

DATE: May 14, 2004

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In Re:

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SSN: -----

Applicant for Security Clearance

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ISCR Case No. 02-16554

**DECISION OF ADMINISTRATIVE JUDGE**

**CHARLES D. ABLARD**

**APPEARANCES**

**FOR GOVERNMENT**

Marc Curry, Esq., Department Counsel

**FOR APPLICANT**

*Pro Se*

**SYNOPSIS**

Applicant is a 30-year-old employee of a defense contractor. He admitted to four delinquent debts of approximately \$12,000.00, a criminal record consisting of a variety of offenses that occurred between 1995 and 1997, and a court order entered in 2000 finding he had caused physical harm to his children by extreme physical abuse. The criminal offenses are mitigated by the passage of time and the absence of a criminal record in the past six years. Only one debt for child support is being resolved, and that only through the garnishment of wages. Clearance is denied.

**STATEMENT OF CASE**

On October 2, 2003, the Defense Office of Hearings and Appeals (DOHA), pursuant to Executive Order 10865, *Safeguarding Information Within Industry*, as amended and modified, and Department of Defense Directive 5220.6, *Defense Industrial Personnel Security Clearance Review Program* (Directive), dated January 2, 1992, as amended and modified, issued a Statement of Reasons (SOR) to Applicant which 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. DOHA recommended the case be referred to an administrative judge to determine whether a clearance should be granted, continued, denied, or revoked.

In a sworn written statement dated October 20, 2003, Applicant responded to the allegations set forth in the SOR, and elected to have his case decided on the written record in lieu of a hearing. Department Counsel submitted the Government's written case on January 14, 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 in refutation, extenuation, or mitigation. Applicant did not respond and the case was assigned to me on March 5, 2004.

**FINDINGS OF FACT**

Applicant admitted to all of the specific allegations in the SOR but took exception to the conclusions based on the criminal allegations. The admitted facts are hereby incorporated as findings of fact.

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

Applicant is a 30-year-old employee of a defense contractor. He admitted to four delinquent debts of approximately \$12,000.00, a criminal record consisting of a variety of family related offenses between 1995 and 1997, and a court order entered in a 2000 divorce proceeding finding that he had caused physical harm to his children by extreme physical abuse. The court granted sole custody of Applicant's children to his wife.

The court ordered Applicant to provide child support. Various debts were apportioned between Applicant and his former wife who had been totally responsible for financial support of the family from 1996 until the time of the divorce decree in 2000.

Applicant has a negative income of almost \$700.00 per month according to his financial statement. The only debt being resolved is for delinquent child support payments. It has been reduced from \$20,000.00 to \$13,000.00 at the time of the SOR and to \$10,000.00 as stated in Applicant's answer. This has been through the garnishment of Applicant's wages. Although he asserts an intention to pay the other smaller debts, no action has been taken to do so and it appears it will be difficult for him to do so.

### 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.

An evaluation of whether the applicant meets the security guidelines includes consideration of the following factors: (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; (8) the potential for pressure, coercion, exploitation, or duress; and (9) the likelihood of continuation or recurrence. Directive, ¶ E2.2.1. Security clearances are granted only when "it is clearly consistent with the national interest to do so." Executive Order No. 10865 § 2. *See* Executive Order No. 12968 § 3.1(b).

Initially, the Government must establish, by something less than a preponderance of the 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. The applicant then bears the burden of demonstrating that it is clearly consistent with the national interest to grant or continue the applicant's clearance. "Any doubt as to whether access to classified information is clearly consistent with national security will be resolved in favor of the national security." Directive, ¶ E2.2.2. "[S]ecurity clearance determinations should err, if they must, on the side of denials." *Egan*, 484 U.S. at 531. *See* Executive Order No. 12968 § 3.1(b)

### CONCLUSIONS

Upon consideration of all the facts in evidence, and after application of all appropriate legal precepts, factors and conditions above, I conclude the following with respect to all allegations set forth in the SOR.

Applicant's extensive debts have resulted in the allegation of violation of Guideline F in that an individual who is financially overextended is at risk of having to engage in illegal acts to generate funds. (E2.A6.1.1.) Conditions that could raise a security concern and maybe disqualifying include a history of not meeting financial obligations (E2.A6.1.2.1.) and evidence of inability or unwillingness to satisfy debts. (E2.A6.1.2.3.)

Applicant has acknowledged being over his head in debt and that it was caused by financial irresponsibility during a former marriage. He attributes his financial problems in large measure to that marriage, but this is disproved by the 2000 divorce decree finding that his wife had been responsible for all financial support from 1996 until the entering of the

divorce decree. None of the mitigating conditions under Guideline F are applicable since he failed to establish that the financial problems were beyond his control or that they are being resolved.

Applicant's criminal record has resulted in the allegation relating to Guideline J in that a pattern of criminal activity creates doubt about a person's judgment, reliability and trustworthiness. (E2.A10.1.1.) Conditions that could raise a security concern and may be disqualifying include a single serious crime or multiple lesser offenses. (E2.A10.1.2.2.) Possible mitigating conditions (MC) might include the fact that the criminal behavior was not recent. (E2.A10.1.3.1.)

The criminal offenses for which he has been cited in the SOR are all over six years old involving domestic violence against his wife and children. He attributes these allegations to a difficult marriage, an excuse that is impossible to accept. He is now divorced, has a fiancé, and is financially supportive of, but not responsible for, parenting his children. Since the 2000 divorce decree gave sole custody of the children to his former wife he has no access to the children at this point. While his conduct directed at his former wife and children was not excusable, it was not recent and thus the mitigating condition cited is applicable.

The allegation under Guideline E concerning rule violation (E2.A5.1.1.) is based on the judicial finding in the 2000 divorce decree which is predicated on the same criminal conduct eight years ago cited under Guideline J. In view of the age of the offenses, I find that the allegation is mitigated in that it is at this time not pertinent to determination of judgment, trustworthiness, or reliability. (E2.A5.1.3.1.)

After considering all the evidence in its totality and as an integrated whole to focus on the whole person of Applicant, I conclude it is not clearly consistent with the national interest to grant clearance to Applicant.

### **FORMAL FINDINGS**

Formal findings as required by the Directive (Par. E3.1.25) are as follows:

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

Paragraph 2. Guideline J: FOR APPLICANT

Subparagraph 2.a.: For Applicant

Subparagraph 2.b.: For Applicant

Subparagraph 2.c.: For Applicant

Subparagraph 2.d.: For Applicant

Paragraph 3. Guideline E: FOR APPLICANT

Subparagraph 3.a.: For Applicant

### **DECISION**

After full consideration of all the facts and documents 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.

Charles D. Ablard

Administrative Judge