



DEPARTMENT OF DEFENSE  
DEFENSE OFFICE OF HEARINGS AND APPEALS



In the matter of: )  
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----- ) ISCR Case No. 07-10575  
SSN: ----- )  
 )  
Applicant for Security Clearance )

**Appearances**

For Government: Braden M. Murphy, Esquire, Department Counsel  
For Applicant: *Pro Se*

February 27, 2008

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**Decision**

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BRAEMAN, Kathryn M., Administrative Judge:

**History of the Case**

The Defense Office of Hearings and Appeals (DOHA) issued a Statement of Reasons (SOR) to the Applicant on October 11, 2007. The SOR detailed reasons why the Government could not make the preliminary positive finding that it is clearly consistent with the national interest to grant or continue a security clearance for the Applicant.<sup>1</sup> The SOR alleged specific concerns over Financial Considerations (Guideline F) in paragraph 1 based on the revised Adjudicative Guidelines<sup>2</sup> issued on December 29, 2005, and implemented by the Department of Defense, to be effective September 1, 2006. As discussed below, clearance is granted.

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<sup>1</sup> This procedure is required by Executive Order 10865, as amended, and Department of Defense Directive 5220.6, dated January 2, 1992 (Directive), as amended and revised.

<sup>2</sup> A copy of the revised Adjudicative Guidelines was sent with his Statement of Reasons (SOR).

Applicant responded to these SOR allegations in a notarized Answer of October 24, 2007, where he admitted all four of the allegations and requested a hearing.

Department Counsel submitted a Ready to Proceed notice on November 28, 2007. Subsequently the case was assigned to me on December 3, 2007. A Notice of Hearing issued on December 21, 2007, set the matter for January 22, 2008.

At the hearing Department Counsel offered three documents (Exhibits 1-3) that were admitted into evidence without objection. Applicant testified himself. Subsequently, the Department Counsel moved to amend SOR 1.d. to substitute a debt of \$6,320 instead of \$12,797. (TR 74-76; Exhibits 2, 3) The Applicant did not object, so this technical amendment was granted.

At Applicant's request, and as the Department Counsel did not object, we left the record open for two weeks until February 5, 2008, in order for Applicant to submit supplemental information. Department Counsel was granted reasonable time to review the submissions. (TR 33-35, 82) Applicant timely submitted his budget (three pages of records) on January 31, 2008 (Exhibit A); subsequently, two letters of reference were submitted on February 6, 2008 (Exhibit B). Department Counsel reviewed the documents and stated on February 6, 2008, that he had no objection to these documents being admitted into evidence. However, he questioned Applicant's budget figures. In response Applicant submitted a rebuttal letter of February 8, 2008 (Exhibit C) where he argued that the monthly gift from his mother of \$916 should be considered as income. Department Counsel reviewed this document and on February 13, 2007, made no objection to Exhibit C being admitted into evidence. Subsequently, the record closed on February 13, 2007. The transcript (TR) was received on January 29, 2008.

### **Findings of Fact**

After a complete and thorough review of the evidence in the record, and upon due consideration of that evidence, I make the following Findings of Fact:

Applicant, 61 years old, has done financial analysis for a defense contractor in State #1 from August 2006 to present. He was promoted in 2007. His job is to make sure that money obligated to different projects is spent appropriately and that the projects don't overspend their budget. Applicant completed a Security Clearance Application (SF 86) to obtain a security clearance in August 2006. Previously he worked as an accountant for various mortgage companies. He has lived at the same address since 2002. He was unemployed from January to April 2003 and also from June 1995 to October 2002 when he was in school. (Exhibit 1; TR 20, 30-32, 36-38) Applicant served in the U.S. military from November 1966 to October 1970 and was honorably discharged. (Exhibit 1; TR 38-39)

Applicant attended a university from 1995 to 2002 in Pennsylvania and received a Bachelor of Arts degree in April 2002 in accounting. He married in 1970 and divorced in 1975. He remarried in February 1975. He adopted Wife #2's children who were born

during her prior marriage: a son born in 1964, a daughter born in 1968, and another son born in 1970. (Exhibit 1; TR 29-30, 36-37, 40-41, 64-65)

