

DATE: December 10, 2007

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In Re: )	
)	
----- )	ISCR Case No. 07-02133
SSN: ----- )	
)	
Applicant for Security Clearance )	
_____ )	

**DECISION OF ADMINISTRATIVE JUDGE  
WILFORD H. ROSS**

**APPEARANCES**

**FOR GOVERNMENT**

Jennifer I. Goldstein, Esquire, Department Counsel

**FOR APPLICANT**

*Pro Se*

**SYNOPSIS**

The Applicant has owed approximately \$10,000.00 in past due debts to seven creditors since at least 2000. He does not have the ability to pay off or otherwise resolve these debts. He is not currently eligible for security clearance. Clearance is denied.

## STATEMENT OF THE CASE

On May 29, 2007, the Defense Office of Hearings and Appeals (DOHA), pursuant to Executive Order 10865 (as amended) and Department of Defense Directive 5220.6 (Directive), dated January 2, 1992, issued a Statement of Reasons (SOR) to the 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 the Applicant and recommended referral to an Administrative Judge to determine whether a clearance should be denied or revoked.

The Applicant responded to the SOR in writing on June 21, 2007, and requested a hearing. The case was received by the undersigned on August 6, 2007, and a Notice of Hearing was issued on August 7, 2007.

A hearing was held on September 5, 2007, at which the Government presented six documentary exhibits. Testimony was taken from the Applicant, who also submitted two hearing exhibits and one post-hearing exhibit. The transcript was received on September 14, 2007.

## FINDINGS OF FACT

The Applicant is 43, married to his second wife and has a Bachelor of Science degree. He is employed by a defense contractor as an engineer, and he seeks a DoD security clearance in connection with his employment in the defense sector.

The Government opposes the Applicant's request for a security clearance, based upon the allegations set forth in the Statement of Reasons (SOR). The following findings of fact are entered as to each paragraph and guideline in the SOR. They are based on the Applicant's Answer to the SOR, the exhibits and the live testimony.

Paragraph 1 (Guideline F - Financial considerations). The Government alleges in this paragraph that the Applicant is ineligible for clearance because he is financially overextended and therefore at risk of having to engage in illegal acts to generate funds. The Applicant admitted in his answer all of the allegations in the SOR with the exception of subparagraph 1.l. Those admissions are hereby deemed findings of fact.

The Applicant has been married twice. His first marriage ended in divorce in 2000. He alleges that many of his financial problems occurred as a result of the divorce. (Transcript at 20.) While he was still married to his first wife, the Applicant filed for bankruptcy under Chapter 7 of the Bankruptcy Code. (SOR subparagraph 1.m.) He received a discharge in bankruptcy in August 1999. (Transcript at 41-42.) (SOR subparagraph 1.n.)

After he was divorced, the Applicant filed for protection under Chapter 13 of the Bankruptcy Code in May 2001. (SOR subparagraph 1.k.) The Applicant did not want to proceed with the bankruptcy, and his case was dismissed. (Transcript at 42-43.) (SOR subparagraph 1.l.)

The current status of the debts alleged in the SOR is as follows:

1.a. The Applicant admits that he owes a past due medical bill for \$50.00. The available credit reports do not provide contact information for the creditor and the Applicant has not been able to find such information. This debt remains unpaid. (Transcript at 24-26, 53-55; Government Exhibits 2 and 3.)

1.b. The Applicant admits that he owes a past due debt to a bank in the approximate amount of \$3,576.00. This debt has not been paid. The available evidence indicates that the original creditor has sold this debt. The Applicant states that he is in negotiation to pay this debt, but he has presented no evidence to support this statement. (Transcript at 26-27, 61-63; Government Exhibits 2, 3, 4, 5 and 6 at 7; Applicant's Exhibit B at 5.)

1.c. The Applicant admits that he owes a past due debt to his ex-wife's lawyer in the amount of \$5,692.19. The Applicant made a payment arrangement with the attorney on September 4, 2007, agreeing to pay \$250.00 a month until the debt is paid off. He has made one payment. (Transcript at 27-28, 66; Applicant's Exhibit A.)

1.d. The Applicant admits that he owes a past due debt to McDonnell Douglas Federal Credit Union in the amount of \$166.00. This debt has not been paid. According to the Applicant, this credit union went out of existence at the same time McDonnell Douglas was bought by Boeing. He has been in contact with the successor in interest to the credit union, but has been unable to either confirm or deny that there is an amount now owing. (Transcript at 28-30.)

1.e. The Applicant admits that he owes a past due credit card debt to Providian in the amount of \$835.00. This debt has not been paid. The Applicant states that this debt was run up by his ex-wife without his knowledge. The debt has been charged off and the successor in interest to Providian will not accept payments on the account. (Transcript at 30-31, 45.)

1.f. The Applicant admits he owes a past due utility bill in the amount of \$530.00. The Applicant testified that this debt was paid by his ex wife. (Transcript at 32-33.) The Applicant submitted a copy of his latest utility bill from the same company. It shows a past due amount of \$222.63 as of August 2007. (Applicant's Exhibit C at 4.)

1.g. The Applicant admits that he owes a past due credit card debt to Nuvision in the amount of \$102.00. This debt has not been paid. The evidence concerning this allegation is mixed. The Applicant stated that he is in negotiation with his ex wife to have her pay this debt. (Transcript at 33-34.) He also stated in April 2007 that he had been in negotiations with this creditor himself. (Transcript at 78-79; Government Exhibit 6 at 7.)

