

DATE: November 26, 2003

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In Re:

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SSN: -----

Applicant for Security Clearance

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ISCR Case No. 02-06703

**DECISION OF ADMINISTRATIVE JUDGE**

**WILFORD H. ROSS**

**APPEARANCES**

**FOR GOVERNMENT**

Melvin A. Howry, Esquire, Department Counsel

**FOR APPLICANT**

*Pro Se*

**SYNOPSIS**

The Applicant has had serious debt problems for several years. Part of this was brought about by a divorce and employment problems. However, it is only within the last year that he has begun to take control of his finances. This culminated in the filing of a Chapter 7 bankruptcy which will be discharged in approximately December 2003. Insufficient mitigation is shown, financial considerations guideline found against the Applicant. The Applicant did not falsify a Security Clearance Questionnaire as alleged in the SOR. Adverse inference is not overcome. Clearance is denied.

**STATEMENT OF THE CASE**

On February 14, 2003, the Defense Office of Hearings and Appeals (DOHA), pursuant to Executive Order 10865 (as amended) and Department of Defense Directive 5220.6 (Directive), dated January 2, 1992, issued a Statement of Reasons (SOR) to the 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 the Applicant and recommended referral to an Administrative Judge to determine whether a clearance should be denied or revoked.

The Applicant responded to the SOR in writing on March 14, 2003, and requested a hearing. The case was received by the undersigned on June 18, 2003, and a Notice of Hearing was issued on June 30, 2003.

A hearing was held on July 22, 2003, at which the Government presented six documentary exhibits. Testimony was taken from the Applicant, who called one additional witness, and also submitted five hearing exhibits (Applicant's Exhibits A through E) and four post-hearing exhibits. (Applicant's Exhibit F is a signed copy of Applicant's Exhibit D; Applicant's Exhibit G is a letter from the Treasury Department dated May 2, 2003; Applicant's Exhibit H is a letter from the Applicant's bankruptcy attorney and a copy of the face sheet of the Applicant's Chapter 7 bankruptcy, filed September 15, 2003; and Applicant's Exhibit I is the Notice of Chapter 7 Bankruptcy Case, Meeting of Creditors &

Deadlines, also dated September 15, 2003.) Department Counsel objected to my considering Applicant's Exhibits H and I because they are untimely. In my opinion they relate directly to Applicant's Exhibit B. The objections are overruled. The transcript was received on July 29, 2003.

### FINDINGS OF FACT

The Applicant is 31, single and has a high school diploma. He is employed by a defense contractor as a welder, and he seeks to obtain a DoD security clearance in connection with his employment in the defense sector.

The Government opposes the Applicant's request for a security clearance, based upon the allegations set forth in the Statement of Reasons (SOR). The following findings of fact are entered as to each paragraph and guideline in the SOR. They are based on the Applicant's Answer to the SOR, the exhibits and the live testimony.

Paragraph 1 (Guideline F - Financial considerations). The Government alleges in this paragraph that the Applicant is ineligible for clearance because he has financial problems which indicate poor judgment, untrustworthiness or unreliability on his part.

1.a. The Applicant admits that a judgment was entered against him by a bank in the amount of \$500.00. The Applicant testified that the judgment has been paid. (Transcript at 26.) However, in Schedule F of his bankruptcy petition, the Applicant admits owing this creditor another \$13,408.00 for a revolving loan and credit card debt. (Government Exhibit 1 at 1, Applicant's Exhibit B at 5.)

1.b. The Applicant admits that he owed AAFES approximately \$1,498.69. In May 2003, the Treasury Department forwarded this amount from the Applicant's 2002 tax refund to pay this past due debt. (Applicant's Exhibit G.) This allegation is found for the Applicant.

1.c. The Applicant admits owing a deficiency balance on a repossessed automobile of \$6388.78 to a finance company. This amount has not been paid and is included in the Applicant's Chapter 7 bankruptcy. (Transcript at 27, Applicant's Exhibit B at 5.)

1.d. The Applicant admits owing a utility company \$319.00 in past due payments for services. This amount has not been paid and is included in the Applicant's Chapter 7 bankruptcy. (Transcript at 28, Applicant's Exhibit B at 5.)

1.e. The Applicant admits owing a bank \$1,169.00 in past due credit card debt. This amount has not been paid and is included in the Applicant's Chapter 7 bankruptcy. (Transcript at 28, Applicant's Exhibit B at 5.)

