

DATE: March 26, 2004

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In Re:

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SSN:-----

Applicant for Security Clearance

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ISCR Case No. 02-10754

**ECISION OF ADMINISTRATIVE JUDGE**

**WILFORD H. ROSS**

**APPEARANCES**

**FOR GOVERNMENT**

Melvin A. Howry, Esquire, Department Counsel

**FOR APPLICANT**

*Pro Se*

**SYNOPSIS**

The Applicant has resolved the three debts set forth in the Statement of Reasons. Two have been paid and one is being paid in a fashion acceptable to the judgment creditor. The Applicant had to declare bankruptcy in 2001 due to unique circumstances. His current financial situation is stable. Sufficient mitigating evidence is shown. Adverse inference is overcome. Clearance is granted.

**STATEMENT OF THE CASE**

On April 18, 2003, the Defense Office of Hearings and Appeals (DOHA), pursuant to Executive Order 10865 (as amended) and Department of Defense Directive 5220.6 (Directive), dated January 2, 1992, issued a Statement of Reasons (SOR) to the Applicant, which detailed reasons why DOHA could not make the preliminary affirmative finding under the Directive that it is clearly consistent with the national interest to grant or continue a security clearance for the Applicant and recommended referral to an Administrative Judge to determine whether a clearance should be denied or revoked.

The Applicant responded to the SOR in writing on May 15, 2003, and requested that the case be decided without a hearing. The Government submitted its File of Relevant Material (FORM) to the Applicant on August 11, 2003. The Applicant was given 30 days from receipt of the FORM to submit any documents in rebuttal, extenuation or mitigation. The Applicant received the FORM on August 18, 2003, and submitted no additional information. The case was received by the undersigned on September 22, 2003.

**FINDINGS OF FACT**

The Applicant is 33 and single. He is employed by a defense contractor as a firefighter, and he seeks to obtain a DoD security clearance in connection with his employment in the defense sector.

The Government opposes the Applicant's request for a security clearance, based upon the allegations set forth in the

Statement of Reasons (SOR). The following findings of fact are entered as to each paragraph and guideline in the SOR. They are based on the Applicant's Answer to the SOR, the exhibits and the live testimony.

Paragraph 1 (Guideline F - Financial considerations). The Government alleges in this paragraph that the Applicant is ineligible for clearance because he is financially overextended and therefore at risk of having to engage in illegal acts to generate funds.

Subparagraph 1.a. The Applicant paid off this past due debt in the amount of \$94.63 on February 26, 2003. (Government Exhibit 2 at 2.)

Subparagraph 1.b. The Applicant was the defendant in a law suit and had a judgment entered against him for \$14,745. Subsequently, \$8, 229.44 of the judgment was paid by garnishment of the Applicant's pay. In April 2003, the Applicant reached an agreement with the judgment creditor for the Applicant to pay them directly. (Government Exhibit 3 at 3.) As of May 2003, the balance the Applicant continued to owe was \$7,950.56. (Government Exhibit 3 at 1.)

Subparagraph 1.c. The Applicant got into some financial difficulty in 1999/2000. The primary problem involved the repossession of the Applicant's automobile. He could not make the payments to pay the deficiency on the repossession and declared bankruptcy as a last resort. The Applicant discharged over \$31,000 of unsecured debt. However, over \$26,000 of that amount was related to the repossession of his automobile. (Government Exhibit 6 at 2-3, and Government Exhibit 8 at 10.)

Subparagraph 1.d. In his sworn statement of March 5, 2002, the Applicant indicates that he had no knowledge of a tax lien in the amount of \$718. (Government Exhibit 6 at 5.) The tax lien was released as of October 2003. (Government Exhibit 3 at 4.)

Subparagraph 1.e. The Applicant's current financial situation is stable, and he is able to resolve the debt in subparagraph 1.c.

## POLICIES

Security clearance decisions are not made in a vacuum. Accordingly, the Department of Defense, in Enclosure 2 of the 1992 Directive, has set forth policy factors which must be given "binding" consideration in making security clearance determinations. These factors should be followed in every case according to the pertinent guideline. However, the factors are neither automatically determinative of the decision in any case, nor can they supersede the Administrative Judge's reliance on his own common sense, as well as his knowledge of the law, human nature and the ways of the world, in making a reasoned decision. Because each security clearance case presents its own unique facts and circumstances, it cannot be assumed that these factors exhaust the realm of human experience, or apply equally in every case. Based on the Findings of Fact set forth above, the factors most applicable to the evaluation of this case are:

### Guideline F (Financial considerations)

#### Condition that could raise a security concern:

(1) a history of not meeting financial obligations;

#### Condition that could mitigate security concerns:

(6) the individual initiated a good-faith effort to repay overdue creditors or otherwise resolve debts.

