

DATE: June 24, 2004

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In Re:

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SSN: -----

Applicant for Security Clearance

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ISCR Case No. 02-21604

**DECISION OF ADMINISTRATIVE JUDGE**

**MARTIN H. MOGUL**

**APPEARANCES**

**FOR GOVERNMENT**

Edward W. Loughran, Department Counsel

**FOR APPLICANT**

Pro Se

**SYNOPSIS**

Applicant has had a history of financial difficulties. He has taken virtually no action to contact the creditors and pay off his debts. Based on his tenuous financial situation and his history of financial irresponsibility, Applicant has failed to demonstrate a stable and mature outlook about his finances. Applicant knew or should have known that the financial information that he provided to the Government on a Security Clearance Application (SCA) was materially incorrect and incomplete. Mitigation has not been shown. Clearance is denied.

**STATEMENT OF THE CASE**

On October 9, 2003, the Defense Office of Hearings and Appeals (DOHA), pursuant to Executive Order 10865 and Department of Defense Directive 5220.6 (Directive), dated January 2, 1992, 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 and recommended referral to an Administrative Judge to determine whether clearance should be denied or revoked.

In a signed and sworn statement, dated November 24, 2003, Applicant responded in writing to the SOR allegations. He requested a clearance decision based on a hearing record.

On February 2, 2004, this case was assigned to this Administrative Judge to conduct a hearing and issue a written decision. A Notice of Hearing was issued to the parties on February 13, 2004, and the hearing was held on March 15, 2004.

At the hearing, Department Counsel offered five documentary exhibits (Government Exhibits 1 through 5), and no witnesses were called. Applicant offered no documentary exhibits, but offered his own testimony. The transcript (TR) was received on March 30, 2004.

## FINDINGS OF FACT

In the SOR, the Government alleges that a security risk may exist under Adjudicative Guideline F (Financial Considerations) and Guideline E (Personal Conduct) of the Directive. The SOR contains seven allegations, 1.a. through 1.g., under Guideline F, and two allegations, 2.a. and 2.b., under Guideline E. Applicant admitted all of the SOR factual allegations, except 1.b. and 1.c. The admitted allegations are incorporated herein as a finding of fact.

After a complete and thorough review of the evidence in the record, including Applicant's Answer to the SOR, the documents and the live testimony, and upon due consideration of that evidence, I make the following additional Findings of Fact:

Applicant is a 48 year old employee of a defense contractor who seeks access to classified information. He is separated from his wife, and they have a nine year old son. Applicant is a high school graduate.

### Paragraph 1 (Guideline F - Financial Considerations)

The SOR lists six debts that Applicant owed as of May 9, 2003, 1.a. through 1.f under Adjudicative Guideline F. Based on his response to the SOR, the total amount owed by Applicant was approximately \$5,600. These debts were all long overdue, most for several years. The debts will be discussed in the order that they were listed in the SOR:

1.a. This credit card debt to Creditor 1 is listed in the SOR in the amount of \$2,153. Applicant testified that he has made no payment on this debt, and he currently owes the full amount stated (TR at 17, 18).

1.b. This debt to Creditor 2 is in the amount of \$80. Applicant testified that this debt, for a delinquent parking ticket, has been resolved. He paid this debt in approximately 1998 to remove any restrictions from his motor vehicle (TR at 18, 19).

1.c. This debt to Creditor 2 is in the amount of \$23. Applicant testified that this debt, also for a delinquent parking ticket, has been resolved. He paid this debt in approximately 1998 to remove any restrictions from his motor vehicle (TR at 18, 19).

1.d. This credit card debt to Creditor 3 is listed in the SOR in the amount of \$2,570. Applicant testified that he has made no payment on this debt, and he currently owes the full amount stated (TR at 19).

1.e. This debt to Creditor 4 for cable television services is listed in the SOR in the amount of \$80. Applicant testified that he has made no payment on this debt, and he currently owes the full amount stated (TR at 19-21).

1.f. This debt to Creditor 5, a department store, is in the amount of \$810. Applicant testified that he has made no payment on this debt, and he currently owes the full amount stated (TR at 21).

1.g. The SOR alleges that, based on a Personal Financial Statement, completed by Applicant on April 8, 2002, he would have no disposable income to resolve his debts. Applicant testified that based on a more current Personal Financial Statement, prepared on May 16, 2003, he now has \$360 a month remaining to pay off his debts (TR at 31-34, Exhibit 4).

Applicant consulted a credit counseling service after beginning the security clearance process, but he never availed himself of their services. In a sworn statement made by Applicant to the Defense Security Service (DSS) on April 8, 2002, he stated that since he is now employed, he planned to contact the creditors to attempt to arrange a payment plan (Exhibit 2). However, at the hearing, Applicant testified that, even though he has been aware of the Government's interest in resolving his debts, and despite his statement to the DSS, he did not want to start paying off these debts until he knew for certain that he could retain this current job. Therefore, as of the date of the hearing, he had taken no steps to resolve any of these debts (TR at 28, 29).

