

DATE: June 24, 2004

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In Re:

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SSN: -----

Applicant for Security Clearance

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CR Case No. 02-10938

**DECISION OF ADMINISTRATIVE JUDGE**

**ROGER E. WILLMETH**

**APPEARANCES**

**FOR GOVERNMENT**

Catherine M. Engstrom, Department Counsel

**FOR APPLICANT**

*Pro Se*

**SYNOPSIS**

Applicant has failed to mitigate financial concerns, including state tax liability of more than \$28,000.00 for tax year 1996. Although the amount of his liability may have been reduced as a result of the garnishment of his pay from 1998-2000, Applicant has failed to demonstrate that omissions from his security clearance application were not deliberate. Attributing his failure to list delinquent debts to his wife paying the bills does not explain his failure to list the tax liability, including the garnishment of his pay, when he discussed both at length with a DSS investigator before submitting his security clearance application. Clearance is denied.

**STATEMENT OF THE CASE**

On September 8, 2003, the Defense Office of Hearings and Appeals (DOHA), pursuant to the applicable Executive Order <sup>(1)</sup> and Department of Defense Directive, <sup>(2)</sup> issued a Statement Reasons (SOR) to Applicant. The SOR details security concerns under Guideline F (Financial Considerations) and Guideline E (Personal Conduct). The SOR states that DOHA was unable to find that it is clearly consistent with the national interest to grant him access to classified information and recommends that her case be submitted to an Administrative Judge.

On October 6, 2003, DOHA received Applicant's response to the SOR, dated October 2, 2003, in which he requested a hearing. The case was assigned to me on January 5, 2004. A notice of hearing was issued on January 16, 2004 and the hearing was held on February 18, 2004. During the hearing, nine Government exhibits (Govt Ex), two Applicant exhibits (Ap Ex) and the testimony of Applicant were received. The transcript (Tr) was received on February 24, 2004.

**PROCEDURAL ISSUE**

Without objection by Department Counsel, I granted Applicant until March 3, 2004 to provide documentation pertaining to the status of his indebtedness. Without objection by Department Counsel, I have marked Applicant's post-hearing submission, including Department Counsel's response, as Ap Ex C and have considered it in reaching my decision.

## FINDINGS OF FACT

Having thoroughly considered the evidence in the record, I make the following findings of fact:

Applicant is a 53-year-old senior systems engineer employed by a defense contractor. He is seeking a security clearance.

In May 1997, a state tax lien against Applicant in the amount of \$3,260.00 was released. On September 7, 1998, Applicant's state of residence began garnishing his pay to collect \$28,610.50 in unpaid tax liability for tax year 1996, including penalties and interest. By January 25, 2000, the amount of his indebtedness was reduced to \$17,563.56. The state continued to garnish Applicant's pay until October 2000, when he left that employment to begin working for his current employer (SOR ¶ 1.a).

In October 1998, Applicant opened a credit account with a department store and incurred a \$1,675.00 debt that was charged off as a bad debt and transferred to a debt collector. In addition, he has another delinquent account in the amount of \$199.00 with the same department store. The debts have not been paid or otherwise settled (SOR ¶ 1.e).

On February 5, 1999, a court ordered the garnishment of Applicant's pay in the amount of \$275.00 per month for child support. The amount included \$25.00 per month to cover an arrearage.

In August 1999, an unpaid \$32.00 medical bill owed by Applicant was transferred to a debt collector. On May 27, 2003, Applicant paid the debt (SOR ¶ 1.b).

In October 2000, a \$448.00 debt to a telephone company that Applicant had incurred was transferred to a debt collector. The debt has not been paid or otherwise settled (SOR ¶ 1.c).

On April 20, 2000, Applicant was interviewed by a special agent of the Defense Security Service (DSS) and provided a sworn statement. He discussed the state's garnishment of his pay beginning in 1999 to collect delinquent taxes for 1996. Applicant stated he could settle the obligation with a payment of \$8,500.00, not including penalties and interest (SOR ¶ 2.a).

