

DATE: October 15, 2007

In re:)
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 -----) ISCR Case No. 07-01935
 SSN: -----)
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 Applicant for Security Clearance)
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)

**DECISION OF ADMINISTRATIVE JUDGE
SHARI DAM**

APPEARANCES

FOR GOVERNMENT

Candace L. Le'i, Esq., Department Counsel

FOR APPLICANT

Pro Se

SYNOPSIS

Applicant is 30 years old and employed by a federal contractor. He accumulated a number of debts over the past eight or nine years that he has not resolved or paid. Some of the debts are owed to the court for numerous traffic citations and a minor criminal offense. He failed to mitigate the security concerns raised by financial considerations and criminal conduct. Clearance is denied.

STATEMENT OF THE CASE

On July 20, 2006, Applicant electronically submitted a security clearance application (SCA). The Defense Office of Hearings and Appeals (DOHA) declined to grant or continue a security clearance for Applicant. As required by Department of Defense Directive 5220.6 (Jan. 2, 1992), as amended, DOHA issued a Statement of Reasons (SOR) on May 25, 2007, detailing the basis for its decision—security concerns raised under Guideline F (Financial Considerations) and Guideline J (Criminal Conduct) of the Adjudicative Guidelines (Guidelines) issued on December 29, 2005, and implemented by the Department of Defense effective September 1, 2006.

Applicant answered the SOR in writing on June 25, 2007, and elected to have his case decided on the written record. On July 17, 2007, Department Counsel prepared a File of Relevant Material (FORM), containing seven Items, and mailed it to Applicant.¹ He received it on July 30, 2007, and had 30 days to file additional materials, which he declined to do. On September 14, 2007, the case was assigned to me.

FINDINGS OF FACT

Based on the entire record, including Applicant’s admissions in his answer to all of the allegations in the SOR, I make the following findings of fact:

Applicant is 30 years old. He is single and has three children whom he supports along with his fiancé. In April 2006, he began his current position as an alarm monitor/drafter for a federal contractor. He applied for a SCA in July 2006. (GX 4).

Applicant admitted that he filed for bankruptcy twice. In April 2000, he filed a Chapter 7 Bankruptcy in which he listed assets of \$1,215 and liabilities of \$6,192. The following August, the court discharged his liabilities. In January 2001, he filed a Chapter 13 Bankruptcy, listing assets of \$1,215 and liabilities of \$2,847. In July 2002, the court dismissed the bankruptcy.

In May 2000, the police arrested Applicant and charged him with Theft, 3rd degree, for leaving a restaurant without paying the bill. He pled guilty and the court fined him \$250, which remains unpaid. From 1998 through December 2003, he accumulated approximately \$6,000 in fines for traffic violations that remain unpaid. He has been unable to pay those fines due to his previous limited income. He hopes to pay them as soon as his fiancé obtains a job. (GX 5 at 3).

Based on his SCA, responses to Interrogatories (GX 5), February and April 2007 credit reports (GX 7 and 8), and his answers to the SOR, Applicant owes about \$7,116 to various creditors and \$6,250 to the court. In his SCA, he indicated that he intended to dispute the debts listed in ¶ 1.f and ¶ 1.g. (GX 4 at 42 and 44). He stated he “was in the process of paying off everything” he owed and intended to use a settlement from an accident to help pay the debts. (*Id.* at 49). He did not provide any documentation to prove that he disputed or paid any debts, including the fines. To-date, all of the debts listed in the SOR are unresolved.

In May 2007, Applicant submitted a budget with his response to the Interrogatories. His net monthly income is about \$3,200 and expenses are \$2,900, leaving him approximately \$300 that

¹The individual Items are marked as Government Exhits (GX).

could be used to reduce his delinquent obligations. (AX 5 at 7). Although he listed his outstanding student loan on the budget, he did not list any of the debts noted in the SOR.

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 . . . 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 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 with the national interest to do so.” Exec. Or. 10865, *Safeguarding Classified Information within Industry* § 2 (Feb. 20, 1960). Each security clearance decision “must be a fair and impartial common sense determination based upon consideration of all relevant and material information and the pertinent criteria and adjudication policy.” Directive ¶ 6.3. 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 (App. Bd. Dec. 19, 2002). 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 the applicant has not met the strict guidelines the President and the Secretary of Defense established for issuing a clearance.

In an evaluation of an applicant’s suitability for a security clearance, an administrative judge must consider the “Adjudicative Guidelines for Determining Eligibility for Access to Classified Information.” The revised Guidelines set forth potentially disqualifying conditions (DC) and mitigating conditions (MC), which are used to determine an applicant’s eligibility for access to classified information.

