

DATE: June 18, 2004

In re:

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SSN: -----

Applicant for Security Clearance

ISCR Case No. 02-22572

**DECISION OF ADMINISTRATIVE JUDGE**

**JAMES A. YOUNG**

**APPEARANCES**

**FOR GOVERNMENT**

Kathryn A. Trowbridge, Esq., Department Counsel

**FOR APPLICANT**

*Pro Se*

**SYNOPSIS**

Applicant failed to mitigate the security concerns raised by his failure to pay his debts and his deliberate falsification of his security clearance application concerning those debts, judgments, a lien, and a repossession. 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 11 August 2003, DOHA issued a Statement of Reasons<sup>(1)</sup> (SOR) detailing the basis for its decision-security concerns raised under Guideline F (Financial Considerations) and Guideline E (Personal Conduct) of the Directive. Applicant admitted, with explanation, each of the SOR allegations in a writing notarized on 10 September 2003 and elected to have a hearing before an administrative judge. Applicant filed an amended Answer on 20 February 2004 in which he denied each of the allegations but gave the same explanation. The case was assigned to me on 12 December 2003. On 6 April 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 15 April 2004.

Without objection from Applicant, I granted Department Counsel's motion to amend the date in ¶ 1.i. to read "February 16" vice "November 9" and ¶ 1.j. to read "for the Northern District of Texas on October 29" vice "for the (sic) Northern District of Texas on January 9."

**FINDINGS OF FACT**

Applicant is a 45-year-old electronics technician for a defense contractor. Ex. 1 at 4; Tr. 19. He has two years of college and served in the military for six years, from 1980-1986. Tr. 19. He obtained a secret security clearance in 1992 when he worked for the same defense contractor. Ex. 1 at 6. He was laid off from that position in early 1995.

In February 1989, Applicant filed a Chapter 7 bankruptcy petition. Applicant's monthly expenses exceeded his income

by over \$200. Ex. 4. In July 1989, the court discharged more than \$16,000 in debts.

After he was laid off from his job with the defense contractor, Applicant formed his own long-haul trucking business, which he incorporated. He had as many as 20 trucks hauling for him, the majority of which were owned by the drivers. By the time he closed the business in early 2001, Applicant had been recalled to work for the defense contractor. Tr. 22-23, 33-34.

In June 2001, Applicant and his wife filed for bankruptcy under Chapter 13. They listed over \$300,00 in unsecured debts and deficiencies. Ex. 6 at 13. In the bankruptcy petition, Applicant listed six judgments against him (Ex. 6 at 20) and denied that, in the previous six years, he had been an officer, director, or partner of any corporation, partnership, or sole proprietorship (*Id.* at 24). Applicant had known of his delinquent debts at least six months before the filing. Tr. 52. On 20 February 2002, the court dismissed the bankruptcy without discharging Applicant's debts for failing to complete the paperwork required for filing. Ex. 5; Ex. 6 at 1-3. Applicant had a lien placed on his home by his mortgage company. Ex. H. He had one of his vehicles repossessed. Tr. 30.

On 10 April 2001, Applicant completed a security clearance application (SCA). Question 35 asked if, in the previous seven years, Applicant had any property repossessed for any reason. Question 36 asked if, in the previous seven years, Applicant had a lien placed against his property for failing to pay taxes or other debts. Question 37 asked if, in the previous seven years, Applicant had any judgments that had not been paid. Question 38 asked if, in the previous seven years, Applicant had been delinquent more than 180 days on any debts. Question 39 asked if Applicant was then delinquent more than 90 days on any debts. Applicant answered "no" to each of these questions.

### 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 not paid several debts totaling approximately \$15,000 (¶¶ 1.a.-h.) and that he had filed for bankruptcy protection in 1989 and 2002 (¶¶ 1.i.-1.j.). 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 each of the allegations in the SOR. Applicant has a history of not meeting his financial obligations (DC E2.A6.1.2.1.) and is unable or unwilling to satisfy his debts (DC E2.A6.1.2.3.).

