

DATE: August 23, 2002

---

In re:

-----

SSN: -----

Applicant for Security Clearance

---

ISCR Case No. 01-10803

## **DECISION OF ADMINISTRATIVE JUDGE**

**ROGER C. WESLEY**

### **APPEARANCES**

#### **FOR GOVERNMENT**

Kathryn A. Trowbridge, Department Counsel

#### **FOR APPLICANT**

Ms. Toni S. McKay

### **SYNOPSIS**

Applicant, an electronics technician for a defense contractor, who omitted debt arrangements with the IRS to pay old tax debts for tax years 1996 and 1998, and a delinquent medical debt, out of concern disclosure might jeopardize his security clearance, voluntarily disclosed his debts without prodding in an initial DSS interview six months later, in time to satisfy both the good faith and promptness prongs of the mitigating conditions of the Adjudicative Guidelines. Clearance is granted.

### **STATEMENT OF THE CASE**

On February 7, 2002, the Defense Office of Hearings and Appeals, 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 granted, continued, denied or revoked.

Applicant responded to the SOR on April 11, 2002, and requested a hearing. The case was assigned to this Administrative Judge on May 13, 2002, and was scheduled for hearing. A hearing was convened on June 4, 2002, to consider whether it would be clearly consistent with the national interest to grant, continue, deny or revoke Applicant's security clearance. At hearing, the Government's case consisted of three exhibits; Applicant relied on five witnesses (including herself) and three exhibits. The transcript (R.T.) of the proceedings was received on June 12, 2002.

### **STATEMENT OF FACTS**

Applicant, an electronics technician for a defense contractor, seeks a secret-level security clearance.

#### **Summary of Allegations and Responses**

Applicant is alleged to have falsified his security clearance application of December 1999 out of embarrassment and fear of losing his security clearance. Allegedly, he omitted three delinquent debts, when responding in the negative to question 28: tax debts with the IRS arising out of his filed tax returns for tax years 1996 and 1998, for which Applicant had arranged payment plans in force with the Service, and a delinquent medical debt of \$2,150.00 for which he was making payments pursuant to an assigned collection agency. Applicant's omissions are also alleged to constitute pattern criminal conduct, in violation of 18 U.S.C. Sec. 1001.

For his response to the SOR, Applicant denied any deliberate falsification of his SF-86, attributing his tax and medical debt omissions to good faith failure to check on the status of his debts and embarrassment and concern over jeopardizing his security clearance. Applicant denied any pattern criminal activity and claimed his covered omissions were isolated and unlikely to recur.

### **Relevant and Material Factual Findings**

When completing his SF-86 in December 1999, Applicant answered **no** to both parts of question 28, which inquired about whether or not he had any delinquencies in excess of 180 and 90 days, respectively. At the time, he had payment plans in effect with both the IRS covering delinquent tax debts of \$1,006.16 and \$1,373.09, for the respective tax years of 1996 and 1998, and a delinquent medical debt in the amount of \$2,150.50. But because of claimed embarrassment and concern over jeopardizing his security clearance, he made no follow-up effort to determine any of the details of his tax and medical debts. Inferentially, he was sufficiently acquainted with these debt delinquencies to know whether the debts were covered by question 28 of his SF-86. Failure to list these debts was the result of embarrassment and fear of losing his security clearance, and not because of uncertainty over whether the omitted debts were covered or not.

Applicant was interviewed by Agent A of the DSS in early June 2000, and before he could be confronted with any information about his IRS and medical debts, he alerted the agent of these debts. Several weeks later, Agent A returned to interview Applicant a second time (*i.e.*, in July 2000) and elicited more details about his payment plans with his IRS and medical creditors. She returned to interview Applicant a third time several months later after obtaining a copy of his credit report (*see ex. 2*). Called by Applicant to testify, Agent A opined that she was impressed that Applicant was forthcoming about his debts in both interviews and voluntarily disclosed his federal tax and medical debt delinquencies without any confronting from her (*see R.T.*, at 102-06, 128-29). Agent A was impressed that Applicant made no tangible attempt to mask his tax and medical debts. Based on her investigation, she was impressed, too, that Applicant was not lacking in the level of honesty necessary for holding a security clearance (*see R.T.*, at 113-15).

Agent A's impressions about Applicant's overall honesty draw corroborating support not only by his unprompted disclosures when initially interviewed, but by his following through on his repayment plans with both the IRS and his medical creditor. Each of these debts reflect considerable pay down (*see exs. A through D*).

Applicant is highly regarded by his supervisors and colleagues as someone who is possessed of good character who can be relied on and entrusted with sensitive materials and assignments.

### **POLICIES**

The Adjudicative Guidelines of the Directive (Change 4) list "binding" policy considerations to be made by Judges in the decision making process covering DOHA cases. The term "binding," as interpreted by the DOHA Appeal Board, requires the Judge to consider all of the "conditions that could raise a security concern and may be disqualifying" (Disqualifying Conditions), if any, and all of the "Mitigating Conditions," if any, before deciding whether or not a security clearance should be granted, continued or denied. The Guidelines do not require the Judge to assess these factors exclusively in arriving at a decision. In addition to the relevant Adjudicative Guidelines, judges must take into account the pertinent considerations for assessing extenuation and mitigation set forth in E2.2 of Enclosure 2 of the Directive, which are intended to assist the judges in reaching a fair and impartial common sense decision.