### **Finances**

In response to questions on the SF 86 on his Financial Record Applicant disclosed the following:

- He admitted a debt to Creditor #1 of \$11,572 (SOR 1.a.) incurred in June 2000 and written off as a bad debt in April 2002 per his credit report and referred for collection. (Answer; Exhibit 1; TR 21, 60-61)
- He admitted a debt to Creditor #2 of \$11,211 (SOR 1.b) incurred in June 2001 and charged off as a bad debt in December 2002. (Answer; Exhibit 1; TR 21)

On the SF 86 Applicant explained that he no longer used credit cards, only debit cards. He stated his past due debts were “caused by being over extended as a result of poor credit and cash flow management.” He reported he repaid some of his accounts. He chose not to file for bankruptcy. If he can, he expressed a willingness to arrange payments in the future when he had sufficient funds to repay the debt holders. (Answer; Exhibit 1; TR 21, 42-43)

Credit reports (Exhibits 2, 3) showed additional debts:

- He admitted he owed Creditor #3 for a delinquent debt of \$15,068 referred by a bank for collection (SOR 1.c).
- He admitted he owed approximately \$6,000 to Creditor #4 for a delinquent account charged off as a bad debt in May 2003 and referred for collection (SOR 1.d. as amended). (Answer; Exhibit 1) As documented in the credit report, he settled this debt by paying them half of the \$14,000 due and sent them a check for \$7,000. (Exhibits 2, 3; TR 28, 46-48)

While he had money to settle one debt, he did not have sufficient funds to resolve the other three debts. (TR 29) The other debtors also did not offer him a settlement. (TR 45) He asserted that the credit reports document that all of his debts have been written off or settled, so based on his accounting studies he does not believe he needs to take any further action. These three debts no doubt fall within the state statute of limitations as the creditors took no actions to enforce their rights. In addition, the credit reports show no adverse debts for the past five years. Since 2003 Applicant has not had any additional adverse credit as he relies only on debit cards for payments. (Exhibits 2, 3; TR 17; 21-25, 44-46)

Special circumstances contributed to his failure to resolve these credit card debts.

- For the 1995 to 2002 period when he was in school, they lived on his wife's income of \$20,000 per year. For some on the time he charged his tuition of approximately \$20,000 to \$25,000 to credit cards. While he had intended to pay off these credit cards which helped him pay his school tuition after he graduated, it took longer for him to find a job than he anticipated. Thus, he was financially unable to pay the debts in 2002. (TR 27, 41-43, 63)
- Later his daughter's son had a malignant brain tumor, so in 2002 Applicant moved from State #2 to the area where she lived (State #1) in order to provide her support and assistance. He got a job in State #1 so that his wife could take care of his daughter's infant child and the ill child. (TR 26-27, 41-43)
- In 2003 he was fired from a job from not learning it fast enough which also adversely affected his ability to repay his debts. (Exhibit 1; TR 63-64)
- Recently, his wife has not been able to work because of health problems; she has had two and a half years of recovering from various surgeries. (TR 51) She began working again as a babysitter for her daughter in January 2008, but makes a modest income. (Exhibit A)

At the time of the hearing he had no formal budget to present as his wife handles their finances. (TR 24-25) He earns \$50,000 annually since he was promoted in August 2007, a raise from his initial salary of \$44,000. (TR 32, 49-50)

Applicant reported his take home pay of approximately \$2,800 per month. (TR 50-51) In addition, his mother is giving them \$11,000 per year under the Gift Act. (TR 52) His expenses include rent of approximately \$1,600 per month. He owns a home in State #2 worth approximately \$200,000, but does not have to make any mortgage payments as the mortgage is paid. He owns a 1996 car and a 1997 car that are paid for. He also owns a classic car valued at about \$30,000. (TR 52-56) He has other assets and is current on his taxes. (TR 56- 59)

He provided a monthly budget that reported that he earned monthly net income of approximately \$2,800 per month. His wife now earns \$711 net per month; and he allocated \$916 of the gift money from his mother to his monthly income for a monthly total of \$4,442. He documented expenses of almost \$3,600 for his homes in States #1 and #2. He thus had a net remainder of approximately \$850 per month. (Exhibits A, C)