Applicant admits each of the debts alleged in ¶ 1.a.-1.g., but claims ignorance regarding the debt alleged in ¶ 1.h. That debt is for medical services from a doctor in 1996. Ex. 3 at 7. Applicant engaged a non-profit credit counseling service that contested every one of Applicant's debts, even those he admitted were genuine. According to the credit counseling service, the doctor's debt and some of the other debts listed in the SOR were either deleted or upgraded to positive. Ex. B at 2. This does not show the accounts were paid or resolved, merely that they may have been deleted from his credit report. The latest correspondence from the credit counseling service is dated 24 November 2003.

Applicant's debts may have resulted, in part, from the conditions beyond his control-failure of his business venture. MC E2.A6.1.3.3. He received some financial counseling concerning his debt problems, but there are not clear indications his problem is being resolved or under control. *See* MC E2A6.1.3.4. Applicant admits his monthly income exceeds his expenses by between \$1,000, yet he is not using that money to resolve his debts. Tr. 48. He claims he has paid some of his debts, but produced no documentation to corroborate his claims. He owes his own company over \$500, but still has not figured out what the debt is for. Tr. 55. He has not made a good-faith effort to pay his debts. *See* MC E2.A6.1.3.6. Under the circumstances, finding is against Applicant on ¶¶ 1.a.-1.g. and 1.i.-1.j.

## **Guideline E-Personal Conduct**

In the SOR, DOHA alleged Applicant falsified his SCA by deliberately failing to disclose relevant and material information concerning a lien (¶ 2.a.), unpaid judgments (¶ 2.b.), repossessions (¶ 2.c.), debts in the previous seven years delinquent more than 180 days (¶ 2.d.), and debts that were then delinquent more than 90 days (¶ 2.e.). 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.

The Government established by substantial evidence that Applicant failed to disclose in his SCA his lien, his unpaid judgments, his repossessions, and delinquent debts. Proof Applicant omitted this information from his SCA shifted the burden to Applicant to explain the omissions sufficiently to negate a finding of knowing and deliberate falsification. *See* ISCR Case No. 02-23133 at 5 (App. Bd. Jun. 9, 2004).

Applicant asserts he was unaware of his financial problems because he entrusted the finances to his wife, who he claims was an alcoholic and drug addict. Despite her condition, and their separation pending divorce, Applicant nevertheless avers he expected her to make payments on the Chapter 13 bankruptcy while he paid the mortgage on the couple's house. It just would not be reasonable for him to trust his alcoholic, drug-addicted wife, who had gotten him into such financial difficulties in the first place, to pay on a substantial wage-earner plan. He also claimed the debts were related to his business and he thought he was only required to list personal debts. But he admits the debt alleged in ¶ 1.f. was from his failure to pay his home mortgage. And on his bankruptcy in 2001, he swore that, in the previous six years, he had not been an officer, director, partner, or managing executive in any corporation, partnership, or sole proprietorship. Applicant was not a credible witness. He admits being nervous when he filled out his SCA and did not seek assistance because he did not want others to know of his financial situation. Tr. 53. I find Applicant deliberately falsified his SCA by omitting relevant and material facts from his SCA. DC E2.A5.1.2.2. None of the listed mitigating conditions 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.: Against Applicant

Subparagraph 1.b.: Against Applicant

Subparagraph 1.c.: Against Applicant

Subparagraph 1.d.: Against Applicant

Subparagraph 1.e.: Against Applicant

Subparagraph 1.f.: Against Applicant

Subparagraph 1.g.: Against Applicant

Subparagraph 1.h.: For Applicant

Subparagraph 1.i.: Against Applicant

Subparagraph 1.j.: Against Applicant

Paragraph 2. Guideline E: AGAINST APPLICANT

Subparagraph 2.a.: Against Applicant

Subparagraph 2.b.: Against Applicant

Subparagraph 2.c.: Against Applicant

Subparagraph 2.d.: Against Applicant

Subparagraph 2.e.: 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.