

DATE: March 27, 2003

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In Re:

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SSN: -----

Applicant for Security Clearance

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ISCR Case No. 01-02441

**DECISION OF ADMINISTRATIVE JUDGE**

**CLAUDE R. HEINY**

**APPEARANCES**

**FOR GOVERNMENT**

Kathryn D. MacKinnon, Department Counsel

**FOR APPLICANT**

*Pro Se*

**SYNOPSIS**

The Applicant owes approximately \$10,800.00 on three accounts. In March 2000, he completed a Standard Form 86 and gave false answers about delinquencies of more than 90 and 180 days. He gave additional false information in a signed, sworn statement. The record evidence is insufficient to mitigate or extenuate the negative security implications stemming from the unpaid debts and the falsifications. Clearance is denied.

**STATEMENT OF THE CASE**

On September 16, 2002, the Defense Office of Hearings and Appeals (DOHA) issued a Statement of Reasons (SOR) to Applicant, stating that DOHA could not make the preliminary affirmative finding [\(1\)](#) it is clearly consistent with the national interest to grant or continue a security clearance for Applicant. In a response dated September 29, 2002, the Applicant answered the SOR and elected to have his case decided on the written record in lieu of a hearing.

On November 24, 2002, the Applicant received a complete copy of the file of relevant material (FORM) dated October 30, 2002, and was given the opportunity to file objections and submit material in extenuation, mitigation, or refutation. The Applicant's response to the FORM was due on December 14, 2003. No response has been received. I was assigned the case on January 21, 2003. The Department Counsel presented twelve exhibits (Items). The record closed on December 14, 2002.

**FINDINGS OF FACT**

The SOR alleges financial considerations (Guideline F) and personal conduct (Guideline E). The Applicant admits owing the debts and admits falsifying and concealing facts.

The Applicant is 41-years-old, has worked for a defense contractor since September 1999, and is seeking to obtain a security clearance. In 1991 and 1982, the Applicant was issued secret clearances and in 1987 he received a confidential

clearance. (Item 4)

In 1992, the Applicant separated from his wife prior being divorced. He was required to pay \$600.00 per month child support and pay school tuition for his children.

The Applicant was temporarily laid off at work during 1991, 1992, 1993, and 1994. Until April 1994, he collected unemployment compensation of \$350.00 per month. In December 1994, he was again unemployed and collected unemployment compensation until May 1995. He was employed from May 1995 until February 1999, when he was laid off. He collected unemployment compensation from February 1999 through September 1999, at which time he started his current job. As of May 2002, his current take home pay was \$2,520.00 per month and his wife's take home pay was \$1,520.00 per month. (Item 8) Their net remainder after expenses was \$890.00 per month.

The Applicant is indebted to a credit card company (SOR subparagraph 1.a) in the amount of \$2,569.00, an amount which was charged off. As of December 2001, the Applicant acknowledged this debt, had not made any payment on the debt, nor had he contacted the debtor. In May 2002, the Applicant stated if the creditor contacted him and offered him a reasonable settlement plan, he would be willing to talk with them, but he was not going to seek them out. (Item 8) As of September 2002, the Applicant had made two monthly payments of \$89.00 on this debt.

The Applicant is indebted to a credit union (SOR subparagraph 1.b) in the amount of \$8,019.11, which was charged off. In January 1999, the Applicant had been laid off and was unable to make the monthly payment on the credit union debt. The Applicant did not make any payments between March 1998 and September 2000. (Item 6) In December 2000, the debt was sold and the new holder who refused to accept monthly payments below \$180.00. The Applicant refused to pay that amount and stopped paying. The Applicant's last contact with the company was in December 2000. In May 2002, the Applicant stated if the creditor contacted him and offered him a reasonable settlement plan, he would be willing to talk with them, but he was not going to seek them out. (Item 8) As of September 2002, the Applicant had contacted the credit union's attorney and was attempting to negotiate a repayment schedule for this debt, which is now approximately \$6,300.00. No payment had been made on this debt since December 2000.

