

DATE: June 9, 2004

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In re:

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SSN: -----

Applicant for Security Clearance

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ISCR Case No. 02-15217

## **DECISION OF ADMINISTRATIVE JUDGE**

**JAMES A. YOUNG**

### **APPEARANCES**

#### **FOR GOVERNMENT**

Erin C. Hogan, Esq., Deputy Chief Department Counsel

#### **FOR APPLICANT**

*Pro Se*

### **SYNOPSIS**

Applicant failed to mitigate the security concerns raised by his delinquent debts. Although he disputed the existence of some debts and the amounts of others, and was working with a certified public accountant and a credit counseling service, he produced no evidence to demonstrate the debts were resolved or he was making substantial progress towards such resolution. 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 28 May 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) of the Directive. Applicant answered the SOR in an undated writing and requested a hearing before an administrative judge. A hearing was set for 6 January 2004. Applicant's wife took ill on the way to the hearing and it was canceled. Applicant withdrew his request for a hearing and elected to have his case decided on the written record. Item 5. Department Counsel submitted the Government's written case on 22 January 2004. A complete copy of the file of relevant material (FORM) was provided to Applicant, and he was afforded an opportunity to file objections and submit material to refute, extenuate, or mitigate the disqualifying conditions. Applicant received the FORM on 25 February 2004.<sup>(2)</sup> He did not submit any response to the FORM within the 30-day period allowed. The case was assigned to me on 10 May 2004.

### **FINDINGS OF FACT**

Applicant is a 52-year-old driver for a federal contractor. He has been married to his current wife since 1991. Item 6 at 1, 2, 4. He served in the U.S. Army from 1967 until 1970, during which time he held a secret clearance. *Id.* at 6, 10.

The IRS filed a federal tax lien filed against Applicant on 24 March 1995 for a debt of \$8,874 owed for tax year 1990. The lien was filed in both the real property and personal property records, but it is really only one lien. Item 9 at 2.

Applicant also owes federal income taxes for 1989, 1991, 1992, 1998, and 1999, but the \$25,000 IRS figure is in dispute. Item 7 at 1; Answer. The IRS admits the total figure may not be accurate, but is unable to correct it because Applicant does not have the appropriate records. Item 9 at 2. As of February 2002, the IRS was willing to consider an offer in compromise for settlement of all of the couple's tax deficiencies. *Id.* Applicant hired a certified public accountant (CPA) to help him negotiate a resolution with the IRS. Item 3 at 3.

In November 1997, Applicant leased a tractor (semi cab) for \$1,500 per month. He paid as agreed until December 1998, when he turned the tractor back to the company because he "no longer wanted to use it anymore." Ex. 7 at 1. The company claims Applicant owes more than \$12,000 for unpaid services. Applicant disputes that he owes this debt. *Id.*; Item 8 at 5-6; Item 3 at 2. Applicant owes a bank for a bad debt of \$523. Ex. 7 at 1; Ex. 8 at 4. As of February 2002, Applicant had been participating in a debt management program with a credit counseling service to handle payments of four accounts. He, his wife, and apparently his mother had made timely payments of \$436 a month for approximately 18 months to the program. Ex. 10. Applicant admitted that his and his wife's monthly income exceeds their monthly expenses by approximately \$990. Ex. 11 at 5.

### 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, that conditions exist in the personal or professional history of the applicant which disqualify, or may disqualify, the applicant from being eligible for access to classified information. *See Egan*, 484 U.S. at 531. "[T]he Directive presumes there is a nexus or rational connection between proven conduct under any of the Criteria listed therein and an applicant's security suitability." ISCR Case No. 95-0611 at 2 (App. Bd. May 2 1996) (quoting DISCR Case No. 92-1106 (App. Bd. Oct. 7, 1993)).

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 (App. Bd. Dec. 19, 2002). "[S]ecurity clearance determinations should err, if they must, on the side of denials." *Egan*, 484 U.S. at 531; *see* Directive ¶ E2.2.2.

### CONCLUSIONS

In the SOR, DOHA alleged Applicant has two federal tax liens filed against him by the IRS (¶ 1.a.), owes taxes and penalties for underpayment of his federal income taxes for tax years 1989, 1991, 1992, 1998, and 1999 (¶ 1.b.), is indebted to a bank for a delinquent account of \$523 that was charged off in 1996 (¶ 1.c.), is indebted to a truck company for a delinquent account of more than \$12,000 that was turned over for collection in 1999 (¶ 1.d.), and, with his wife, has approximately \$990 left over each month after expenses (¶ 1.e.). 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 and Applicant's admissions each of the allegations contained 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.). Applicant denies his income currently exceeds his expenses by \$990 a month because he and his wife have started to pay on debts they owe. Item 3 at 2. Applicant denies the debt set forth in SOR ¶ 1.c., claiming the creditor has no record of him ever holding an account with them. But in his 7 February 2002 statement to an agent of the Defense Security Service, Applicant claimed that debt was being paid as part of his debt management program with a credit counseling service. Ex. 7 at 1. Applicant has received or is receiving counseling for his financial problems (*see* MC E2.A6.1.3.4.) and was making a good-faith effort to resolve his IRS debts through the services of a CPA (*see* MC E2.A6.1.3.6.). But he failed to produce any evidence on the current status of those debts since his Answer to the SOR in June 2003. At that time, none of the alleged debts had been resolved. Therefore, neither MC E2.A6.1.3.4. or MC E2.A6.1.3.6. apply to Applicant's case. Under these circumstances, I am unable to find for 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

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, and Department of Defense Directive 5220.6, *Defense Industrial Personnel Security Clearance Review Program* (Jan. 2, 1992), as amended and modified.
2. Applicant's receipt reads 25 March 2004, but DOHA received the receipt on 1 March 2004.