In addition to evaluating those disqualifying and mitigating conditions under each guideline, the adjudicative process requires a thorough consideration and review of all available, reliable information about the applicant, past and present, favorable and unfavorable, to arrive at a balanced decision. The essence of scrutinizing all appropriate variables in a case is known as the “whole person” concept. Guideline ¶ 2(c). Specifically, an administrative judge should consider the nine adjudicative process factors listed at Guideline ¶ 2(a): “(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 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.”

CONCLUSIONS

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

Guideline F - Financial Considerations

Guideline ¶ 18 articulates the Government's concern regarding financial problems. "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."

Based on Applicant's admissions and credit reports, the Government raised potential disqualifications under Financial Considerations Disqualifying Condition (FC DC) 19(a) ("inability or unwillingness to satisfy debts"), and FC DC 19(c) ("a history of not meeting financial obligations"). Applicant admitted responsibility for the delinquent debts listed in the SOR and acknowledged he has not had the resources to manage his debts from approximately 1998 to the present. After the Government produced substantial evidence of those two disqualifying conditions, the burden shifted to Applicant to mitigate or rebut the allegations.

Five Financial Considerations' Mitigating Condition (FC MC) under Guidelines ¶ 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;
- (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.

Based on my evaluation of the record evidence as a whole, I conclude Guideline ¶ 20(a) does not apply. Applicant's problems date back to 1998, include the filing of two bankruptcies and the discharge of \$6,000 of debt, and continue into the present. The financial problems span an eight or nine year period and there is no evidence that they are being resolved. All of these facts cast doubt on Applicant's reliability and good judgment. Applicant did not submit any information to support the application of Guideline ¶ 20(b). Nor did he produce documentation indicating that he received financial counseling, such that the problems are being resolved or under control, as required by Guideline ¶ 20(c). He did not provide any evidence to establish that he made a good-faith effort to

resolve any debt under Guideline ¶ 20(d). Although he stated he intended to dispute two debts, he failed to produce evidence that he filed a dispute, hence, Guideline ¶ 20(e) does not apply.

Guideline J - Criminal Conduct

Under Guideline ¶ 30, “Criminal activity creates doubt about a person’s judgment, reliability, and trustworthiness. By its very nature, it calls into question a person’s ability or willingness to comply with laws, rules and regulations.”

One Criminal Conduct Disqualifying Condition (CC DC) could raise a security concern and be disqualifying in this case: “a single serious crime or multiple lesser offenses.” Guideline ¶ 31(a). Applicant admitted that from May 1998 through December 2003, he accumulated a number of fines related to traffic violations and that in May 2000, he was arrested for Theft, 3rd Degree, to which he later plead guilty. The Government produced substantial evidence of that CC DC, and the burden shifted to Applicant to produce evidence of a mitigating condition.

Two Criminal Conduct Mitigating Conditions (CC MC) under Guideline ¶ 30 are potentially applicable:

- (a) so much time has elapsed since the criminal behavior happened, or it happened under such unusual circumstances that it is unlikely to recur and does not cast doubt on the individual’s reliability, trustworthiness, or good judgment;
- (d) there is evidence of successful rehabilitation; including but not limited to the passage of time without recurrence of criminal activity, remorse or restitution, job training or higher education, good employment record, or constructive community involvement.

Although Applicant was arrested and convicted in May 2000, seven years ago, he has received traffic citations that span May 1998 through December 2003. Based on the ongoing nature of those traffic offenses for more than five years, sufficient time has not elapsed under Guideline ¶ 30(a), and his good judgment remains in question. Guideline ¶ 30(d) does not apply because he has not paid the \$6,000 in fines, which would demonstrate some rehabilitation, nor submitted any evidence of a good employment record, completion of his education, constructive community involvement, or even remorse for his multiple criminal infractions, regardless of their nature.

Whole Person Analysis

In addition to the enumerated disqualifying and mitigating conditions, I considered the totality of the evidence in view of the “whole person” concept, including Applicant’s age and his candid disclosure of his numerous debts, and unpaid fines. I also took into account the fact that the debts and traffic violations were the result of voluntary behaviors. I reviewed his current budget and noted the lack of provisions for repayment of his delinquent debts, despite being aware of the problem since the time he completed a SCA in July 2006 or responded to the Interrogatories in May 2007. Without an established budget and a track record of consistent financial management

demonstrating reliability and maturity, I am concerned that his financial problems will recur. Until he pays his traffic fines, I cannot find that he has sufficiently rehabilitated himself or shown a commitment to exercising trustworthiness, reliability or good judgment. Accordingly, Guidelines F and J are found against him.

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 as follows:

Paragraph 1: Guideline F (Financial Considerations)	AGAINST APPLICANT
Subparagraphs 1.a through 1.j:	Against Applicant
Paragraph 2: Guideline J (Criminal Conduct)	AGAINST APPLICANT
Subparagraphs 1.a and 1.b:	Against Applicant

DECISION

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

Shari Dam
Administrative Judge