

DATE: June 30, 2003

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In Re:

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SSN: -----

Applicant for Security Clearance

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ISCR Case No.01-21991

## **DECISION OF ADMINISTRATIVE JUDGE**

**CHARLES D. ABLARD**

### **APPEARANCES**

#### **FOR GOVERNMENT**

Juan Rivera, Esq., Department Counsel

#### **FOR APPLICANT**

*Pro Se*

### **SYNOPSIS**

Applicant, a thirty one-year-old employee of a defense contractor for the past three years incurred debts over a period of time primarily prior to his employment. Since his employment he has been deployed aboard two aircraft carriers for 75% of the time. He has shown that the debts have been resolved or are being addressed in a responsible manner. Applicant was given a less than honorable discharge from the service in 1996 but has since had a good record of behavior and citizenship. Clearance is granted.

### **STATEMENT OF CASE**

On February 28, 2003, the Defense Office of Hearings and Appeals (DOHA) pursuant to Executive Order 10865, *Safeguarding Information Within Industry*, as amended and modified, and Department of Defense Directive 5220.6, *Defense Industrial Personnel Security Clearance Review Program* (Directive), dated January 2, 1992, as amended and modified, 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. DOHA recommended the case be referred to an administrative judge to determine whether a clearance should be granted, continued, denied, or revoked.

On March 24, 2003, Applicant, in a sworn written statement, responded to the allegations set forth in the SOR, and requested a hearing. The case was assigned to another administrative judge who could not hold the hearing and it was re-assigned to me on April 25, 2003. A notice of hearing was issued on April 23, 2003 and a hearing was held on May 16, 2003. The Government introduced six exhibits at the hearing . The Applicant introduced eight exhibits at the hearing and one additional exhibit after the hearing. All of the exhibits were admitted into evidence. The Applicant testified. The transcript was received on May 28, 2003.

### **FINDINGS OF FACT**

Applicant admitted several of the factual allegations pertaining to his debts under Guideline F and that he was

discharged from the service with a general discharge for misconduct but denied knowingly falsifying his Security Clearance Application (SF 86) under Guideline E. Those admissions are incorporated herein as findings of fact.

After a complete review of the evidence in the record and upon due consideration of the record the following additional findings of fact are made

Applicant was in debt to a finance company in 2002 but the debt was sold to a collection agency and now has been paid in full. (Exhibit I b)

Applicant is still in debt for an indefinite amount arising from a voluntary automobile repossession in 1997. He is attempting to determine the exact amount of the debt since the creditor has never solicited payment from him and he had not known there was a debt until he received the credit report in connection with his application for a security clearance. He is willing to repay the debt when the creditor advises him of the amount owed. (Tr. p. 27)

Applicant's debt to a chain store in the amount of \$634.00 was written off and is no longer showing on his credit report. (Exhibit I d) Applicant's debt to a local military credit union in the amount of \$165.00 has been paid.(Exhibit I b).

Applicant has received debt counseling from a local service in his community and is following their advice.(Tr. p. 58)

Applicant has paid all other debts cited in the SOR as well as some that he voluntarily acknowledged at the hearing. This was confirmed by a credit report prepared after the hearing and submitted as additional evidence. (Exhibit I)

Applicant has been employed in his present position by a defense contractor since February 2000 and has been deployed aboard aircraft carriers for approximately 75% of the time since that time.

Applicant has received several awards for excellence and patriotism from his company and his supervisors in their employee evaluations. He has been named employee of the month for March 2001. (Exhibits D,E,F, and H)

Applicant was divorced in 1998. His wife was the cause of several of his debts including the automobile that was voluntarily repossessed. (Tr. pp. 23, 35, 57 and 65)

He re-married in 2002 and his wife is employed. She contributes to the family income and is helping take care of some of the remaining debt. Their combined income is approximately \$6,000.00 per month.(Tr. p. 52)

Applicant was enrolled in a college program and has an outstanding student loan that he is re-paying according to schedule in the amount of \$130.00 per month. (Exh. I d and Tr. p. 59)

Applicant has had no further difficulties with law enforcement since his discharge from the military service and is now a responsible member of society with a wife who is expecting their first child.(Tr. p. 59)

## POLICIES

[N]o one has a 'right' to a security clearance." *Department of the Navy v. Egan*, 484 U.S. 518, 528 (1988). 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.

