

DATE: December 28, 2007

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In re: )	
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----- )	ISCR Case No. 07-03249
SSN: ----- )	
)	
Applicant for Security Clearance )	
_____ )	

**DECISION OF ADMINISTRATIVE JUDGE  
PHILIP S. HOWE**

**APPEARANCES**

**FOR GOVERNMENT**

Caroline H. Jeffreys, Esq., Department Counsel

**FOR APPLICANT**

*Pro Se*

**SYNOPSIS**

Applicant is 32 years old, and preparing to get a divorce. He has 13 delinquent debts incurred during and after his military service. Applicant repaid six debts and has a plan to repay the remaining delinquent debts by January 2009. Applicant mitigated the financial considerations security concern. Clearance is granted.

## STATEMENT OF THE CASE

The Defense Office of Hearings and Appeals (DOHA) declined to grant or continue a security clearance for Applicant. On June 8, 2007, DOHA issued a Statement of Reasons<sup>1</sup> (SOR) detailing the basis for its decision—security concerns raised 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. Applicant answered the SOR in writing on July 7, 2007, and elected to have a hearing before an administrative judge. The case was assigned to me on August 15, 2007. On November 15, 2007, I convened a hearing to consider whether it is clearly consistent with the national interest to grant or continue a security clearance for Applicant. The Government and the Applicant submitted exhibits that were admitted into evidence. I left the record open until December 6th to allow Applicant to submit additional documents for consideration. He submitted them, and the Government had no objection. I marked them as Exhibits G-L and admitted them into evidence. DOHA received the hearing transcript (Tr.) on November 27, 2007.

## FINDINGS OF FACT

Applicant's admissions to all of the SOR allegations are incorporated here as findings of fact. After a complete and thorough review of the evidence in the record, and full consideration of that evidence, I make the following additional findings of fact:

Applicant is 32 years old, married but about to be divorced from his wife. Applicant served eight years, six months in the U.S. Marines, being honorably discharged in December 2003. He obtained the rank of E-5 in four years. He was unemployed from then until February 2005. At that time he found a job in his specialty, non-destructive aircraft testing, with a defense contractor. He has been gainfully employed with that company since then. Applicant is the first high school graduate in his family. He obtained his degree while in foster care from the ages of 15 to 19. He was in foster care not through any fault or action on his part, but because his parents were not able to care for him and his siblings. Applicant presented himself at the hearing in an articulate and professional manner. (Tr. 19-25, 47, 69-76; Exhibits 1, D, E)

Applicant's supervisors, including the person who hired him into the company for which he currently works, regards him as a professional and ethical worker. They are very satisfied with Applicant's work product and work ethic. His character references write that Applicant is a very knowledgeable test technician, and that he has received recognition from his managers for his job performance. (Tr. 13, 14; Exhibits A-C, E)

Applicant has no credit cards except his company credit card, used for travel and work purposes. He pays that balance in full monthly. He pays his current monthly bills on time. He gave his wife the responsibility to pay all other bills, but does not know which ones are paid or not paid. He traveled from August 4th until 10 days before the hearing. When he returned home he found his

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<sup>1</sup>Pursuant to Exec. Or. 10865, *Safeguarding Classified Information within Industry* (Feb. 20, 1960), as amended and modified, and Department of Defense Directive 5220.6, *Defense Industrial Personnel Security Clearance Review Program* (Jan. 2, 1992), as amended and modified (Directive).

wife had left him, taking almost everything from their rented house. Applicant will now be responsible for paying his own bills. He acknowledges his 13 delinquent debts listed in the SOR. He admitted none had been paid as of the date of the hearing. His budget plan, submitted as an exhibit, shows he intends to repay his delinquent debts at the rate of \$500 monthly. He did not repay these debts previously because his wife was expensive to support. Now he will not have that financial expense. His plan is to repay his delinquent debts by January 2009. He consulted with a debt consolidation agency he found on the internet, but has not paid them any money yet. Applicant has a lease on the house he occupies. After his wife leaves him, he will obtain one or two roommates to help split the rental cost, and increase his ability to repay his debts. (Tr. 24, 26, 41-46, 56; Exhibits 2-5, F)