Viewing the issues raised and evidence as a whole, the following adjudication policy factors are pertinent herein:

### **Personal Conduct**

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.

### **Disqualifying Conditions:**

DC 2 The deliberate omission, concealment, falsification or misrepresentation 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.

DC 5 A pattern of dishonesty or rule violations, *including violation of any written or recorded agreement made between the individual and the agency.*

### **Mitigating conditions:**

MC 3 The individual made prompt, good-faith efforts to correct the falsification before being confronted with the facts.

MC 5 The individual has taken positive steps to significantly reduce or eliminate vulnerability to coercion, exploitation, or duress.

## **Criminal Conduct**

Concern: A history or pattern of criminal activity creates doubt about a person's judgment, reliability and trustworthiness

### **Disqualifying Conditions**

DC 2 A single serious crime or multiple lesser offenses.

### **Mitigating Conditions:**

MC 2 The crime was an isolated incident.

MC 6 There is clear evidence of successful rehabilitation.

## **Burden of Proof**

By dint of the precepts framed by the Directive, a decision to grant or continue an Applicant's request for security clearance may be made only upon a threshold finding that to do so is clearly consistent with the national interest. Because the Directive requires Administrative Judges to make a common sense appraisal of the evidence accumulated in the record, the ultimate determination of an applicant's eligibility for a security clearance depends, in large part, on the relevance and materiality of that evidence. As with all adversary proceedings, the Judge may draw only those inferences which have a reasonable and logical basis from the evidence of record. Conversely, the Judge cannot draw factual inferences that are grounded on speculation or conjecture.

The Government's initial burden is twofold: (1) It must prove any controverted fact[s] alleged in the Statement of Reasons and (2) it must demonstrate that the facts proven have a nexus to the applicant's eligibility to obtain or maintain a security clearance. The required showing of nexus, however, does not require the Government to affirmatively demonstrate that the applicant has actually mishandled or abused classified information before it can deny or revoke a security clearance. Rather, consideration must take account of accessible risks that an applicant may deliberately or inadvertently fail to safeguard classified information.

Once the Government meets its initial burden of proof of establishing admitted or controverted facts, the burden of proof shifts to the applicant for the purpose of establishing his or her security worthiness through evidence of refutation, extenuation or mitigation of the Government's case.

## CONCLUSIONS

Applicant comes to these proceedings with raised security-significant omissions in the security clearance application he completed in December 1999.

In his December 1999 SF-86, Applicant omitted his debt deficiencies with the IRS, along with deficient medical debt. His assigned reasons for his omissions (embarrassment and fear of losing his security clearance) are neither absolving nor extenuating of imputed knowing and wilful omission of material information on an executed security form known to be developed for DoD use in evaluating Applicant's background to assess his clearance eligibility. Applicant's covered SF-86 omissions reveal deliberate falsification.

When first interviewed by a DSS agent some four months later, Applicant disclosed his tax and medical debts and the respective payment plans under which he was paying off these debts. He is corroborated by the DSS agent who interviewed him that he voluntarily disclosed these debts when initially asked without being first confronted. While Agent A's favorable impressions of Applicant's good faith candor about his corrections of his previous omissions are not dispositive of Applicant's good faith, they are certainly entitled to considerable weight. *See* ISCR Case No. 00-0033 (August 2, 2002). Agent A's favorable credibility impressions are buttressed by Applicant's own favorable credibility showing in his hearing.

Applicant's favorable credibility assessment is further reinforced by the positive professional impressions he has engendered with his interfacing government managers, none of whom were aware of the specific allegations covered in the SOR. Mitigation is fully available to Applicant under the facts determined in this record. He may take protective sanctuary in both MC 3 (prompt, good-faith correction of the falsification) and MC 5 (individual has taken positive steps to significantly reduce or eliminate vulnerability to coercion, exploitation, or duress). Overall, Applicant's favorable credibility impressions enable him to mitigate his omissions with convincing evidence of his correcting his omissions in a prompt and good faith manner when interviewed by Agent A four months later. *See* ISCR Case No. 00-0033, *supra*.

Taking into account all of the evidence produced in this record and the available guidelines in the Directive (inclusive of the E.2.2 factors), favorable conclusions warrant with respect to sub-paras. 1.a through 1.b of Guideline E.

Because none of Applicant's covered omissions were isolated, never pursued to conviction, and are otherwise supported by credible evidence of mitigating corrections, these offenses are mitigated under the criminal conduct guidelines as well. On the strength of the evidence presented, Applicant may claim the full mitigation benefits of MC 2 (isolated) and MC 6 (clear evidence of successful rehabilitation). Favorable conclusions warrant with respect to sub-paragraph 2.a of Guideline J.

In reaching my recommended decision, I have considered the evidence as a whole, including each of the factors and conditions enumerated in E.2.2 of the Adjudicative Process of Enclosure 2 of the Directive.

## FORMAL FINDINGS

In reviewing the allegations of the SOR in the context of the FINDINGS OF FACT, CONCLUSIONS and the FACTORS and CONDITIONS listed above, this Administrative Judge makes the following separate FORMAL FINDINGS with respect to Appellant's eligibility for a security clearance.

**GUIDELINE E (PERSONAL CONDUCT): FOR APPLICANT**

Sub-para. 1.a: FOR APPLICANT

**GUIDELINE J (CRIMINAL CONDUCT): FOR APPLICANT**

Sub-para. 2.a: FOR 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 Applicant's security clearance.

Roger C. Wesley

Administrative Judge