

DATE: May 14, 2003

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In Re:

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SSN: -----

Applicant for Security Clearance

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ISCR Case No. 01-26915

## **DECISION OF ADMINISTRATIVE JUDGE**

**PHILIP S. HOWE**

### **APPEARANCES**

#### **FOR GOVERNMENT**

Marc E. Curry, Department Counsel

#### **FOR APPLICANT**

*Pro Se*

### **SYNOPSIS**

Applicant owes fourteen creditors, some debts dating back to 1992. Applicant made material omissions on his security clearance application and was not truthful in his interview with an investigator. Applicant admits he cannot manage his finances and does not pay his bills, despite his declared willingness to repay the debts. Applicant offered no credible plan or commitment to repay these debts. His lack of truthfulness in providing required information on the security clearance application and during the investigation raises grave questions and doubts about his security eligibility and suitability. Clearance is denied.

### **STATEMENT OF THE CASE**

On October 15, 2002, the Defense Office of Hearings and Appeals (DOHA), under Executive Order 10865, *Safeguarding Classified Information Within Industry*, dated February 20, 1960, 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. The SOR detailed reasons under Guideline F (Financial Considerations) and Guideline E (Personal Conduct) 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 conduct proceedings and determine whether clearance should be granted, continued, denied, or revoked.

In a signed and sworn statement, dated November 8, 2002, Applicant responded to the SOR allegations. He requested his case be decided on the written record in lieu of a hearing.

On December 30, 2002, Department Counsel submitted the Government's written case. A complete copy of the file of relevant material (FORM) [\(1\)](#) was provided to the Applicant on February 12, 2003, and he was given the opportunity to file objections and submit material in refutation, extenuation, or mitigation. He apparently chose not to do so by the Response due date of April 18, 2003. The case was assigned to me on May 2, 2003, as the Administrative Judge for this

case.

## **FINDINGS OF FACT**

Applicant admitted all 20 of the SOR allegations contained in Paragraphs 1 and 2 and their subparagraphs. 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 the same, I make the following additional findings of fact:

Applicant is a 50 year old system analyst for a defense contractor. He is married and has four children. (Item 4 at 1 and 4; Item 5 at 4)

Applicant's financial problems extend back to 1992. Applicant currently owes about \$9,000. He filed bankruptcy in 1996 and was discharged of \$35,395 in various debts. Nine of those debts were incurred when Applicant purchased goods or services from merchants and paid with checks written on accounts with insufficient funds in them to cover the checks. His state of residence has filed lawsuits at least twice to obtain income tax monies owed to it. Applicant admits he did not file his 1999 and 2000 state and federal income tax returns because he knew he owed money and could not pay it. Applicant admits he is not good at managing his money, and that the credit report in the file is accurate in all its details of his financial history. (Item 5 at 4; Item 6 at 1-4; Item 7 at 1, 2, 5-8)

Applicant stated in October 2001 in his two statements in the FORM that he would pay his debts as soon as he got a workers compensation settlement from his employer. No evidence was submitted to show that he has actually made any such payments in the intervening 17 months. (Item 5 at 8; Item 6 at 1-4)

Bankruptcy discharged Applicant's unpaid 1988 and 1989 state income liabilities. Applicant admits he owes state and federal income taxes for 1999 and 2000, for a total debt for those two years and to those two governments of \$3,750. Applicant was sued by his home state for unpaid income taxes for 1992 and 1995, for which years he admits he did not file income tax returns. (Item 5 at 5; Item 6 at 1-2; Item 8 at 3 and 5)

Applicant has incurred debts exceeding his financial ability to pay them based on his current income for the foreseeable future. Among the businesses to which he is indebted are banks issuing credit cards and making installment loans, two hospitals, two telephone companies, an automobile manufacturer, a landlord, the Internal Revenue Service, and the tax collection department of his home state, in addition to commercial creditors. (Items 5, 6, 7 and 8)

Applicant answered a question from a Defense Security Service Special Agent untruthfully on a rent debt by denying the debt's existence. In fact, Applicant did owe rent to a former landlord, and was sued for it. Applicant also answered "no" to Question 40 on the security clearance application on any civil court actions in the past 7 years, when in fact the lawsuit for back rent owed had been filed and Applicant did not disclose it. Applicant's position is that he was forgiven the rent money alleged to be owed by subparagraph 1.o in January 2001 and that is why he answered Question 40 on the security clearance application as "no". Further, Applicant did not disclose the repossession of an automobile in 1999 in response to Question 35 on the security clearance application. (Item 4 at 7; Item 5 at 4; Item 6 at 1-3)

## **POLICIES**

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. Enclosure 2 to the Directive sets forth adjudicative guidelines that must be carefully considered according to the pertinent Guideline in making the overall common sense determination required.

Each adjudicative decision must also include an assessment of:

- (1) the nature, extent, and seriousness of the conduct;
- (2) the circumstances surrounding the conduct, and the extent of knowledgeable participation;
- (3) how recent and frequent the behavior was;

- (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 pertinent 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 (See Directive, Section E2.2.1. of Enclosure 2).

