

DATE: November 28, 2007

In re:

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SSN: -----

Applicant for Security Clearance

ISCR Case No. 07-06992

**DECISION OF ADMINISTRATIVE JUDGE  
MARY E. HENRY**

**APPEARANCES**

**FOR GOVERNMENT**

James F. Duffy, Esq., Department Counsel

**FOR APPLICANT**

*Pro Se*

**SYNOPSIS**

Applicant incurred significant debt which has not been paid. While some of the debt is due to reasons beyond his control, he has made only a minimal effort to resolve his outstanding debt. He has not mitigated the government's security concerns under Guideline F. Clearance is denied.

**STATEMENT OF THE CASE**

On July 25, 2007, the Defense Office of Hearings and Appeals (DOHA) issued a Statement of Reasons (SOR) to Applicant, pursuant to Executive Order 10865, *Safeguarding Classified Information Within Industry*, dated February 20, 1960, as amended and modified, and Department of Defense Directive 5220.6, *Defense Industrial Security Clearance Review Program* (Directive), dated January 2, 1992, as amended and modified. The SOR 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. Specifically, the SOR sets forth security concerns arising under Guideline F (Financial Considerations) of the revised Adjudicative Guidelines (AG) issued on December 29, 2005 and implemented by the Department of Defense, effective September 1, 2006. DOHA recommended the case be referred to an administrative judge to determine whether a clearance should be granted, continued, denied, or revoked. On August 17, 2007, Applicant submitted a notarized response to the allegations. He requested a hearing.

This matter was assigned to another administrative judge on September 12, 2007. DOHA issued a notice of hearing on September 21, 2007. Due to a personal emergency, DOHA reassigned this case to me on October 10, 2007. I held a hearing on October 16, 2007. Five government exhibits (GE), 1 through 5, were marked and admitted into evidence. Applicant did not submit any documents at the hearing, although he testified. I held the record open until October 30, 2007 for the submission of additional evidence. The hearing transcript (Tr.) was received on October 24, 2007. Applicant submitted three documents, which were marked and admitted into evidence as Applicant exhibits (AE), A through C. The hearing transcript (Tr.) was received on October 24, 2007.

### **FINDINGS OF FACT**

Applicant admitted the allegations under Guideline F, subparagraphs 1.a through 1.f of the SOR.<sup>1</sup> Those admissions are incorporated as findings of fact. After a complete review of the evidence in the record and upon due consideration, I make the following findings of fact.

Applicant, who is 25 years old, began working for a defense contractor two years ago. He currently works as a sheet metal mechanic. He completed his security clearance application (SF-86) on January 31, 2006.<sup>2</sup>

Applicant married on September 29, 2007. He and his wife have a daughter, age 2 ½. He graduated from high school in 2000. He attended technical college for two years. In 2003, Applicant moved to his present location from another area of the country for a job. The job opportunity did not materialize as expected. He worked various jobs, with lower wages than he had previously earned until he obtained his current employment. Because of his lower income, he could not pay all his financial obligations, which resulted in unpaid debts.<sup>3</sup>

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<sup>1</sup>Applicant's response to the SOR, dated March 17, 2006, at 1.

<sup>2</sup>GE 1 (Security Clearance Application) at 1, 7, 31; Tr. at 13-15.

<sup>3</sup>GE 1 at 4-5; Tr. at 14-15, 24.

Applicant received a pay raise of \$1.20 an hour in September 2007. His current gross pay for a 40 hour work week is \$564.40. His earnings and leave statements from July 1, 2007 through October 14, 2007 (15 weeks) revealed that he worked overtime most pay periods and even when he worked less than 40 hours a week he had some overtime pay. During this period of time, his net income averaged \$684 a week. More recently, he has worked significantly less overtime, which means his weekly net income is significantly reduced. His wife's net income is approximately \$1,100 a month. His monthly expenses, including rent, utilities, child care, food, car payment, gas, school loan, and miscellaneous expenses, averages approximately \$2,850 a month. When he works overtime, his income is greater than his expenses. When he does not work overtime, his family monthly income pays his expenses. He has no other financial assets, except two cars, a 1996 Honda and 2002 Nissan.<sup>4</sup>

