

DATE: November 2, 2004

In re:

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SSN: -----

Applicant for Security Clearance

ISCR Case No. 02-27573

**DECISION OF ADMINISTRATIVE JUDGE**

**JAMES A. YOUNG**

**APPEARANCES**

**FOR GOVERNMENT**

Francisco J. Mendez, Esq., Department Counsel

**FOR APPLICANT**

*Pro Se*

**SYNOPSIS**

Applicant failed to mitigate security concerns raised by his financial condition and his knowing and willful failure to report his financial condition and criminal conduct on his security clearance application. 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 21 November 2003, DOHA issued a Statement of Reasons<sup>(1)</sup> (SOR) detailing the basis for its decision-security concerns raised under Guideline F (Financial Considerations), Guideline E (Personal Conduct), and Guideline J (Criminal Conduct) of the Directive. Applicant answered the SOR in writing on 13 February and 9 April 2004 and elected to have a hearing before an administrative judge. The case was assigned to me on 30 July 2004. On 16 September 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 22 September 2004.

**RULINGS ON PROCEDURE**

Department Counsel moved to amend the SOR ¶ 1 to include several additional debts that were charged off or placed for collection, totaling over \$15,000 (¶ 1.j-1.o), a federal tax lien for over \$13,000 (¶ 1.p), and an unpaid judgment of \$985 (¶ 1.q). Department Counsel also moved to amend the SOR by adding an allegation Applicant deliberately falsified his security clearance application (SCA) by denying he had unpaid judgments against him (¶ 2.e). Applicant had no objection to the motion to amend. The SOR was so amended.

**FINDINGS OF FACT**

Applicant is a 51-year old employee of a defense contractor. He is a hard worker and holds down two full-time jobs.

In 25 March 1985, Applicant was arrested and charged with possession of a controlled substance (marijuana) and

possession with intent to deliver (a felony). Ex. 5 at 1. Applicant pled guilty to the misdemeanor possession charge, entry of judgment was deferred, and he was placed on probation without verdict for six months. *Id.* at 16. Applicant violated the terms of his probation by failing to pay fines and costs prior to the expiration of his probation. Applicant agreed to the attachment of his wages for \$10 a week. In May 1988, Applicant was charged with public drunkenness. Answer. Applicant has been drug and alcohol free since 1993.

Applicant has many delinquent debts. The following chart summarizes the delinquent debt allegations in the SOR by paragraph.

¶	Nature and Amount	Status	Record
1.a	Housing Authority--\$232	In collection--not paid	Ans; Tr. 35-36
1.b	Dept. Store--\$1,023	In collection--not paid--claims credit limit of \$500	Tr. at 36-37
1.c	Dept. Store--\$500	Charged off in 1997--\$861--not paid	Ex. 3 at
1.d	Dept Store--\$294	Charged off in 1998--claims paid, but no proof	Tr. 37
1.e	Bank debt--\$979	Charged off in 2000--unpaid	Tr. 39
1.f	Bank debt \$5,017	Debt after sale of repossessed vehicle in 1997--still not paid	Tr. 39
1.j	Telephone--\$49	Claims it paid--no evidence	Tr. 40-41
1.k	Bank--\$968	Charged off --unpaid	Tr. 41
1.l	Finance Co--\$405	Unpaid	Tr. 41-42
1.m	Collection acct--\$476	Unaware of debt--unpaid	Tr. 42
1.n	Charged off auto acct--\$11,885	Unpaid	Tr. 43
1.o	Merchandise Co--\$2,537	Charged off and unpaid	Tr. 44-45
1.p	U.S. taxes--\$13,569	Payment plan--no evidence of payment	Tr. 47-48
1.q	Judgment--\$985	Failure to pay rent--contests--unpaid	Tr. 49-50

In addition, Applicant voluntarily turned in a vehicle for repossession in April 2002. Applicant owes \$11,885 on the account (same action as debt in ¶ 1.n). His wages were voluntarily garnished to satisfy a debt to the Internal Revenue Service (IRS) and to a tax collection bureau. ¶ 1.h). On 12 March 2001, the IRS filed a federal tax lien for \$13,569 against Applicant. Ex. 7 at 2. On 7 August 2001, Applicant called the IRS to set up a payment plan. Ex. 4. In September 2003, the IRS filed another federal tax lien against Applicant for more than \$13,841. Ex. 7 at 1. Applicant did not file his 2003 federal income tax return. Applicant is not making sufficient money to pay off his debts.

