

DATE: November 17, 2004

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In Re:

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SSN: -----

Applicant for Security Clearance

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ISCR Case No. 02-11434

## **DECISION OF ADMINISTRATIVE JUDGE**

**PAUL J. MASON**

### **APPEARANCES**

#### **FOR GOVERNMENT**

Jason Perry, Esq., Department Counsel

#### **FOR APPLICANT**

*Pro Se*

### **SYNOPSIS**

The level of extenuation Applicant receives in 1998 for his work-related injury is reduced by his failure to furnish detailed evidence explaining the extent of the injury and how it interfered with his ability to work and pay his bills. Neither the work-related injury nor his marital difficulty are sufficient to meet his ultimate burden of persuasion under the financial considerations guideline. Furthermore, failing to provide honest answers to two of the financial questions on his security clearance questionnaire (SCA), and denying he was prosecuted for domestic violence raise security concerns under the personal conduct guideline that have not been mitigated. Clearance is denied.

### **STATEMENT OF CASE**

On December 30, 2003, the Defense Office of Hearings and Appeals (DOHA), pursuant to Executive Order 10865 and Department of Defense Directive 5220.6 (Directive), dated January 2, 1992, amended April 4, 1999, issued a Statement of Reasons (SOR) to Applicant. The SOR 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 Applicant and recommended referral to an Administrative Judge to determine whether clearance should be denied or revoked.

Applicant furnished his answer to the SOR on January 26, 2004 and elected to have his case decided on a written record. The Government provided Applicant a copy of the File of Relevant Material (FORM) on May 10, 2004. Applicant received the FORM on June 16, 2004. His response to the FORM was due by July 16, 2004. No response was received. The case was assigned to me on July 26, 2004.

### **FINDINGS OF FACT**

The SOR alleges financial considerations and personal conduct. Applicant denied factual allegations 1.a. through 1.i. He also denied 1.j. and 1.k. as he thought both creditors were satisfied after they sold the chattel for more than each item was worth. He denied subparagraph 2.a. and claimed the car was not repossessed; he simply turned the car in and was

led to believe there would be no additional charges. He answered "no" to the delinquent debt question (2.b.) because he did not believe he was more than 60 days late on any debt. While denying 2.c., documentation in the FORM reflects a petition was filed and Applicant conceded the protective order (for the domestic violence charge) was extended for six months. Applicant is 36 years old and employed as an armaments technician by a defense contractor. He seeks a secret clearance.

**Financial Considerations.** Applicant's financial difficulties began in February 1998<sup>(1)</sup> when he was injured (no additional information provided) at his job as a mechanic for the county road department, shortly after he and his wife purchased a trailer. Even while he was unable to work, he was still able to make ends meet with his military check. He told the trailer company (1j.) to pick-up the trailer (in approximately February 1998) because he could not maintain the payments. He told the auto dealer in September 1999 to retrieve the auto (1k.) for the same reason.

Applicant then moved to another state where he leased a house for a year. While he was settling in the house, the roof began to leak causing damage to Applicant's personal possessions. When he was unable to convince the landlord to fix the roof, he moved back (six months before the end of the house lease) to the state he lived in when he had the trailer. Then, Applicant was sued by the house landlord.

In early 2000, Applicant's relationship with his wife began to deteriorate. In June 2000, his wife filed for protection against him based on domestic violence. Applicant pled guilty to the charge. On June 23, 2000, the protective order was extended for six months. In May 2001, Applicant learned his wife had not been paying the bills as she had told him. Applicant's work as an auto mechanic allowed him to pay some bills including the children's rent, the car payment, and the light bill.

In 2002, Applicant began to borrow money to pay his bills. He did not believe he owed the trailer company more than two additional payments. He stated his intention to pay for the trailer and other bills once his divorce was final.

In an undated reply to interrogatories dated January 24, 2003, Applicant indicated he paid most of the bills but had no proof. Applicant explained the divorce decree ordered him to pay child support as well as all the other bills. He was using his best efforts to pay the bills.

