

DATE: April 27, 2004

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In Re:

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SSN: -----

Applicant for Security Clearance

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ISCR Case No. 02-15872

**DECISION OF ADMINISTRATIVE JUDGE**

**KATHRYN MOEN BRAEMAN**

**APPEARANCES**

**FOR GOVERNMENT**

Erin C. Hogan, Esquire, Department Counsel

**FOR APPLICANT**

*Pro Se*

**SYNOPSIS**

While Applicant filed for Chapter 13 bankruptcy in April 2003 to resolve his financial problems, security concerns remain because of his delay in seeking a legal way to resolve these long-standing debts to several creditors. In addition, he failed to document his regular monthly payments to the bankruptcy court which will continue until April 2006 before his debts are fully resolved. Further, personal conduct concerns remain over his failure to reveal the full extent of his financial problems on his security questionnaire. Clearance is denied.

**STATEMENT OF THE CASE**

The Defense Office of Hearings and Appeals (DOHA) issued a Statement of Reasons (SOR) to the Applicant on August 7, 2003. The SOR detailed reasons why the Government could not make the preliminary positive finding that it is clearly consistent with the national interest to grant or continue a security clearance for the Applicant. <sup>(1)</sup> The SOR alleges specific concerns over finances (Guideline F) in paragraph 1 and over personal conduct (Guideline E) in paragraph 2. Applicant responded to the SOR in an undated Answer and requested a decision without a hearing.

The case was assigned to Department Counsel who prepared a File of Relevant Material (FORM) for the Applicant's review and on October 16, 2003, advised Applicant that he had 30 days to submit objections and/or information before the FORM was submitted to an administrative judge and that he had the right to be represented by counsel. A Personnel Security Specialist (PSS) sent the FORM to Applicant on October 17, 2003, and again notified the Applicant that he had 30 days from receipt of the letter to submit objections and/or information before the FORM was submitted to an administrative judge. Applicant received the FORM on November 1, 2003. The Applicant submitted a response on November 24, 2003 (Exhibit A). On December 1, 2003, Department Counsel indicated she had no objection to Applicant's Exhibit A. The DOHA Director assigned the case to me for a decision on the record on December 22, 2003.

**FINDINGS OF FACT**

After a complete and thorough review of the evidence in the record, and upon due consideration of that evidence, I make the following findings of fact:

Applicant, 43 years old, has worked for defense contractor #1 in State #1 since January 2001. Previously Applicant worked for defense contractor #2 from 1996 to 2001. He was on active duty in the military from 1975 to 1996. He was granted a Secret clearance in 1990 by the Defense Department. (Items 4,5; Exhibit A)

Applicant remarried in April 1998. He was divorced in April 1997. (Items 4, 5)

### **Finances and Personal Conduct**

When Applicant applied for a security clearance in August 2001, he completed a Security Clearance Application (Standard Form 86) (SF 86) where he failed to reveal any adverse financial issues. He answered, "No" to several questions where he should have answered, "Yes." He failed to reveal a July 1998 judgment for \$718<sup>(2)</sup> (SOR 1.b. and 2.a.). Also, he failed to disclose any of his debts which were 90 days or 180 days delinquent<sup>(3)</sup> on the SF 86. (SOR 2.b., 2.c.). (Items 4, 5) His defense of "haste and embarrassment" (Exhibit A) is not credible.

Investigation showed multiple adverse credit accounts on his September 2001 credit report. (Item 8) In his Defense Security Service (DSS) interview, in April 2002, he admitted delinquent financial accounts to Creditor #1 for \$3,627; to Creditor #2, a bad debt with no balance; to Creditor #3 for \$515; to Creditor #4, a bad debt with a balance of \$751; to Creditor #5 listed as a bad debt with a \$677 balance; to Creditor #6, a bad debt of \$2,175 where records reflected a balance of \$3,135; Creditor #7, a bad debt with a balance of \$3,697; and Creditor #8, a bad debt with a balance of \$6,961. He disputed debts to two other creditors and claimed to be unaware of a judgment for \$718 from a furniture company. He claimed that he became delinquent when he was divorced in 1997<sup>(4)</sup> and that his wife volunteered to pay off all credit cards if he bought her a new vehicle. In April 2002 he stated he would contact Consumer Credit Counseling (CCC) to set up a payment plan to clear up his adverse credit. (Item 6) There is no evidence he did so.

