

DATE: June 4, 2003

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In Re:

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SSN: -----

Applicant for Security Clearance

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ISCR Case No. 01-03785

**DECISION OF ADMINISTRATIVE JUDGE**

**JOSEPH TESTAN**

**APPEARANCES**

**FOR GOVERNMENT**

Erin C. Hogan, Department Counsel

**FOR APPLICANT**

*Pro Se*

**SYNOPSIS**

In view of applicant's history of (1) providing false, material information on a resume he submitted to his employer, (2) submitting a questionable expense report to his employer, and (3) seeking professional help to address his problem with "lying," I cannot conclude he possesses the good judgment, reliability and trustworthiness required of security clearance holders. Clearance is denied.

**STATEMENT OF THE CASE**

On June 19, 2002, the Defense Office of Hearings and Appeals (DOHA), pursuant to Executive Order 10865 and Department of Defense Directive 5220.6 (Directive), dated January 2, 1992, issued a Statement of Reasons (SOR) to 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 applicant and recommended referral to an Administrative Judge to determine whether clearance should be denied or revoked.

Applicant responded to the SOR in writing on June 25, 2002, and elected to have his case determined on a written record in lieu of a hearing. Department Counsel submitted the Government's written case (FORM) on or about August 26, 2002. Applicant filed a response to the FORM on November 12, 2002. The case was assigned to me on December 10, 2002.

**FINDINGS OF FACT**

Applicant is 42 years of age. He is employed as a Customer Service Manager by a defense contractor.

**Financial Considerations**

Applicant filed a Chapter 7 bankruptcy petition in 1983. Applicant explained the reason for the filing in a signed, sworn statement that he provided to the Defense Security Service (DSS) in November 2001. In pertinent part he stated:

Reasons for Bankruptcy: I had an individual assume a VA loan for a mobile home which I owned in Louisiana prior to leaving the Army. I then left Louisiana after being discharged from the service and moved to New Hampshire. I then discovered, approximately three years later, that the individual who bought my mobile home had never paid the mortgage and had also never paid the lot fee which I was subsequently held liable for. I was unable to pay the debts incurred, totaling approximately \$30,000.00, and was forced into bankruptcy.

Applicant filed a second Chapter 7 bankruptcy petition in November 1999. His petition listed total assets of \$169,003.00 and total liabilities of \$264,592.78. <sup>(1)</sup> Applicant's debts were discharged in February 2000. <sup>(2)</sup> In his November 2001 signed, sworn statement, applicant stated the following:

Reasons For Bankruptcy. I accumulated extensive credit card bills for food, lodging and incidentals while traveling on (defense contractor - hereinafter DC) business, from approximately 1993 to 1998. DC corporate payroll reimbursed me by including it in my DC paychecks which were directly deposited into my checking account in the United States. This was always done while I was overseas. However, not understanding that the additional money was actually reimbursement for credit card charges that had to be paid in full, my wife proceeded to spend the additional money rather than pay off the credit balance in full and only made minimum payments to the credit cards. My wife used the money for home improvements, clothes, appliances, and down payments for a car and boat. Consequently, over the course of 4 years, substantial credit card bills accumulated and I had no way to pay them.

In his response to the SOR, applicant, in discussing the circumstances that led to his financial difficulties and ultimately to his decision to file for bankruptcy in 1999, appears to place a lot of the blame on his employer's slow reimbursement policy, something he never mentioned in the aforementioned statement. In pertinent part he stated:

I was forced into bankruptcy by excessive credit card debt. The excessive debt was accumulated over several years while I was living and working for DC in various overseas locations. The DC expense reimbursement policy was to repay you for expenses incurred after they were incurred. Since I was incurring living expenses which included rent, meals, rental car and incidentals is (sic) excess of \$10,000 per month, I was using my personal credit cards to pay these bills and would get reimbursed by DC several weeks later, in some instances, as much as 6 to 8 weeks later. Because of delays in reimbursement from DC, the lag in receiving mail overseas, and that (sic) fact my wife was still living in the United States and also making charges I was not always aware of, it became more and more difficult to determine the actual balances on my credit cards and manage the credit card debt. Once I returned to the United States and became fully aware of the poor financial situation I was in, I sought the assistance of a credit counseling service. After several months of using the service, it became obvious that the credit counseling service was not going to work in my financial situation. My attorney advised that my only option was bankruptcy.

In his response to the FORM, applicant stated, "[I]t was not my financial irresponsibility that led to the bankruptcy but circumstances that were not within my control." He also attached two identical letters from two former coworkers corroborating his claim that "reimbursement for business related travel expenses would take several weeks."

### **Personal Conduct**

The Government alleges that applicant falsified material facts on an Electronic Security Clearance Application (ESCA) that was transmitted to the Government on March 3, 2000 when he denied that he had filed a bankruptcy petition during the previous seven years. Applicant denies the allegation. He maintains that, although the information was transmitted to the Government on March 3, 2000, he actually completed the ESCA and provided it to his employer on August 16, 1999, prior to his November 1999 bankruptcy filing. Given the fact that applicant provided a document from his previous employer's security office that appears to corroborate his assertions, I find that at the time he completed the ESCA, he had not filed a bankruptcy petition during the previous seven years, and accordingly, did not falsify the ESCA.