1.f. The Applicant admits that a judgment was entered against him and his ex-wife in the amount of \$11,198.00. The ex-wife's wages were garnished and, from the available court records, it appears the entire judgment was paid off in 1998. The Applicant maintains, and the court records support, that he was never personally served with the complaint. To protect the Applicant, he listed this debt in the Schedule F of his bankruptcy petition. (Transcript at 28-29, Applicant's Exhibit B at 5, Applicant's Exhibit C.) This allegation is found for the Applicant.

1.g. The Applicant admits owing \$11,149.19 in past due maintenance fees for a condominium he owned. This amount has not been paid and is included in the Applicant's Chapter 7 bankruptcy. (Transcript at 29-30, Applicant's Exhibit B at 7.)

1.h. The Applicant admitted in his Answer to the SOR owing \$1,500 in past due credit card charges to a bank. He also admitted that this debt has not been paid. At the hearing, and in Schedule F of his bankruptcy petition, the Applicant disputed the debt. He states that he has no specific knowledge of this credit card. (Transcript at 30, Applicant's Exhibit B at 7.) In addition, none of the credit reports submitted by the Government show this debt. (Government Exhibits 2, 4, 5 and 6.) This allegation is found for the Applicant.

1.i. The Applicant admitted in his Answer to the SOR owing \$1,734.60 to this creditor for a past due account. (*See, also*, Government Exhibit at 2-3.) At the hearing, the Applicant disputed the debt, saying it may have been his ex-wife's. (Transcript at 31-32.) In addition, none of the credit reports submitted by the Government show this debt. (Government

Exhibits 2, 4, 5 and 6.) This allegation is found for the Applicant.

1.j. The Applicant admits owing this collection agency \$1,197.00 in past due indebtedness. This amount has not been paid and is included in the Applicant's Chapter 7 bankruptcy. (Transcript at 32-33, Applicant's Exhibit B at 6.)

1.k. The Applicant admits owing a telephone company \$1,500.00 for a delinquent account. This amount has not been paid and is included in the Applicant's Chapter 7 bankruptcy. (Transcript at 32, Applicant's Exhibit B at 6.)

1.l. The Applicant admits owing an automobile dealership \$750.00 for the deficiency on an automobile that was repossessed. (Transcript at 33.)

1.m. The Applicant admits that his house was foreclosed on in 1998. Since the loan was guaranteed by the Department of Veteran's Affairs, it appears that there is no current deficiency owed to the mortgage company. (Transcript at 33-34.) This allegation is found for the Applicant.

The Applicant filed for protection under Chapter 7 of the Bankruptcy Code on September 15, 2003. His Schedule F shows \$75,441.14 in unsecured debt. (Applicant's Exhibit B at 5-7.) Several of the creditors referred to in the Schedule F are not in the Statement of Reasons or the available credit reports. The meeting of Creditors was scheduled for October 20, 2003, and the Deadline to File a Complaint Objecting to Discharge of the Debtor or to Determine Dischargeability of Certain Debts is set for December 19, 2003. (Applicant's Exhibit I.)

The Applicant testified that his financial problems occurred primarily because of a divorce from his wife and the breakdown of business relationship. Both of these events occurred in 1997-1998. (Transcript at 36-37, 43-46.) Following that the Applicant went through a long period of unemployment or underemployment, which ended in late 2002, when he was hired by his current employer. (Transcript at 49-50.)

The Applicant further testified that his current financial situation is healthy. He is able to keep up on his current bills. Once the Chapter 7 is concluded, he is confident that he can move on and continue to pay his bills. (Transcript at 47-48.)

Paragraph 2 (Guideline E - Personal conduct). The Government alleges in this paragraph that the Applicant is ineligible for clearance because he intentionally falsified material aspects of his personal background during the clearance screening process.

On October 13, 2001, the Applicant completed the paper copy of an SF 86, Questionnaire for National Security Positions. (Applicant's Exhibit E.) He answered "Yes" to Question 27 which asks, "In the last 7 years, have you had your wages garnished or property repossessed for any reason?" This was a true answer to BOTH parts of that question. In the available space below, the Applicant described the foreclosure of his house. He did not describe the garnishment of his wages set forth under subparagraph 1.a., above.