## References

Applicant's two supervisors favorably evaluated him. (Exhibits B, C)

## **Policies**

Enclosure 2 of the Directive sets forth adjudicative guidelines to consider in evaluating an individual's security eligibility which are divided into conditions that could raise a security concern and may be disqualifying and conditions that could mitigate security concerns. In deciding whether to grant or continue an individual's access to classified information, the mere presence or absence of any adjudication policy condition is not decisive. Based on a consideration of the evidence as a whole in evaluating this case, I weighed the relevant Revised Adjudication Guidelines, and determined the following security concern was relevant to my determination:

### **Guideline F: Financial Considerations**

The security concern caused by financial problems is:

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. Compulsive gambling is a concern as it may lead to financial crimes including espionage. Affluence that cannot be explained by known sources of income is also a security concern. It may indicate proceeds from financially profitable criminal acts.

AG ¶ 18.

The responsibility for producing evidence initially falls on the Government to demonstrate that it is not clearly consistent with the national interest to grant or continue applicant's access to classified information. Then the applicant may present evidence to refute, explain, extenuate, or mitigate in order to overcome the doubts raised by the Government, and to demonstrate persuasively that it is clearly consistent with the national interest to grant or continue the clearance. Under the provisions of Executive Order 10865, as amended, and the Directive, a decision to grant or continue an applicant's security clearance may be made only after an affirmative finding that to do so is clearly consistent with the national interest. In reaching the fair and impartial overall common sense determination, the Administrative Judge may draw only those inferences and conclusions that have a reasonable and logical basis in the evidence of record.

Section 7 of Executive Order 10865 specifically provides industrial security clearance decisions shall be "in terms of the national interest and shall 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 a decision on the allegiance, loyalty, and patriotism

of an applicant.<sup>3</sup> An adverse decision reflects that an applicant has not met the strict guidelines the President and the Secretary of Defense have established for issuing a security clearance.

## **Analysis**

### **Financial Considerations**

The government provided substantial evidence of Applicant's financial problems reflecting debts totaling approximately \$40,000, so Financial Considerations Disqualifying Condition, AG ¶ 19(a), "inability or unwillingness to satisfy debts," and AG ¶ 19(c), "a history of not meeting financial obligations," apply. His financial problems are sufficiently significant to raise security concerns.

With the government's case initially established, the burden shifted to Applicant to present evidence of refutation, extenuation, or mitigation to overcome the case against him. Five Financial Considerations Mitigating Conditions under AG ¶¶ 20(a)-(e) are potentially applicable:

(a) the behavior happened so long ago, was so infrequent, or occurred under such circumstances that it is unlikely to recur and does not cast doubt on the individual's current reliability, trustworthiness, or good judgment;

(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;

(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;

(d) the individual initiated a good-faith effort to repay overdue creditors or otherwise resolve debts; and,

(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.

AG ¶ 20(a) partially applies because several of his financial problems "occurred under such circumstances that it is unlikely to recur and does not cast doubt on the individual's current reliability, trustworthiness, or good judgment." His debts grew out of

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<sup>3</sup>Executive Order No. 10865 § 7.

his school tuition and living expenses when he was in school for and lived on his wife's \$20,000 annual income. He subsequently had to move to a new area with higher expenses. While he negotiated a settlement for one of his debts, he believes he owes nothing on the other debts as the creditors have written off those debts. He does not receive full credit under AG ¶ 20(a) because not all of his debts grew out of special circumstances and because of his unwillingness and slowness in addressing the debts written off by Creditors #1, #2, and #3.

AG ¶ 20(b) provides that security concerns may be mitigated when, "the conditions that resulted in the behavior 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." He was unemployed from June 1995 to October 2002 when he was in school and lived on his wife's limited income. Applicant and his wife moved to State #1 to assist her daughter when her son was gravely ill. He was again unemployed from January to April 2003. More recently his wife has been ill and unable to work because of several surgeries. He receives partial credit under AG ¶ 20(b) as his inability to resolve some of the debts were from conditions beyond his control due to special circumstances and his limited income.

