

DATE: December 5, 2003

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In re:

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SSN: -----

Applicant for Security Clearance

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ISCR Case No. 02-14550

## **DECISION OF ADMINISTRATIVE JUDGE**

**JAMES A. YOUNG**

### **APPEARANCES**

#### **FOR GOVERNMENT**

Marc Curry, Esq., Department Counsel

#### **FOR APPLICANT**

*Pro Se*

### **SYNOPSIS**

Thirty-three-year-old employee of a defense contractor incurred several debts, including a large debt to the IRS, as a result of his failed business partnership. Although he took some tentative steps toward resolving his financial obligations, he failed to establish it is clearly consistent with the national interest to grant him a clearance. 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 4 September 2003, under the applicable Executive Order<sup>(1)</sup> and Department of Defense Directive,<sup>(2)</sup> DOHA issued a Statement of Reasons (SOR), detailing the basis for its decision—security concerns raised under Guideline F (Financial Considerations) of the Directive. Applicant answered the SOR in writing on 14 October 2003 and elected to have a hearing before an administrative judge. The case was assigned to me on 4 November 2003. On 25 November 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 December 2003.

### **FINDINGS OF FACT**

Applicant is a 33-year-old machinery installer for a defense contractor. He separated from the U.S. Army in 1997 after serving over eight years on active duty. Ex. 1 at 1; Tr. 8. In that year, he and a friend started a business that bought old houses, renovated them, and then rented or sold them. The friend had the money, and owned 51 percent of the partnership. Applicant owned 49 percent and provided sweat equity. Eventually the business expanded to include real estate and mortgage services. The business struggled to make a profit as Applicant's partner opened a bar and lost focus on the primary business. As the business declined, Applicant went without a salary causing him to rely on credit cards to pay his family's expenses. He has been unable to pay these credit card debts.

Applicant failed to pay his income taxes for 1997-2000. As a result, the IRS filed a tax lien

against him. Although Applicant entered into an installment agreement with the IRS to pay off these debts, his payments have not even offset the accumulating interest owed. Applicant has retained an attorney to file for bankruptcy, but no filing has been made.

The following chart summarizes the status of the delinquent debts alleged in the SOR:

¶	Nature and Amount	Status	Record
1.a.	Delinq bank acct \$5,744	Unpaid	Tr. 22
1.b.	Delinq bank acct \$2,550	Unpaid	Tr. 22
1.c.	Collection debt \$59	Unpaid	Tr. 22
1.d.	Federal tax lien \$37,964	Unpaid, now over \$41,000	Tr. 22; Ex. H

### 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

In the SOR, DOHA alleged Applicant has delinquent debts (¶¶ 1.a.-1.c.); a federal tax lien in the amount of \$37,964 against him (¶ 1.d.); and his monthly expenses consume all of his income, preventing him from paying his delinquent debts (¶ 1.e.). An applicant who is financially overextended is at risk of having to engage in illegal acts to generate funds.

Applicant has a history of not meeting his financial obligations. DC E2.A6.1.2.1. He has been unable to satisfy his

debts. DC E2.A6.1.2.3. However, it appears that the conditions that resulted in the debts were largely beyond Applicant's control as they were caused by the failure of his business. MC E2.A6.1.3.3. Applicant claims that his largest debt, the amount owed to the IRS that has been turned into a tax lien, was caused by his partner funneling funds for another business through the partnership. Applicant says this inflated the income he was required to report to the IRS. Applicant has made some efforts to resolve his financial difficulties. E2.A6.1.3.6. In April 2003, he consulted an attorney about filing for bankruptcy and he entered into an installment agreement to pay his tax debt to the IRS.

After weighing both the favorable and unfavorable evidence, I find against Applicant. Of primary consideration is the debt to the IRS. Applicant failed to pay his taxes for four years (from 1997-2000) and has done little to rectify this problem. Although he entered into an installment agreement, he is no longer paying while he and his attorney ponder whether to file for bankruptcy and under which chapter. Interest on the IRS debt has raised the total tax indebtedness from \$37,000 to over \$41,000. There is no evidence Applicant has tried to resolve his other debts. Applicant failed to convince me it is clearly consistent with the national interest to grant him a clearance.

### **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

Subparagraph 1.e.: 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.