The Applicant also answered "Yes" to Questions 28a and 28b. These questions asked, respectively, "In the last 7 years, have you been over 180 days delinquent on any debt(s)?" and "Are you currently over 90 days delinquent on any debt(s)?" These were true answers to both questions. In the available space below, he described only his delinquent phone bill. The Applicant did not describe his other past due indebtedness, set forth under Paragraph 1, above.

The Applicant should have used the area marked "Continuation Space" to further describe his debt situation. Specifically, to set forth all of his past due debts and his garnishment. However, due to confusion on the Applicant's part concerning what he could put in the "Continuation Space," he did not do so. (Transcript at 42, Applicant's Exhibit F.)

When the company security officer later transcribed the Applicant's handwritten questionnaire to the Electronic Personnel Security Questionnaire (EPSQ), some transcription errors were made. The security officer marked Question 34, regarding wage garnishments, "No." This was an incorrect answer, and the Applicant did not catch it when he signed the EPSQ.

The security officer correctly transcribed what the Applicant said about having debts 90 and 180 days delinquent. In

conversations with the Applicant about what information he needed to reveal, she also told the Applicant to just put one debt down, then bring the rest of the information to the Defense Security Service agent when the Applicant had his interview. (Transcript at 42-43.) The Applicant did exactly that. (Government Exhibit 2.)

The Applicant's answer to question 37, stating that he had no unpaid judgements in the last seven years, was correct. The record indicates that the judgment described in subparagraph 1.a. was paid by the Applicant, and the judgment described in subparagraph 1.f. was paid by a garnishment on the ex-wife's wages in 1998.

### Mitigation.

The Applicant's supervisor testified on his behalf. The supervisor described the Applicant as a hard-working, trustworthy employee. He finds the Applicant to be reliable and truthful. The witness also described how EPSQs were filled out and corroborated the Applicant's testimony concerning this situation. (Transcript at 52-58.)

## **POLICIES**

Security clearance decisions are not made in a vacuum. Accordingly, the Department of Defense, in Enclosure 2 of the 1992 Directive, has set forth policy factors which must be given "binding" consideration in making security clearance determinations. These factors should be followed in every case according to the pertinent guideline. However, the factors are neither automatically determinative of the decision in any case, nor can they supersede the Administrative Judge's reliance on his own common sense, as well as his knowledge of the law, human nature and the ways of the world, in making a reasoned decision. Because each security clearance case presents its own unique facts and circumstances, it cannot be assumed that these factors exhaust the realm

of human experience, or apply equally in every case. Based on the Findings of Fact set forth above, the factors most applicable to the evaluation of this case are:

### Guideline F (Financial considerations)

#### Conditions that could raise a security concern:

- (1) a history of not meeting financial obligations;
- (3) inability or unwillingness to satisfy debts;

#### Conditions that could mitigate security concerns:

- (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);
- (6) the individual initiated a good-faith effort to repay overdue creditors or otherwise resolve debts.

### Guideline E (Personal conduct)

#### Conditions that could raise a security concern:

(None of the stated conditions have application in this case.)

#### Conditions that could mitigate security concerns:

- (4) omission of material facts was caused or significantly contributed to by improper or inadequate advice of authorized personnel, and the previously omitted information was promptly and fully provided;

In addition, as set forth in Enclosure 2 of the Directive at pages 16-17, "In evaluating the relevance of an individual's conduct, the [Administrative Judge] should consider the following factors [General Factors]:

- a. The nature, extent and seriousness of the conduct
- b. The circumstances surrounding the conduct, to include knowledgeable participation
- c. The frequency and recency of the conduct
- d. The individual's age and maturity at the time of the conduct
- e. The voluntariness of participation
- f. The presence or absence of rehabilitation and other pertinent behavior changes
- g. The motivation for the conduct
- h. The potential for pressure, coercion, exploitation or duress
- i. The likelihood of continuation or recurrence."

The eligibility guidelines established in the DoD Directive identify personal characteristics and conduct which are reasonably related to the ultimate question of whether it is "clearly consistent with the national interest" to grant an Applicant's request for access to classified information.

In the defense industry, the security of classified industrial secrets is entrusted to civilian workers who must be counted upon to safeguard such sensitive information twenty-four hours a day. The Government is therefore appropriately concerned where available information indicates that an Applicant for clearance may be involved in acts of financial irresponsibility or falsification that demonstrates poor judgement, untrustworthiness or unreliability on the Applicant's part.