Because each security case presents its own unique facts and circumstances, it should not be assumed that the factors exhaust the realm of human experience or that the factors apply equally in every case. Moreover, although adverse information concerning a single condition may not be sufficient for an unfavorable determination, the individual may be disqualified if available information reflects a recent or recurring pattern of questionable judgment, irresponsibility, or other behavior specified in the Guidelines.

Based upon a consideration of the evidence as a whole, I find the following adjudicative guidelines most pertinent to an evaluation of the facts of this case:

### **Guideline F: Financial Considerations**

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:

- (3) The conditions that resulted in the behavior were largely beyond the person's control (e.g., loss of employment, a business downturn, unexpected medical emergency, or a death, divorce or separation).

### **Guideline E: Personal Conduct**

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. The following will normally result in an unfavorable clearance action or administrative termination of further processing for clearance eligibility:

Refusal to complete required security forms, releases, or provide full, frank and truthful answers to lawful questions of investigators, security officials or other official representatives in connection with a personal security or trustworthiness determination.

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

- (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;
- (3) Deliberately providing false or misleading information concerning relevant and material matters to an investigator, security official, or other official representative in connection with a personnel security or trustworthiness

determination;

(4) Personal conduct or concealment of information that increases an individual's vulnerability to coercion, exploitation or duress, such as engaging in activities which, if known, may affect the person's personal, professional, or community standing or render the person susceptible to blackmail;

Conditions that could mitigate security concerns include:

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

Under the provisions of Executive Order 10865 as amended and the Directive, a decision to grant or continue an applicant's clearance may be made only upon an affirmative finding that to do so is clearly consistent with the national interest. In reaching the fair and impartial overall common sense determination required, I can only draw those inferences and conclusions which have a reasonable and logical basis in the evidence of record. Likewise, I have attempted to avoid drawing any inferences that are based on mere speculation or conjecture.

### **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 each allegation set forth in the SOR:

With respect to Guideline F, the Government established its case. Applicant is delinquent on fourteen accounts. Applicant shows a pattern over the past 11 years of not paying his bills on time or at all. The evidence on the record and Applicant's own admissions show he is incapable of properly managing his finances. He has chronically not paid or filed his state and federal income returns and payments on time. The state tax department filed suit against him at least twice to obtain the taxes. Disqualifying Conditions (DC) 1 and 3 apply. While Applicant tries to portray his financial problems as resulting from health problems in 1995, I can determine from the evidence that his financial problems result instead from his inability to manage his money. The health problems might have given him a reason to file bankruptcy or exacerbated the underlying problem, but they did not cause his inability to pay his debts, and certainly did not cause him to write nine insufficiently funded checks. Furthermore, Applicant stated several times in his statements that he would pay his debts from a workers compensation claim he filed against his employer, but he never submitted any evidence he has paid any of these debts. I conclude that Mitigating Condition (MC) 3 does not apply in this case, nor do I find any other mitigating condition applies. Accordingly, allegations 1.a. through 1.p. of the SOR are concluded against Applicant.

With respect to Guideline E, the Government established its case on this Guideline also. Applicant knew he had financial problems and tried to keep them quiet so the Government would not discover his financial difficulties. I do not find Applicant to be credible in his explanations of why he did not answer two questions on the security clearance application truthfully, and I do not give his statements in explanation of the falsification accusations to be believable or persuasive on this issue. In fact, he also admits he failed to give information about four family members on the application. Applicant has a history of not filing and paying his income taxes. Applicant exhibits a pattern of mendacity which cannot be explained or overlooked. Therefore, DC 2, 3 and 4 apply. The only possible MC is 3, but I am not persuaded it is applicable here because of the volume and repeated nature of the falsifications made by Applicant, and his further attempts to minimize the falsifications when confronted by making statements which are not supported by evidence from his creditors about the debt status. Accordingly, allegations 2.a. through 2.d. of the SOR are concluded against 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: Against Applicant

Subparagraph 1.a.: Against the Applicant

Subparagraph 1.b.: Against Applicant

Subparagraph 1.c.: Against Applicant

Subparagraph 1.d.: Against Applicant

Subparagraph 1.e.: Against Applicant

Subparagraph 1.f.: Against Applicant

Subparagraph 1.g.: Against Applicant

Subparagraph 1.h.: Against Applicant

Subparagraph 1.i.: Against Applicant

Subparagraph 1.j.: Against Applicant

Subparagraph 1.k.: Against Applicant

Subparagraph 1.l.: Against Applicant

Subparagraph 1.m.: Against Applicant

Subparagraph 1.n.: Against Applicant

Subparagraph 1.o.: Against Applicant

Subparagraph 1.p.: Against Applicant

Paragraph 2 Guideline E: Against Applicant

Subparagraph 2.a.: Against Applicant

Subparagraph 2.b.: Against Applicant

Subparagraph 2.c.: Against Applicant

Subparagraph 2.d.: Against Applicant

### **DECISION**

In light of all the circumstances and facts 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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Philip S. Howe

Administrative Judge

1. The Government submitted eight items or exhibits in support of its contention.