Instead, after DOHA sent an inquiry to him in March 2003, in April 2003 Applicant replied that all of his debts were included in a Chapter 13 bankruptcy he filed in April 2003 where his secured debt totaled over \$28,000 and his unsecured debt totaled over \$71,000. He provided a Personal Financial Statement which showed his total net monthly income was \$4,638, monthly expenses \$3,348, and scheduled monthly payment to the bankruptcy court was \$1,150. (Items 3, 7)

While he claimed that he has had financial delinquencies due to his divorce, he did not provide details on the divorce or how it adversely impacted him financially. He simply said that he was "embarrassed, those bills occurred by my x-wife and I thought I was getting back at her for leaving me. . . ." (Item 3) Further, he provided no information as to how he was reformed his financial practices or that he has received or is receiving counseling for his financial problems.

### **POLICIES**

Enclosure 2 of the Directive sets forth adjudicative guidelines to consider in evaluating an individual's security eligibility. They are divided into conditions that could raise a security concern and may be disqualifying and conditions that could mitigate security concerns in deciding whether to grant or continue an individual's access to classified information. But the mere presence or absence of any given adjudication policy condition is not decisive. Based on a consideration of the evidence as a whole in evaluating this case, I applied relevant Adjudication Guidelines listed below:

#### **Guideline F - Financial Considerations**

**An individual who is financially overextended is at risk of having to engage in illegal acts to generate funds. Unexplained affluence is often linked to proceeds from financially profitable criminal acts.**

**Conditions that could raise a security concern and may be disqualifying include:**

1. A history of not meeting financial obligations;

3. Inability or unwillingness to satisfy debts;

**Conditions that could mitigate security concerns include:**

6. The individual initiated a good-faith effort to repay overdue creditors or otherwise resolve debts.

**Guideline E - Personal Conduct**

**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.**

**Conditions that could raise a security concern and may be disqualifying also include:**

2. The deliberate omission, concealment, or falsification of relevant and material facts from any personnel security questionnaire, personal history statement, or similar form used to conduct investigations, determine employment qualifications, award benefits or status, determine security clearance eligibility or trustworthiness, or award fiduciary responsibilities;

**Conditions that could mitigate security concerns include:**

None

The responsibility for producing evidence initially falls on the Government to demonstrate that it is not clearly consistent with the national interest to grant or continue Applicant's access to classified information. Then the Applicant presents evidence to refute, explain, extenuate, or mitigate in order to overcome the doubts raised by the Government, and to demonstrate persuasively that it is clearly consistent with the national interest to grant or continue the clearance.

Under the provisions of Executive Order 10865, as amended, and the Directive, a decision to grant or continue an applicant's security clearance may be made only after an affirmative finding that to do so is clearly consistent with the national interest. In reaching the fair and impartial overall common sense determination, the Administrative Judge may draw only those inferences and conclusions that have a reasonable and logical basis in the evidence of record.

**CONCLUSIONS**

**Financial Considerations**

Applicant has (1) a history of financial problems and has shown (3) an inability or unwillingness to satisfy all of his debts. Although he stated some of the debts stemmed from his divorce, he did not explain how the divorce led to his financial problems. While he was made aware of these debts and acknowledged them in an April 2002 DSS interview, he made no documented efforts to resolve any of these debts until he filed for bankruptcy in April 2003 after he received a March 13, 2003, inquiry from DOHA. In the interim he failed to document any effort to resolve these debts such as any effort to meet with CCC as he had stated he would do in April 2002. Thus, security concerns persist because of the long-standing nature of these debts, and his failure to resolve them more quickly or to seek financial counseling.

