

DATE: October 23, 2007

In re:

SSN: -----

Applicant for Security Clearance

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) ISCR Case No. 07-01847
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**DECISION OF ADMINISTRATIVE JUDGE
MARTIN H. MOGUL**

APPEARANCES

FOR GOVERNMENT

Jeff Nagel, Esq., Department Counsel

FOR APPLICANT

Pro Se

SYNOPSIS

Applicant has had a history of financial difficulties. He has paid off or is paying the majority of his debts, and he has a plan to resolve any remaining overdue debt, that is not in dispute. His financial situation is stable and current. Mitigation has been shown. Clearance is granted.

STATEMENT OF THE CASE

On May 2, 2007, 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.

In a signed and sworn statement, dated May 15, 2007, Applicant responded in writing to the SOR allegations (RSOR), and he requested a clearance decision based on a hearing record.

The case was assigned to this Administrative Judge on June 29, 2007. A Notice of Hearing was issued to the parties on August 20, 2007, and the hearing was held in Fairbanks, Alaska, on September 25, 2007.

At the hearing, Department Counsel offered seven documentary exhibits (Exhibits 1-7) and no witnesses were called. Applicant submitted five documentary exhibits (Exhibits A through E) and offered his own testimony. All documentary evidence was entered into evidence without objection. The record was left open until October 5, 2007, to allow Applicant to introduce additional evidence of proof of payment of past overdue debts. Applicant timely offered into evidence a cover letter and additional documents. Department Counsel indicated that he had no objection to these additional proffered documents; these documents are entered into evidence as Applicant's Exhibit F. The transcript (Tr) was received on October 10, 2007.

FINDINGS OF FACT

In the SOR, the Government alleges that a security risk may exist under Adjudicative Guideline F (Financial Considerations) of the Directive. The SOR contains 21 allegations, 1.a. through 1.u., under Guideline F. In his Response to the SOR (RSOR), Applicant admitted SOR allegations 1.d., 1.e., 1.h., 1.i., 1.j., 1.k., 1.l., 1.n., 1.o., 1.p., 1.t., and 1.u., and he denied the other allegations. The admitted allegations are incorporated herein as findings of fact.

After a complete and thorough review of the evidence in the record, including Applicant's Answer to the SOR, the admitted documents, and the live testimony and upon due consideration of that evidence, I make the following additional findings of fact:

Applicant is 41 years old. He is currently unmarried, and he has one 16 year old son. Applicant is employed as an Operations Manager by a defense contractor, and he seeks to retain a DoD security clearance in connection with his employment in the defense sector.

The SOR lists 20 debts that Applicant allegedly owed as of either February 26, 2007, or April 18, 2007, 1.a. through 1.t., under Adjudicative Guideline F. The debts will be discussed in the order that they were listed in the SOR:

1.a. This overdue debt to Creditor 1 is listed in the SOR in the amount of \$84. Applicant testified that this debt has been paid. Exhibit 7, a credit report from Equifax, dated September 20, 2007, shows that this debt has been paid.

1.b. This overdue debt to Creditor 2 is listed in the SOR in the amount of \$4,321. This medical debt arose because Applicant had wrist surgery, and he had difficulty having the insurance company pay the 80% that he believes it was required to pay. Applicant testified that this debt has now been reduced to \$866, because the insurance company has now paid its share. He has now formulated a payment plan with the collection agency, and is scheduled to pay \$555.26 a month for this debt and several others. Exhibit C shows that he has made two payments thus far. The other debts that this payment covers will be discussed as the additional debts are reviewed.

1.c. This overdue debt to Creditor 3 is listed in the SOR in the amount of \$4,409. Applicant believes that this is the same debt as that listed in 1.b., above. Exhibit 7, the most current credit report, does not list two separate debts in the amounts of 1.b. and 1.c. I cannot find that 1.b. and 1.c. are two different debts.

1.d. This overdue debt to Creditor 4 is listed in the SOR in the amount of \$342. Applicant testified that at this time he still owes this debt, but he is planning to resolve this debt by the end of the year.

1.e. This overdue debt to Creditor 5 is listed in the SOR in the amount of \$1,235. Applicant testified that this debt is part of a slip and fall personal injury claim that he has filed. Exhibit A includes a letter from attorneys who are representing Applicant in this law suit. Applicant plans to take the proceeds from this lawsuit if it is resolved favorably to pay this debt and some additional debts.