Before Applicant left his former state of residence, he incurred a \$39.00 debt to a gas and electric company that he did not pay. He paid the debt on February 27, 2004 (SOR ¶ 1.d).

On October 9, 2002, Applicant executed a security clearance application (SF 86). In response to question 34, <sup>(3)</sup> Applicant answered, "yes," and listed the garnishment for child support. However, he failed to list the garnishment for state taxes (SOR ¶ 2.a). In response to question 38 <sup>(4)</sup> on the same SF 86, Applicant answered, "no" (SOR ¶ 2.b).

On May 22, 2003, Applicant answered interrogatories. He said he was not aware of the debt to the telephone company and was making arrangements to pay it. Applicant also stated that he was not aware the debt to the department store had been charged off and that the bill was being settled.

## POLICIES

Department Counsel is responsible for presenting witnesses and other evidence to establish facts alleged in the SOR that have been controverted. Directive E3.1.14. The applicant is responsible for presenting witnesses and other evidence to rebut, explain, extenuate, or mitigate facts admitted by the applicant or proven by Department Counsel, and has the ultimate burden of persuasion as to obtaining a favorable clearance decision. Directive E3.1.15.

Eligibility for access to classified information is predicated upon an individual meeting adjudicative guidelines discussed in Enclosure 2 of the Directive. An evaluation of whether an applicant meets these guidelines includes the consideration of a number of variables known as the "whole person concept." Available, reliable information about the person, past and present, favorable and unfavorable, should be considered in reaching a decision. This assessment should include the following factors: (1) the nature, extent, and seriousness of the conduct; (2) the circumstances surrounding the conduct, to include knowledgeable participation; (3) the frequency and recency of the conduct; (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. Any doubt as to whether access to classified information is clearly consistent with national security will be resolved in favor of national security. Directive E2.2.2.

Enclosure 2 provides conditions for each guideline that could raise a concern and may be disqualifying, as well as further conditions that could mitigate a concern and support granting a clearance. The following guidelines are applicable to this case.

#### Guideline F: Financial Considerations

The concern is that an individual who is financially overextended is at risk of having to engage in illegal acts to generate funds. Conditions that could raise a security concern and may be disqualifying include E2.A6.1.2.1, a history of not meeting financial obligations (Disqualifying Condition 1). They also include E2.A6.1.2.3, inability or unwillingness to satisfy debts (Disqualifying Condition 3).

Conditions that could mitigate security concerns include E2.A6.1.3.1, the behavior was not recent (Mitigating Condition 1), and E2.A6.1.3.3, 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) (Mitigating Condition 3). They also include E2.A6.1.3.6, the individual initiated a good-faith effort to repay overdue creditors or otherwise resolve debts (Mitigating Condition 6).

#### Guideline E: Personal Conduct

The concern under Guideline E is 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. Conditions that could raise a security concern and may be disqualifying under Guideline E include E2.A5.1.2.2 (Disqualifying Condition 2). Disqualifying Condition 2 covers the deliberate omission, concealment, or falsification 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.

## CONCLUSIONS

#### Guideline F: Financial Considerations

The record establishes Applicant's history of not meeting financial obligations, as well as his inability or unwillingness to satisfy debts. He incurred a state tax liability of more than \$28,000.00 for tax year 1996 that still has not been paid or settled. The amount of the liability was only reduced as a result of the garnishment of his pay. Based on Applicant's contention, he still owes \$8,500.00, not including penalties and interest. In addition, Applicant still owes a \$1,675.00 debt to a department store that was placed for collection over five years ago and a \$448.00 debt to a telephone company that was placed for collection over three years ago. The record raises both Disqualifying Condition 1 and Disqualifying Condition 3.

On April 20, 2000, Applicant told a DSS investigator he planned to pay off the state tax liability (SOR ¶ 1.a) through the sale of stock. His answer to the SOR said that the state liability "is being worked and I expect satisfaction within 6 months." During the hearing, Applicant testified, "I have talked to [the tax board] trying to resolve this early on, but I do not have any recent information on this...." <sup>(5)</sup> Moreover, he offered no evidence of any recent effort on his part to resolve this obligation.