The Applicant owed the state \$255.00 (SOR subparagraph 1.c) for unpaid taxes. The state kept his 2001 tax refund of \$260.00 and the Applicant assumes the debt has been satisfied. In December 2001, the Applicant chose not to provide a release to allow a review of his tax records because he considers tax information to be personal and because his wife's name is also on the joint return and she is not under investigation. (Item 6) In May 2002, the Applicant provided a release. (Item 8)

In 1994, the Applicant withdrew money from his 401(k) retirement plan, resulting in a tax penalty. He currently owes the state approximately \$2,200.00, which he intends to pay by allowing the state to retain any tax refund that might be due.

In September 1999, the Applicant completed a Questionnaire for National Security Positions, Standard Form (SF) 86. He answered "no" to question 38, which asked if he had been more than 180 days delinquent on any debt during the prior seven years. He also answered "no" to question 39, which asked if the Applicant was currently more than 90 days delinquent with any debt. The Applicant admits falsifying his responses to question 38 and 39 because he was embarrassed by the outstanding debts and failed to understand the consequences of his actions.

In September 2000, the Applicant made a signed, sworn statement stating he was paying \$60.00 per month on the credit union debt. This was not true. The applicant admits (Item 3) he sought to conceal the facts concerning his debts. He stated (Item 6, p 2):

. . . I was embarrassed and frustrated about my financial problems and about having to lay it all out during the interview. I did not fully understand the reason for the clearance investigation delving so deeply into my financial past.

Initially the Applicant failed to realize the consequence of providing false information. Once advised of the importance of the investigation, he was truthful and provided full disclosure to the questions asked.

In December 2001, the Applicant acknowledged his inability to pay his debts and the unwillingness to meet legal

obligations were security concerns. (Item 7, p 6) In April or May 2001, the Applicant sought advice from the Consumer Credit Counseling Service (CCCS). Although the program "sounded attractive" the Applicant did not establish a payment plan. (Item 6)

## **POLICIES**

The Adjudicative Guidelines in the Directive are not a set of inflexible rules of procedure. Instead they are to be applied by Administrative Judges on a case-by-case basis with an eye toward making determinations that are clearly consistent with the interests of national security. In making overall common sense determinations, Administrative Judges must consider, assess, and analyze the evidence of record, both favorable and unfavorable, not only with respect to the relevant Adjudicative Guidelines, but in the context of factors set forth in section E 2.2.1. of the Directive as well. In that vein, the government not only has the burden of proving any controverted fact(s) alleged in the SOR, it must also demonstrate the facts proven have a nexus to an Applicant's lack of security worthiness.

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. Although the presence or absence of a particular condition for or against clearance is not determinative, the specific adjudicative guidelines should be followed whenever a case can be measured against this policy guidance.

Considering the evidence as a whole, this Administrative Judge finds the following adjudicative guidelines to be most pertinent to this case:

Financial Considerations (Guideline F) The Concern: An individual who is financially overextended is at risk of having to engage in illegal acts to generate funds. Unexplained affluence is often linked to proceeds from financially profitable criminal acts. E2.A6.1.1.

Conditions that could raise a security concern and may be disqualifying include:

1. A history of not meeting financial obligations. (E2.A6.1.2.1.)
3. Inability or unwillingness to satisfy debts. (E2.A6.1.2.3.)

Conditions that could mitigate security concerns include:

None Apply.

Personal Conduct (Guideline E) The Concern: Conduct involving questionable judgment, untrustworthiness, unreliability, lack of candor, dishonesty, or unwillingness to comply with rules and regulations could indicate that the person may not properly safeguard classified information.

Conditions that could raise a security concern and may be disqualifying also include:

2. The deliberate omission, concealment, or falsification of relevant and material facts from any personnel security questionnaire, personal history statement, or similar form used to conduct investigations, determine employment qualifications, award benefits or status, determine security clearance eligibility or trustworthiness, or award fiduciary responsibilities. (E2.A5.1.2.2.)
3. Deliberately providing false or misleading information concerning relevant and material matters to an investigator, security official, competent medical authority, or other official representative in connection with a personnel security or trustworthiness determination. (E2.A5.1.2.3.)

Conditions that could mitigate security concerns include:

None Apply.