Applicant incurred his delinquent debts while unemployed from December 2003 to February 2005, and while on active duty. These debts total nearly \$24,000. Six debts total \$630. Applicant repaid four of those debts after the hearing and before December 6th. The debt in Subparagraph 1.f was paid in 2005, according to the creditor, and the debt in Subparagraph 1.b was paid on May 23, 2007, according to the creditor. Those debts are SOR subparagraphs 1.b (gas company for apartment heating, \$69), 1.c (cable television service, \$104), 1.f (credit card used at PX while in Kuwait on active duty, \$136), 1.k (video rental, \$140), 1.l (auto insurance with company which insures his car now, \$115), and 1.m (water bill for apartment at last duty station, \$66). Subparagraphs 1.b, 1.c, and 1.m are debts for utilities services to the same apartment at Applicant's last military duty station. The remaining seven delinquent debts total \$22,700: Subparagraph 1.a (carpet repair at apartment he and his wife rented and Applicant disputes charge, \$599); 1.d (a credit card, \$7,417); 1.e. (tire replacement for car, \$918); 1.g (department store credit card, \$612); 1.h (car loan, \$11,623); 1.i (overdraft charges on a checking account, \$1,155); and, 1.j (court costs for driving class not taken, \$446). These seven will be paid out of the \$500 debt repayment amount in his budget. (Tr. 28-39; Exhibits 2-5, F-L)

## POLICIES

“[N]o one has a ‘right’ to a security clearance.” *Department of the Navy v. Egan*, 484 U.S. 518, 528 (1988). As Commander in Chief, the President has “the authority to . . . control access to information bearing on national security and to determine whether an individual is sufficiently trustworthy to occupy a position . . . that will give that person access to such information.” *Id.* at 527. The President has authorized the Secretary of Defense or his designee to grant applicants eligibility for access to classified information “only upon a finding that it is clearly consistent the national interest to do so.” Exec. Or. 10865, *Safeguarding Classified Information with Industry* § 2 (Feb. 20, 1960). Eligibility for a security clearance is predicated upon the applicant meeting the security guidelines contained in the Directive. An applicant “has the ultimate burden of demonstrating that it is clearly consistent with the national interest to grant or continue his security clearance.” ISCR Case No. 01-20700 at 3.

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. Enclosure 2 of the Directive sets forth personnel security guidelines, as well as the disqualifying conditions (DC) and mitigating conditions (MC)

under each guideline that must be carefully considered in making the overall common sense determination required.

In evaluating the security worthiness of an applicant, the administrative judge must also assess the adjudicative process factors listed in ¶ 6.3 of the Directive. Those assessments include: (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). Because each security case presents its own unique facts and circumstances, it should not be assumed that the factors exhaust the realm of human experience or that the factors apply equally in every case. Moreover, although adverse information concerning a single condition may not be sufficient for an unfavorable determination, the individual may be disqualified if available information reflects a recent or recurring pattern of questionable judgment, irresponsibility, or other behavior specified in the Guidelines.

The decision to deny an individual a security clearance is not necessarily a determination as to the loyalty of the applicant. *See* Exec. Or. 10865 § 7. 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.

Initially, the Government must establish, by substantial evidence, conditions in the personal or professional history of the applicant that disqualify, or may disqualify, the applicant from being eligible for access to classified information. The Directive presumes a nexus or rational connection between proven conduct under any of the disqualifying conditions listed in the guidelines and an applicant's security suitability. *See* ISCR Case No. 95-0611 at 2 (App. Bd. May 2, 1996). All that is required is proof of facts and circumstances that indicate an applicant is at risk for mishandling classified information, or that an applicant does not demonstrate the high degree of judgment, reliability, or trustworthiness required of persons handling classified information. ISCR Case No. 00-0277, 2001 DOHA LEXIS 335 at \*\*6-8 (App. Bd. 2001). Once the Government has established a *prima facie* case by substantial evidence, the burden shifts to the applicant to rebut, explain, extenuate, or mitigate the facts. *See* Directive ¶ E3.1.15. An applicant "has the ultimate burden of demonstrating that is clearly consistent with the national interest to grant or continue his security clearance. ISCR Case No. 01-20700 at 3 (App. Bd. 2002). "Any doubt as to whether access to classified information is clearly consistent with national security will be resolved in favor of the national security." Directive ¶ E2.2.2. "[S]ecurity clearance determinations should err, if they must, on the side of denials." *Egan*, 484 U.S. at 531. *See* Exec. Or. 12968 § 3.1(b).

