

DATE: March 31, 2004

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In Re:

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SSN: -----

Applicant for Security Clearance

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ISCR Case No. 02-17368

## **DECISION OF ADMINISTRATIVE JUDGE**

**CHARLES D. ABLARD**

### **APPEARANCES**

#### **FOR GOVERNMENT**

Marc E. Curry, Esq., Department Counsel

#### **FOR APPLICANT**

*Pro Se*

### **SYNOPSIS**

Applicant is a 46-year-old employee of a defense contractor who was charged with criminal offenses on four occasions in 1985. The first was for Theft of Government Property and he was terminated from his employment. The second was for possession of two marijuana cigarettes and the third was for transporting 40 to 50 pounds of marijuana from New York to Virginia. The fourth was for drug possession with intent to distribute and he was sentenced to four years confinement all of which was suspended. Although the sentence was suspended it is covered by the provisions of 10 U.S.C. 986. Applicant has overdue debts to eight different creditors for a total amount of approximately \$4,000.00. Clearance is denied.

### **STATEMENT OF CASE**

On August 26, 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 signed statement dated September 16, 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 December 30, 2003. 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, 2003.

### **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 findings of fact.

Applicant is a 46-year-old employee of a defense contractor who was charged with criminal offenses on four occasions in 1985. The first was for Theft of Government Property from a Navy exchange facility. He was terminated from his employment. The second was for possession of two marijuana cigarettes and the third was for transporting 40 to 50 pounds of marijuana from New York to Virginia. The fourth was for drug possession with intent to distribute and he was sentenced to four years confinement all of which was suspended. He was charged with an additional drug offense in 1986.

Applicant admitted to two specific allegations in the SOR relating to Criminal Conduct and denied three. He admitted to all of the allegations regarding Financial Considerations relating to debts and denied the two allegations relating to Personal Conduct concerning his Security Clearance Application (SF 86). The admitted facts are hereby incorporated as findings of fact. The government concedes that three allegations in the SOR that were denied have been mitigated because of lack of proof. (¶ 1 c, 3 a and b)

Applicant is alleged to have ten delinquent debts to eight different creditors for an amount exceeding \$4,000.00. One debt for \$784.00 resulted in a judgment against him by a state court that is still unpaid. Five other debts have been placed for collection and the remaining four have been charged off but are still unpaid. Two of the nine are duplicate. (¶ 2 d and f)

### 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.

Allegations of criminal conduct relating to drugs raise a number of Disqualifying Conditions (DC) under Guideline J relating to a single serious crime or multiple lesser offenses (E2.A10.1.2.2.) and allegations or admissions of criminal conduct, regardless of whether the person was formally charged (E2.A10.1.2.1.). One drug charge in 1986 (¶ 1.c) was mitigated for lack of proof but the others were either proven or admitted.

The applicable Disqualifying Condition for Criminal Conduct is applicable to Appellant. The provisions of 10 U.S.C.

986 and the implementing regulations are unequivocal that an applicant is disqualified from holding a security clearance if convicted of a crime and sentenced to more than one year of imprisonment absent a waiver from the Secretary of Defense.

Applicant's delinquent debts raise concerns under 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's contention in his answer that the debts were the result of misuse of credit cards during college days does not explain the continued problem and the admission that he and his wife owe even more than is alleged to a hospital aggravates the problem. The extensive number of debts unpaid over a lengthy period of time disqualifies Applicant from holding a security clearance under Guideline F.

Although the criminal conduct occurred almost 20 years ago, most of the offenses were related to drug charges occurring in a brief period of four months when Applicant went into the drug business after losing his employment for theft. The most serious offense resulted in an extensive sentence. Absent the above facts and circumstances, the offenses might have been mitigated as criminal conduct that was not recent under Mitigating Condition (MC) 1. However, I cannot so conclude in light of the surrounding circumstances of the case specifically the allegations concerning financial considerations.

Also alleged in the SOR is falsification of his SF 86 by failing to disclose debts that were over 180 days old under Guideline E (E2.A5.1.2.2.). The government has conceded in the FORM that these allegations are unproved and therefore mitigated.

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 J: AGAINST APPLICANT

Subparagraph 1.a.: Against Applicant

Subparagraph 1.b.: Against Applicant

Subparagraph 1.c.: For Applicant

Subparagraph 1.d.: Against Applicant

Subparagraph 1.e.: Against Applicant

Subparagraph 1.f.: Against Applicant

#### Paragraph 2. Guideline F: AGAINST APPLICANT

Subparagraph 2.a.: Against Applicant

Subparagraph 2.b.: Against Applicant

Subparagraph 2.c.: Against Applicant

Subparagraph 2.d.: For Applicant

Subparagraph 2.e.: Against Applicant

Subparagraph 2.f.: For Applicant

Subparagraph 2.g.: Against Applicant

Subparagraph 2.h.: Against Applicant

Subparagraph 2.i.: Against Applicant

Subparagraph 2.j.: Against Applicant

Paragraph 3. Guideline E: FOR APPLICANT

Subparagraph 3.a.: For Applicant

Subparagraph 3.b. For 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 renew a security clearance for Applicant. The provisions of 10 U.S.C. 986 and the implementing regulations preclude such a finding because of Appellant's conviction and sentence. Clearance is denied.

Charles D. Ablard

Administrative Judge