The only debts addressed by the SOR the Applicant has paid are a \$32.00 medical bill that was transferred to a debt collector in 1999 (SOR ¶ 1.b) and a \$39.00 debt a utility company that was several years delinquent (SOR ¶ 1.d). In response to interrogatories in May 2003, Applicant said that he had not been aware that the telephone bill (SOR ¶ 1.c) had not been paid because his wife paid the bills but that he was "making arrangements to pay bill" (sic). In his subsequent answer to the SOR, Applicant denied the debt. During the hearing, he testified, "my intentions concerning

this debt and all debts is to pay those debts as soon as possible." However, Applicant has failed to provide any evidence of having done so. On May 22, 2003, Applicant said that he had not been aware of the charged off account with a department store (SOR ¶ 1.e) and "the bill is being settled." His post-hearing submission indicates that he made arrangements to pay \$335.17 down and \$223.45 for six months to settle the account but there is no confirmation of this by the debt collector or creditor and no proof of any payment.

With the exception of two minor debts, the record demonstrates that Applicant has failed to mitigate or otherwise address the Government's financial concerns. Therefore, I find against Applicant with regard to SOR ¶ 1.

#### Guideline E: Personal Conduct

Although Applicant listed a garnishment of his pay for child support, he failed to include a garnishment to collect his \$28,000.00 state tax liability (SOR ¶ 2.a), a matter relevant and material to a determination of his security worthiness. He repeated the indiscretion in his answer to the SOR by maintaining, "the only wage attachments I had in the last 7 years were child support payments...." Applicant testified that he failed to list the garnishment for tax liability because of confusion. However, he did not appear to be at all confused when he discussed at length the garnishment for unpaid taxes with a DSS investigator in 2000. Given his prior statement, Applicant's explanation for the omission from his SF 86 is not credible.

Applicant attributed his failure to list his delinquent debts on his SF 86 to not being aware of them because his wife paid the bills. However, this does not address his failure to list the largest delinquent indebtedness, his state tax liability. Applicant's statement to a DSS investigator reveals that he had been aware of the outstanding tax liability at least since 1999. Once again, his prior statement demonstrate that his explanation for his failure to list the delinquent indebtedness is not credible.

Applicant stresses that it would be a disservice to deny him a security clearance in light of his contribution to black programs. However, Applicant's job skills or his value to his employer do not reduce or diminish the negative security implications of his conduct. ISCR Case No. 98-0435 (September 16, 1999) at p.2.

The record establishes that Applicant deliberately omitted relevant and material facts from his security clearance application. He has failed to mitigate those omissions. Therefore, I find against Applicant with regard to SOR ¶ 2.

### FORMAL FINDINGS

Formal findings, as required by section E3.1.25 of Enclosure 3 of the Directive, are as follows:

#### Paragraph 1. Guideline F: AGAINST APPLICANT

Subparagraph 1.a: Against Applicant

Subparagraph 1.b: For Applicant

Subparagraph 1.c: Against Applicant

Subparagraph 1.d: For Applicant

Subparagraph 1.e: Against Applicant

#### Paragraph 2. Guideline E: AGAINST APPLICANT

Subparagraph 2.a: Against Applicant

Subparagraph 2.b: Against Applicant

### DECISION

In light of the evidence of record in this case, it is not clearly consistent with the national interest to grant or continue a security clearance for Applicant.

*Signed*

**Roger E. Willmeth**

**Administrative Judge**

1. Executive Order 10865, *Safeguarding Classified Information Within Industry*, dated February 20, 1960, as amended.
2. Department of Defense Directive 5220.6, *Defense Industrial Personnel Security Clearance Review Program* (Directive), dated January 2, 1992, as amended and modified.
3. "In the last 7 years, have you had your wages garnished for any reason?"
4. "In the last 7 years, have you been over 180 days delinquent on any debt(s)?"
5. Tr. 27.