Applicant mitigated<sup>(S)</sup> his one debt alleged in SOR 1.b as he included that \$718 judgment in his Chapter 13 bankruptcy. Thus, Mitigating condition (MC) 6 applies to that debt as in 2003 he initiated a good-faith effort to resolve his overdue debts through the legal means of a Chapter 13 bankruptcy. However, he did not document that he has been consistent in making payments to the bankruptcy court; indeed the payments are not scheduled to be completed until April 2006. While Applicant has made some progress, Applicant failed to demonstrate that he made managing his finances a priority. Nor has he documented under MC 4 that he has received or is receiving counseling for the problem; there are not clear indications that all of his financial problems are being resolved or are under control. After considering the Adjudicative Process factors and the Adjudicative Guidelines, I conclude that he has mitigated the allegation in SOR subparagraph 1.b, but failed to mitigate 1.a. I rule against Applicant under SOR Paragraph 1.

## **Personal Conduct**

Applicant failed to reveal his long-standing debts on his SF 86 form. This failure to disclose led the Government to raise security concerns over personal conduct issues. Applicant's omission of relevant and material information about his debts could reflect questionable judgment, untrustworthiness, unreliability, or unwillingness to comply with rules and regulations and could indicate that he may not properly safeguard classified information. He had a duty to reveal this adverse information and his defense of "haste and embarrassment" is not a basis for mitigation. Applicant's explanations fail to overcome the Government's security concerns by demonstrating that he has mitigated<sup>(6)</sup> these concerns. His explanations for his omissions are not credible as embarrassment is not a mitigating factor nor a justification for these omissions. There is no evidence that Applicant made prompt, good-faith efforts to correct the omissions before being confronted with the facts by DSS. Further, Applicant provided no recommendations as to his good character.

After looking at the whole person and considering the Adjudicative Process factors and the Adjudicative Guidelines, I rule against Applicant on subparagraphs 2.a..through 2.c. under SOR Paragraph 2.

### **FORMAL FINDINGS**

After reviewing the allegations of the SOR in the context of the Adjudicative Guidelines in Enclosure 2 and the factors set forth under the Adjudicative Process section, I make the following formal findings:

Paragraph 1. Guideline F: AGAINST APPLICANT

Subparagraph 1.a.: Against Applicant

Subparagraph 1.b.: For Applicant

Paragraph 2. Guideline E: AGAINST APPLICANT

Subparagraph 2.a.: Against Applicant

Subparagraph 2.b.: Against Applicant

Subparagraph 2.c.: Against 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 or continue a security clearance for the Applicant.

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Kathryn Moen Braeman

Administrative Judge

1. This procedure is required by Executive Order 10865, as amended, and Department of Defense Directive 5220.6, dated January 2, 1992 (Directive), as amended by Change 4, April 20, 1999.
2. In his Answer Applicant denied he had any intent to falsify by omitting this judgment from his SF 86. (Item 3)
3. In his DSS interview, in April 2002 he claimed that he "checked 'Yes" for delinquent accounts, however, nothing happened and I was not able to list any adverse accounts. There was no intention of hiding or defrauding the U.S. Government by not listing all my bad debts." He admitted these allegations in his Answer to SOR 2.b. and 2.c. Thus, I do not find this claim in his DSS Statement credible as the signed SF 86 (Item 5) shows all "no" answers to financial questions.

4. Although he stated in his DSS interview that the divorce took place in 1999, his SF 86 shows a divorce in 1997 and a remarriage in 1998. (Items 4,5)

**5. Conditions that could mitigate security concerns include:** 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 (e.g., loss of employment, a business downturn, unexpected medical emergency, or a death, divorce or separation); 4. The person has received or is receiving counseling for the problem and there are clear indications that the problem is being resolved or is under control; 5. The affluence resulted from a legal source; and 6. The individual initiated a good-faith effort to repay overdue creditors or otherwise resolve debts.

**6. Conditions that could mitigate security concerns include:** 1. The information was unsubstantiated or 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; 4. Omission of material facts was caused or significantly contributed to by improper or inadequate advice of authorized personnel, and the previously omitted information was promptly and fully provided; 5. The individual has taken positive steps to significantly reduce or eliminate vulnerability to coercion, exploitation, or duress; 6. A refusal to cooperate was based on advice from legal counsel or other officials that the individual was not required to comply with security processing requirements and, upon being made aware of the requirement, fully and truthfully provided the requested information; 7. Association with persons involved in criminal activities has ceased.