

DATE: October 2, 2003

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In re:

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SSN: -----

Applicant for Security Clearance

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ISCR Case No. 02-04736

## DECISION OF ADMINISTRATIVE JUDGE

**JAMES A. YOUNG**

### APPEARANCES

#### FOR GOVERNMENT

Marc Curry, Esq., Department Counsel

#### FOR APPLICANT

*Pro Se*

### SYNOPSIS

Fifty-five-year-old Applicant had a Chapter 7 bankruptcy in 1993, resulting from a failed business, and several delinquent debts. He was unable to show he had made sufficient good-faith efforts to resolve that would warrant finding that his financial situation did not represent a security concern. Clearance is denied.

### STATEMENT OF THE CASE

The Defense Office of Hearings and Appeals (DOHA) declined to grant or continue a security clearance for Applicant. On 14 April 2003, DOHA issued a Statement of Reasons (SOR), under the applicable Executive Order <sup>(1)</sup> and Department of Defense Directive, <sup>(2)</sup> detailing the basis for its decision-failure to meet the financial considerations (Guideline F) personnel security guideline of the Directive. Applicant answered the SOR in writing on 5 May 2003 and elected to have a hearing before an administrative judge. The case was assigned to me on 5 August 2003. On 3 September 2003, I convened a hearing to consider whether it is clearly consistent with the national interest to grant or continue a security clearance for Applicant. DOHA received the transcript (Tr.) of the proceeding on 15 September 2003.

### FINDINGS OF FACT

Applicant is 55 years old. Ex. 1 at 1. He is currently making approximately \$68,700 per year. Tr. 29. He divorced in 1997 and has a 17-year-old child whom he is required to support. Tr. 29-30. The chart below summarizes the financial considerations alleged in the SOR:

	Nature and Amount	Status	Record
1.a.	Charged-off credit card acct \$711	Admits; Still not paid	Ans; Tr. 43
1.b.	Charged-off acct \$391	Disputes debt; Claims creditor doesn't know him	Tr. 43

1.c.	Charged-off credit card acct \$353	Admits; Still not paid	Ans; Tr. 44
1.d.	Child support \$20,289	No arrears	Ex. D
1.e.	Auto collection acct \$575	Admits; Still not paid	Tr. 45-46
1.f.	1993 Chap 7 bankruptcy	Admits	Ans

In April 1993 he had his debts discharged in a Chapter 7 Bankruptcy proceeding. He was forced to file bankruptcy because he had co-signed, in his personal capacity, for some of the credit accounts for his wife's business that failed. Tr. 31-32; Ex. 3 at 7. However, over \$40,000 of the \$76,000 of debts that were discharged were attributable to his private debts, not his wife's business. Tr. 32-38.

### 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. 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." Exec. Or. 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.

Enclosure 2 of the Directive sets forth personal security guidelines, as well as the disqualifying conditions (DC) and mitigating conditions (MC) under each guideline. In evaluating the security worthiness of an applicant, the administrative judge must also assess the adjudicative process factors listed in ¶ 6.3 of the Directive. The decision to deny an individual a security clearance is not necessarily a determination as to the loyalty of the applicant. *See* Exec. Or. 10865 § 7. It is merely an indication that the applicant has not met the strict guidelines the President and the Secretary of Defense have established for issuing a clearance.

Initially, the Government must establish, by substantial evidence, conditions in the personal or professional history of the applicant that disqualify, or may disqualify, the applicant from being eligible for access to classified information. *See Egan*, 484 U.S. at 531. The Directive presumes a nexus or rational connection between proven conduct under any of the disqualifying conditions listed in the guidelines and an applicant's security suitability. *See* ISCR Case No. 95-0611 at 2 (App. Bd. May 2, 1996).

Once the Government establishes a disqualifying condition by substantial evidence, the burden shifts to the applicant to rebut, explain, extenuate, or mitigate the facts. ISCR Case No. 01-20700 at 3 (App. Bd. Dec. 19, 2002); *see* Directive ¶ E3.1.15. An applicant "has the ultimate burden of demonstrating that it is clearly consistent with the national interest to grant or continue his security clearance." ISCR Case No. 01-20700 at 3.

### CONCLUSIONS

In the SOR, DOHA alleged under Guideline F that Applicant had several delinquent debts (¶¶ 1.a. - 1.e.) and had other debts that were discharged in bankruptcy in 1993 (¶ 1.f.). An Applicant who is financially overextended is at risk of having to engage in illegal acts to generate funds. Directive ¶ E2A6.1.1.

The Government established by substantial evidence each of the allegations contained in the SOR. Applicant has a history of not meeting his financial obligations. DC 1. He has been unable or unwilling to satisfy some of his debts. DC 2.

Applicant refuted the allegation that he was in arrears on his child support, at least any court ordered arrears, by submitting a document from the child support agency, filed in the county court, that listed Applicant's court-ordered arrears as "\$0.00." Ex. D at 3. Applicant admitted that he was paying interest because of a "back child support issue."

Tr. 63. This suggests that he may have been delinquent on his child support payments, although perhaps not to the tune of \$20,000, as alleged. It appears that he has made a good-faith effort to resolve this situation (MC 6)-his child support payments are now sent to the county support agency by his employer-and he seems to be in good standing with the county child support agency. Finding is for Applicant on ¶ 1.d.

Applicant admits getting bills after he cancelled the credit cards that are the basis for the allegations in ¶¶ 1.a. and 1.c. Tr. 50. So, he was on notice of the creditors' claims. He suggests he failed to take action on these accounts because he did not believe he owed any money on them. *Id.* Applicant has not provided convincing evidence to support his belief. He asserts that he is willing to pay if they would send him an itemized bill. Tr. 43. Of course, he has not pursued these debts in an aggressive manner, even after receiving the SOR. None of the mitigating conditions listed under the guideline apply. Findings on ¶¶ 1.a. and 1.c. are against Applicant.

Applicant disputes the debt referenced in ¶ 1.b. of the SOR. He claims he contacted the company and they have no record of him. Tr. 43. He provided no substantiation of this contention. Finding is against Applicant.

### **FORMAL FINDINGS**

The following are my conclusions as to each allegation in the SOR:

Paragraph 1. Guideline F: AGAINST APPLICANT

Subparagraph 1.a.: Against Applicant

Subparagraph 1.b.: Against Applicant

Subparagraph 1.c.: Against Applicant

Subparagraph 1.d.: For Applicant

Subparagraph 1.e.: Against Applicant

Subparagraph 1.e.: Against Applicant

### **DECISION**

In light of all of 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. Clearance is denied.

**James A. Young**

**Administrative Judge**

1. Exec. Or. 10865, *Safeguarding Classified Information within Industry* (Feb. 20, 1960), as amended and modified.
2. Department of Defense Directive 5220.6, *Defense Industrial Personnel Security Clearance Review Program* (Jan. 2, 1992), as amended and modified.