

DATE: September 23, 2003

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In Re:

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SSN: -----

Applicant for Security Clearance

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ISCR Case No. 02-04005

**DECISION OF ADMINISTRATIVE JUDGE**

**MARTIN H. MOGUL**

**APPEARANCES**

**FOR GOVERNMENT**

Catherine Engstrom, Esq., Department Counsel

**FOR APPLICANT**

*Pro Se*

**SYNOPSIS**

Applicant has had a history of financial difficulties. Some of his past overdue debts have now been resolved, and he has recently taken steps to contact the creditors and pay off the debts not yet resolved. However, a significant amount of his past due debts have yet to be resolved, and based on his tenuous financial situation and his rather recent history of financial responsibility, it is far too soon to conclude that Appellant has a more stable and mature outlook about his finances. Applicant knew or should have known that the financial information that he provided to the Government was materially incorrect and incomplete. litigation has not been shown. Clearance is denied.

**STATEMENT OF THE CASE**

On November 26, 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.

In a signed and sworn statement, dated February 6, 2003, Applicant responded in writing to the SOR allegations. He requested a clearance decision based on a hearing record.

On April 28, 2003, this case was assigned to another Administrative Judge, but on May 6, 2003, because of caseload consideration, the case was reassigned to me to conduct a hearing and issue a written decision. A Notice of Hearing was issued to the parties on May 7, 2003, and the hearing was held on May 22, 2003.

At the hearing, Department Counsel offered six documentary exhibits (Government Exhibits 1 through 6), and no witnesses were called. Applicant offered eight documentary exhibits (Applicant Exhibits A through H) and offered his own testimony. The record was left open so that Applicant could offer any additional documents to establish the current status of any of the debts listed on the SOR. Applicant submitted an additional document, which included current debt

status information, and to which Department Counsel had no objection. I have entered this document, identified as Applicant's Exhibit I, into evidence. The transcript (TR) was received on June 2, 2003.

### **FINDINGS OF FACT**

In the SOR, the Government alleges that a security risk may exist under Adjudicative Guideline F (Financial Considerations) and Guideline E (Personal Conduct) of the Directive. The SOR contains 11 allegations, 1.a. through 1.k., under Guideline F, and two allegations, 2.a. and 2.b., under Guideline E.

After a complete and thorough review of the evidence in the record, including Applicant's Answer to the SOR, the documents and the live testimony, and upon due consideration of that evidence, I make the following Findings of Fact:

Applicant is a 29 year old employee of a defense contractor and he seeks access to classified information. His job title is Central Station Operator, and in that position he monitors security alarms. He is unmarried and is a high school graduate.

#### **Paragraph 1 (Guideline F - Financial Considerations)**

The SOR lists 11 debts that Applicant owed as of October 22, 2002, 1.a. through 1.k under Adjudicative Guideline F . In his initial undated response to the SOR, Applicant admitted to owing these debts. The total owed by Applicant was approximately \$15,900. These debts were all long overdue, most for several years. Applicant filed a second response to the SOR, dated February 6, 2003, wherein he admits that there are still outstanding debts on 1.a., 1.e., and 1.j., but he states that the other debts have been paid. The evidence establishes that Applicant (1) was indebted in the amounts alleged, and (2) all of the debts were delinquent as of October 2002. The debts will be discussed in the order that they were listed in the SOR:

1.a. This debt to Creditor 1 is listed in the SOR in the amount of \$2,902. Applicant testified that he has arranged a payment plan as of October 2002, and he will be paying \$20 a month. Exhibit A and Exhibit D, letters from the collection agency for Creditor 1, verify this payment arrangement. Exhibit D showed an amount now due of \$4,150, the increase apparently the result of interest on the original debt. At the time of the hearing Applicant had paid \$100, and was planning to continue making payments every month until the debt is paid in full. (TR at 27, 28.) Exhibit I establishes that Applicant has now paid \$160 towards this debt.

1.b. This debt to Creditor 2 is in the amount of \$250. Applicant testified that this debt has been paid. (TR at 26, 27.) Exhibit C, a letter from the collection agency for Creditor 2, verifies this debt has been paid.

1.c. This debt to Creditor 3 is in the amount of \$113. Applicant testified that this debt has been paid. (TR at 28.) Exhibit E, a letter from the collection agency for Creditor 3, verifies this debt has been paid.