In addition, as set forth in Enclosure 2 of the Directive at pages 16-17, "In evaluating the relevance of an individual's conduct, the [Administrative Judge] should consider the following factors [General Factors]:

a. The nature, extent and seriousness of the conduct

b. The circumstances surrounding the conduct, to include knowledgeable participation

- c. The frequency and recency of the conduct
- d. The individual's age and maturity at the time of the conduct
- e. The voluntariness of participation
- f. The presence or absence of rehabilitation and other pertinent behavior changes
- g. The motivation for the conduct
- h. The potential for pressure, coercion, exploitation or duress
- i. The likelihood of continuation or recurrence."

The eligibility guidelines established in the DoD Directive identify personal characteristics and conduct which are reasonably related to the ultimate question of whether it is "clearly consistent with the national interest" to grant an Applicant's request for access to classified information.

In the defense industry, the security of classified industrial secrets is entrusted to civilian workers who must be counted upon to safeguard such sensitive information twenty-four hours a day. The Government is therefore appropriately concerned where available information indicates that an Applicant for clearance may be involved in acts of financial irresponsibility that demonstrates poor judgement, untrustworthiness or unreliability on the Applicant's part.

The DoD Directive states, "Each adjudication is to be an overall common sense determination based upon consideration and assessment of all available information, both favorable and unfavorable, with particular emphasis placed on the seriousness, recency, frequency, and motivation for the individual's conduct; the extent to which conduct was negligent, willful, voluntary, or undertaken with the knowledge of the circumstances or consequences involved; and, to the extent that it can be estimated, the probability that conduct will or will not continue in the future." The Administrative Judge can only draw those inferences or conclusions that have a reasonable and logical basis in the evidence of record. The Judge cannot draw inferences or conclusions based on evidence which is speculative or conjectural in nature. Finally, as emphasized by President Eisenhower in Executive Order 10865, "Any determination under this order...shall be a determination in terms of the national interest and shall in no sense be a determination as to the loyalty of the applicant concerned."

### CONCLUSIONS

It is the Government's responsibility to present substantial evidence to support the finding of a nexus, or rational connection, between the Applicant's conduct and the granting of a security clearance. If such a case has been established, the burden then shifts to the Applicant to go forward with evidence in rebuttal, explanation or mitigation which is sufficient to overcome or outweigh the Government's case. The Applicant bears the ultimate burden of persuasion in proving that it is clearly consistent with the national interest to grant him or her a security clearance.

In this case the Government has met its initial burden of proving by substantial evidence that the Applicant has had financial problems in his past, which resulted in a bankruptcy and a judgment.

The Applicant, on the other hand, has introduced sufficient evidence to overcome the Government's case against him. Two of the debts, subparagraphs 1.a. and 1.d., have been completely resolved. The Applicant disputes the reason behind the judgment against him, but has paid over half of it, and has a payment agreement with the judgment creditor for the other half. This brings Mitigating Factor 6 into effect as he is making a good-faith effort to pay off all of his indebtedness. As for his 2001 bankruptcy, it appears that this was the result of an automobile repossession that he simply was not able to pay off. His financial situation is now stable and he appears ready and willing to continue to pay his debts in a responsible manner.

The General Factors also apply and support a finding for the Applicant. He is motivated to continue paying his debts (factor g.), the evidence shows considerable evidence of rehabilitation (factor f.), there is no potential for coercion or

pressure (factor h.), and the possibility of recurrence is virtually nil (factor i.).

On balance, it is concluded that the Applicant has overcome the Government's information opposing his request for a security clearance. Accordingly, the evidence supports a finding for the Applicant as to the conclusionary allegations expressed in Paragraph 1 of the Government's Statement of Reasons.

### **FORMAL FINDINGS**

Formal findings For or Against the Applicant on the allegations in the SOR, as required by Paragraph 25 of Enclosure 3 of the Directive, are:

Paragraph 1: For the Applicant.

Subparagraphs 1.a. through 1.e.: For the Applicant

### **DECISION**

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.

Wilford H. Ross

Administrative Judge