Based upon a consideration of the evidence as a whole, I find the following adjudicative guideline most pertinent to an evaluation of the facts of this case:

Guideline F: Financial Considerations: The Concern: 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 could 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.

## CONCLUSIONS

**Financial Considerations:** Applicant incurred debts which he allowed to become delinquent for a variety of reasons. He did not repay them in the past two years because his wife was in charge of paying the bills and he did not monitor those payments. And Applicant found his wife was expensive to support. He did not pay attention to his financial obligations, in part also, because he traveled for his job and was not home.

The disqualifying conditions applicable are Financial Considerations Disqualifying Condition ¶19.a. (inability or unwillingness to satisfy debts), and ¶19.c. (a history of not meeting financial obligations). Applicant had an obligation to repay the debts, and forgot to do so, or did not give them enough attention while working and getting married during the past two years.

Applicant's situation has now changed. He admits his responsibility to repay the debts, and commits to doing so. His wife left him, and now he is in charge of paying his debts, i.e., actually writing the checks or making electronic payments. He demonstrated his commitment to get the debts paid by repaying six delinquent debts in a three-week time period after the hearing. His budget in Exhibit F shows a commitment to spending \$500 monthly to repay the remaining debts. His planned date of January 2009 for repaying all of them may be ambitious absent a greater money repayment amount, but it shows Applicant is focused on the problem and has a plan. Furthermore, some of the debts were incurred during a 14-month period of unemployment Applicant endured after being honorably discharged from the Marines, having completed eight years and six months of service. Applicant repaid \$630 of debt in a three-week period, so he knows what to do to repay debts and how to do it. He took the initiative to repay them.

The Financial Considerations Mitigating Conditions applicable are ¶20.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 ¶20.d (the individual initiated a good-faith effort to repay overdue creditors or otherwise resolve debts).

### **Whole Person Analysis**

“The adjudicative process is an examination of a sufficient period of a person's life to make an affirmative determination that the person is eligible for a security clearance.” AG ¶ 2(a). “Each security clearance decision must be a fair and impartial common sense determination based upon consideration of all the relevant and material information and the pertinent criteria and adjudication policy.” Directive ¶ 6.3. “Available, reliable information about the person, past and present, favorable and unfavorable, should be considered in reaching a determination.” AG ¶ 2(a). In

evaluating Applicant's case, I have considered the adjudicative process factors listed in the AG ¶ 2(a).

There are nine adjudicative factors to apply. All nine are relevant to Applicant's past financial situation. \$24,000 is a lot of debt for person to have. Most of the debts go back to 2003 and some date farther back. But his period of unemployment contributed to most of them. However, since he became employed in 2005, he has not incurred significant debt. There does not appear to be a pattern of incurring significant debt and then failing to repay it over many years. Applicant was in his twenties when the debts were incurred. He recently contacted a debt consolidation service, but has not engaged it yet. He repaid \$630 of debt on his own efforts, constituting almost half of the number of allegations in the SOR. Applicant's motivation for spending these monies was not frivolous or irresponsible, but was part of obtaining goods and services. His automobile debt is his largest debt, and he should be able to reestablish an installment payment plan with the lender.

Applicant spoke at the hearing of having a responsible job which he does well, and therefore, he should be considered responsible enough now to be trusted to repay his debts, especially because he will not have the distraction of his wife's expenses. He makes a persuasive argument, especially because he is articulate and credible. He persevered through foster care and a disrupted family to obtain a high school diploma, spent eight years in the U.S. Marines, obtaining the rank of E-5 (Sergeant) in four years which is an accomplishment of note. Applicant has demonstrated through his life his dedication to duty and his commitment to accomplishing his stated goals. His commitment to repay his debts is, therefore, believable and persuasive.

Based on the totality of the evidence, I conclude the Financial Considerations security concern for Applicant. I also conclude the "whole person" concept for Applicant based on his work and military performance history, the factors under that concept, and his eloquent presentation at the hearing.

### **FORMAL FINDINGS**

The following are my conclusions as to each allegation in the SOR:

Paragraph 1. Guideline F:                   FOR APPLICANT

    Subparagraph 1.a to 1.1:           For Applicant

### **DECISION**

In light of all of 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 Applicant. Clearance is granted.

Philip S. Howe  
Administrative Judge