## **BURDEN OF PROOF**

Initially, the Government has the burden of proving any controverted fact(s) alleged in the Statement of Reasons. If the Government meets that burden, the burden of persuasion then shifts to the Applicant who must remove that doubt and establish his security suitability with substantial evidence in explanation, mitigation, extenuation, or refutation, sufficient to demonstrate that despite the existence of guideline conduct, it is clearly consistent with the national interest to grant or continue his security clearance.

A person who seeks access to classified information enters into a fiduciary relationship with the Government predicated upon trust and confidence. Where the facts proven by the Government raise doubts about an applicant's judgment, reliability or trustworthiness, the applicant has a heavy burden of persuasion to demonstrate that he is nonetheless security worthy. As noted by the United States Supreme Court in *Department of Navy v. Egan*, 484 U.S. 518, 531 (1988), "the clearly consistent standard indicates that security clearance determinations should err, if they must, on the side of denials." As this Administrative Judge understands the Court's rationale, doubts are to be resolved against the applicant.

### CONCLUSIONS

The Government has satisfied its initial burden of proof under Guideline F, Financial Consideration. A person's relationship with his creditors is a private matter until evidence is uncovered demonstrating an inability or unwillingness to repay debts under agreed upon terms. Absent evidence of strong extenuating or mitigating circumstances, an applicant with a history of serious or recurring financial difficulties is in a situation of risk that is inconsistent with the holding of a security clearance. Under Guideline F, an Appellant is not required to be debt free, but is required to manage his finances in such a way as to meet his financial obligations. The Applicant's overall history of financial difficulties, which started in the mid 1990s, and continues to the present, provides concern. The Appellant owes approximately \$10, 800.00 on three accounts. Disqualifying conditions (DC) 1-(2) and 3-(3) apply.

As of September 2000, the Applicant knew the government was concerned about his debts. He was interviewed and gave a sworn statement concerning his finances in September 2000 (Item 5), October 2000 (Item 6), December 2001 (Item 7), and May 2002 (Item 8). In his December 2001 sworn statement, the Applicant stated he knew his inability to pay his debts and meet legal obligations was a security concern. From September 2000 until September 2002, he made no or few payments on his debts and stated he would be willing to talk with his creditors if they contacted him and offered a reasonable repayment plan. As of September 2002, he had made two \$98.00 payments on his credit card debt, made no payments on his credit union debt, and says his taxes have been paid.

None of the mitigating factors (MC) apply in the Appellant's favor. For MC 6-(4) to apply there must be an "ability" to repay the debts, the "desire" to repay, and evidence of a good faith effort to repay. Although the Applicant has a desire to repay his debts, there is no evidence he has reached an agreement with his creditors. He has stated, but again provided no evidence to show his taxes have been paid. The mere desire to pay past due debts is insufficient. A systematic, concrete method of handling past due liabilities is needed, which is not present here. The Applicant has provided no cancelled checks, money order receipts, other receipts, letters from the creditors, or other evidence showing payment has been made.

None of the other mitigating factors apply in the Applicant's favor. The conduct is recent (MC 1)-(5) in that the debts are still owed. It is not an isolated incident (MC 2)-(6) because there are three debts. There is an indication the Applicant has talked with CCCS, but he chose not to enter into a repayment plan. There is no indication the Applicant's financial problems are under control. (MC 4)-(7) Affluence was not alleged. (MC5)-(8) The Applicant's 1992 separation and divorce, his unemployment in 1991, 1992, 1993, 1994, 1995, and 1999 are factors beyond his control. However, sufficient time has passed since these events occurred to allow some type of repayment plan to be established and even minimal payments to have been made. I find MC 3-(9) does not apply. Because the Applicant has failed to present sufficient mitigation to overcome his financial irresponsibility concerning his debts, I find against the Applicant as to SOR subparagraph 1.a., 1.b., and 1.c.

