

DATE: December 21, 2004

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In re:

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SSN: -----

Applicant for Security Clearance

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ISCR Case No. 02-10446

**DECISION OF ADMINISTRATIVE JUDGE**

**JAMES A. YOUNG**

**APPEARANCES**

**FOR GOVERNMENT**

Francisco J. Mendez Jr., Esq., Department Counsel

**FOR APPLICANT**

*Pro Se*

**SYNOPSIS**

Applicant has a history of not meeting his financial obligations. After several Chapter 13 bankruptcies were dismissed, Applicant appears to be making progress on paying off all but one of his debts. Applicant deliberately falsified his security clearance application by denying his security clearance had previously been revoked and the IRS had placed tax liens against him. Clearance is denied.

**STATEMENT OF THE CASE**

The Defense Office of Hearings and Appeals (DOHA) declined to grant or continue a security clearance for Applicant. On 10 August 2004, DOHA issued a Statement of Reasons [\(1\)](#) (SOR) detailing the basis for its decision-security concerns raised under Guideline F (Financial Considerations) and Guideline E (Personal Conduct) of the Directive. Applicant answered the SOR in writing on 2 September 2004 and elected to have a hearing before an administrative judge. The case was assigned to me on 8 October 2004. On 2 December 2004, I convened a hearing to consider whether it is clearly consistent with the national interest to grant or continue a security clearance for Applicant. DOHA received the hearing transcript (Tr.) on 13 December 2004.

**FINDINGS OF FACT**

Applicant is a 57-year-old senior logistics engineer for a defense contractor. Ex. 1 at 1. Applicant retired from the U.S. Army in 1987 with the rank of sergeant first class (E-7). In 1969, Applicant's security clearance was revoked because of a security violation. Ex. 4 at 3.

Applicant is unable to corroborate any payments he may have made to his creditors because a leaking hot water heater caused flooding in his house and the loss of all of his financial records. Tr. 12.

Applicant filed Chapter 13 wage-earner's plans in June 1998, March 1999, October 2000, and January 2002. The first three were dismissed prior to discharge of the debts. Applicant has made 33 payments on his January 2002 Chapter 13

Bankruptcy. The debts alleged in ¶¶ 1.a-1.d are not included in the bankruptcy. Tr. 27. He has received financial counseling from a mortgage broker he knows. Tr. 31. Applicant no longer carries a credit card. *Id.* Recently, Applicant received a raise of \$200 a month. The income remaining after paying his monthly bills is now \$3,000. Tr. 32.

The following chart lists the delinquent debts alleged in the SOR and their current status.

¶	Debt and Amount	Status	Record
1.a	Bank card charged off for \$1,357	Claims settled for \$700	Tr. 12
1.b	Bank card delinquent \$963	Claims he paid it	Tr. 12
1.c	Collection agency \$224	Paid \$747	Tr. 12; Ex. B
1.d	Bank debt charged off \$4,652	Unpaid--resulted from car repo	Tr. 13
1.e	Lien by IRS (1992-94) \$16,400	Part of Chapter 13 payments	Ex. 15
1.f	Lien--state income taxes \$1,030	Part of Chapter 13 payments	Ex. 15
1.g	Lien--state income taxes \$2,000	Part of Chapter 13 payments	Ex. 15
1.h	Line--state income taxes \$3,400	Part of Chapter 13 payments	Ex. 15

On 16 January 2001, Applicant executed a security clearance application acknowledging that a knowing and willful false statement was a violation of 18 U.S.C. § 1001. Question 32 asked if Applicant had ever had a clearance denied, suspended, or revoked. Question 36 asked if Applicant had ever had a lien placed against him for failing to pay taxes or other debts. Applicant answered "no" to both questions. Question 33 asked if, in the previous seven years, Applicant had filed for bankruptcy. Applicant answered "yes," but listed only the 2000 bankruptcy.

### 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 restricted eligibility for access to classified information to United States citizens "whose personal and professional history affirmatively indicates loyalty to the United States, strength of character, trustworthiness, honesty, reliability, discretion, and sound judgment, as well as freedom from conflicting allegiances and potential for coercion, and willingness and ability to abide by regulations governing the use, handling, and protection of classified information." Exec. Or. 12968, *Access to Classified Information* § 3.1(b) (Aug. 4, 1995). Eligibility for a security clearance is predicated upon the applicant meeting the security guidelines contained in the Directive.

