

DATE: November 27, 2007

In Re:

SSN: -----

Applicant for Security Clearance

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) ISCR Case No. 07-07126
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**DECISION OF ADMINISTRATIVE JUDGE
MATTHEW E. MALONE**

APPEARANCES

FOR GOVERNMENT

Alison O'Connell, Esquire, Department Counsel

FOR APPLICANT

Pro Se

SYNOPSIS

Applicant failed to mitigate the security concerns about the fact he owes more than \$44,000 in unpaid credit cards and other personal credit accounts, some of which have been in collection since 2001. He has not acted to resolve his debts and presented no information showing his financial problems will not continue. Clearance is denied.

STATEMENT OF THE CASE

On January 10, 2006, Applicant submitted an Electronic Questionnaire for Investigations Processing (e-QIP) to request a security clearance required for his employment with a defense contractor. After reviewing the results of the ensuing background investigation, adjudicators for the Defense Office of Hearings and Appeals (DOHA) were unable to make a preliminary affirmative finding¹ that it is clearly consistent with the national interest to give Applicant a security clearance. On June 29, 2007, DOHA issued to Applicant a Statement of Reasons (SOR) alleging facts that raise security concerns addressed in the Revised Adjudicative Guidelines² under Guideline F (financial considerations). Specifically, the SOR alleged Applicant owes at least \$44,000 in delinquent debt consisting of 20 unpaid personal credit accounts (SOR ¶¶ 1.a - 1.t).

Applicant timely responded to the SOR, admitted all but two of the allegations (SOR ¶¶ 1.a and 1.t), and requested a decision without a hearing. On August 22, 2007, Department Counsel submitted the government's case in a File of Relevant Materials (FORM), which Applicant received on September 5, 2007. Applicant was given 30 days to respond to the FORM, but he did not do so. The case was assigned to me on November 2, 2007.

FINDINGS OF FACT

Applicant's admissions to SOR ¶¶ 1.b - 1.s are incorporated herein as facts. After a thorough review of the pleadings, the information provided with Applicant's response to the SOR, and the information provided in the FORM, I make the following additional findings of fact.

Applicant is 58 years old and works as a structural mechanic for a defense contractor. He has held his current job since October 2005. He served in the United States Navy from June 1976 until October 1997. Upon his retirement, he went to work as an aircraft mechanic for a large aircraft manufacturing company. In July 1999, he was laid off from his job and was unemployed until he found work as a truck driver, which he did from December 1999 until January 2002. From January 2002 until March 2004, he held a variety of jobs, but was also unemployed at times for a total of 13 months.³

In his e-QIP, Applicant disclosed his wages had been garnished twice in the previous seven years to pay delinquent debts. He also disclosed he was then, or had been in the previous seven years, delinquent on at least nine debts. A credit report⁴ obtained in 2006 during his background

¹ Required by Executive Order 10865, as amended, and by DoD Directive 5220.6 (Directive), as amended.

² Adjudication of this case is controlled by the Revised Adjudicative Guidelines, approved by the President on December 29, 2005, which were implemented by the Department of Defense on September 1, 2006. Pending official revision of the Directive, the Revised Adjudicative Guidelines supercede the guidelines listed in Enclosure 2 to the Directive, and they apply to all adjudications or trustworthiness determinations in which an SOR was issued on or after September 1, 2006.

³ FORM, Item 5.

⁴ FORM, Item 9.

investigation showed he owed more than \$40,000 in unpaid debts, many of which had been referred for collection. At the time of the report he was also three months late on his mortgage.

Applicant's current job pays him about \$3,500 gross monthly. He also receives \$1,500 monthly in military retired pay. Additionally, his wife earns \$1,100 gross monthly. After taxes and other deductions, they take home \$5,616 each month. After monthly expenses and a single car payment, Applicant and his wife realize a monthly net cash flow of about \$2,286.⁵

Applicant has paid a delinquent \$533 state tax bill (SOR ¶ 1.a) and a delinquent \$71 cable TV bill (SOR ¶ 1.t). He also told a government investigator he intends to file for bankruptcy protection as a means of resolving his debts. Otherwise, he has taken no action to pay or otherwise resolve his remaining debts.⁶

POLICIES AND BURDEN OF PROOF

Each security clearance decision must be a fair, impartial, and commonsense determination based on examination of all available relevant and material information, and consideration of the pertinent criteria and adjudication policy in the Revised Adjudicative Guidelines.⁷ Decisions must also reflect consideration of the factors listed in the ¶ 2(a) of the new guidelines.⁸ The presence or absence of a disqualifying or mitigating condition is not determinative of a conclusion for or against an applicant. However, specific applicable guidelines should be followed whenever a case can be measured against them as they represent policy guidance governing the grant or denial of access to classified information. In this case, the pleadings and the information presented by the parties require that Revised Adjudicative Guideline F (financial considerations) be applied.

