

DATE: June 16, 2004

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In re:

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SSN: -----

Applicant for Security Clearance

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ISCR Case No. 02-05600

**DECISION OF ADMINISTRATIVE JUDGE**

**JAMES A. YOUNG**

**APPEARANCES**

**FOR GOVERNMENT**

Kathryn A. Trowbridge, Esq., Department Counsel

**FOR APPLICANT**

*Pro Se*

**SYNOPSIS**

Applicant has a history of not meeting financial obligations, caused in part by his wife's medical condition. Despite some efforts to repay his debts through a Chapter 13 bankruptcy, Applicant continues to have trouble paying his other debts. And Applicant deliberately omitted relevant and material information from his security clearance application by failing to disclose he had debts in the previous seven years that were delinquent more than 180 days. 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 8 September 2003, DOHA issued a Statement of Reasons<sup>(U)</sup> (SOR) detailing the basis for its decision-security concerns raised under Guideline F (Financial Considerations) and Guideline E (Personal Conduct) of the Directive. Applicant answered the SOR in writing on 13 October 2003 and elected to have a hearing before an administrative judge. The case was assigned to me on 12 March 2004. On 6 April 2004, 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 hearing transcript (Tr.) on 15 April 2004.

**FINDINGS OF FACT**

Applicant is a 30-year-old systems engineer for a defense contractor. He married in 1996. His wife has since been diagnosed with fibromyalgia and is not able to work. Tr. 14.

Applicant and his wife were not able to meet all of their bills, apparently in large part due to her expenses caused by her medical bills and prescription medication. In February 2003, Applicant filed a voluntary Chapter 13 bankruptcy petition. In it, Applicant listed \$240,667 in liabilities and only \$132,925 in assets. In the 12 months before 26 March 2004, Applicant made 11 payments totaling \$1,200 to the trustee, leaving payments of \$17,280. Applicant's mortgage

company started foreclosure proceedings on his home. Applicant's delinquent mortgage payments are included in the Chapter 13. Applicant worked with the lender to forestall the foreclosure. But Applicant is currently \$6,000 in arrears on his two mortgages and \$3,200 in arrears on property taxes. Tr. 39-41.

Applicant was unable to make his car payments. He voluntarily turned the car in to the dealer. As a result, Applicant currently owes more than \$11,000 on that account. This debt is now part of his Chapter 13 bankruptcy.

Applicant completed a security clearance application (SCA) on 31 July 2000. Question 35 asked if, in the previous seven years, Applicant had any property repossessed for any reason. Question 38 asked if, in the previous seven years, Applicant had been delinquent more than 180 days on any debts. Applicant answered "no" to both questions.

## 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

### **Guideline F-Financial Considerations**

In the SOR, DOHA alleged Applicant had several delinquent debts totaling over \$31,000 (¶¶ 1.a.-1.e., 1.h.), the income he produces is insufficient to pay the delinquent debts (¶ 1.f.), and he filed for Chapter 13 bankruptcy in February 2003 (¶ 1.g.). An applicant who is financially overextended is at risk of having to engage in illegal acts to generate funds. Directive ¶ E2.A6.1.1.

The Government established by substantial evidence and Applicant's admissions each of the allegations contained in the SOR. Applicant admitted each of the delinquent debts alleged in the SOR, but claimed the debt alleged in ¶ 1.f. was the same as the debt alleged in ¶ 1.a. After carefully reviewing the credit report, the account numbers, and the total debt, I am not convinced the debts alleged in ¶¶ 1.a. and 1.f. are the same.

Applicant has a history of not meeting his financial obligations (DC E2.A6.1.2.1.) and is unable or unwilling to satisfy his debts (DC E2.A6.1.2.3.). It appears Applicant's debts are due, in part, by conditions beyond his control-the cost of his wife's medical care. MC E2.A6.1.3.3. By participating in the Chapter 13 payment plan, Applicant initiated a good-faith effort to repay his overdue creditors. MC E2.A6.1.3.6. But payments of \$100 a month are not likely to result in the satisfaction of those debts in the near future. In fact, it appears the only payments he is making are being used to pay the trustee's fees, not the actual debts. Applicant has not made significant progress on his debts and, since the filing of the Chapter 13, has acquired new delinquencies. I find against Applicant.

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

In the SOR, DOHA alleged Applicant falsified his SCA by deliberately failing to disclose he had property repossessed (¶ 2.a.) and that in the previous seven years he had debts that were delinquent more than 180 days (¶ 2.b.).

The Government established by substantial evidence that Applicant failed to disclose in his SCA that he had a car repossessed and had debts that were delinquent more than 180 days. An Applicant may be disqualified from holding a security clearance if deliberately omits or falsifies relevant and material facts from his SCA. DC E2.A5.1.2.2. The evidence established that Applicant turned his car in because he could not make the required payments. Under the circumstances, I conclude the term repossess is somewhat ambiguous as it applies to the voluntary relinquishment of the automobile. Under the circumstances, I conclude he did not deliberately falsify his answer to question 35. Applicant failed to convince me he did not falsify his answer to question 38. He must have known the debts listed in ¶¶ 1.a., 1.b., and 1.h. had, in the previous seven years, been in arrears more than 180 days.

### **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.: Against Applicant

Subparagraph 1.e.: Against Applicant

Subparagraph 1.f.: Against Applicant

Subparagraph 1.g.: Against Applicant

Subparagraph 1.h.: Against Applicant

Paragraph 2. Guideline E: AGAINST APPLICANT

Subparagraph 2.a.: For Applicant

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