The SOR identifies six debts totaling \$22,379. The majority of this debt, \$18,714 relates to two unpaid education loans. Applicant pays monthly on a third education loan, which is current. He, however, has not made any payment arrangements on his outstanding education loans. Of the three remaining unpaid debts, he complies with the payment plan he established for the \$787 debt listed in allegation 1.e. He contacted the collection company for the \$1,363 credit card debt listed in allegation 1.d to work out a payment plan in late 2005 or early 2006. Initially, the creditor requested payment in full. When he made an offer to pay a certain amount each month, the creditor rejected his offer. He has not made any additional contacts with this creditor. He has not made any payments on the remaining debt.<sup>5</sup>

When he first moved to his current location, he and two other young men leased an apartment. One young man left the apartment fairly early, without paying his share of the rent. The other young man did not have employment, so Applicant attempted to pay the entire rent, but was only able to pay his share of the rent. He soon vacated the premises. The landlord obtained a judgment against all three tenants. Applicant is attempting to obtain the money to pay the judgment from his former roommates, but has not been successful.<sup>6</sup>

In 2005 or 2006, Applicant contacted a consumer credit counseling agency for assistance in resolving his debt problems. This agency failed to provide useful assistance to him. He also attempted to consolidate his debt, but was told that his credit score was not high enough. He acknowledges that he made mistakes with managing his bills and that he acted irresponsibly towards his debt, which he attributes to his immaturity. The creditors for the unpaid debts identified in allegations 1.c and 1.d cannot collect on these debts because the time to file a collection action in court has expired under the state's statute of limitations. *See* State Code Ann. §§8.01-246(4), 8.01-249(8).<sup>7</sup>

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<sup>4</sup>AE A (Budget); AE B (Leaving and earnings statements); Tr. at 16-17, 25-27.

<sup>5</sup>GE 3 (Credit report, dated June 9, 2007); GE 4 (Credit report, dated May 24, 2007); GE 5 (Credit report, July 7, 2006); AE C (Payment plan); Tr. at 18-20.

<sup>6</sup>GE 3, *supra* note 5, at 3; Tr. at 22-23.

<sup>7</sup>Tr. at 28-29.

## POLICIES

The revised Adjudicative Guidelines set forth disqualifying conditions (DC) and mitigating conditions (MC) applicable to each specific guideline. An administrative judge need not view the revised adjudicative guidelines as inflexible ironclad rules of law. Instead, acknowledging the complexities of human behavior, these guidelines, are intended to assist the administrative judge in reaching fair and impartial common sense decisions. Although the presence or absence of a particular condition or factor for or against clearance is not outcome determinative, the revised AG should be followed whenever a case can be measured against this policy guidance. In addition, each security clearance decision must be based on the relevant and material facts and circumstances, the whole-person concept, and the factors listed in the Directive. Specifically, these are: (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; (8) the potential for pressure, coercion, exploitation, or duress; and (9) the likelihood of continuation or recurrence.<sup>8</sup>

The sole purpose of a security clearance determination is to decide if it is clearly consistent with the national interest to grant or continue a security clearance for an applicant.<sup>9</sup> The government has the burden of proving controverted facts.<sup>10</sup> The burden of proof is something less than a preponderance of the evidence.<sup>11</sup> Once the government has met its burden, the burden shifts to the applicant to present evidence of refutation, extenuation, or mitigation to overcome the case against him.<sup>12</sup> Additionally, an applicant has the ultimate burden of persuasion to obtain a favorable clearance decision.<sup>13</sup>

No one has a right to a security clearance,<sup>14</sup> and “the clearly consistent standard indicates that security clearance determinations should err, if they must, on the side of denials.”<sup>15</sup> Any reasonable doubt about whether an applicant should be allowed access to sensitive information must be resolved in favor of protecting such sensitive information.<sup>16</sup> Section 7 of Executive Order 10865 specifically provides industrial security clearance decisions shall be “in terms of the national interest and shall

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<sup>8</sup>Directive, revised Adjudicative Guidelines (AG) ¶ 2(a)(1)-(9).

<sup>9</sup>ISCR Case No. 96-0277 at 2 (App. Bd., July 11, 1997).

<sup>10</sup>ISCR Case No. 97-0016 at 3 (App. Bd., Dec. 31, 1997); Directive, Enclosure 3, ¶ E3.1.14.

<sup>11</sup>*Department of the Navy v. Egan*, 484 U.S. 518, 528 (1988).

<sup>12</sup>ISCR Case No. 94-1075 at 3-4 (App. Bd., Aug. 10, 1995); Directive, Enclosure 3, ¶ E3.1.15.