_____ A security clearance decision is intended to resolve whether it is clearly consistent with the national interest⁹ for an applicant to either receive or continue to have access to classified information. The government bears the initial burden of producing admissible information on which it based the preliminary decision to deny or revoke a security clearance for an applicant. Additionally, the government must be able to prove controverted facts alleged in the SOR. If the government meets its burden, it then falls to the applicant to refute, extenuate or mitigate the government's case. Because no one has a "right" to a security clearance, an applicant bears a heavy

⁵ FORM, Item 6.

⁶ FORM, Item 4.

⁷ Directive. 6.3.

⁸ Commonly referred to as the "whole person" concept, these factor are:(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 extent to which participation is voluntary; (6) the presence or absence of rehabilitation and other permanent 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.

⁹ See *Department of the Navy v. Egan*, 484 U.S. 518 (1988).

burden of persuasion.¹⁰ A person who has access to classified information enters into a fiduciary relationship with the government based on trust and confidence. The government, therefore, has a compelling interest in ensuring each applicant possesses the requisite judgement, reliability and trustworthiness of one who will protect the national interests as his or her own. The “clearly consistent with the national interest” standard compels resolution of any reasonable doubt about an applicant’s suitability for access in favor of the government.¹¹

CONCLUSIONS

Financial Considerations. Under Guideline F, “[f]ailure 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.”¹² The government presented sufficient information to support the allegations in SOR ¶¶ 1.a through 1.t. Additionally, Applicant admitted all but two of the SOR allegations. Available information shows that since about 2001, Applicant has owed more than \$40,000 in delinquent debt accrued through apparent misuse of personal credit. The available information requires consideration of Guideline F disqualifying conditions 19(a)¹³ and 19(c).¹⁴

In response, available information suggests Guideline F mitigating condition 20(b)¹⁵ should be considered. Applicant’s employment history between 1999 and 2005 included several periods of unemployment and his claim he was underemployed through much of that time is plausible. However, application of mitigating condition 20(b) also requires reasonable action under the circumstances. Applicant’s income since 2005 has provided him the means to pay more than the two debts (SOR ¶¶ 1.a and 1.t) he has satisfied to date, yet he has taken no other action to resolve his debts. Accordingly, he may not benefit from 20(b). As he has not presented any information to support any other mitigating conditions, he has failed to overcome the security concerns about his unpaid debts.

Whole Person. I have evaluated the facts presented in this record and have applied the appropriate adjudicative factors, pro and con, under Guideline F. I have also reviewed the record before me in the context of the whole person factors listed in section 2(a) of the Revised

¹⁰ See *Egan*, 484 U.S. at 528, 531.

¹¹ See *Egan*; Revised Adjudicative Guidelines, ¶ 2(b).

¹² Revised Adjudicative Guidelines, ¶ 18.

¹³ “a history of not meeting financial obligations;”

¹⁴ “inability or unwillingness to satisfy debts;”

¹⁵ “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;”

Adjudicative Guidelines.¹⁶ It is noteworthy that Applicant served more than 20 years in the military. Further, it appears he kept trying to find work through adverse times after he was laid off in 1999, which speaks well of his sense of responsibility. Yet, his inaction in addressing his debts since he has had steady income that yields a significant positive cash flow each month far outweighs these positive inferences about his character and judgment. Applicant is presumed to be a mature adult, but has failed to show how, if at all, his past financial problems will not recur in the future.

Despite the recent improvement in his employment, his continued inaction regarding his debts sustains the government's doubts about his judgment and trustworthiness. Such doubts must be resolved in favor of the national security.¹⁷ A fair and commonsense assessment¹⁸ of all available information before me shows that the Applicant has failed to overcome the government's reasonable doubts about his ability to protect classified information and to exercise the requisite good judgment and discretion expected of one who holds a security clearance.

FORMAL FINDINGS

Formal findings regarding each SOR allegation are as follows:

Paragraph 1, Guideline F (Financial Considerations):	AGAINST THE APPLICANT
Subparagraph 1.a:	For the Applicant
Subparagraph 1.b - 1.s:	Against the Applicant
Subparagraph 1.t:	For 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. Clearance is denied.

Matthew E. Malone
Administrative Judge

¹⁶ See footnote 8, *supra*.

¹⁷ See footnote 11, *supra*.

¹⁸ See footnote 7, *supra*.