

DATE: September 30, 2002

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In Re:

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SSN: -----

Applicant for Security Clearance

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ISCR Case No. 01-10499

**DECISION OF ADMINISTRATIVE JUDGE**

**WILFORD H. ROSS**

**APPEARANCES**

**FOR GOVERNMENT**

Melvin A. Howry, Esquire, Department Counsel

**FOR APPLICANT**

*Pro Se*

**SYNOPSIS**

The Applicant is \$25,000 in debt and only filed for bankruptcy after the SOR had been issued. Insufficient mitigation is shown. Adverse inference is not overcome. Clearance is denied.

**STATEMENT OF THE CASE**

On January 24, 2002, 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 February 20, 2002, and requested a hearing. The case was received by the undersigned on March 11, 2002, and a Notice of Hearing was issued on March 21, 2002.

A hearing was held on April 24, 2002, at which the Government presented seven documentary exhibits, and called one witness. Testimony was taken from the Applicant, who also submitted four hearing exhibits and three post-hearing exhibits. Applicant's Exhibit E consists of the Applicant's work-related performance reviews; Applicant's Exhibit F is a letter of recommendation from his Unit Security Officer; and Applicant's Exhibit G is the Amended Schedules to the Applicant's bankruptcy case. The transcript was received on May 3, 2002.

**FINDINGS OF FACT**

The Applicant is 41, single and has a high school diploma. He is employed by a defense contractor as a Supply Technician Lead, 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). It is alleged in this paragraph that the Applicant is ineligible for clearance because he is financially overextended and at risk of having to engage in illegal acts to obtain funds.

The Applicant admits that he is indebted to the creditors set forth in subparagraphs 1.a. through 1.i. of the SOR. The debts all became delinquent during the time period from 1995 through 1997. The Applicant states that most of the debts were incurred during a period when he was attempting to establish a business in 1994 and 1995. Specifically, subparagraphs 1.b., 1.c., 1.d., and 1.g. concern credit cards that the Applicant used to try to keep his business going.

The Applicant stopped paying on this indebtedness in 1996 because he simply did not have the funds. From 1995 through 1999 the Applicant went through several periods of unemployment and underemployment. In addition, he testified that he spoke with an attorney who recommended against bankruptcy at that point in time.

In 1999, the Applicant was interviewed by a Special Agent of the Defense Security Service (DSS). He made a sworn statement in which he indicated that he would resolve his indebtedness as soon as possible. (Government Exhibit 3.) Due to family problems the Applicant was not able to take care of these debts.

The Applicant filed for relief under Chapter 7 of the Bankruptcy Act on March 29, 2002. (Applicant's Exhibit B.) He filed his amended schedule of creditors on May 1, 2002. (Applicant's Exhibit G.) The Applicant's debts had not been discharged in bankruptcy before the record closed on May 3, 2002.

According to Applicant's Exhibit G, the Applicant owes the following amounts to the creditors named in the SOR. The total amount is \$25,589.

1.a. \$62.

1.b. \$2,841.

1.c. \$10,000.

1.d. \$9,521.

1.e. \$521.

1.f. \$743.

1.g. \$1,625.

1.h. \$126.

1.i. \$150.

#### Mitigation.

The Applicant's financial situation was fairly secure before he decided to start his business in 1994. (Applicant's Exhibit A.) His current financial situation is tight, but the Applicant submits that he is able to maintain his current payments. He does not have any current credit cards and pays cash for almost everything. Given five years, the Applicant could have paid off these overdue debts.

His work evaluations show that the Applicant is a valued employee who works hard and is respected on the job. (Applicant's Exhibit E.) His Unit Security Officer wrote a letter of recommendation which states, "His [the Applicant's] behavior has, at all times, consistently exhibited high moral and ethical standards." (Applicant's Exhibit F.)

## 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)

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

- (1) a history of not meeting financial obligations;
- (3) inability or unwillingness to satisfy debts;

#### Conditions that could mitigate security concerns:

(None of the stated conditions have application in this case.)

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 criteria 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 have excessive indebtedness 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.

The Applicant has been approximately \$25,000 in debt for several years. He has known since 1999 of the Government's concerns about this situation. Only after the Notice of Hearing was issued to the Applicant did he file for Chapter 7 bankruptcy. His debts had not been discharged as of the date the record closed. His arguments about why he has not been able to resolve these problems have been noted, but they do not rise to the level of mitigating the security concerns of his long-standing indebtedness. Paragraph 1 and its subparagraphs are found against the Applicant.

The Applicant is not currently eligible for a security clearance. However, if his debts are successfully discharged in bankruptcy, and he continues to make timely payments on his current debts, he may be eligible for a security clearance in the future.

On balance, it is concluded that the Applicant has failed to overcome the Government's information opposing his request for a security clearance. Accordingly, the evidence supports a finding against 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: Against the Applicant.

Subparagraphs 1.a. through 1.i.: 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.

Wilford H. Ross

Administrative Judge