An evaluation of whether the applicant meets the security guidelines includes consideration of the following factors: (1) the nature, extent, and seriousness of the conduct; (2) the circumstances surrounding the conduct; (3) the frequency and recency of the conduct; (4) the individual's age and maturity at the time of the conduct; (5) the voluntariness of participation; (6) the presence or absence of rehabilitation and other behavioral changes; (7) the motivation for the conduct; (8) the potential for pressure, coercion, exploitation, or duress; and (9) the likelihood of continuation or recurrence. Directive, ¶ E2.2.1. Security clearances are granted only when "it is clearly consistent with the national interest to do so." Executive Order No. 10865 § 2. *See* Executive Order No. 12968 § 3.1(b).

Initially, the Government must establish, by something less than a preponderance of the 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. The applicant then bears the burden of demonstrating that it is clearly consistent with the national interest to grant or continue the applicant's clearance. "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. "[S]ecurity clearance determinations should err, if they must, on the side of denials." *Egan*, 484 U.S. at 531. *See* Executive Order No.12968

The applicable Guideline cited in the SOR concern the following Disqualifying Conditions (DC): Financial Considerations Guideline F:

An individual who is financially overextended is at risk of having to engage in illegal acts to generate funds.

Conditions that could raise a security concern and may be disqualifying include a history of not meeting financial obligations or an inability or unwillingness to satisfy his debts.

Conditions that could mitigate security concerns include the fact that the behavior was largely beyond the person's control, that he has received counseling, and that he has initiated good faith effort to repay creditors and resolve debts.

The applicable Guideline cited in the SOR concern the DC Personal Conduct Guideline E:

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:

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;

Deliberately providing false or misleading information concerning relevant and material matters to an investigator, security official, competent medical authority, or other official representative in connection with a personnel security or trust-worthiness determination;

Conditions that could mitigate security concerns include the fact that the falsification was an isolated incident, was not recent, and the individual has subsequently provided correct information voluntarily;

## CONCLUSIONS

Upon consideration of all the facts in evidence, and after application of all appropriate legal precepts, factors and conditions above, I conclude the following with respect to all allegations set forth in the SOR.

The financial considerations alleged as a Disqualifying Condition (DC) under Guideline F are based on a series of debts incurred prior to Applicant's current employment when his income was low. It was also during the first marriage when his wife was incurring debts for which he became responsible. Several of those debts were written off by the creditors. Several more were paid and others he was unaware of others or the amount due until recently. Mitigating Condition (MC) 3 is applicable in that the conditions were largely beyond his control.(E2.A6.1.3.3)

His major debt was for the repossession of his automobile. This was a voluntary repossession that he undertook realizing that he could not afford the car. He did not consider it a repossession

since he did not default on payments but took the car to the creditor when he realized he could not make payments. He did not regard the matter to be a repossession thus accounting for his failure to list it on the SF 86. The omission was not deliberate as required by the guideline.

Applicant has straightened out his life and his behavior since his discharge from the military and has been a responsible employee of a defense contractor for over three years.

His service abroad during three fourths of the the time since his employment has led to some of his debt problems since for much of that time he was single and working on aircraft carriers at sea and unable to take care of many of his personal financial problems.

In all adjudications the protection of our national security is of paramount concern. Persons who have access to classified information have an overriding responsibility for the security concerns of the nation. The objective of the security clearance process is the fair-minded, commonsense assessment of a person's trustworthiness and fitness for access to classified information.

The "whole person" concept recognizes that we should view a person by the totality of their acts and omissions. Each case must be judged on its own merits taking into consideration all relevant circumstances, and applying sound judgment, mature thinking, and careful analysis.

After considering all the evidence in its totality and as an integrated whole to focus on the whole person of Applicant, I conclude that he is trustworthy, reliable and that it is clearly consistent with the national interest to grant clearance to Applicant.

### **FORMAL FINDINGS**

Formal Findings as required by Section E3.1.25 of Enclosure 3 of the Directive are hereby rendered as follows:

Paragraph 1 Guideline F: For Appellant

Subparagraph 1.a.: For Applicant

Subparagraph 1.b.: For Applicant

Subparagraph 1.c.: For Applicant

Subparagraph 1.d.: For Applicant

Subparagraph 1.e.: For Applicant

Subparagraph 1.f.: For Applicant

Subparagraph 1.g.: For Applicant

Paragraph 2 Guideline E: For Appellant

Subparagraph 1.a.: For Applicant

Subparagraph 1.b.: For Applicant

### **DECISION**

In light of all the circumstances and facts presented by the record in this case, it is clearly consistent with the national interest to grant a security clearance for Applicant.

Charles D. Ablard

Administrative Judge