<sup>13</sup>ISCR Case No. 93-1390 at 7-8 (App. Bd. Decision and Reversal Order, Jan. 27, 1995); Directive, Enclosure 3, ¶ E3.1.15.

<sup>14</sup>*Egan*, 484 U.S. at 531.

<sup>15</sup>*Id.*

<sup>16</sup>*Id.*; Directive, revised AG ¶ 2(b).

in no sense be a determination as to the loyalty of the applicant concerned.” The decision to deny an individual a security clearance is not necessarily a determination as to the allegiance, loyalty, and patriotism of an applicant.<sup>17</sup> It is merely an indication that the applicant has not met the strict guidelines the President and the Secretary of Defense have established for issuing a clearance.

## **CONCLUSIONS**

Upon consideration of all the facts in evidence, and after application of all appropriate adjudicative factors, I conclude the following with respect to the allegations set forth in the SOR:

### **Guideline F - 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. An individual who is financially overextended is at risk of having to engage in illegal acts to generate funds. (AG ¶ 18.) Applicant has significant unpaid debt, and a history of debt problems, primarily related to his education loans. DC ¶ 19 (a) *inability ... to satisfy debts* and DC ¶ 19 (c) *a history of not meeting financial obligations* apply.

I have carefully reviewed the mitigating conditions under this guideline. MC ¶ 26 (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 MC ¶ 20 (d) *the individual initiated a good-faith effort to repay overdue creditors or otherwise resolve debts* may have some applicability in this case. Applicant left job security and move to a new area of the country for a promised job, which did not materialize. Although he found other employment, his earnings failed to provide him with sufficient income to pay his monthly bills. At the same time, he rented an apartment with two other young men, who failed to pay their share of the rent. Even though he tried to pay the entire rent he could not. He wisely chose to move so as not to accrue any more unpaid rent than existed. Both of these events were not completely within his control and impacted him financially.

In good faith and as a way to pay off his credit card debt, Applicant contacted the collection agency for the credit card company to work out a payment plan. The company refused his offer. The company’s refusal does not negate his good faith effort. He has not contacted this company again. Applicant contacted a credit consolidation agency and a credit counseling company for assistance with resolving his debts. Neither organization provided him with effective assistance. He has not made any additional efforts to resolve his unpaid bills through these sources. Thus, Applicant’s efforts reflect a good faith, but unsuccessful, effort to resolve his debts.

### **Whole Person Analysis**

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<sup>17</sup>Executive Order No. 10865 § 7.

Protection of our national security is of paramount concern. Security clearance decisions are not intended to assign guilt or to impose further punishment for past transgressions. Rather, the objective of the adjudicative process is the fair-minded, commonsense assessment of a person's trustworthiness and fitness for access to classified information. Thus, in reaching this decision, I have considered the whole person concept in evaluating Appellant's risk and vulnerability in protecting our national interests.

As a teenager and young man, Applicant made unwise decisions about spending money, which resulted in his current debts problems. In recent years, he has not lived beyond his financial means and not accrued significant, new unpaid debts. He, however, has not taken enough initiative to resolve his old debts. He has made some effort, which has resulted in a payment plan for one debt. His net monthly income fluctuates, depending upon how much overtime he works. In months when he had higher income, he did not use this money to resolve some of his smaller debts, which would indicate his expressed intention to resolve his debts. Without his overtime, he lacks the resources to resolve his debts.

Applicant credibly testified to the circumstances leading to his current credit problems. His testimony about trying to repay his debts one at a time was sincere. He works hard and provides steady support for his family. He has many positive attributes. In weighing the positive and negative factors in this case, I, however, find that Applicant has not mitigated the government's security concerns regarding his finances. Accordingly, I find against Applicant under Guideline F.

### **FORMAL FINDINGS**

Formal findings For or Against Applicant on the allegations set forth in the SOR, as required by Section E3.1.25 of Enclosure 3 of the Directive, are:

SOR ¶ 1-Guideline F :	AGAINST APPLICANT
Subparagraphs a-d:	Against Applicant
Subparagraph e:	For Applicant
Subparagraph f:	Against Applicant

### **DECISION**

In light of all of the circumstances presented by the record in this case, it is not clearly consistent with the national interest to grant a security clearance for Applicant. Clearance is denied.

Mary E. Henry  
Administrative Judge