1.d. This debt to Creditor 4 is in the amount of \$184. Applicant testified that this debt has been paid, but he had no documentation to establish that. (TR at 34.) The record was held opened for Applicant to introduce any documents to show that this debt has been paid. Page 2 of Exhibit I establishes that Applicant has now paid this debt.

1.e. This debt to Creditor 5 is in the amount of \$4,985 for an automobile which was repossessed. Applicant testified that he has arranged a payment plan as of October 2002, and he has been paying \$20 a month. Exhibit F, a letter from the collection agency for Creditor 5, verifies a payment arrangement, but does not show the amount to be paid monthly. At the time of the hearing Applicant testified that he had paid \$200, and he was planning to continue making payments every month until the debt is paid in full. (TR at 28-30.) Exhibit I verifies only that Applicant has paid \$100 on this debt.

1.f. This debt to Creditor 6 is in the amount of \$82. Applicant testified that this debt has been paid, but he had no documentation to establish that. (TR at 37-41.) The record was held opened for Applicant to introduce any documents to show that this debt had been paid. My review of Exhibit I did not reveal any evidence which would establish that Applicant has paid this debt.

1.g. This debt to Creditor 7 is in the amount of \$169. Applicant testified that this debt has been paid, but he had no documentation to establish that. (TR at 41.) The record was held opened for Applicant to introduce any documents to show that this debt had been paid. My review of Exhibit I did not reveal any evidence which would establish that Applicant has paid this debt.

1.h. This debt to Creditor 8 is in the amount of \$101. Applicant testified that this debt has been paid, but he had no documentation to establish that. (TR at 41, 42.) The record was held opened for Applicant to introduce any documents to show that this debt had been paid. My review of Exhibit I did not reveal any evidence which would establish that Applicant has paid this debt.

1.i. This debt to Creditor 9 is in the amount of \$132. Applicant testified that this debt has been paid. (TR at 25, 26.) Exhibit B, a letter from the collection agency for Creditor 9, verifies this debt has been paid.

1.j. This debt to Creditor 10 is in the amount of \$6,488. Applicant testified that he has been unable to receive any documentation to show that he owes this debt, and that the creditor has informed him they do not know who he is nor could they provide to him information about this debt. Since he has received no verification of the loan Applicant is planning to dispute the loan. Upon cross examination, he did recall that he had taken out a student loan for the approximate amount of this debt, and he had never repaid the debt. (TR at 42- 47.)

1.k. This debt is for a judgment awarded to Creditor 11 is in the amount of \$496. Applicant initially testified that he had made some payments on this, but subsequently he conceded that he had only paid \$10 by the time of the hearing. (TR at 47-49.) This was verified by Exhibit 4. My review of Exhibit I did not reveal any evidence which would establish that Applicant has paid any additional amount on this debt.

Applicant consulted a credit counseling service after beginning the security clearance process, but he never availed himself of their services. Applicant has a second job which he uses to supplement his income, but even with this additional income he has does not have a significant remainder after paying his required bills. (TR at 51-56.)

### **Paragraph 2 Guideline E (Personal Conduct)**

Applicant denies allegation 2.a. and 2.b., under Guideline E.

Applicant completed a signed, sworn Security Clearance Application (SCA) on November 16, 1999, where he answered "no" to question #37 . Question #37 asks, " In the last 7 years, have you had any judgments against you that have not been paid?" While Applicant did have a judgment against him, (See 1.K.) he testified that he answered "no" because he was not aware of this judgment.

I conclude that he probably did not know about the judgment only because of his cavalier and irresponsible attitude towards his financial responsibilities. He testified regarding this debt,"At the time I moved I had no intention of paying it. I figured after seven years it will roll off my - my credit report... anything that came on it with (Creditor 10) on it went unopened in the trash." (TR at 61-62.)

Question #38 asks, "In the last 7 years, have you been over 180 days delinquent on any debt(s)?" Clearly, at the time he completed the SCA, Applicant was delinquent on the above stated debts, and he should have answered "yes" to this question, but he testified that he believed that the Government was only interested in "utility bills." (TR at 62-64.)

### **POLICIES**

Enclosure 2 of the Directive sets forth adjudicative guidelines that must be carefully considered in evaluating an individual's security eligibility and making the overall common sense determination required. The Administrative Judge must take into account the conditions raising or mitigating security concerns in each area applicable to the facts and circumstances presented. 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, as the guidelines reflect consideration of those factors of seriousness, recency, motivation, *etc.*

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.