1.f. This overdue debt to Creditor 6 is listed in the SOR in the amount of \$1,468. Applicant testified that this medical bill was also never paid by his insurance company. It has been resubmitted to the insurance company, and he anticipates that 80% of the debt will be paid by the insurance company. After the hearing Applicant submitted Exhibit F and offered that the insurance company has now paid \$1,174.54, reducing the debt still owed to \$293.64. This debt is also one that is being reduced by his monthly payment of \$555.26, as discussed in 1.b., above.

1.g. This overdue debt to Creditor 7 is listed in the SOR in the amount of \$1,112. This bill for an apartment lease has now been resolved. Exhibit B includes a letter from the attorneys who represented the creditor on this claim, which shows that this debt has been paid in full.

1.h. This overdue debt to Creditor 8 is listed in the SOR in the amount of \$325. This is an additional debt that is being reduced by Applicant's monthly payment of \$555.26, as discussed in 1.b., above.

1.i. This overdue debt to Creditor 9 is listed in the SOR in the amount of \$731. This hospital bill is also part of Applicant's slip and fall case, as is 1.g., above.

1.j. This overdue debt to Creditor 10 is listed in the SOR in the amount of \$84. Applicant testified that at this time he still owes this debt, but he is planning to resolve this debt by the end of the year.

1.k. This overdue debt to Creditor 11 is listed in the SOR in the amount of \$54. Applicant testified that he has disputed this debt, because he is not aware of its origin, and he has been informed that it will be removed from his subsequent credit reports.

1.l. This overdue debt to Creditor 12 is listed in the SOR in the amount of \$159. Applicant testified that at this time he still owes this debt, but he is planning to resolve this debt by the end of the year.

1.m. This overdue debt to Creditor 13 is listed in the SOR in the amount of \$11. Applicant believes that he paid this bill in 1999 to a hospital, and it is not on his most current credit report.

1.n. This overdue debt to Creditor 14 is listed in the SOR in the amount of \$365. Applicant testified that he has no information to dispute that he owes this bill to a cable company, and he plans to pay the debt after he confirms that the bill is correct.

1.o. This overdue debt to Creditor 15 is listed in the SOR in the amount of \$46. Applicant contacted the credit reporting agencies, but he has been unable to ascertain the origin of this bill. Department Counsel confirmed that this debt which arose in 2004 is no longer listed on the latest credit report so it must be resolved since the debt is too recent to have been dropped off the credit report after seven years.

1.p. This overdue debt to Creditor 16 is listed in the SOR in the amount of \$891. Applicant testified that he paid \$930 to resolve this debt, by fax on July 18, 2007.

1.q. This overdue debt to Creditor 17 is listed in the SOR in the amount of \$862. Applicant averred that this debt is the same as 1.p., above, and it has been resolved, as discussed above.

1.r. This overdue debt to Creditor 18 is listed in the SOR in the amount of \$854. Applicant testified that at this time he still owes this debt, but he is planning to resolve this debt by the end of the year.

1.s. This overdue debt to Creditor 19 is listed in the SOR in the amount of \$615. Applicant testified that this debt is for a university course that he took. He stated that he attempted to have the college reduce the debt, since he only attended three class sessions before he was forced to go in the hospital and drop the class, but they refused. He testified that he would pay off this debt, but it would be the last one he resolved.

1.t. This overdue debt to Creditor 20 is listed in the SOR in the amount of \$35. Applicant testified that when he requested from the credit reporting agency background as to the origin of this debt, it was dropped from his credit report. The latest credit report does not list this debt.

1.u. Applicant prepared a Personal Financial Statement on March 13, 2007, (Exhibit 5) which indicates he has a monthly net remainder of \$2,257, after expenses. The Government alleges that he should have been able to resolve more of his debts. Applicant testified that this Personal Financial Statement does not reflect the money that he has been paying for back taxes and \$12,500 advance that he received from his current employer to pay off additional debts. Applicant estimated that 90%

of his income, that does not go to supporting his son or him, goes to paying off his debts. He testified that he has had additional debts that have not been listed on the SOR, including a debt of \$1,800 that he borrowed from a friend, and he has been paying these off as well.

Applicant testified that as a resident of Alaska he will be receiving a dividend of \$1,654 at the end of 2007, and he is planning to use that to resolve as many additional debts as he can.

