

DATE: August 8, 2003

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In Re:

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SSN: -----

Applicant for Security Clearance

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ISCR Case No. 02-18157

**DECISION OF ADMINISTRATIVE JUDGE**

**WILFORD H. ROSS**

**APPEARANCES**

**FOR GOVERNMENT**

Melvin A. Howry, Esquire, Department Counsel

**FOR APPLICANT**

*Pro Se*

**SYNOPSIS**

The Applicant submitted compelling evidence showing that he has successfully resolved three of his debts and has made a good faith attempt over several years to resolve the fourth. While his Personnel Security Questionnaire did not contain information on all of his past due debts, there was no intent to falsify the questionnaire. Adverse inference is overcome. Clearance is granted.

**STATEMENT OF THE CASE**

On May 15, 2003, the Defense Office of Hearings and Appeals (DOHA), pursuant to Executive Order 10865 (as amended) and Department of Defense Directive 5220.6 (Directive), dated January 2, 1992, issued a Statement of Reasons (SOR) to the 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 the Applicant and recommended referral to an Administrative Judge to determine whether a clearance should be denied or revoked.

The Applicant responded to the SOR in writing on June 6, 2003, and requested a hearing. The case was received by the undersigned on July 9, 2003, and a Notice of Hearing was issued on July 9, 2003.

A hearing was held on July 22, 2003, at which the Government presented four documentary exhibits. Testimony was taken from the Applicant, who also submitted 11 exhibits. The transcript was received on July 30, 2003.

**FINDINGS OF FACT**

The Applicant is 29, separated and has a high school degree. He is employed by a defense contractor as a system administrator, and he seeks to obtain a DoD security clearance in connection with his employment in the defense sector.

The Government opposes the Applicant's request for a security clearance, based upon the allegations set forth in the

Statement of Reasons (SOR). The following findings of fact are entered as to each paragraph and guideline in the SOR. They are based on the Applicant's Answer to the SOR, the exhibits and the live testimony.

Paragraph 1 (Guideline F- Financial considerations). The Government alleges in this paragraph that the Applicant is ineligible for clearance because he is financially overextended and at risk of having to engage in illegal acts to generate funds.

*Subparagraph 1.a.* The Applicant admits that he incurred this credit card debt. The Applicant settled with this creditor and has paid them off. (Transcript at 51.) Applicant's Exhibit D at page 1 shows that the collection agency was deleting the account from the Applicant's credit reports. The same exhibit at page 2 also shows that the Applicant began contacting this creditor in December 2001 in an attempt to resolve this debt.

*Subparagraph 1.b.* The Applicant admits that he had an account with this credit card company. He separated from his wife in the Summer of 2001 and was concerned about her running up charges on his accounts. (Transcript at 35-38.) Beginning in November 2001, he was in contact with this creditor to find out the status of this account, see if his wife made any charges, and arrange for payment. (Applicant's Exhibit E at 2.) After several more letters, the creditor eventually responded by informing the Applicant that they were requesting the credit reporting agencies to delete the account from their files. (Applicant's Exhibit E at 1.)

*Subparagraph 1.c.* The Applicant admits that he had an account with this credit card company. Once again, he was concerned about his wife running up charges on the account and, in September 2001, he contacted the creditor to find out the status of the account, see if his wife had made any charges, and arrange for payment. (Applicant's Exhibit F at 1.) The Applicant did not receive a response and wrote again in February 2003. (Applicant's Exhibit F at 2.) As of the date of the hearing he had received no response. The Applicant's credit bureau report from June 2003 does not show any account number for this debt. (Applicant's Exhibit H at 7.) This has caused problems for the Applicant in attempting to resolve this indebtedness since the debt may have been transferred and the Applicant cannot find out who now owns the debt. (Transcript at 40.) The Applicant has the funds to resolve this situation if he can find out who the creditor is. (Transcript at 43.)

*Subparagraph 1.d.* The Applicant admitted owing this consumer debt. He made a payment arrangement with this creditor and the debt has been paid in full. (Applicant's Exhibit G at 1.)

The Applicant testified that this financial situation was caused by his moving from his home state to another state for work in 1998. At that time he and his wife were involved in a custody battle with her first husband, which cost a considerable amount of money. In 2001, he and his wife separated and he left his job and moved back to his home state. He is now gainfully employed and his credit report shows that he is able to pay his current indebtedness, pay off any remaining past due indebtedness, and pay child support to his soon to be ex-wife. (Transcript at 42-44.)

