

DATE: August 30, 2004

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In Re:

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SSN: -----

Applicant for Security Clearance

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ISCR Case No. 01-15845

**DECISION OF ADMINISTRATIVE JUDGE**

**CLAUDE R. HEINY**

**APPEARANCES**

**FOR GOVERNMENT**

Jennifer I. Campbell, Department Counsel

**FOR APPLICANT**

*Pro Se*

**SYNOPSIS**

Applicant owes numerous debts. He asserts he has contacted the IRS to attempt a settlement concerning his tax obligation. He has provided no documentation supporting payment of his debts or that an arrangement with the IRS was achieved. He received an Article 15 in 1983, was arrested in 1995, and received a traffic citation in 1997. When he completed his SF 86, he failed to list his 1995 arrest or his 1997 traffic citation. The record evidence is sufficient to mitigate or extenuate the criminal conduct. However, the record evidence is insufficient to mitigate or extenuate the negative security implications regarding his finances or his false answers. Clearance is denied.

**STATEMENT OF THE CASE**

On September 15, 2003, 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<sup>(1)</sup> it is clearly consistent with the national interest to grant or continue a security clearance for Applicant. On October 22, 2003, Applicant answered the SOR and elected to have his case decided on the written record in lieu of a hearing.

On January 26, 2004, the Applicant received a complete copy of the file of relevant material (FORM) dated January 12, 2004, 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 February 27, 2004. No response has been received. In the FORM, DC presented 24 government exhibits (Gov. Ex). I was assigned the case on March 5, 2004.

**FINDINGS OF FACT**

The SOR alleges Financial, Criminal Conduct, and Personal Conduct. The Applicant admits to the following: he and his wife are attempting to pay their debts; he talked with the IRS regarding his federal tax debt; he received a traffic citation in 1997; he was arrested in 1995 for felony possession of cocaine and drunk in public; he received an Article 15 under the Uniform Code of Military Justice (UCMJ) in 1983 for wrongful use of marijuana; and he admits he falsified the

questions on his SF 86 related to his police record. Those admissions are incorporated herein as findings of fact. After a complete and thorough review of the evidence in the record, and upon due consideration of same, I make the following additional findings of fact.

The Applicant is 42-years-old, has worked for a defense contractor since June 1998, and is seeking to obtain a security clearance.

Applicant owes nine debts totaling approximately \$18,600. A summary of the debts follows:

	Creditor	Amount	Current Status
a.	Dental bill judgment	\$ 782	Unpaid. In his January 1999 sworn statement (Gov Ex 5) Applicant said he would pay this debt by the end of arch 1999.
b.	Federal Tax lien for 1995 and 1996	\$5,123	Unpaid.
c.	Federal Tax lien for 1991 and 1994	\$2,631	Unpaid.
d.	Charge off of credit card debt	\$884	Unpaid.
e.	Credit management company	\$1,105	Unpaid.
f.	Credit management company	\$1,290	Unpaid.
g.	medical debt	\$25	Unpaid. In his January 1999 sworn statement (Gov Ex 5) Applicant said he would pay this debt during January 1999.
h.	fund raiser debt	\$551	Unpaid. Goods were purchased to be resold to support a sports team. The goods were not sold. In his February 1999 sworn statement (Gov ex 6) Applicant said he would contact the creditor and arrange monthly payments.
i.	Federal tax lien for 1992 and 1993	\$6,222	
		\$18,613	Total debt listed in the SOR.

Applicant asserts, but provides no documentation, he has talked with the IRS and received the paperwork necessary to request a settlement concerning his tax liens. Applicant presented a letter dated June 2003, from a dentist concerning a \$91.80 debt (Gov Ex 15) indicating Applicant had paid the bill in full. There is no indication this dental bill and item 1 above are the same debt.