Applicant completed an SCA on 4 August 2000. Ex. 1. Question 23a asked if he had ever been charged with or convicted of any felony offense. Question 23d asked if Applicant had ever been charged with or convicted of any offense related to drugs or alcohol. Question 27b asked if, in the previous seven years, Applicant had his wages garnished or any property repossessed. Question 28a asked if in the previous seven years Applicant had been delinquent more than 180 days on any debts. Question 28b asked if Applicant was then delinquent more than 90 days on any debts. Applicant answered "no" to all of these 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 personnel 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, as amended, DOHA alleged Applicant had delinquent debts that were in collection or charged off status (¶ 1.a-1.e, 1.j-1.o) totaling approximately \$18,000; was indebted to a bank after resale of a vehicle that was voluntarily repossessed (¶ 1.f); had another vehicle repossessed (¶ 1.g); had his wages garnished (¶ 1.h); is not producing sufficient income to pay these debts (¶ 1.i), and has a federal tax lien (¶ 1.p) and an unpaid judgment (¶ 1.q) against him. 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 each of the allegations in the SOR. 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.). None of the mitigating conditions apply. Applicant seems oblivious to his financial condition and the rules governing financial matters. He refused to pay a charge for leaving his apartment without giving sufficient notice because he did not believe he should have to pay for an apartment in which he was no longer living. When his car was stolen, and his insurance paid off the value of the car, Applicant was left owing the difference between the loan amount and the insurance payout. He did not think he should have to pay, so he did not. He has utterly failed to stay current on his federal income taxes as established by the two federal tax liens against him. I find against Applicant.

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

In the SOR, DOHA alleged Applicant falsified his SCA by deliberately denying he had been convicted of any felony offenses (¶ 2.a) and any alcohol or drug-related offenses (¶ 2.b); and denied having his wages garnished in the previous seven years (¶ 2.c), having any debts in the previous seven years that were delinquent more than 180 days or currently delinquent more than 90 days (¶ 2.d), and having any unpaid judgments in the previous seven years (¶ 2.e). 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. Directive ¶ E2.A5.1.1.

The Government established by substantial evidence and Applicant's admissions each of the allegations in the SOR. Applicant claims he thought the alcohol and drug offenses had been expunged from his record and he did not have to report them. But the form specifically required Applicant to report such offenses "regardless of whether the record in your case has been 'sealed' or otherwise stricken from the court record." Applicant deliberately concealed relevant and material facts from his SCA. DC E2.A5.1.2.2. None of the mitigating conditions apply. I find Against Applicant.

## **Guideline J--Criminal Conduct**

In the SOR, DOHA alleged Applicant violated 18 U.S.C. § 1001 by deliberately making false statements on his SCA. ¶ 3.a. A history or pattern of criminal activity creates doubt about a person's judgment, reliability, and trustworthiness. Directive ¶ E2.A10.1.1.

It is a criminal offense to knowingly and willfully make any materially false, fictitious, or fraudulent statement or representation in any matter within the executive branch of the Government of the United States. 18 U.S.C. § 1001. Security clearances are within the jurisdiction of the executive branch of the Government of the United States. *See Egan*, 484 U.S. at 527. An applicant's criminal conduct and financial condition are relevant and material to a determination of his security worthiness. Applicant knowingly and willfully violated 18 U.S.C. § 1001 by making material false statements on his SCA concerning his past criminal conduct and his financial situation.

An applicant may be disqualified if he commits serious criminal offenses, regardless of whether he is charged or convicted. DC E2.A10.1.2.1; DC E2.A10.1.2.2. Applicant's violation of 18 U.S.C. § 1001 is a serious offense. None of the mitigating conditions apply. It is a mitigating condition if the criminal offense is isolated. MC E2.A10.1.3.2. Although Applicant falsified only one document, the numerous separate false statements on his SCA and his past criminal conduct militates against applying this mitigating condition to Applicant. After weighing the disqualifying and mitigating conditions, I find 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-1.q: Against Applicant

Paragraph 2. Guideline E: AGAINST APPLICANT

Subparagraph 2.a-2.e: Against Applicant

Paragraph 3. Guideline J: AGAINST APPLICANT

Subparagraph 3.a: 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 (Directive).