

DATE: June 2, 2004

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In re:

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SSN: -----

Applicant for Security Clearance

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ISCR Case No. 02-20088

**DECISION OF ADMINISTRATIVE JUDGE**

**JAMES A. YOUNG**

**APPEARANCES**

**FOR GOVERNMENT**

Juan J. Rivera, Esq., Department Counsel

**FOR APPLICANT**

*Pro Se*

**SYNOPSIS**

After Applicant was laid off from his job, he was unable to pay his bills while he was searching for other employment. He consulted a debt consolidator, but was unable to make the necessary payments. He finally resolved his debts through bankruptcy. Clearance is granted.

**STATEMENT OF THE CASE**

The Defense Office of Hearings and Appeals (DOHA) declined to grant or continue a security clearance for Applicant. On 20 June 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) of the Directive. Applicant answered the SOR in writing on 11 July 2003 and elected to have the case decided on the written record in lieu of a hearing. Department Counsel submitted the Government's written case on 23 December 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 to refute, extenuate, or mitigate the disqualifying conditions. Applicant received the FORM on 22 January 2004 and responded on 16 February 2004. The case was assigned to me on 28 April 2004.

**FINDINGS OF FACT**

Applicant is a 57-year-old applications developer for a defense contractor. Item 4 at 1, 2. He is married and has two adult children. *Id.* at 3, 4. He served in the U.S. Navy from 1965 until 1974. *Id.* at 5. He was previously investigated for a security clearance in 1966 and 1977 and on both occasions was granted a secret clearance. *Id.* at 8.

Applicant was laid off from his position as a senior engineer in 1996. He was unemployed for one year and then became a consultant. He took a position with a defense contractor in May 2000. During his unemployment and while working as a consultant, Applicant was unable to pay his bills. He spent his severance package, his savings, and his 401K savings to try to stay current. He was unable to keep up and turned to a credit counseling service to help him consolidate and pay

his bills. His consulting business did not bring in sufficient funds to maintain payments to the credit counseling service. He became delinquent on his property taxes, but paid them off when he sold his house in 1999. Item 6. After Applicant found full-time employment in 2000, he has been able to stay current on his bills. But he was unable to make satisfactory progress in paying off the past delinquencies. He filed for bankruptcy protection and, on 3 February 2003, his delinquent debts were discharged. Item 3 at 3.

## 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, 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. "[T]he Directive presumes there is a nexus or rational connection between proven conduct under any of the Criteria listed therein and an applicant's security suitability." ISCR Case No. 95-0611 at 2 (App. Bd. May 2 1996) (quoting DISCR Case No. 92-1106 (App. Bd. Oct. 7, 1993)).

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 (App. Bd. Dec. 19, 2002). "[S]ecurity clearance determinations should err, if they must, on the side of denials." *Egan*, 484 U.S. at 531; *see* Directive ¶ E2.2.2.

## CONCLUSIONS

In the SOR, DOHA alleged Applicant had numerous delinquent debts (¶¶ 1.a.-1.l.) totaling over \$80,000, and his monthly expenses exceeded his monthly income so that he was unable to pay on his delinquent debts (¶ 1.m.). 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 substantial evidence and Applicant's admissions each of the SOR allegations. Applicant has a history of not meeting his financial obligations (DC E2.A6.1.2.1.) and was unable to satisfy his debts (DC E2.A6.1.2.3.). But the conditions resulting in his delinquent debts were largely beyond his control. MC E2.A6.1.3.3. He was laid off from his employment and struggled to re-establish himself. He attempted debt consolidation, but was forced to abandon the idea because his consulting business did not bring in sufficient funds to make the required monthly payments. Finally, he was forced to file bankruptcy. His debts have been resolved by the bankruptcy discharge. MC E2.A6.1.3.6. Although the bankruptcy is little more than a year old, it appears Applicant is living within his means and has been making payments on his current debts. There is no evidence he had any delinquent debts before he was laid off. After considering all of the evidence in this case, I find for Applicant.

**FORMAL FINDINGS**

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

Paragraph 1. Guideline F: FOR APPLICANT

Subparagraph 1.a.-1.m.: For Applicant

**DECISION**

In light of all of 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 Applicant. Clearance is granted.

**James A. Young**

**Administrative Judge**

1. 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.