### Paragraph 2 Guideline E (Personal Conduct)

Applicant completed a signed, sworn Security Clearance Application (SCA) on August 28, 2001. Question #38 asks, "In

the last 7 years, have you been over 180 days delinquent on any debt(s)?" Applicant answered, "Yes" to this question and listed only one debt, which is the debt included on the SOR as 1.a. (Exhibit 1). Clearly, at the time he completed the SCA, Applicant was or had been delinquent on all the other debts listed on the SOR, and he should have included all of these debts .

Question #39 asks, "Are you currently over 90 days delinquent on any debt(s)?" Applicant answered, "Yes" to this question and again listed only the one debt, which he had included in his response to question #38 (Exhibit 1). At the time he completed the SCA, Applicant was still delinquent on the debts listed as 1.d, 1.e, and 1.f., on the SOR, and he should have included all of these debts.

Applicant's explanation for his responses was that he did not recall, or was not sure, what debts he actually owed. He testified, "The other creditors, I hadn't heard from them for a while. I assumed they probably got repaid from the bank I guessed. Whatever." (TR at 25).

## POLICIES

Enclosure 2 of the Directive sets forth adjudicative guidelines that must be carefully considered in evaluating an individual's security eligibility and making the overall common sense determination required. The Administrative Judge must take into account the conditions raising or mitigating security concerns in each area applicable to the facts and circumstances presented. Although the presence or absence of a particular condition for or against clearance is not determinative, the specific adjudicative guidelines should be followed whenever a case can be measured against this policy guidance, as the guidelines reflect consideration of those factors of seriousness, recency, motivation, *etc.*

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.

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).

Based upon a consideration of the evidence as a whole, I find the following adjudicative guidelines and concerns most pertinent to an evaluation of the facts of this case:

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

E2.A6.1.1. *The Concern:* An individual who is financially overextended is at risk of having to engage in illegal acts to generate funds. Unexplained affluence is often linked to proceeds from financially profitable criminal acts.

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

E2.A5.1.1. *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. The following will normally result in an unfavorable clearance action or administrative termination of further processing for clearance eligibility:

## **BURDEN OF PROOF**

Initially, the Government must prove controverted facts alleged in the Statement of Reasons. If the Government meets that burden, the burden of persuasion then shifts to Applicant to establish his security suitability through evidence of refutation, extenuation or mitigation sufficient to demonstrate that, despite the existence of disqualifying conduct, it is nevertheless clearly consistent with the national interest to grant or continue the security clearance. Assessment of

Applicant's fitness for access to classified information requires evaluation of the whole person, and consideration of such factors as the recency and frequency of the disqualifying conduct, the likelihood of recurrence, and evidence of rehabilitation.

A person who seeks access to classified information enters into a fiduciary relationship with the U.S. Government that is predicated upon trust and confidence. Where facts proven by the Government raise doubts about Applicant's judgment, reliability, or trustworthiness, Applicant has a heavy burden of persuasion to demonstrate that he or she is nonetheless security worthy. As noted by the United States Supreme Court in *Department of the Navy v. Egan*, 484 U.S. 518, 531 (1988), "the clearly consistent standard indicates that security-clearance determinations should err, if they must, on the side of denials."

### CONCLUSIONS

Having considered the evidence of record in light of the appropriate legal precepts and factors, I conclude the following with respect to guidelines F and E:

With respect to Guideline F, the Government has established that Applicant has had a history of financial difficulties. The evidence shows that Applicant has had some funds available to pay off his debts, yet he has taken virtually no action to contact the creditors and pay off these debts. Based on his tenuous financial situation and his history of financial irresponsibility, Applicant has failed to demonstrate a stable and mature outlook about his finances. I, therefore, resolve Guideline F against Applicant.

Regarding the Disqualifying Conditions (DC) under Guideline F, I conclude both DC E2.A6.1.2.1., and DC E2.A6.1.2.3 apply, because of Applicant's history of not meeting financial obligations and his unwillingness to satisfy his debts. I find that none of the Mitigating Conditions (MC) apply.

With respect to Guideline E, the evidence establishes that Applicant provided inaccurate information to the Government in response to two questions, #38 and #39, on the SCA that he executed in August 2001. I conclude that when Applicant answered the SCA, he knew or should have known that he had several long overdue debts, and he should have furnished this information to the Government. I resolve Guideline E against Applicant.

In reviewing the Disqualifying Conditions (DC) under Guideline E, I conclude that DC E2.A5.1.2.2. applies because the information that Applicant provided to the Government, in his SCA, was known or should have been known by him to be an omission of relevant and material facts. No Mitigating Conditions (MC) apply.

### FORMAL FINDINGS

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

#### **Paragraph 1, Financial Considerations, Guideline F: Against Applicant**

Subparagraph 1.a.: Against Applicant

Subparagraph 1.b.: For Applicant

Subparagraph 1.c.: For Applicant

Subparagraph 1.d.: Against Applicant

Subparagraph 1.e.: Against Applicant

Subparagraph 1.f.: Against Applicant

#### **Paragraph 2, Personal Conduct, Guideline E: Against Applicant**

Subparagraph 2.a.: Against Applicant

Subparagraph 2.b.: Against Applicant

**DECISION**

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

Martin H. Mogul

Administrative Judge