Paragraph 2 (Guideline E - Personal conduct). The Government alleges in this paragraph that the Applicant is ineligible for clearance because he intentionally falsified material aspects of his personal background during the clearance screening process.

On October 2, 2001, the Applicant completed an official DoD questionnaire in which he stated that he did not have any debts which were currently over 90 days delinquent. (Government Exhibit 1 at question 39.) In fact the Applicant had the four past due debts set forth under Paragraph 1, above, which were currently more than 90 days delinquent as of the date of this questionnaire.

On Government Exhibit 1 at question 38 the Applicant did state that the debt set forth under Subparagraph 1.b., above, had been 180 days delinquent within the past 7 years. The Applicant has stated that he put all four of the debts on the work sheet he filled out concerning this questionnaire. The Applicant's work location is geographically distant from his company's headquarters, and the work sheets were faxed to the headquarters. Then, the Applicant was faxed just the signature pages, not the entire electronic Personnel Security Questionnaire, which had been prepared by another person. He was not given an opportunity to review the completed document. During this transfer, according to the Applicant, several errors occurred in the document that was submitted. (Transcript at 21-28.) In addition, there were signs on Government Exhibit 1 that another person transcribed the Applicant's hand-written work sheet, especially on question

38 where the Applicant is referred to in the third person in a statement that he allegedly wrote.

When the Applicant was interviewed on April 23, 2002, he freely admitted all four of the past due debts. (Government Exhibit 2 at 4.) He further stated, "I thought I had disclosed all of my bad debts and I cannot explain why all of my bad debts do not appear on my security questionnaire. I did not willfully attempt to omit pertinent information from my security questionnaire." (Government Exhibit 2 at 2.)

### Mitigation.

The Applicant submitted several letters of recommendation from co-workers and supervisors (Applicant's Exhibit A). These individuals all stated that they hold the Applicant in high regard, that he "is both trustworthy and a man of integrity." (Applicant's Exhibit A at 4.)

The Applicant also submitted excerpts from the Department of Defense Adjudicator's Desk Reference concerning indebtedness (Applicant's Exhibit J). He made a particular point of several statements, including, "Many persons face serious financial problems through no fault of their own, so debt alone is rarely a basis for adverse administrative action. A person making a good faith effort to pay off a large debt caused by unexpected medical expenses or business reverses, for example, is unlikely to be a security concern." (Applicant's Exhibit J at 2.) He also drew the Administrative Judge's attention to this statement, "If a subject has formally disputed a debt (i.e., written the creditor, hired an attorney, initiated a court action) prior to adjudication proceedings, the adjudicator may elect to disregard this debt until the issue is resolved." (Applicant's Exhibit J at 5.)

## **POLICIES**

Security clearance decisions are not made in a vacuum. Accordingly, the Department of Defense, in Enclosure 2 of the 1992 Directive, has set forth policy factors which must be given "binding" consideration in making security clearance determinations. These factors should be followed in every case according to the pertinent guideline. However, the factors are neither automatically determinative of the decision in any case, nor can they supersede the Administrative Judge's reliance on his own common sense, as well as his knowledge of the law, human nature and the ways of the world, in making a reasoned decision. Because each security clearance case presents its own unique facts and circumstances, it cannot be assumed that these factors exhaust the realm of human experience, or apply equally in every case. Based on the Findings of Fact set forth above, the factors most applicable to the evaluation of this case are:

### Guideline F (Financial considerations)

#### Condition that could raise a security concern:

(1) a history of not meeting financial obligations.

#### Conditions that could mitigate security concerns:

(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);

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

### Guideline E (Personal conduct)

#### Conditions that could raise a security concern:

(None of the stated conditions have application in this case.)

#### Conditions that could mitigate security concerns:

(None of the stated conditions have application in this case.)

In addition, as set forth in Enclosure 2 of the Directive at pages 16-17, "In evaluating the relevance of an individual's conduct, the [Administrative Judge] should consider the following factors [General Factors]:

- a. The nature, extent and seriousness of the conduct
- b. The circumstances surrounding the conduct, to include knowledgeable participation
- c. The frequency and recency of the conduct
- d. The individual's age and maturity at the time of the conduct
- e. The voluntariness of participation
- f. The presence or absence of rehabilitation and other pertinent behavior changes
- g. The motivation for the conduct
- h. The potential for pressure, coercion, exploitation or duress
- i. The likelihood of continuation or recurrence."

