

DATE: June 28, 2004

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In re:

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SSN: -----

Applicant for Security Clearance

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ISCR Case No. 02-21064

**DECISION OF ADMINISTRATIVE JUDGE**

**PHILIP S. HOWE**

**APPEARANCES**

**FOR GOVERNMENT**

Kathryn D. MacKinnon, Esq., Department Counsel

**FOR APPLICANT**

*Pro Se*

**SYNOPSIS**

Applicant had ten unpaid and delinquent utility, medical, and credit card debts totaling less \$2500. Applicant procrastinated on paying these delinquent debts over the years they were due. Applicant also owed over \$22,000 in back child support. Applicant failed to fully disclose the delinquency of these debts on his security clearance application. He did not mitigate all of the financial consideration concerns. He failed to mitigate the personal conduct concerns. Clearance is denied.

**STATEMENT OF THE CASE**

On August 18, 2003, the Defense Office of Hearings and Appeals (DOHA), under Executive Order 10865, *Safeguarding Classified Information Within Industry*, dated February 20, 1960, 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. The SOR detailed reasons under Guideline F (Financial Considerations) and Guideline E (Personal Conduct) 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 referral to an Administrative Judge to conduct proceedings and determine whether clearance should be granted, continued, denied, or revoked.

Applicant submitted a signed and sworn statement, dated September 15, 2003. He admitted the allegations contained in Paragraphs 1. and 2. of the SOR.

On February 6, 2004, Department Counsel submitted the Department's written case. A complete copy of the file of relevant material (FORM) was provided to the Applicant. He was given the opportunity to file objections and submit material in refutation, extenuation, or mitigation. Applicant file the response to the FORM within the scheduled due date of March 31, 2004. The case was assigned to me on April 26, 2004.

**FINDINGS OF FACT**

Applicant's admissions are incorporated herein as findings of fact. After a complete and thorough review of the evidence in the record, and upon due consideration of that evidence, I make the following additional findings of fact:

Applicant is 40 years old. Applicant is married and has three children. He is currently employed by a defense contractor. (Item 4 at 1 to 3; Item 5 at 1, 6-8)

Applicant's delinquent debts and their disposition are shown as follows:

| SOR ¶ | Creditor and Amount                   | Current Status  | Record Evidence                  |
|-------|---------------------------------------|---|----------------------------------|
| 1.a.  | Chiropractor, \$135 (2001)            | Paid  | Item 3 at 8, Item 6 at 10        |
| 1.b.  | Physician, \$247 (2000)               | Paid  | Item 3 at 5, Item 7              |
| 1.c.  | Physician, \$35 (1996)                | Paid  | Item 3 at 5, Item 7              |
| 1.d.  | Electric utility, \$189 (1997)        | Paid  | Item 6 at 8, Item 7              |
| 1.e.  | Dentist, \$100 (1997)                 | Paid  | Item 3 at 9, Item 6 at 9, Item 7 |
| 1.f.  | Physician, \$40 (1998)                | Paid  | Item 3 at 5, Item 7              |
| 1.g.  | Physician, \$10 (1998)                | Paid  | Item 3 at 5, Item 7              |
| 1.h.  | Dentist, \$364 (2000)                 | Allegedly paying on plan  | Item 3 at 1, Item 7              |
| 1.i.  | Credit Card, \$219 (2003)             | Allegedly paying on plan  | Item 3 at 1, Item 7              |
| 1.j.  | Credit Card, \$1195 (2001)            | Allegedly paying on plan  | Item 3 at 1, Item 7              |
| 1.k.  | Child support, \$27,000               | Paying small amounts monthly pursuant to court order since 1993 | Item 8, Response Attachment D    |
| 1.l.  | 4/101997 Chapter 13 bankruptcy filing | 9/3/1999 discharge  | Item 9                           |

As of June 2003, according to the credit report in the file, Applicant owed \$51,483, including the child support. The child support is not dischargeable in bankruptcy. The debts listed on the credit report were incurred after the bankruptcy discharge, except three medical bills which were incurred before the bankruptcy and could have been included in the bankruptcy. (Item 7)