In 1983, Applicant received an Article 15 (UCMJ) for wrongful use of marijuana. He was reduced in rank, had to perform 30 days of extra duty, and forfeited \$280. In March 1995, Applicant was arrested for felony possession of cocaine and drunk in public. At the time of his arrest, he was very intoxicated to the point he was passed out kneeling beside a car. He had blacked out from alcohol consumption and does not remember what occurred that day. In June 1995, a felony arrest warrant was issued. The drug in question was determined to be methamphetamine and not cocaine. The charge was reduced from a felony to a misdemeanor. In July 1997, Applicant was cited for failure to yield right-of-way to pedestrians or traffic when turning, driving without a license, and driving without proof of insurance. He was fined \$486.

In October 1998, Applicant completed a Security Clearance Application, Standard Form (SF) 86. Question 24 asked him if he had ever been charged with or convicted of any offenses related to alcohol or drugs. He listed his 1983 Article 15 for use of marijuana. He failed to list his 1995 arrest for felony possession of cocaine and drunk in public. Question 26 asked Applicant to list any arrest, charge, or conviction he had received in the prior seven years not previously listed on the form. Traffic fines of less than \$150 could be omitted. He answered "no" to the question, failing to list his July 1997 traffic related incident which resulted in a \$486 fine.

In his February 1999 sworn statement (Gov. Ex 6) Applicant says he did not list his 1995 drug related arrest because he was embarrassed and "did not want his job to find out as it would jeopardize my job." In his response to the SOR he says he did not want to divulge that information to the general public. He was afraid the secretary and colleagues might see his application. He claims his failure to list the traffic citation was merely on oversight on his part.

### 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. The government has the burden of proving any controverted fact(s) alleged in the SOR, and the facts must 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.

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

1. A history of not meeting financial obligations.
3. Inability or unwillingness to satisfy debts.

Conditions that could mitigate security concerns include:

None Apply.

Criminal Conduct, Guideline J, the Concern: A history or pattern of criminal activity creates doubt about a person's judgment, reliability and trustworthiness.

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

- a. Allegations or admission of criminal conduct, regardless of whether the person was formally charged.
- b. A single serious crime or multiple lesser offenses.

Conditions that could mitigate security concerns include:

- a. The criminal behavior was not recent.

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 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.

Conditions that could mitigate security concerns include:

None apply.

### **BURDEN OF PROOF**

As noted by the United States Supreme Court in *Department of Navy v. Egan*, 484 U.S. 518, 528 (1988), "no one has a 'right' to a security clearance." As Commander in Chief, the President has "the authority to . . . control access to information bearing on national security and to determine whether an individual is sufficiently trustworthy to occupy a position . . . that will give that person access to such information." *Id.* at 527. The President has restricted eligibility for access to classified information to "United States citizens . . . whose personal and professional history affirmatively indicates loyalty to the United States, strength of character, trustworthiness, honesty, reliability, discretion, and sound judgment, as well as freedom from conflicting allegiances and potential for coercion, and willingness and ability to abide by regulations governing the use, handling, and protection of classified information." Executive Order 12968, *Access to Classified Information* § 3.1(b) (Aug. 4, 1995). Eligibility for a security clearance is predicated upon the applicant meeting the security guidelines contained in the Directive.

Initially, the Government must establish, by substantial evidence, that conditions exist in the personal or professional history of the applicant which disqualify, or may disqualify, the applicant from being eligible for access to classified information. *See Egan*, 484 U.S. at 531. All that is required is proof of facts and circumstances which indicate an applicant is at risk for mishandling classified information, or that an applicant does not demonstrate the high degree of judgment, reliability, or trustworthiness required of persons handling classified information. Where the facts proven by the Government raise doubts about an applicant's judgment, reliability or trustworthiness, then the applicant has the ultimate burden of establishing 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.

Security clearances are granted only when "it is clearly consistent with the national interest to do so." *See* Executive Orders 10865 § 2 and 12968 § 3.1(b). "Any doubt as to whether access to classified information is clearly consistent with national security will be resolved in favor of the national security." Directive ¶ E2.2.2 "The clearly consistent standard indicates that security clearance determinations should err, if they must, on the side of denials." *See Egan*, 484 U.S. at 531. Doubts are to be resolved against the applicant.