Applicant remains current on all his recent debts, including his two credit cards, and he has demonstrated a stable and mature outlook about his finances.

Applicant submitted a character letter from his current supervisor (Exhibit A). He spoke extremely highly of Applicant, talking about him being as an excellent worker and more significantly about him working diligently to resolve his overdue debts, which occurred because of medical bills and because of the move of Applicant and his son from Wisconsin to Fairbanks, Alaska to obtain his current employment.

POLICIES

Enclosure 2 of the Directive sets forth adjudicative guidelines that must be carefully considered in evaluating an individual's security eligibility and making the overall common sense determination required. The Administrative Judge must take into account the conditions raising or mitigating security concerns in each area applicable to the facts and circumstances presented. 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.*

The adjudication process is based on the whole person concept. All available, reliable information about the person, past and present, is to be taken into account in reaching a decision as to whether a person is an acceptable security risk.

Each adjudicative decision must also include an assessment of: (1) the nature, extent, and seriousness of the conduct; (2) the circumstances surrounding the conduct, and the extent of knowledgeable participation; (3) how recent and frequent the behavior was; (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 pertinent behavioral changes; (7) the motivation for the conduct; (8) the potential for pressure, coercion, exploitation, or duress; and (9) the likelihood of continuation or recurrence (See Directive, Section E2.2.1. of Enclosure 2).

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 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. Assessment of Applicant's fitness for access to classified information requires evaluation of the whole person, and consideration of such factors as the recency and frequency of the disqualifying conduct, the likelihood of recurrence, and evidence of rehabilitation.

A person who seeks access to classified information enters into a fiduciary relationship with the U.S. Government that is predicated upon trust and confidence. Where facts proven by the Government raise doubts about Applicant's judgment, reliability, or trustworthiness, 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

It is the Government's responsibility to present substantial evidence to support the finding of a nexus, or rational connection, between the Applicant's conduct and the continued holding of a security clearance. If such a case has been established, the burden then shifts to the Applicant to go forward with evidence in rebuttal, explanation or mitigation which is sufficient to overcome or outweigh the Government's case. The Applicant bears the ultimate burden of persuasion in proving that it is clearly consistent with the national interest to grant him a security clearance. This the Applicant has done.

Having considered the evidence of record in light of the appropriate legal precepts and factors, I conclude the following with respect to Guidelines F:

The Government has established its initial case under Guideline F. The record evidence proves Applicant's history of indebtedness. However, there is evidence that Applicant is attempting to resolve these overdue debts.

Regarding the Disqualifying Conditions (DC) under Guideline F in the Adjudicative Guidelines, I conclude DC 19 (a) applies because of Appellant's "history of not meeting financial obligations."

In considering the Mitigating Conditions (MC) I find that MC 20. (b) applies because the conditions that resulted in the financial problem of Applicant were largely beyond his control, (in this case medical emergencies, loss of employment, and the cost of moving to obtain new employment), and Applicant has acted responsibly under the circumstances. MC 20. (e) also applies, as Applicant has initiated a good-faith effort to repay the creditors. I, therefore, hold Guideline F for Applicant.

FORMAL FINDINGS

Formal Findings as required by Section E3.1.25 of Enclosure 3 of the Directive are hereby

rendered as follows:

Financial Considerations, Guideline F: For Applicant

Subparagraph 1.a.: For Applicant
Subparagraph 1.b.: For Applicant
Subparagraph 1.c.: For Applicant
Subparagraph 1.d.: For Applicant
Subparagraph 1.e.: For Applicant
Subparagraph 1.f.: For Applicant
Subparagraph 1.g.: For Applicant
Subparagraph 1.h.: For Applicant
Subparagraph 1.i.: For Applicant
Subparagraph 1.j.: For Applicant
Subparagraph 1.k.: For Applicant
Subparagraph 1.l.: For Applicant
Subparagraph 1.m.: For Applicant
Subparagraph 1.n.: For Applicant
Subparagraph 1.o.: For Applicant
Subparagraph 1.p.: For Applicant
Subparagraph 1.q.: For Applicant
Subparagraph 1.r.: For Applicant
Subparagraph 1.s.: For Applicant
Subparagraph 1.t.: For Applicant
Subparagraph 1.u.: For Applicant

DECISION

In light of all the circumstances and facts presented by the record in this case, it is clearly consistent with the national interest to grant or continue a security clearance for Applicant.

Martin H. Mogul
Administrative Judge