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).

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**

E2.A6.1.1. *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.

E2.A6.1.2. Conditions that could raise a security concern and may be disqualifying include:

E2.A6.1.2.1. A history of not meeting financial obligations.

E2.A6.1.2.3 Inability or unwillingness to satisfy debts.

E2.A6.1.3. Conditions that could mitigate security concerns include:

E2.A6.1.3.1. The behavior was not recent.

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

E2.A5.1.1. *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. The following will normally result in an unfavorable clearance action or administrative termination of further processing for clearance eligibility:

E2.A5.1.2. Conditions that could raise a security concern and may be disqualifying also include:

E2.A5.1.2.2. 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;

E2.A5.1.3. Conditions that could mitigate security concerns include:

E2.A5.1.3.2. The falsification was an isolated incident, was not recent, and the individual has subsequently provided correct information voluntarily.

### **BURDEN OF PROOF**

Initially, the Government must prove controverted facts alleged in the Statement of Reasons. If the Government meets that burden, the burden of persuasion then shifts to Applicant to establish his security suitability through evidence of refutation, extenuation or mitigation sufficient to demonstrate that, despite the existence of disqualifying conduct, it is nevertheless clearly consistent with the national interest to grant or continue the security clearance. Assessment of Applicant's fitness for access to classified information requires evaluation of the whole person, and consideration of such factors as the recency and frequency of the disqualifying conduct, the likelihood of recurrence, and evidence of

rehabilitation.

A person who seeks access to classified information enters into a fiduciary relationship with the U.S. Government that is predicated upon trust and confidence. Where facts proven by the Government raise doubts about Applicant's judgment, reliability, or trustworthiness, Applicant has a heavy burden of persuasion to demonstrate that he or heis nonetheless security worthy. As noted by the United States Supreme Court in Department of the Navy v. Egan, 484 U.S. 518, 531 (1988), "the clearly consistent standard indicates that security-clearance determinations should err, if they must, on the side of denials."

### CONCLUSIONS

Having considered the evidence of record in light of the appropriate legal precepts and factors, I conclude the following with respect to guidelines F and E:

With respect to Guideline F, the Government has established that Applicant has a history of financial difficulties, including a judgment. While he has made some progress toward resolving his long past due debts, he still has a significant number of debts that have not been resolved, and based on his financial situation, it is too soon to conclude that he will be able to resolve these debts. I, therefore, resolve Guideline F against Applicant.

Regarding the Disqualifying Conditions (DC) under Guideline F, I conclude both DC E2.A6.1.2.1., and DC E2.A6.1.2.3 apply, because of Applicant's history of not meeting financial obligations and his inability to satisfy his debts. I find that none of the Mitigating Conditions (MC) apply.

With respect to Guideline E, the evidence establishes that Applicant provided inaccurate information to the Government in response to two questions, #37 and #38, on the SCA that he executed in November 1999. I conclude that Applicant knew or should have known that he was providing untruthful information. Regarding question #37, Applicant may not have been aware of the judgment against him, but he cannot escape his financial responsibility simply by not opening an envelope with a creditor's name on it. As for question #38, regarding any past debts over 180 days, I conclude that when Applicant answered the SCA, he knew or should have known that the correct answer to the question was "yes,"as a he had a number of debts that were at least 180 days overdue. I resolve Guideline E against Applicant.

In reviewing the Disqualifying Conditions (DC) under Guideline E, I conclude that DC E2.A5.1.2.2. applies because the information that Applicant provided in his SCA were known or should have been known by him to be an omission of relevant and material facts. No MCs apply.

### FORMAL FINDINGS

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

#### **Paragraph 1, Financial Considerations, Guideline F: Against the Applicant**

Subparagraph 1.a.: Against the Applicant

Subparagraph 1.b.: For the Applicant

Subparagraph 1.c.: For the Applicant

Subparagraph 1.d.: For 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.: For the Applicant

Subparagraph 1.j.: Against the Applicant

Subparagraph 1.k.: Against the Applicant

**Paragraph 2, Personal Conduct, Guideline E: Against the Applicant**

Subparagraph 2.a.: Against the Applicant

Subparagraph 2.b.: Against the Applicant

**DECISION**

In light of all the circumstances and facts presented by the record in this case, it is clearly not consistent with the national interest to grant or continue a security clearance for Applicant.

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Martin H. Mogul

Administrative Judge