

DATE: December 31, 2005

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In Re:

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SSN: -----

Applicant for Security Clearance

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ISCR Case No. 03-23221

**DECISION OF ADMINISTRATIVE JUDGE**

**MATTHEW E. MALONE**

**APPEARANCES**

**FOR GOVERNMENT**

Richard A. Stevens, Esquire, Department Counsel

**FOR APPLICANT**

*Pro Se*

**SYNOPSIS**

In 1995, Applicant filed for Chapter 13 bankruptcy protection to resolve debts and other obligations totaling more than \$95,000. He not only failed to complete the repayment plan, he also accrued more than \$19,000 in new delinquencies. As of June 2003, he had sufficient cash flow to pay down the new debts, but took no significant action to do so until just before this hearing. He also deliberately omitted from his most recent security clearance application (SF 86) relevant information about his debts and a prior criminal indictment. Clearance is denied.

**STATEMENT OF THE CASE**

After reviewing the results of Applicant's background investigation, adjudicators for the Defense Office of Hearings and Appeals (DOHA) were unable to make a preliminary affirmative finding<sup>(1)</sup> it is clearly consistent with the national interest to give Applicant a security clearance. On December 3, 2004, DOHA issued to Applicant a Statement of Reasons (SOR) alleging facts that raise security concerns addressed in the Directive under Guideline E (personal conduct) and Guideline F (financial considerations). Applicant timely answered the SOR (Answer), admitted all but five<sup>(2)</sup> of the allegations, and requested a hearing.

The case was assigned to me on August 24, 2005, and I convened a hearing on September 20, 2005. The parties appeared as scheduled and the government presented nine exhibits (GE 1 through 9), which were admitted without objection. Applicant testified in his own behalf and introduced three exhibits (AE A, B, and C), which were admitted without objection. I left the record open after hearing to allow Applicant time to submit additional information I deemed relevant and material to the issues herein. Applicant timely submitted two additional exhibits, which I have admitted without objection as AE D and E. DOHA received the transcript (Tr) on October 5, 2005.

**FINDINGS OF FACT**

After a thorough review of the pleadings, transcript, and exhibits, I make the following essential findings of fact:

Applicant is 35 years old and employed by a defense contractor as an engineering specialist. He was hired in May 2000 and seeks to renew a security clearance he has held continuously since he joined the U.S. Navy in 1988. He served in the Navy as an electrician's mate and had risen to the rank of Petty Officer Second Class (EM2; paygrade E-5) at the time of his discharge in July 1998. Before he was hired for his current job, Applicant worked for two years as a marine electrician. He is in the last semester of course work required to earn his degree in educational workforce development.

Applicant has a 13-year-old daughter who lives with her mother in another state. Applicant pays about \$360 each month in child support. Applicant was recently married for the first time in July 2002. His wife has two children from a previous marriage, one of whom requires ongoing medical attention costing more than Applicant's medical insurance will pay.

In 1994, Applicant gave his then-girlfriend power of attorney over his affairs and bought a house they would live in as they planned to get married. Applicant deployed at sea for extended periods over the next year, but his girlfriend did not always pay the mortgage or other bills on time. He soon fell behind on his mortgage, utilities, car payments, and other obligations. <sup>(3)</sup>

In July 1995, Applicant sought protection from his creditors through Chapter 13 bankruptcy. He declared \$21,426 in unsecured debt and \$74,451 in secured debt against \$69,998 in assets. About \$13,000 of the unsecured debt consisted of the deficiency balances owed after two of Applicant's cars were repossessed. Applicant agreed to pay \$185 each month for 57 months, with the payment plan to end in March 2000. However, the bankruptcy was dismissed in July 1999 after Applicant stopped paying into the plan sometime earlier that year (SOR ¶ 1.a). <sup>(4)</sup> In a signed, sworn statement given to the government in June 2003, Applicant claimed the bankruptcy action was satisfied in January 1999. <sup>(5)</sup>

Applicant and his girlfriend stayed together through at least 1998. As a result, he continued to accrue debts while he was paying off his bankruptcy plan, and still owes some of the debts declared in his bankruptcy petition. Included among those debts is a March 1995 judgment for unpaid rent totaling \$550 plus costs and interest (SOR ¶ 1.b). This debt was incurred when Applicant co-signed a lease for an apartment for his girlfriend after she separated from her husband. She did not pay rent on time and the resulting debt was assigned to Applicant.

Another debt left over from the bankruptcy dismissal was for \$609 owed to an electronics store (SOR ¶ 1.l). This debt has actually grown to more than \$1,300 due to accrued interest. The collection agency handling this account offered to settle for \$559 in April, 2005. Applicant sent \$35 four days after the hearing.

Applicant accrued 18 additional delinquencies after he filed bankruptcy. These debts totaled approximately \$17,964 (SOR ¶¶ 1.c - 1.k, 1.m - 1.u). One debt arose when Applicant continued to accept and spend approximately \$3,663 in unemployment compensation payments even after he went to work for his current employer in May 2000. This debt was placed with a collection agency in October 2001 and remains unsatisfied (SOR ¶ 1.o). Another debt arose when Applicant claimed his girlfriend's three children on his tax return in 1997. He then obtained an advance on the tax refund he thought he would get. It is unclear if the claimed deductions were allowed, but Applicant did not repay the company that advanced him the funds, and still owes approximately \$694 (SOR ¶ 1.j). Applicant also failed to pay an account with the Navy exchange totaling about \$800. This debt appears to have been satisfied in March 2002 through attachment of Applicant's tax returns (SOR ¶ 1.u).