Applicant's personal financial statements in the file show in March 2002 that he has one motorcycle and car, \$2800 gross salary, no debt payments being made, and a net remainder of income of \$600. In the June 2003 personal financial statement, Applicant owns two motorcycle in addition to his car, has a gross income of \$3800, and a net remainder income of \$1023. While Applicant's income increased and he incurred more delinquent debt, he also purchased another motorcycle. (Item 5 at 2; Item 6 at 4)

The security clearance application (SCA) is dated September 26, 2000. The only date alleged in the SOR and contained in the file for the judgment by the chiropractor against Applicant is July 2001. Applicant did not disclose any unpaid judgments in answer to Question 37 of the SCA. The four previous judgments contained in the bankruptcy were discharged under that Chapter 13 proceeding. (Item 4 at 1; Item 6 at 10)

Applicant did not disclose any delinquent debts in the past seven years which were unpaid more than 180 days, in answer to Question 38 of the SCA. All of the unpaid debts alleged in the SOR subparagraphs 1.b. through 1.h. and 1.k. were delinquent more than 180 days. Applicant attributes his negative answer to failing to check his credit report after his bankruptcy, but those debts were incurred after the bankruptcy or not included in it. (Answer Item 3; Item 4 at 9)

### **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 judgement, 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* Section 3.1(b) (Aug. 4, 1995). Eligibility for a security clearance is predicted upon the applicant meeting the security guidelines contained in the Directive.

The adjudication process is based on the whole person concept. All available, reliable information about the person, past and present, is to be taken into account in reaching a decision as to whether a person is an acceptable security risk. Enclosure 2 to the Directive sets forth adjudicative guidelines that must be carefully considered according to the pertinent Guideline in making the overall common sense determination required.

Each adjudicative decision must also include an assessment of:

- (1) the nature, extent, and seriousness of the conduct;
- (2) the circumstances surrounding the conduct, and the extent of knowledgeable participation;
- (3) how recent and frequent the behavior was;
- (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 pertinent 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 (See Directive, Section E2.2.1. of Enclosure 2).

Because each security case presents its own unique facts and circumstances, it should not be assumed that the factors exhaust the realm of human experience or that the factors apply equally in every case. Moreover, although adverse information concerning a single condition may not be sufficient for an unfavorable determination, the individual may be disqualified if available information reflects a recent or recurring pattern of questionable judgment, irresponsibility, or other behavior specified in the Guidelines.

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. All that is required is proof of facts and circumstances that indicate an applicant is at risk for mishandling classified information, or that an applicant does not demonstrate the high degree of judgment, reliability, or trustworthiness required of persons handling classified information. ISCR Case No. 00-0277, 2001 DOHA LEXIS 335 at \*\*6-8 (App. Bd. 2001). Once the Government has established a *prima facie* case by substantial evidence, the burden shifts to the applicant to rebut, explain, extenuate, or mitigate the facts. See Directive ¶ E3.1.15. An applicant "has the ultimate burden of demonstrating that is clearly consistent with the national interest to grant or continue his security clearance." ISCR Case No. 01-20700 at 3 (App. Bd. 2002). "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 Exec. Or. 12968 Section 3.1(b).

Based upon a consideration of the evidence as a whole, I find the following adjudicative guideline most pertinent to an

evaluation of the facts of this case:

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

An individual who is financially overextended is at risk of having to engage in illegal acts to generate funds. Directive, ¶ E2.A6.1.1.

Applicable conditions that could raise a security concern and may be disqualifying include:

(1) A history of not meeting financial obligations. Directive, ¶ E2.A6.1. 2.1.

(3) Inability or unwillingness to satisfy debts. Directive, ¶ E2.A6.1.2.3.

Applicable conditions that could mitigate security concerns include:

(6) The individual initiated a good-faith effort to repay overdue creditors otherwise resolve debts. Directive, ¶ E2.A6.1.3.6.

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

(A) The Concern: Conduct involving questionable judgment, untrustworthiness, unreliability, lack of candor, dishonesty, or unwillingness to comply with rules and regulations could indicate that the person may not properly safeguard classified information. Directive, ¶ E2.A5.1.1.

