

DATE: June 3, 2004

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In re:

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SSN: -----

Applicant for Security Clearance

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ISCR Case No. 02-17489

## **DECISION OF ADMINISTRATIVE JUDGE**

**JAMES A. YOUNG**

### **APPEARANCES**

#### **FOR GOVERNMENT**

Francisco J. Mendez, Esq., Department Counsel

#### **FOR APPLICANT**

*Pro Se*

### **SYNOPSIS**

Although he has the money to substantially decrease his debt total, Applicant refuses to allocate it towards his debts until he is granted a security clearance. Applicant failed to mitigate security concerns raised by his delinquent debts and his deliberate failure to report those debts on his security clearance application. 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 25 September 2003, DOHA issued a Statement of Reasons (SOR)<sup>(1)</sup> detailing the basis for its decision-security concerns raised under Guideline F (Financial Considerations) and Guideline E (Personal Conduct) of the Directive. Applicant answered the SOR in writing on 22 October 2003 and elected to have a hearing before an administrative judge. The case was assigned to me on 22 January 2004. On 23 March 2004, 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 hearing transcript (Tr.) on 30 March 2004.

### **FINDINGS OF FACT**

Applicant is a 58-year-old information supervisor for a defense contractor. Ex. 1 at 1, 2. He entered the U.S. Air Force in October 1963 and retired from the service on 1 January 1988 as a senior master sergeant (E-8). *Id.* at 4; Tr. 11. He held a security clearance during his entire military career. Tr. 11. After his retirement, he went to work for a defense contractor and was granted a security clearance. Ex. 1 at 6.

In 1996, Applicant and his first wife, whom he married in 1969, were divorced. That same year, Applicant married again and was laid off from his job. His only income was half his retirement pay (the other half was going to his ex-wife). He was unemployed for two years until he was hired by another defense contractor in 1998. Applicant had approximately \$39,000 in delinquent debts. Applicant never notified his creditors of his divorce or change of address

and failed to ensure that the debts were paid. Ex. 5 at 1-2; Ex. A at 1.

Applicant completed his security clearance application on 7 September 2000. Question 38 asked if, in the previous seven years, Applicant had been over 180 days delinquent on any debts. Question 39 asked if he was then over 90 days delinquent on any debts. Applicant answered "no" to both questions. Ex. 1 at 7.

In March 2002, Applicant sent letters to some of his other creditors (not alleged in the SOR) acknowledging the debts and offering to make arrangements to pay the debts as he became financially able to do so. Ex. 7. By May 2003, Applicant's father provided Applicant and his siblings with approximately \$16,000 each. Tr. 16; Ex. B. Applicant does not plan to allocate any of these funds to pay his debts until he finds out if his clearance is approved. Tr. 18, 26. He declined to ask his new wife to assist him in paying off the debts. Ex. 5 at 2.

## 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

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

In the SOR, DOHA alleged Applicant had delinquent debts (¶¶ 1.a.-1.m.) totaling more than \$39,000. 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 Applicant's admissions each of the allegations contained in the SOR, except those in ¶¶ 1.f. and 1.k. The debt alleged in ¶ 1.f. appears to have been paid, and the debt alleged in ¶ 1.k. appears to be the same debt alleged in ¶ 1.d. Applicant has a history of not meeting his financial obligations (DC E2.A6.1.2.1.) and has been unable or unwilling to pay his debts (E2.A6.1.2.3.). Some of the conditions that resulted in his delinquent debts were beyond Applicant's control—he lost his job and divorced his wife. MC E2.A6.1.3.3. But Applicant was totally

irresponsible in his handling of the debts. He never notified his creditors of his divorce and change of address, turned his credit cards over to his ex-wife believing she would pay his debts off, but never followed up to see that she did. Although he received counseling from a consumer credit counseling service, there are no clear indications his financial problems are being resolved. So MC E2.A6.1.3.4 does not apply. Applicant has declined to seek assistance from his new wife. Ex. 5 at 2. He also decided not to allocate to his debts any of the \$16,000 he received from his father until a decision is made to grant him a clearance. Tr. 18, 26. Thus, he has not made a good-faith effort to resolve these debts. See MC E2.A6.1.3.6. Under the circumstances, Applicant has not mitigated the security concerns raised by his delinquent debts. I find against Applicant.

### **Guideline E-Personal Conduct**

In the SOR, DOHA alleged Applicant falsified his SCA by deliberately failing to disclose that he had delinquent debts. Conduct involving questionable judgment, untrustworthiness, unreliability, lack of candor, dishonesty, or unwillingness to comply with rules and regulations could indicate that the applicant may not properly safeguard classified information. Directive ¶ E2.A5.1.1.

Applicant claims that, when he completed the SCA, he was unaware of the debts alleged in the SOR. He asserts he turned over all his credit cards to his ex-wife at the time of the divorce and that she verbally agreed to pay off the debts. He did not contact the creditors to cancel his accounts or follow-up with his ex-wife to ensure she paid the outstanding balances on those debts. He admits that his divorce was a very painful and unpleasant experience-the couple was "experiencing extreme marital differences." Accepting Applicant's claims at face value, his conduct demonstrated questionable judgment. None of the mitigating conditions listed in the guideline apply to Applicant's case. I find against Applicant.

### **FORMAL FINDINGS**

The following are my conclusions as to each allegation in the SOR:

Paragraph 1. Guideline F: AGAINST APPLICANT

Subparagraph 1.a.-1.e.: Against Applicant

Subparagraph 1.f. For Applicant

Subparagraph 1.g.-1.j. Against Applicant

Subparagraph 1.k. For Applicant

Subparagraph 1.l.-1.m. Against Applicant

Paragraph 2. Guideline E: AGAINST APPLICANT

Subparagraph 2.a.: 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. Pursuant to 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.