**Personal Conduct.** A credit bureau report (CBR) was generated for February 2001, February 2003, and May 2004. The February 2001 CBR identifies debts in 1.h., 1.j., 1.k., and 1.l. becoming delinquent at least 180 days before Applicant signed his SCA on April 4, 2000. Yet in his SCA response to question 27b. (In the last 7 years, have you had hour wages garnished or had property repossessed for any reason?),<sup>(2)</sup> Applicant answered "no." The record reflects Applicant turned the car into the creditor in September 1999. In response to question 28 (in the last 7 years, have you been over 180 days on any debt?)<sup>(3)</sup> of the same SCA, Applicant answered "no."

**Character Evidence.** Applicant has never mixed his job responsibilities with the issues he encounters away from work. He claims his credit has been satisfactory since he has been away from his former wife whom he believes should be investigated. Applicant has served in the national guard since October 1986.

## POLICIES

Enclosure 2 of the Directive sets forth policy conditions which must be given binding consideration in making security clearance determinations. These conditions must be considered in every case according to the pertinent guideline; however, the conditions are in no way automatically determinative of the decision in any case nor can they supersede the Administrative Judge's reliance on his own common sense. Because each security case presents its own unique facts and circumstances, it should not be assumed that the conditions exhaust the entire realm of human experience or that the conditions apply equally in every case. In addition, the Judge, as the trier of fact, must make critical judgments as to the credibility of witnesses. Conditions most pertinent to evaluation of the facts in this case are:

### **Financial Considerations**

Disqualifying Conditions (DC):

1. A history of not meeting financial obligations.

#### Mitigating Conditions (MC):

1. The behavior was not recent;
2. It was an isolated incident;
3. The conditions that resulted in the behavior were largely beyond the person's control;
4. The person has received or is receiving counseling for the problem and there are clear indications the problem is being resolved or is under control;
6. The individual initiated a good-faith effort to repay overdue creditors or otherwise resolve debts.

### **Personal Conduct**

#### Disqualifying Conditions (DC):

2. The deliberate omission, falsification of relevant and material facts from any personnel security questionnaire used to determine security clearance eligibility;

#### Mitigating Conditions (MC):

1. The information was unsubstantiated or not not pertinent to a determination of judgment, trustworthiness or reliability;
2. The falsification was an isolated incident, was not recent, and the individual has subsequently provided correct information voluntarily;
3. The individual made prompt, good-faith efforts to correct the falsification before being confronted with the facts.

### **General Policy Factors (Whole Person Concept)**

Every security clearance case must also be evaluated under additional policy factors that make up the whole person concept. Those factors (found at page 16 of Enclosure 2 of the Directive) include: (1) the nature, extent, and seriousness of the conduct; (2) the circumstances surrounding the conduct; (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 behavioral changes; (7) the motivation for the conduct; and, (8) the potential for pressure, coercion, exploitation, or duress; and (9) the likelihood of continuation or recurrence.

### **Burden of Proof**

As set forth in the Directive, every personnel security determination must be a fair and impartial overall commonsense decision based upon all available information, both favorable and unfavorable, and must be arrived at by applying the standard that the granting (or continuance) of a security clearance under this Directive may only be done upon a finding that to do so is clearly consistent with the national interest. In reaching determinations under the Directive, careful consideration must be directed to the actual as well as the potential risk involved that an applicant may fail to properly safeguard classified information 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.

The Government must establish a *prima facie* case that establishes doubt about a person's judgment, reliability and trustworthiness. Then, the burden shifts to applicant to refute, explain, mitigate, or extenuate the facts. An applicant has the ultimate burden of persuasion to demonstrate he qualifies for a security clearance.

## CONCLUSIONS

**Financial Considerations.** Security concerns are raised when a debtor is unable to pay his creditors on time. The more extensive the past due indebtedness, the greater the risk the debtor may engage in illegal acts to generate funds. While there are several bona fide reasons why a debtor may not be able to satisfy the creditor on time, those reasons should be supported by substantial evidence. Applicant's overall indebtedness of \$51,619.00 to seven creditors constitutes a history of not meeting financial obligations within the ambit of DC 1. Some of the debts became delinquent in the late 1990s while others reached past due status as recently as 2003.