Enclosure 2 of the Directive sets forth personnel security guidelines, as well as the disqualifying conditions (DC) and mitigating conditions (MC) under each guideline. 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. 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. *See Egan*, 484 U.S. at 531. 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).

Once the Government establishes a disqualifying condition by substantial evidence, the burden shifts to the applicant to rebut, explain, extenuate, or mitigate the facts. ISCR Case No. 01-20700 at 3 (App. Bd. Dec. 19, 2002); *see* Directive ¶ E3.1.15. 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.

## CONCLUSIONS

### **Guideline F--Financial Considerations**

In the SOR, DOHA alleged Applicant had two debts that were charged off totaling approximately \$6,000 (¶¶ 1.a, 1.d), a debt of \$963 that was more than 120 days delinquent (¶ 1.b), a debt of \$224 that had been placed in collection status (¶ 1.c), a lien placed against him in 1995 by the IRS for \$16,400 for unpaid federal income taxes for tax years 1992-94 (¶ 1.e), three liens placed against him for unpaid state income taxes (¶¶ 1.f-1.h), and filed for Chapter 13 bankruptcy in 1998, 1999, 2000, and 2002 (¶¶ 1.i-1.l). An applicant who is financially overextended is at risk of having to engage in illegal acts to generate funds. Directive ¶ E2.A6.1.1.

The Government established by substantial evidence each of the allegations in the SOR. Applicant has a history of not meeting his financial obligations (DC E2.A6.1.2.1.) and is unable or unwilling to satisfy his debts (DC E2.A6.1.2.3.). What is most disturbing is that Applicant is making over \$100,000 a year and has about \$3,000 remaining each month after paying his current bills. Applicant's delinquent debts do not appear to be much of a priority for him. Instead, he is using the money to help other members of his family. He is paying college expenses for one, living expenses for another, and purchasing a house for his daughter. On the other hand, Applicant paid some of his debts and appears to have most of his other debts under control. MC E2.A6.1.3. But he has not paid the debt alleged in ¶ 1.d and has no formalized plan to do so. I find against Applicant on ¶ 1.d.

### **Guideline E--Personal Conduct**

In the SOR, DOHA alleged Applicant falsified material facts on his SCA by failing to acknowledge the U.S. Army had denied/revoked his security clearance in 1969 (¶ 2.a), he had several liens placed against him (¶ 2.b), and he had filed several of the bankruptcies in the previous seven years (¶ 2.c). Conduct involving questionable judgment, untrustworthiness, unreliability, lack of candor, dishonesty, or unwillingness to comply with rules and regulations could indicate the applicant may not properly safeguard classified information. Directive ¶ E2.A5.1.1.

The Government established Applicant failed to disclose in his SCA that the U.S. Army had revoked his security clearance in 1969, he had liens placed against him for unpaid taxes, and he had filed for Chapter 13 bankruptcy on two additional occasions.<sup>(2)</sup> The question remains whether the knowingly and willfully failed to do so. The deliberate omission, concealment, or falsification of material facts on an SCA is a condition that could be disqualifying. DC E2.A5.1.2.2. After carefully considering all of the evidence and Applicant's testimony, and observing his demeanor, I am convinced Applicant's omissions were deliberate. None of the mitigating conditions apply. I find against him on ¶ 2.

## FORMAL FINDINGS

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

Paragraph 1. Guideline F: AGAINST APPLICANT

Subparagraph 1.a: For Applicant

Subparagraph 1.b: For Applicant

Subparagraph 1.c: For Applicant

Subparagraph 1.d: Against Applicant

Subparagraph 1.e: For Applicant

Paragraph 2. Guideline E: AGAINST APPLICANT

Subparagraph 2.a: Against Applicant

Subparagraph 2.b: Against Applicant

Subparagraph 2.c: Against Applicant

**DECISION**

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

**James A. Young**

**Administrative Judge**

1. 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).
2. The fourth Chapter 13 bankruptcy was filed after the SCA was completed.