1.h. This debt has been paid in full. (Transcript at 35-38; Applicant's Exhibit C at 3.) This debt was paid off by the Applicant's wife refinancing her house and paying off the debt in the amount of \$5,375.00.

1.i. The state tax lien has been paid off and lifted. (Government Exhibit 6 at 7-9.)

1.j. The Applicant admits owing \$4,442.35 in past due homeowners association dues. The debt has been paid. (Transcript at 41.)

### POLICIES

Security clearance decisions are not made in a vacuum. Accordingly, the Department of Defense, in Enclosure 2 of the 1992 Directive, has set forth policy factors which must be given "binding" consideration in making security clearance determinations. These factors should be followed in every case according to the pertinent guideline. However, the factors are neither automatically determinative of the decision in any case, nor can they supersede the Administrative Judge's reliance on his own common sense, as well as his knowledge of the law, human nature and the ways of the world, in making a reasoned decision. Because each security clearance case presents its own unique facts and circumstances, it cannot be assumed that these factors exhaust the realm of human experience, or apply equally in every case. Based on the Findings of Fact set forth above, the factors most applicable to the evaluation of this case will be set forth under CONCLUSIONS, below.

In addition, as set forth in Enclosure 2 of the Directive at pages 18-19, "In evaluating the relevance of an individual's conduct, the [Administrative Judge] should consider the following factors [General Factors]:

- (1) The nature, extent and seriousness of the conduct
- (2) The circumstances surrounding the conduct, to include knowledgeable participation
- (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 pertinent behavior changes
- (7) The motivation for the conduct
- (8) The potential for pressure, coercion, exploitation or duress
- (9) The likelihood of continuation or recurrence."

The eligibility guidelines established in the DoD Directive identify personal characteristics and conduct which are reasonably related to the ultimate question of whether it is "clearly consistent with the national interest" to grant an Applicant's request for access to classified information.

In the defense industry, the security of classified industrial secrets is entrusted to civilian workers who must be counted upon to safeguard such sensitive information twenty-four hours a day. The Government is therefore appropriately concerned where available information indicates that an Applicant for clearance may be involved in acts of financial irresponsibility that demonstrates poor judgement, untrustworthiness or unreliability on the Applicant's part.

The DoD Directive states, "Each adjudication is to be an overall common sense determination based upon consideration and assessment of all available information, both favorable and unfavorable, with particular emphasis placed on the seriousness, recency, frequency, and motivation for the individual's conduct; the extent to which conduct was negligent, willful, voluntary, or undertaken with the knowledge of the circumstances or consequences involved; and, to the extent that it can be estimated, the probability that conduct will or will not continue 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. Finally, as emphasized by President Eisenhower in Executive Order 10865, "Any determination under this order...shall be a determination in terms of the national interest and shall in no sense be a determination as to the loyalty of the applicant concerned."

## 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 granting 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 or her a security clearance.

In this case the Government has met its initial burden of proving by substantial evidence that the Applicant has long-standing and continuing financial problems (Guideline F).

The Applicant, on the other hand, has not introduced persuasive evidence in rebuttal, explanation or mitigation which is sufficient to overcome the Government's case against him, except in part. Under Paragraph 1, subparagraphs 1.h., 1.i., and 1.j. are found for the Applicant as he has successfully paid these debts in full.

The Applicant's financial difficulties are of a long-standing nature. Even though they may have originally been caused by the aftermath of his divorce, he has presented insufficient evidence that he will be able to resolve his debts any time in the foreseeable future. Rather, the Applicant asks the Government to trust him when he states that he will pay his debts eventually. In fact, he had no answer when asked why he had not resolved these debts earlier. (Transcript at 62-63.) He also has no specific plan as to how he intended to pay off the rest of his past due debts. (Transcript at 80-82.)

Under Guideline F, the following Disqualifying Conditions are applicable: 19(a) "*Inability or unwillingness to satisfy debts;*" and 19(c) "*A history of not meeting financial obligations.*" None

of the Mitigating Conditions apply. The behavior is recent, he is not receiving counseling for the problem and he has not yet initiated a good faith effort to repay the creditors or resolve the debts. I have considered the fact that the Applicant may have had financial problems during the pendency of his divorce, during which many of the debts were incurred. Specifically, I have considered the Applicant's arguments and evidence concerning subparagraphs 1.a., 1.b., 1.c., 1.d., 1.e., 1.f., and 1.g. However, under the particular facts of this case, the evidence does not show that the Applicant acted responsibly under the circumstances during that period, or afterwards.

On balance, it is concluded that the Applicant has failed to overcome the Government's information opposing his request for a security clearance. Accordingly, the evidence supports a finding against the Applicant as to the conclusionary allegations expressed in Paragraph 1 of the Government's Statement of Reasons.

### **FORMAL FINDINGS**

Formal findings For or Against the Applicant on the allegations in the SOR, as required by Paragraph 25 of Enclosure 3 of the Directive, are:

- Paragraph 1: 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.: For the Applicant.
- Subparagraph 1.i.: For the Applicant.
- Subparagraph 1.j.: For the Applicant.
- Subparagraph 1.k.: Against the Applicant.
- Subparagraph 1.l.: Against the Applicant.
- Subparagraph 1.m.: Against the Applicant.
- Subparagraph 1.n.: 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 the Applicant.

Wilford H. Ross  
Administrative Judge