Applicant's history of indebtedness may be mitigated by five mitigating conditions. MC 1 and MC 2 do not apply to these facts as Applicant still owes the seven creditors and has not presented any evidence that supports his claim in his undated response to the January 24, 2003 interrogatories that he paid most of the creditors.

MC 3 addresses incidents that suddenly emerge in person's life preventing him from paying his debts on time. When a person cannot work due a work-related injury, he warrants extenuation under MC 3 for the unanticipated occurrence. However, as with his responsibility to prove other mitigating circumstances under the Directive, Applicant has to provide details about when his injury occurred, how it occurred, the extent and duration of his injury, and how he was able to pay bills on his military check so that a better assessment can be made as to how much extenuation Applicant should receive. With only a skeletal description of his injury provided in his sworn statement and answer, Applicant receives only limited extenuation under MC 3.

Applicant also discussed his marital discord and ultimate divorce in 2002 or 2003 that also aggravated his indebtedness. Again, with only a general description of how the marital discord affected Applicant's ability to pay his bills, Applicant receives only limited extenuation under MC 3. Even after combining the work-related injury and Applicant's marital problems, Applicant has not successfully rebutted the negative evidence under DC 1. MC 4 is not applicable to the analysis of these circumstances as there is no evidence of financial counseling or that Applicant has his past debts under control. MC 5 is not relevant.

MC 6 rewards a debtor's good-faith efforts to repay creditors or otherwise resolve his debts. Applicant's ongoing payment of his child support and other utilities weighs in his favor. However, the record shows no steps by Applicant to repay the creditors identified in the SOR. Applicant's unsupported claims of paying his creditors are not borne out by the CBRs. The financial issues have not been mitigated.

**Personal Conduct.** The guideline refers to poor judgment or dishonest behavior that suggests the person may not be a good candidate to safeguard classified information. Applicant was 31 years old when his car was repossessed in September 1999. He should have known that signing the installment contract for the car obligated him to comply with all contractual terms. Turning the chattel back in because of injury does not extinguish one's obligations under the contract. Applicant should have answered "yes" to question 27b. (repossession) of the SCA on April 4, 2000. Applicant should have also answered question 28a. (debts over 180 days delinquent) "yes" because he was delinquent on debts 1.g., 1.h., 1.i., 1.j., and 1.k. He has presented no evidence that his "no" answers in question 27 and 28 resulted from oversight, negligence or any other independent reason. I have already found against Applicant under 2c. as he admitted pleading "no contest" to the domestic violence charge and the extension of his probation for six months.

Applicant's service in the military since 1986 has been considered as positive evidence weighing in Applicant's favor. His reliability and team player attitude on the job also represents affirmative character evidence. Against the favorable evidence is Applicant's history since 1998 of not paying his bills and presently having delinquent debt over \$51,000.00. In addition, Applicant's intentional omission of material information from his SCA in April 2000 and continuing denial he omitted the information militates against a finding for Applicant under the financial considerations and personal conduct guidelines.

In reaching my findings, I have considered the general factors of the whole person concept. Without any documentation of positive changes in Applicant's behavior regarding his financial practices and his intentional failure to disclose material, (factor 6 of the whole person concept), the lack of financial counseling and Applicant's current indebtedness portend continuing financial problems in the future. (factor 9 of the whole person concept)

## **FORMAL FINDINGS**

Paragraph 1 (financial considerations, Guideline F): AGAINST THE APPLICANT.

- a. Against the Applicant.
- b. Against the Applicant.
- c. Against the Applicant.
- d. Against the Applicant.
- e. Against the Applicant.
- f. Against the Applicant.
- h. Against the Applicant.
- i. Against the Applicant.
- j. Against the Applicant.
- k. Against the Applicant.

Paragraph 2 (personal conduct, Guideline F):

- a. Against the Applicant.
- b. Against the Applicant.
- c. Against 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 Applicant a security clearance.

Paul J. Mason

Administrative Judge

- 1. Though not listed in the SOR, a judgment by an auto parts manufacturer was filed against Applicant in 1996.
- 2. Subparagraph 2.a. incorrectly identified the question as 35.
- 3. Subparagraph 2.b. incorrectly refers to question 38.