The eligibility guidelines established in the DoD Directive identify personal characteristics and conduct which are reasonably related to the ultimate question of whether it is "clearly consistent with the national interest" to grant an Applicant's request for access to classified information.

In the defense industry, the security of classified industrial secrets is entrusted to civilian workers who must be counted upon to safeguard such sensitive information twenty-four hours a day. The Government is therefore appropriately concerned where available information indicates that an Applicant for clearance may have a history of excess indebtedness or be involved in acts of falsification that demonstrates poor judgement, untrustworthiness or unreliability on the Applicant's part.

The DoD Directive states, "Each adjudication is to be an overall common sense determination based upon consideration and assessment of all available information, both favorable and unfavorable, with particular emphasis placed on the seriousness, recency, frequency, and motivation for the individual's conduct; the extent to which conduct was negligent, willful, voluntary, or undertaken with the knowledge of the circumstances or consequences involved; and, to the extent that it can be estimated, the probability that conduct will or will not continue in the future." The Administrative Judge can only draw those inferences or conclusions that have a reasonable and logical basis in the evidence of record. The Judge cannot draw inferences or conclusions based on evidence which is speculative or conjectural in nature. Finally, as emphasized by President Eisenhower in Executive Order 10865, "Any determination under this order...shall be a determination in terms of the national interest and shall in no sense be a determination as to the loyalty of the applicant concerned."

### CONCLUSIONS

It is the Government's responsibility to present substantial evidence to support the finding of a nexus, or rational connection, between the Applicant's conduct and the granting of a security clearance. If such a case has been established, the burden then shifts to the Applicant to go forward with evidence in rebuttal, explanation or mitigation which is sufficient to overcome or outweigh the Government's case. The Applicant bears the ultimate burden of persuasion in proving that it is clearly consistent with the national interest to grant him or her a security clearance.

In this case the Government has met its initial burden of proving by substantial evidence that the Applicant had a history of indebtedness involving four particular debts (Guideline F); and that there was an answer on his Personnel Security Questionnaire (PSQ) that was false. (Guideline E).

The Applicant, on the other hand, has introduced compelling evidence overcoming the Government's case. Turning first

to the four debts alleged in the SOR. The Applicant submitted evidence that three of these debts have been resolved. Two were paid by the Applicant and on the third the creditor elected to delete the debt from the Applicant's credit report. He has not received a response from the fourth creditor despite his repeated attempts to contact them.

The evidence shows that the Applicant had marital and employment problems in 2001 that aggravated his debt situation. However, he submitted letters showing that, even at that early date, he was taking concrete steps to resolve the situations. It is clear that he has not avoided these debts, and it is also clear that his current financial situation is stable and that he is dedicated to maintaining a proper financial state. Paragraph 1 is found for the Applicant.

With regards to the alleged falsification, the Applicant has also overcome the Government's evidence. There is evidence that the electronic PSQ was filled out by another person at his employer's home office, located in another state. The electronic PSQ does contain information about one delinquent debt, putting the Government on notice that such problems exist. In addition, the Applicant was very open during his interview about his debt problems. Any motivation the Applicant had to deceive is also vitiated by his attempts to resolve the debts. Finally, the Applicant's testimonial evidence on this matter was credible, believable and consistent with the documentary evidence available. I find that he did not falsify his questionnaire. Paragraph 2 is found for the Applicant.

On balance, it is concluded that the Applicant has successfully overcome the Government's case opposing his request for a DoD security clearance. Accordingly, the evidence supports a finding for the Applicant as to the factual and conclusionary allegations expressed in Paragraphs 1 and 2 of the Government's Statement of Reasons.

### **FORMAL FINDINGS**

Formal findings For or Against the Applicant on the allegations in the SOR, as required by Paragraph 25 of Enclosure 3 of the Directive, are:

Paragraph 1: For the Applicant.

Subparagraph 1.a.: For the Applicant.

Subparagraph 1.b.: For the Applicant.

Subparagraph 1.c.: For the Applicant.

Subparagraph 1.d.: For the Applicant.

Paragraph 2: For the Applicant.

Subparagraph 2.a. For the Applicant.

### **DECISION**

In light of all the circumstances presented by the record in this case, it is clearly consistent with the national interest to grant or continue a security clearance for the Applicant.

Wilford H. Ross

Administrative Judge