The Government has satisfied its initial burden of proof under guideline E, (Personal Conduct). Under Guideline E, the

security eligibility of an applicant is placed into question when that applicant is shown to have been involved in personal conduct which creates doubt about the person's judgment, reliability, and trustworthiness. Complete honesty and candor on the part of applicants for access to classified information is essential to make an accurate and meaningful security clearance determination. Without all the relevant and material facts, a clearance decision is susceptible to error, thus jeopardizing the nation's security. In September 1999, the Applicant completed an SF 86 in which he answered "no" when questioned about delinquencies more than 90 and 180-day delinquent. In September 2000, he gave false information in a signed, sworn statement about paying his credit union debt. Because of his false answers, DC 3 [\(10\)](#) applies.

The Applicant admits he falsified and sought to conceal facts about his financial history because he was embarrassed about his outstanding debts and did not fully realize the consequences of his actions. MC 2 [\(11\)](#) does not apply because the falsification was not an isolated incident for falsifications occurred on an SF 86 and in a signed, sworn statement given a year after the SF 86. The most recent falsification was in September 2000, and, as such, is considered recent.

There is no showing the Applicant made a prompt, good-faith effort to correct the falsification before being confronted with the facts. (MC 3) Nor is there evidence the omission of material facts was caused or significantly contributed to by improper or inadequate advice of authorized personnel, and the previously omitted information was promptly and fully provided. (MC 4) Because DC 2 applies, and no mitigating conditions apply, I find against the Applicant as to SOR subparagraph 2.a., 2.b., and 2.c.

The awarding of a security clearance is not a one time occurrence, but is based on current disqualifying and mitigating conditions. Under the Applicant's current circumstances a clearance is not recommended, but this decision should not be construed as a determination that the Applicant's conduct could never justify the award of a DoD security clearance. Should the Applicant be afforded an opportunity to reapply for a security clearance, in the future, he may well demonstrate persuasive evidence of his security worthiness. A clearance at this time is not warranted.

In reaching my conclusions I have also considered: the nature, extent, and seriousness of the conduct; the Applicant's age and maturity at the time of the conduct; the circumstances surrounding the conduct; the Applicant's voluntary and knowledgeable participation; the motivation for the conduct; the frequency and recency of the conduct; presence or absence of rehabilitation; potential for pressure, coercion, exploitation, or duress; and the probability that the circumstance or conduct will continue or recur in the future.

### **FORMAL FINDINGS**

Formal Findings as required by Section 3., Paragraph 7., of Enclosure 1 of the Directive are hereby rendered as follows:

Paragraph 1 Guideline F (Financial): AGAINST THE APPLICANT

Subparagraph 1.a.: Against the Applicant

Subparagraph 1.b.: Against the Applicant

Subparagraph 1.c.: Against the Applicant

Paragraph 2 Guideline E (Personal Conduct): AGAINST THE APPLICANT

Subparagraph 2.a.: Against the Applicant

Subparagraph 2.b.: Against the Applicant

Subparagraph 2.c.: Against the Applicant

### **DECISION**

In light of all the circumstances presented by the record in this case, it is not clearly consistent with the national interest

to grant or continue a security clearance for the Applicant.

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**Claude R. Heiny**

**Administrative Judge**

1. Required by Executive Order 10865, as amended, and Department of Defense Directive 5220.6 (Directive), dated January 2, 1992, as amended.
2. DC 1. A history of not meeting financial obligations. (E2.A6.1.2.1.)
3. DC 3. Inability or unwillingness to satisfy debts. (E2.A6.1.2.3.)
4. MC 6. The individual initiated a good-faith effort to repay overdue creditors or otherwise resolve debts.
5. MC 1. The behavior was not recent.
6. MC 2. It was an isolated incident.
7. MC 4. The person has received or is receiving counseling for the problem and there are clear indications that the problem is being resolved or is under control.
8. MC 5. The affluence resulted from a legal source. (E2.A6.1.3.5.)
9. MC 3. 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). (E2.A6.1.3.3.)
10. DC 3 Deliberately providing false or misleading information concerning relevant and material matters to an investigator, security official, competent medical authority, or other official representative in connection with a personnel security or trustworthiness determination. (E2.A5.1.2.3.)
11. MC 2. The falsification was an isolated incident, was not recent, and the individual has subsequently provided correct information voluntarily. (E2.A5.1.3.2.)