

DATE: November 18, 2003

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In re:

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SSN: -----

Applicant for Security Clearance

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ISCR Case No. 02-30603

DECISION OF ADMINISTRATIVE JUDGE

JAMES A. YOUNG

APPEARANCES

**FOR GOVERNMENT**

Marc Curry, Esq., Department Counsel

**FOR APPLICANT**

*Pro Se*

**SYNOPSIS**

Applicant, who had debts discharged in bankruptcy in 1988, filed a Chapter 13 repayment plan in 2001. The Chapter 13 was dismissed because Applicant failed to make the required payments. Applicant deliberately falsified a signed, sworn statement made to a Defense Security Service agent after the dismissal, by claiming he was making his Chapter 13 payments. 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 16 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-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 3 May 2003 and elected to have a hearing before an administrative judge. The case was assigned to me on 10 September 2003. On 28 October 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 4 November 2003. I left the record open for 15 days so Applicant could submit additional evidence concerning his financial situation. Without objection from department counsel, I admitted Ex. A which was submitted within the 15-day period.

**FINDINGS OF FACT**

Applicant is 58 years old. In 1990, he retired from the U.S. Navy after 25 years of service. He has worked for his current employer since 1997.

In 1987, while he was still in the Navy, Applicant filed for bankruptcy under Chapter 7. His debts were discharged in February 1988, and he made a fresh financial start. In August 2001, Applicant filed a Chapter 13 bankruptcy, and the

court set up a payment plan for his over \$32,000 of debts. The plan called for Applicant to pay the trustee \$802 a month for 48 months to pay off his creditors. The bankruptcy was dismissed in May and terminated in June 2002 because Applicant failed to make the payments to the trustee. As a result of the dismissal, Applicant was still responsible for paying off 15 debts totaling more than \$17,500. Since the dismissal of the Chapter 13 bankruptcy Applicant paid one of the debts for approximately \$350. In addition to the delinquent accounts, Applicant owes an additional \$6,600 in credit card debt.

In February 2002, Applicant completed his security clearance application (SCA) in which he listed his Chapter 13 bankruptcy. A Defense Security Service agent interviewed Applicant about his financial situation on 24 July 2002. In a signed, sworn statement he gave to the agent, Applicant claimed he was making payments of \$802 per month to the trustee, but that he had made partial payments on two occasions. He asserted the bankruptcy would be paid off in four years. Ex. 2 at 4. Applicant's personal financial statement, completed on 24 July 2002, alleged his monthly income exceeded his expenses, even after paying \$802 to the trustee, by over \$1,600. Ex. 2 at 3. Although Applicant appears to have sufficient resources to pay off at least some of these debts (Ex. 2 at 3), he made no effort to do so until the SOR was issued.

### 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 received a discharge in bankruptcy in February 1988 (¶ 1.a.) entered a wage-earner's payment plan under Chapter 13 bankruptcy in January 2002 (¶ 1.b.), had his wage-earner's payment plan dismissed in March 2002 for failing to make payments (¶ 1.c.), and had his wages garnished for failing to pay a judgment entered in May 2001 (¶ 1.d.). An applicant who is financially overextended is at risk of having to engage in

illegal acts to generate funds. Directive ¶ E2.A6.1.1.

Applicant has a history of not meeting his financial obligations. DC E2.A6.1.2.1. He was unable or unwilling to satisfy his debts. DC E2.A6.1.2.3. Applicant freely admits that he has paid only one of these delinquent debts. Even by the time of the hearing, Applicant had made no effort to pay off his delinquent debts even though his financial statement shows he is able to do so. *See* Ex. 2 at 3. Finding is against Applicant.

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

In the SOR, DOHA alleged Applicant falsified material facts in a sworn statement, dated 24 July 2002, by claiming he was making payments on his Chapter 13 wage-earner's plan. Conduct involving questionable judgment, lack of candor, or dishonesty could indicate that the person may not properly safeguard classified information. Directive ¶ E2.A5.1.1.

Applicant admits he deliberately lied in his statement to the DSS agent. His only explanation for his failure to tell the truth is "bad judgment." Deliberately providing false or misleading information concerning relevant and material matters to an investigator in connection with a personnel security determination is a condition that could raise a security concerns and may be disqualifying. DC E2.A5.1.2.3. Applicant expressed his remorse for his situation and vowed he would never sell his country out. By admitting deliberately lying in his statement, Applicant has eliminated his vulnerability to coercion, exploitation, or duress. MC E2.A5.1.2.5. However, Applicant did not just falsify a form. He deliberately lied when confronted by a DSS agent about the security concerns raised by his financial situation. Applicant can not be trusted to protect classified information. Finding is against Applicant.

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

In the SOR, DOHA alleged Applicant violated 18 U.S.C. § 1001 by making a false sworn statement as to the whether he was making payments on his Chapter 13 wage-earner's plan. ¶ 3.a. A history or pattern of criminal activity creates doubt about an applicant'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. Applicant deliberately falsified the signed, sworn statement he completed for a DSS agent for the purpose of obtaining a security clearance. An applicant may be disqualified if allegations of criminal conduct are raised against him. DC E2.A10.1.2.1. The criminal offense was an isolated incident. MC E2.A10.1.3.2. Nonetheless, after weighing the disqualifying and mitigating conditions, the 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. Against Applicant

Paragraph 2. Guideline E: AGAINST APPLICANT

Subparagraph 2.a.: 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. 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.