(B) Conditions that could raise a security concern and may be disqualifying also include:

(2) The deliberate omission, concealment, falsification or misrepresentation of relevant and material facts from any personnel security questionnaire, personal history statement or similar form used to conduct investigations, determine employment qualifications, award benefits or status, determine security clearance eligibility or trustworthiness, or award fiduciary responsibilities; Directive, ¶ E2.A5.1.2.2.

(C) Conditions that could mitigate security concerns include:

(1) The information was unsubstantiated. Directive, ¶ E2.A5.1.3.1.

## **CONCLUSIONS**

I conclude that under Guideline F (Financial Considerations) the Government proved its case. Therefore, the Disqualifying Conditions (DC) 1 (*a history of not meeting financial obligations*) and DC 2 (*an inability or unwillingness to satisfy debts*) apply. Applicant's delinquent financial debts are sizable and were when he completed the SCA. Applicant has a chronic problem with his finances, as evidenced by his bankruptcy, and later incurring more debt which became delinquent. He only paid some debts after the SOR was filed and mailed to him. His two financial statements show his net remainder income increased over the year which separated the two statements, and he seemed to have money to buy another motorcycle. He should have used some of that money to pay his debts faster, and reduce his credit card and child support delinquencies.

There are no Mitigating Conditions (MC) applicable here to subparagraphs 1.h., 1.i., and 1.j. Applicant stated in his Answer to the SOR he was entering installment payment plans with these creditors, but submitted no documentary evidence of such plans in his Response to the FORM. Applicant has not presented any evidence that he has paid these debts at any time. The subparagraphs 1.a. through 1.g. were mitigated by his payments of those delinquent debts, and MC 6 (*the individual initiated a good-faith effort to repay overdue creditors or otherwise resolve debts*) applies to those allegations. Applicant has been paying on his child support since 1993, according to records submitted in the FORM. His debt is large, and at \$50 or less monthly he will not catch up the arrearage. Lastly, Applicant attempts to persuade that he is consulting with a credit expert, but the only assertion is in Item 6 at 6, the response to the DOHA interrogatory in June 2003. There is not further evidence of any action being taken on that assertion, and I conclude against Applicant

on that assertion. Therefore, I find against Applicant on this guideline.

Regarding Guideline E (Personal Conduct), I conclude the Government proved its case on subparagraph 2.b. The SOR alleges Applicant falsified material facts on the SCA, Question 38 (delinquencies over 180 days). DC 2 (*the deliberate, concealment, or falsification of relevant and material facts from any personal security questionnaire or similar form used to determine security clearance eligibility or trustworthiness*) applies to this case.

The only date for the judgment alleged in subparagraph 1.a. is July 2001, after the date Applicant completed his SCA. I believe his explanation on this allegation. Therefore, I find for Applicant on that allegation. I conclude there is no MC which applies to subparagraph 2.b. Applicant knew he had debts which were delinquent for more than 180 days. He had many such debts. His explanation of why he did not list those debts is not credible or persuasive. Therefore, I find against Applicant under this guideline.

### **FORMAL FINDINGS**

Formal Findings as required by Section E3.1.25 of Enclosure 3 of the Directive are hereby rendered as follows:

Paragraph 1 Guideline F: Against Applicant

Subparagraph 1.a.: For Applicant

Subparagraph 1.b.: For Applicant

Subparagraph 1.c.: For Applicant

Subparagraph 1.d.: For Applicant

Subparagraph 1.e.: For Applicant

Subparagraph 1.f.: For Applicant

Subparagraph 1.g.: For Applicant

Subparagraph 1.h.: Against Applicant

Subparagraph 1.i.: Against Applicant

Subparagraph 1.j.: Against Applicant

Subparagraph 1.k.: For Applicant

Subparagraph 1.l.: For Applicant

Paragraph 2 Guideline E: Against Applicant

Subparagraph 2.a.: For Applicant

Subparagraph 2.b.: Against Applicant

### **DECISION**

In light of all the circumstances and facts presented by the record in this case, it is not clearly consistent with the interest of national security to grant a security clearance to Applicant. Clearance is denied.

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Philip S. Howe  
Administrative Judge