Applicant was suspended without pay for five days by his employer in September 1999 "for submitting expense reports which inappropriately and unethically included charges for several rounds of golf." Applicant denies any wrongdoing. He claims that he was not aware the hotel bill he submitted to his employer included charges for several rounds of golf. He further claims, in essence, that it was the hotel's fault because, despite his request, the hotel would not provide him

with an itemized bill. Applicant accepted the suspension without appealing it. He claims he accepted the advice of his supervisor not to appeal the suspension because, among other reasons, he was not allowed to see the evidence against him and he feared for his job. Based on the evidence presented, I do not find applicant's claims of "innocence" to be credible.

In the early 1990s, applicant misrepresented the rank he held in the Army on a resume he provided to his employer. An adverse information report sent to DISCO by his employer stated the following about applicant's dishonest conduct:

On 10/23/91, subject was confronted with and admitted to providing the Company with false information which was entered into Company personnel data sheets. Subject stated he had independently sought professional help (prior to 4/90) to address his lying and that he had overcome the problem. Subject stated his lying on his data sheet and resume was intended solely to build up his and impress his supervisor.

Letters from four of applicant's coworkers, including a former and current supervisor, were attached to applicant's response to the SOR. All praise applicant's honesty and work ethic.

## **POLICIES**

Enclosure 2 of the Directive sets forth Guidelines (divided into conditions that could raise security concerns and conditions that could mitigate security concerns) which must be followed by the Administrative Judge. Based on the foregoing Findings of Fact, the following conditions are applicable:

### **Financial Considerations**

#### Disqualifying Conditions:

E2.A6.1.2.1: A history of not meeting financial obligations.

#### Mitigating Conditions:

None.

### **Personal Conduct**

#### Disqualifying Conditions

E2.A5.1.2.2: 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.

#### Mitigating Conditions

None.

## **CONCLUSIONS**

With respect to Guideline F, the evidence establishes that applicant accumulated such a large amount of credit card debt in the late 1990s that, in his own words, he had "no way to pay" his creditors. As a result, in November 1999, he filed a Chapter 7 bankruptcy petition, and in February 2000, his debts were discharged by the bankruptcy court. Applicant's history of failing to satisfy his financial obligations reflects adversely on his judgment and reliability, and strongly suggests that he cannot be relied upon to safeguard classified information.

In his most recent statement, applicant stated that "it was not my financial irresponsibility that led to the bankruptcy but circumstances that were not within my control." He then identifies the circumstances beyond his control as (1) the delay in expense reimbursement from his employer, (2) the lack of cash advances from his employer, and (3) his spouse's

"misleading statements and poor spending habits." This statement, placing all of the blame for the financial problems that led to the 1999 bankruptcy filing on factors beyond his control, is not credible for at least three reasons. First, his failure to mention his employer's reimbursement policy when he was first confronted about his financial difficulties in November 2001 seriously undercuts the credibility of this excuse. Second, this incredibly large credit card debt took four years to accumulate; it is difficult to believe that applicant was kept in the dark about this growing problem for four years. Third, applicant has a history of lying. Although applicant's overseas employment may have contributed to his financial difficulties, applicant has not established that these financial difficulties were caused in whole, or even in substantial part, by factors largely beyond his control. Accordingly, he does not qualify for mitigating condition E2.A6.1.3.3.

Given (1) the extremely large amount of unsecured debt applicant accumulated, (2) his inability or unwillingness to provide a credible explanation for why he accumulated it, and (3) his refusal to acknowledge any responsibility for it, I cannot conclude that applicant's financial difficulties are unlikely to recur. This is especially so in light of the fact he has a prior history of significant financial difficulties, as evidenced by his 1983 bankruptcy filing. Accordingly, Guideline F is found against applicant.

With respect to Guideline E, the evidence establishes that applicant provided false, material information on a resume he provided to his employer in 1990 or 1991. The evidence further establishes that in 1999, applicant was suspended for five days without pay by his employer for submitting expense reports that, according to his employer, "inappropriately and unethically included charges for several rounds of golf."

An individual with a history of intentionally falsifying material facts about his background, or of submitting inappropriate and unethical expense reports, or who has such a problem with lying that he felt the need to seek professional help to deal with it, has an extremely heavy burden to prove that he nonetheless possesses the good judgment, reliability and trustworthiness required of security clearance holders. After considering all of the evidence in the record, including the letters of support for applicant, I conclude that applicant has not met his burden. Accordingly, Guideline E is found against applicant.

### **FORMAL FINDINGS**

#### PARAGRAPH 1: AGAINST THE APPLICANT

Subparagraph a: for the applicant

Subparagraphs b and c: against the applicant

#### PARAGRAPH 2: AGAINST THE APPLICANT

Subparagraphs a and b: 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 applicant.

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Joseph Testan

Administrative Judge

1. Applicant's liabilities included \$117,772.78 in unsecured debt, the vast majority of which was credit card debt.
2. Evidence concerning this bankruptcy is in Item 10, not Item 9 as stated in Section II of the FORM.