### **CONCLUSIONS**

The Government has satisfied its initial burden of proof under Guideline F, (Financial Considerations). 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 position of risk that is inconsistent with the holding of a security clearance. Under Guideline F, an Applicant is not required to be debt free, but is required to manage his finances in such a way as to meet his financial obligations.

As of February 1999, Applicant knew the government was concerned about his debts when he was interviewed by the

Defense Security Service. (Gov. Ex. 6) At that time, he said he would contact his creditors and start making payments. In his response to the SOR, he says he is attempting to pay his obligations as funds become available. He also asserts he has contacted the IRS in an attempt to settle his past due tax obligations. However, he has provided no documentation establishing he has paid his debts or reached an agreement with the IRS.

None of the Mitigating Conditions (MC) apply in the Applicant's favor. MC 1 (The behavior was not recent.) does not apply because the conduct is recent since the debts remain unpaid. MC 2 (It was an isolated incident.) does not apply because there are nine debts. There was no showing the debts were caused by factors beyond Applicant's control. There has been no showing Applicant has received financial counseling nor is there any indication his financial difficulties are under control. For MC 6 (The individual initiated a good-faith effort to repay overdue creditors or otherwise resolve debts.) to apply there must be an "ability" to repay the debts, the "desire" to repay, and evidence of a good faith effort to repay. A systematic, concrete method of handling his debts is needed, which is not present here. Because he has failed to document payment of his debts, I find against Applicant on financial considerations.

The Government has satisfied its initial burden of proof under Guideline J, Criminal Conduct. Under Guideline J, the security eligibility of an applicant is placed into question when an applicant is shown to have a history or pattern of criminal activity creating doubt about his judgment, reliability, and trustworthiness. DC a. (Allegations or admission of criminal conduct, regardless of whether the person was formally charged.) and b. (A single serious crime or multiple lesser offenses.) apply due to Applicant's 1983 Article 15, his 1995 arrest for cocaine possession and public drunkenness, his 1997 traffic citation and conviction, and his 1998 false answers on his SF 86.

This conduct is not recent. The Article 15 for marijuana use is 21 years old, his 1995 arrest is nine years old, his 1997 traffic conviction is seven years old, and his falsification is almost six years old. MC a. (The criminal behavior was not recent.) applies. I find for him as to criminal conduct.

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 October 1998, Applicant completed an SF 86 and failed to list his 1995 arrest for public intoxication and felony possession of cocaine, and failed to list his 1997 traffic citation. Because his answer was false, DC 2-[\(2\)](#) applies.

In response to question 24, which asked Applicant if he had ever been charged with or convicted of any offenses related to alcohol or drugs, he listed his 1983 Article 15 for use of marijuana, an event which has occurred 15 years earlier. He did not list his 1995 arrest for felony possession of cocaine and drunk in public, which occurred three years earlier. He did not list it because he was embarrassed and "did not want his job to find out as it would jeopardize my job." None of the MC apply. There is no indication he made a prompt, good-faith efforts to correct the falsification before being confronted with the facts or that he subsequently provided correct information voluntarily. He also failed to list the traffic citation that had occurred just over a year prior to his completing the form. I find against him as to personal conduct.

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 Financial Considerations.: **AGAINST THE APPLICANT**

Subparagraph 1.a.: Against the Applicant

Subparagraph 1.b.: Against the Applicant

Subparagraph 1.c.: Against the Applicant

Subparagraph 1.d.: Against the Applicant

Subparagraph 1.e.: Against the Applicant

Subparagraph 1.f.: Against the Applicant

Subparagraph 1.g.: Against the Applicant

Subparagraph 1.h.: Against the Applicant

Subparagraph 1.i.: Against the Applicant

Paragraph 2 Criminal Conduct.: FOR THE APPLICANT

Subparagraph 2.a.: For the Applicant

Subparagraph 2.b.: For the Applicant

Subparagraph 2.c.: For the Applicant

Subparagraph 2.d.: For the Applicant

Paragraph 3 Personal Conduct.: AGAINST THE APPLICANT

Subparagraph 3.a.: Against the Applicant

Subparagraph 3.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 the Applicant. Clearance is denied.

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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 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.)