." Here, Applicant's history of financial problems trigger the application of Financial Considerations Disqualifying Conditions (FC DC) 19(a), "inability or unwillingness to satisfy debts," FC DC 19(c), "a history of not meeting financial obligations," and FC DC 19(e), "consistent spending beyond one's means, which may be indicated by excessive indebtedness, significant negative cash flow, high debt-to-income ratio, and/or other financial analysis."

Applicant's financial problems were not caused by irresponsible spending. Instead, they began when his wife stopped working full-time after the birth of their first child, worsened after his lengthy unemployment, and grew out of control after their divorce. Through the years, Applicant has made sincere, but unsuccessful efforts at reducing his delinquencies. Currently, he is paying his

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<sup>17</sup>See generally, Directive, Sec. 2.3, Sec. 2.5.3, Sec. 3.2, and Sec. 4.2.

income tax delinquencies through a payment plan. Financial Considerations Mitigating Condition (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,” and FC MC 20(d), “the individual initiated a good-faith effort to repay overdue creditors or otherwise resolve debts,” apply.

Applicant’s income tax delinquencies compose less than one third of his delinquencies, and he has neither organized a plan to satisfy the remainder nor sought counseling to assist him. Also, although he is making payments through an income tax payment plan, he did not establish how much he has satisfied. Moreover, he failed to complete an earlier tax payment plan in 2003, in addition to a Chapter 13 bankruptcy in 2000. Consequently, FC MC 20(c), “the person has received or is receiving counseling for the problem and/or there are clear indications that the problem is being resolved or is under control,” is inapplicable.

Applicant’s three disputed delinquencies equal approximately \$1,000. He provided no evidence that he either notified the respective creditors of the disputes or attempted to locate the disputed creditors. 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,” does not apply.

Upon weighing the applicable disqualifying and mitigating conditions, I conclude that Applicant’s financial situation continues to pose a security risk.

### **Personal Conduct**

“Conduct involving questionable judgment, lack of candor, dishonesty, or unwillingness to comply with rules and regulations can raise questions about an individual’s reliability, trustworthiness and ability to protect classified information. Of special interest is any failure to provide truthful and candid answers during the security clearance process or any other failure to cooperate with the security clearance process.” Here, Applicant’s deliberate omission of relevant financial information from his security clearance application triggers the application of Personal Conduct Disqualifying Condition (PC DC) 16(a), “deliberate omission, concealment, or falsification of relevant facts from any personnel security questionnaire, personal history statement, or similar form used to conduct investigations, determine employment qualifications, award benefits or status, determine security clearance eligibility or trustworthiness, or award fiduciary responsibilities.”

I have considered the mitigating conditions and conclude none apply. Lying to the government in the belief that it is necessary to save one’s job does not mitigate falsification.<sup>18</sup> Applicant has not mitigated the personal conduct security concern.

### **Whole Person Concept**

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<sup>18</sup>DISCR OSD No. 89-1586 (App. Bd., October 26, 1990).

Applicant accrued his financial delinquencies through a series of unexpected circumstances rather than financial irresponsibility. Although he has sincerely tried to get his finances under control, he has made minimal progress. I was impressed by his competence displayed on the job, and with his role as a father figure to youth in his community. These positive attributes were offset by the negative security implications of his decision to falsify the security clearance application. Evaluating this case in the context of the whole person concept, I conclude Applicant's financial considerations and personal conduct concerns continue to create a security concern. Clearance is denied.

### **FORMAL FINDINGS**

Paragraph 1 – Guideline F:	AGAINST APPLICANT
Subparagraph 1.a - 1.i:	Against Applicant
Subparagraph 1.j:	For Applicant
Subparagraph 1.k - 1.n:	Against Applicant
Paragraph 2 - Guideline E:	AGAINST APPLICANT
Subparagraph 2.a - 2.d:	Against 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. Clearance is denied.

Marc E. Curry  
Administrative Judge