AG ¶ 20(c) applies. Although Applicant did not seek financial counseling, there are clear indications that the problem is being resolved or is under control as he has developed a plan to resolve his debts. One SOR debt was paid through a settlement. With an accounting degree Applicant has concluded he does not have to pay back debts that have been written off by creditors; he has been unwilling to file for bankruptcy. He has substantial additional resources as he receives a \$11,000 tax-free annual gift from his mother. While Department Counsel challenged his including this gift in his monthly assets, his monthly allocation of this gift into the income side of his ledger is fair and reasonable. In addition he has substantial assets that he could utilize for financial emergencies. He no longer uses any credit cards and has not developed any new debt in the past five years. Thus, I conclude that he has responsibly demonstrated his financial problems are under control.

AG ¶ 20(d) partially applies because Applicant made a good-faith effort to repay one overdue creditor to resolve that debt through a settlement. However, due to special circumstances discussed above, he did not have additional resources to resolve the other debts. However, the creditors made no effort to bring judgments against him or take timely actions to collect; therefore, I conclude his debts (SOR ¶ 1.a, 1.b, and 1.c) may have been barred by Pennsylvania's 4-year statute of limitations.<sup>1</sup>

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<sup>1</sup> See 42 Pa.C.S. § 5525 (2007). For example, the South Carolina Court of Appeals succinctly explained the societal and judicial value of application of the statute of limitations:

Statutes of limitations embody important public policy considerations in that they stimulate activity, punish negligence and promote repose by giving security and stability to human affairs. The cornerstone policy consideration underlying statutes of limitations is the laudable goal of law to promote and achieve finality in litigation. Significantly, statutes of limitations provide potential defendants with certainty that after a set period of time, they will not be ha[iled] into court to

AG ¶ 20(e) does apply as Applicant did “dispute the legitimacy” of three of the past-due debt “which is the cause of the problem” because he considers them resolved since the companies no longer are attempting to collect these written off debts from him which are no doubt barred from collection do to a state statute of limitations. As discussed above, a state statute of limitations on the collection of these debts has a laudable goal as they discourage people from sitting on their rights as these three creditors have done.

### **Whole Person Analysis**

Applicant’s financial difficulties have in part grown out of his noteworthy desire to attend college to get a degree while he had inadequate financial resources. Further, his inability to timely resolve the credit card debts resulted in part from his exemplary efforts to help his family through difficult circumstances. Both Applicant and his wife are now full time workers, who have a budget. Applicant has taken significant steps to move ahead on the road to financial recovery and has recently been promoted to a more highly paid position. He is highly regarded by his supervisors.

Having considered both the record and Applicant in light of the “whole person” concept, I conclude he is a sincere person who made substantial efforts to reform his financial practices. There is little potential for pressure, coercion, exploitation, or duress because of his stable employment and his substantial assets.

In conclusion, financial issues no longer remain a security concern as he has lived within his means for the past five years. After weighing the disqualifying and mitigating conditions, and all the facts and circumstances in the context of the whole person, I conclude he has mitigated the security concerns pertaining to financial considerations. I rule For Applicant in subparagraphs 1.a through 1.d.

After reviewing the allegations of the SOR in the context of the Adjudicative Guidelines in Enclosure 2 and the factors set forth under the Adjudicative Process section, I make the following formal findings:

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defend time-barred claims. Moreover, limitations periods discourage plaintiffs from sitting on their rights. Statutes of limitations are, indeed, fundamental to our judicial system.

*Carolina Marine Handling, Inc. v. Lasch*, 363 S.C. 169, 175-76, 609 S.E.2d 548, 552 (S.C. Ct. App. 2005) (internal quotation marks and citations omitted). The reduction in the magnitude and number of debts that creditors can legally enforce because of the application of the Texas statute of limitations reduces the potential vulnerability to improper financial inducements, and the degree that a debtor is “financially overextended,” is also reduced. However, it does not negate the debtor’s past conduct, which failed to take more aggressive actions to resolve the financial jeopardy.



### **Formal Findings**

Paragraph 1. Guideline F: FOR APPLICANT

Subparagraphs 1.a. through 1.d.: For Applicant

### **Conclusion**

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

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Kathryn Moen Braeman  
Administrative Judge