

DATE: July 25, 2002

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In Re:

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SSN: -----

Applicant for Security Clearance

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ISCR Case No. 01-13815

## **DECISION OF ADMINISTRATIVE JUDGE**

**JOSEPH TESTAN**

### **APPEARANCES**

#### **FOR GOVERNMENT**

Erin C. Hogan, Department Counsel

#### **FOR APPLICANT**

*Pro Se*

### **SYNOPSIS**

The recency of applicant's dishonest and criminal conduct precludes a finding that it is now clearly consistent with the national interest to grant him access to classified information. Clearance is denied.

### **STATEMENT OF THE CASE**

On February 4, 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 March 8, 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 April 18, 2002. Applicant filed a response to the Government's written case on May 17, 2002. The case was assigned to me on June 6, 2002.

### **FINDINGS OF FACT**

Applicant is fifty-three years of age.

Over ten years ago, applicant had a credit card account with a bank. In approximately 1990 or 1991, he fell behind on his payments to the bank, and the account was referred to a collection agency. The collection agency contacted applicant several times over the years, but applicant refused to make any payments on the debt because he felt he had been treated unfairly by the bank. In a signed, sworn statement that he gave to the Defense Security Service (DSS) in April 2001, he stated that he did "not intend to pay this account." He added, however, that if he was ordered by a court to pay the debt, he would do so.

After the issuance of the SOR, applicant's attitude changed. In his response to the SOR, he indicated that he had paid the debt in full some time after the issuance of the SOR. Letters from the collection agency confirm that (1) after the issuance of the SOR, the collection agency agreed that the debt, which had risen to \$11,556.00, would be considered paid in full if applicant paid the collection agency either \$3,600.00 or \$3,000.00 (depending on how quickly he made the payment), and (2) on or before May 9, 2002, applicant paid the collection agency an unknown amount of money, and the account was considered paid in full.

Applicant completed and executed a Security Clearance Application (SCA) on August 18, 2000. In response to Question 38 of the SCA which asked, "In the last 7 years, have you ever been over 180 days delinquent on any debt(s)?" applicant stated "no." In response to Question 39 of the SCA which asked, "Are you currently over 90 days delinquent on any debt(s)?" applicant stated "no." These responses were false because, as noted above, he was many years delinquent on his credit card debt. In his response to the SOR, applicant stated that he answered "no" because he "was under the impression that this bill (the credit card account) was taken care of." Apparently what applicant meant by "taken care of" was that the creditor had written off the debt. In his response to the FORM, he stated the following about his "no" responses:

"It is with the most profound regret and sincere apology that I gave false information. This was created by my own misunderstanding of the facts aided also with a false sense of indignation over this issue and it was never my intent to provide false or misleading information concerning the material facts as stated previously. I believed the issue was moot and of no real impact when considering the questions at hand. For that lapse of judgment I sincerely apologize. All of the issues at hand center on a single issue. Concerning that issue: Did I misjudge? Yes. Was I wrong? Again in retrospect, Yes. But I assure you there was absolutely no criminal intent in doing so."

## **POLICIES**

Enclosure 2 of the Directive sets forth Guidelines (divided into Disqualifying Factors and Mitigating Factors) which must be followed by the Administrative Judge. Based on the foregoing Findings of Fact, the following Disqualifying Factors and Mitigating Factors are applicable:

### **Financial Considerations**

#### Disqualifying Factors

1. E2.A6.1.2.1: A history of not meeting financial obligations.
2. E2.A6.1.2.3: Inability or unwillingness to satisfy debts.

#### Mitigating Factors

1. E2.A6.1.3.2: It was an isolated incident.

### **Personal Conduct**

#### Disqualifying Factors

1. E2.A5.1.2.2: The deliberate omission of relevant and material facts from any personnel security questionnaire.

#### Mitigating Factors

None.

### **Criminal Conduct**

#### Disqualifying Factors

1. E2.A10.1.2.2: A single serious crime or multiple lesser offenses.

#### Mitigating Factors

1. E2.A10.1.3.2: The crime was an isolated incident.

### **CONCLUSIONS**

The evidence establishes that in approximately 1990 or 1991, applicant fell behind on his credit card payments to a bank, and when the bank refused to accept partial or reduced payments from applicant, he became indignant and refused to make any payments on the debt for the next ten years. The evidence further establishes that applicant intentionally concealed this debt from the Government when he responded "no" to questions 38 and 39 on the SCA he executed in August 2000. Applicant's refusal to satisfy a legitimate debt until it became an issue in this security clearance adjudication, and his intentional concealment of this debt from the Government, a dishonest and criminal act, [\(1\)](#) reflect adversely on his judgment, reliability and trustworthiness, and strongly suggest that he cannot be relied upon to safeguard classified information.

Although applicant apparently regrets both his failure to satisfy the long-standing debt before it became a security issue and his falsification of the SCA, the recency of this conduct, together with the absence of any evidence from independent sources (e.g., friends, family, coworkers, supervisors) that would suggest applicant is now a reliable and trustworthy individual, precludes a finding at the present time that it is clearly consistent with the national interest to grant him access to classified information. For this reason, Guidelines E, F and J are found against applicant.

### **FORMAL FINDINGS**

PARAGRAPH 1: AGAINST THE APPLICANT

PARAGRAPH 2: AGAINST THE APPLICANT

PARAGRAPH 3: 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. This conduct is a felony under 18 U.S.C. 1001.