The DoD Directive states, "Each adjudication is to be an overall common sense determination based upon consideration and assessment of all available information, both favorable and unfavorable, with particular emphasis placed on the seriousness, recency, frequency, and motivation for the individual's conduct; the extent to which conduct was negligent, willful, voluntary, or undertaken with the knowledge of the circumstances or consequences involved; and, to the extent that it can be estimated, the probability that conduct will or will not continue in the future." The Administrative Judge can only draw those inferences or conclusions that have a reasonable and logical basis in the evidence of record. The Judge cannot draw inferences or conclusions based on evidence which is speculative or conjectural in nature. Finally, as emphasized by President Eisenhower in Executive Order 10865, "Any determination under this order...shall be a determination in terms of the national interest and shall in no sense be a determination as to the loyalty of the applicant concerned."

### CONCLUSIONS

It is the Government's responsibility to present substantial evidence to support the finding of a nexus, or rational connection, between the Applicant's conduct and the granting of a security clearance. If such a case has been established, the burden then shifts to the Applicant to go forward with evidence in rebuttal, explanation or mitigation which is sufficient to overcome or outweigh the Government's case. The Applicant bears the ultimate burden of persuasion in proving that it is clearly consistent with the national interest to grant him or her a security clearance.

In this case the Government has met its initial burden of proving by substantial evidence that the Applicant has financial problems (Guideline F).

The Applicant, on the other hand, has not introduced persuasive evidence in rebuttal, explanation or mitigation which is sufficient to overcome the Government's case against him, except in part. Under Paragraph 1 (Guideline F), as set forth above, subparagraphs 1.a., 1.f., 1.h., 1.i. and 1.m. are found for the Applicant as these debts have been paid. Paragraph 3 (Guideline E) is found for the Applicant as I have determined that the subject statements in these three subparagraphs were not willful and/or false. That is because they were either based on the improper transcription from one form to

another by the company security officer (subparagraph 2.a.), or the answer was true (subparagraph 2.b.), or the Applicant misunderstood the form and relied on improper instructions from his security officer (subparagraph 2.c.).

The Applicant's debt situation is substantial, and is of long duration. I have considered the Applicant's marital discord and employment difficulties of the late 1990s as potentially mitigating. He has begun to take control of his finances, and is showing a much improved attitude towards them. This is shown by his decision to file a Chapter 7 bankruptcy. However, the fact remains that the Applicant will not receive a discharge in bankruptcy until some time in December 2003. He has virtually no current track record of being able to maintain his financial stability. Guideline F is found against the Applicant.

The Applicant's efforts at reform are noted, and if he is successful in achieving financial stability he may be eligible for a security clearance in the future. However, on balance, it is concluded that the Applicant has failed to overcome the Government's information opposing his request for a security clearance. Accordingly, the evidence supports a finding against the Applicant as to the conclusionary allegations expressed in Paragraph 1 of the Government's Statement of Reasons. As set forth above, Paragraph 2 is found for the Applicant.

### **FORMAL FINDINGS**

Formal findings For or Against the Applicant on the allegations in the SOR, as required by Paragraph 25 of Enclosure 3 of the Directive, are:

Paragraph 1: Against the Applicant.

Subparagraph 1.a.: Against the Applicant.

Subparagraph 1.b.: For the Applicant.

Subparagraph 1.c.: Against the Applicant.

Subparagraph 1.d.: Against the Applicant.

Subparagraph 1.e.: Against the Applicant.

Subparagraph 1.f.: For the Applicant.

Subparagraph 1.g.: Against the Applicant.

Subparagraph 1.h.: For the Applicant.

Subparagraph 1.i.: For the Applicant.

Subparagraph 1.j.: Against the Applicant.

Subparagraph 1.k.: Against the Applicant.

Subparagraph 1.l.: Against the Applicant.

Subparagraph 1.m.: For the Applicant.

Paragraph 2: For the Applicant.

Subparagraph 2.a.: For the Applicant.

Subparagraph 2.b.: For the Applicant.

Subparagraph 2.c.: For the Applicant.

**DECISION**

In light of all 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 the Applicant.

Wilford H. Ross

Administrative Judge