

KEYWORD: Financial; Personal Conduct

DIGEST: Applicant is a 49-year-old employee of a security firm working for a defense agency who took Chapter 7 bankruptcy in 2000 and still owed over \$50,000.00 to Federal and state agencies in 2003. He failed to report an automobile repossession on his application for a security clearance (SF 86) and offered no plausible explanation for the omission. Clearance is denied.

CASENO: 02-25946.h1

DATE: 09/17/2004

DATE: September 17, 2004

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In Re:

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SSN: -----

Applicant for Security Clearance

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ISCR Case No. 02-25946

**DECISION OF ADMINISTRATIVE JUDGE**

**CHARLES D. ABLARD**

**APPEARANCES**

**FOR GOVERNMENT**

Edward W. Loughran, Esq. , Department Counsel

**FOR APPLICANT**

*Pro Se*

**SYNOPSIS**

Applicant is a 49-year-old employee of a security firm working for a defense agency who took Chapter 7 bankruptcy in 2000 and still owed over \$50,000.00 to Federal and state agencies in 2003. He failed to report an automobile repossession on his application for a security clearance (SF 86) and offered no plausible explanation for the omission. Clearance is denied.

**STATEMENT OF CASE**

On September 30, 2003, the Defense Office of Hearings and Appeals (DOHA), pursuant to Executive Order 10865, *Safeguarding Classified Information Within Industry*, 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 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. DOHA recommended the case be referred to an administrative judge to determine whether a clearance should be granted, continued, denied, or revoked.

In a sworn written statement dated October 31, 2003, Applicant responded to the allegations set forth in the SOR, and elected to have his case decided on the written record in lieu of a hearing. Department Counsel submitted the Government's written case on April 12, 2004. A complete copy of the file of relevant material (FORM) was provided to the Applicant, and he was afforded an opportunity to file objections and submit material in refutation, extenuation, or mitigation. Applicant submitted no additional information and the case was assigned to me on July 6, 2004.

## **FINDINGS OF FACT**

Applicant is a 49-year-old employee of a security firm working for a defense agency. He admitted all of the allegations concerning his bankruptcy and debts. He denied the allegation concerning his failure to list an automobile repossession on his security clearance application (SF 86). After a complete and thorough review of the information in the record, and upon due consideration of same, I make the following additional findings of fact:

Applicant filed for Chapter 7 bankruptcy in 2000 and it was discharged later that year. In the bankruptcy he listed assets of \$2,900.00 and liabilities of \$75,599.26. An automobile was repossessed in 1997 and as of April 2003 he still owed almost \$13,000.00 on the vehicle even though it was listed in his bankruptcy as a debt of over \$7,000.00. His monthly expenses exceed his income by \$84.00.

Applicant's other debts to which he admitted included over \$45,000.00 to the Social Security Administration, and almost \$6,000.00 in delinquent child support payments to an agency of a county government. These debts were not discharged through his bankruptcy since they were debts to government entities.

Applicant failed to report the automobile repossession during the prior seven years on his SF 86 at Question 35 as required.

## **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.

An evaluation of whether the applicant meets the security guidelines includes consideration of the following factors: (1) the nature, extent, and seriousness of the conduct; (2) the circumstances surrounding the conduct; (3) the frequency and recency of the conduct; (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 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. Directive, ¶ E2.2.1. Security clearances are granted only when "it is clearly consistent with the national interest to do so." Executive Order No. 10865 § 2. *See* Executive Order No. 12968 § 3.1(b).

Initially, the Government must establish, by something less than a preponderance of the 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. The applicant then bears the burden of demonstrating that it is clearly consistent with the national interest to grant or continue the applicant's clearance. "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* Executive Order No. 12968 § 3.1(b)

## CONCLUSIONS

Upon consideration of all the facts in evidence, and after application of all appropriate legal precepts, factors, and conditions above, I conclude the following with respect to all allegations set forth in the SOR:

Applicant's delinquent debts prompted the allegation in the SOR of violation of Guideline F in that an individual who is financially overextended is at risk of having to engage in illegal acts

to generate funds. (E2.A6.1.1.) Conditions that could raise a security concern and may be disqualifying include a history of not meeting financial obligations (E2.A6.1.2.1.) and evidence of

inability or unwillingness to satisfy debts. (E2.A6.1.2.3.) Mitigating Conditions (MC) might include the fact that the person has initiated a good-faith effort to repay overdue creditors or otherwise resolve debts (E2.A6.1.3.6.), and that the conditions resulting in the problems were largely beyond the person's control such as divorce. (E2.A6.1.3.3.) Applicant provided no information in his answer that would provide reasons for application of mitigating conditions for the concerns of the government as to Guideline F.

Also alleged under Guideline E is Applicant's falsification of his SF 86 by failing to disclose the automobile repossession. Such failure might indicate questionable judgment, unreliability, and unwillingness to comply with rules and regulations and could indicate that the person may not properly safeguard classified information (E2.A5.1.1.). Specifically, the deliberate omission, concealment, or falsification of relevant and material facts from a personnel security application could raise a security concern and be disqualifying. (E2.A5.1.2.2.) Applicant's excuse for failing to report the repossession was that he forgot about it. Such an event seems difficult, if not impossible, to forget and does not provide a sufficient reason to apply mitigating conditions under Guideline E.

In all adjudications the protection of our national security is of paramount concern. Persons who have access to classified information have an overriding responsibility for the security concerns of the nation. The objective of the security clearance process is the fair-minded, commonsense assessment of a person's trustworthiness and fitness for access to classified information.

After considering all the evidence in its totality and as an integrated whole to focus on the whole person of Applicant, I conclude that it is not clearly consistent with the national interest to grant clearance to Applicant.

### **FORMAL FINDINGS**

Formal findings as required by the Directive (Par. E3.1.25) are as follows:

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.: Against Applicant

Paragraph 2.Guideline E: AGAINST APPLICANT

Subparagraph 2.a.: Against Applicant

**DECISION**

After full consideration of all the facts and documents 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.

Charles D. Ablard

Administrative Judge