Eight of Applicant's outstanding debts totaling about \$2,000 have been placed with collection agencies and date back as far as September 1996 (SOR ¶¶ 1.g, 1.i, 1.k, 1.m, 1.n, 1.q, 1.r, and 1.t). One week before his hearing, Applicant paid off four of these accounts (SOR ¶¶ 1.m, 1.q, 1.r, and 1.t) totaling approximately \$520. <sup>(6)</sup>

Since May 1996, there have been four other judgments representing delinquencies totaling approximately \$7,515 entered against Applicant (SOR ¶¶ 1.e, 1.h, 1.p, and 1.s). Applicant paid off for \$82 on September 16, 2005. <sup>(7)</sup>

Another judgment for \$4,853 has been satisfied since at least January 2005. <sup>(8)</sup> Applicant claims one of the unpaid judgments (SOR ¶ 1.e) is his ex-girlfriend's responsibility because she bought the furniture in question using his power of attorney after they had broken up. He further claims the debt was resolved when she filed her own bankruptcy. <sup>(9)</sup> A

judgment for nearly \$2,000 on an unpaid loan originally made for \$400 was entered against Applicant in April 2003 (SOR ¶ 1.s), and remains unpaid. At or after the hearing, Applicant either made a partial payment to or established a payment plan with his remaining creditors. <sup>(10)</sup>

Applicant was interviewed about his finances and other issues by a Defense Security Service (DSS) agent on June 26, 2003. He submitted a written statement in connection with that interview, which included a personal financial statement (PFS) reflecting his income, expenses, assets, and net cash flow. The PFS showed Applicant had about \$975 left over each month after expenses (SOR 1.v). Applicant denies he has had this much positive cash flow because he now pays child support and other bills. <sup>(11)</sup> However, Applicant declared his monthly child support and other obligations in the PFS, and has not presented new evidence of regular monthly payments or other change of circumstances to support his denial.

In 1998, the house Applicant had bought for his planned marriage burned down, and he was indicted for arson, a felony. He was taken into custody, fingerprinted, and briefly jailed. He later appeared at a trial on this charge. After the prosecution presented its evidence, Applicant's counsel successfully moved to strike the prosecution's evidence and the case was dismissed. <sup>(12)</sup>

Applicant submitted a security clearance application (SF 86) on October 19, 2000. In response to question 21, which asked if he had ever been "charged with or convicted of any felony offense," he answered "no." He has denied any intent to falsify his answer, claiming instead he thought he need not disclose his 1998 felony arson charge because it was dismissed at trial.

In response to question 37, which asked if Applicant had any unpaid judgments at the time, Applicant answered "no" (SOR ¶ 2.a). Three of the four judgments Applicant has owed were in place when he filled out his SF 86. He asserts one of the judgment was his ex-girlfriend's responsibility, but has not accounted for why the other two - one to a municipality (SOR ¶ 1.p) and one for unpaid rent (SOR ¶ 1.b) - were not listed. Applicant also answered "no" to questions 38 and 39, which asked if Applicant had ever been 180 days or was currently 90 days past due on any debts, respectively (SOR ¶¶ 2.b and 2.c). He submitted his negative responses at a time when he had numerous delinquent debts, some in the form of collections and unpaid judgments.

### **POLICIES AND BURDEN OF PROOF**

The Directive sets forth adjudicative guidelines <sup>(13)</sup> to be considered in evaluating an Applicant's suitability for access to classified information. Security clearance decisions must reflect consideration of both disqualifying and mitigating conditions under each adjudicative issue applicable to the facts and circumstances of each case. Each decision must also reflect a fair and impartial common sense consideration of the factors listed in Section 6.3 of the Directive. <sup>(14)</sup> The presence or absence of a disqualifying or mitigating condition is not determinative of a conclusion for or against an Applicant. However, specific applicable guidelines should be followed whenever a case can be measured against them as they represent policy guidance governing the grant or denial of access to classified information. Having considered the record evidence as a whole, I conclude the relevant adjudicative guidelines to be applied here are Guideline E (personal conduct) and Guideline F (financial considerations).

A security clearance decision is intended to resolve whether it is clearly consistent with the national interest <sup>(15)</sup> for an Applicant to either receive or continue to have access to classified information. The government bears the initial burden of producing admissible information on which it based the preliminary decision to deny or revoke a security clearance for the Applicant. Additionally, the government must be able to prove controverted facts alleged in the SOR. If the government meets its burden, it establishes that it is not clearly consistent with the national interest for the Applicant to have access to classified information. The burden then shifts to the Applicant to refute, extenuate or mitigate the government's case. Because no one has a "right" to a security clearance, the Applicant bears a heavy burden of persuasion. <sup>(16)</sup> A person who has access to classified information enters into a fiduciary relationship with the government based on trust and confidence. The government, therefore, has a compelling interest in ensuring each Applicant possesses the requisite judgement, reliability and trustworthiness of one who will protect the national interests as his or her own. The "clearly consistent with the national interest" standard compels resolution of any reasonable

doubt about an Applicant's suitability for access in favor of the government.<sup>(17)</sup>

## CONCLUSIONS

The security concern under Guideline F is that someone who is financially overextended through delinquent debt and poor personal financial management may be at risk of engaging in illegal acts to generate funds to resolve their fiscal difficulties.<sup>(18)</sup> Additionally, how one manages his personal finances is also indicative of one's overall judgment and reliability. Here, the government's concerns about Applicant's suitability to hold a clearance are based on his record of delinquent debts since 1995 totaling at least \$19,000, which arose after he filed for bankruptcy protection from over \$95,000 in debts accrued before 1995. The government has presented sufficient information to support the SOR allegations regarding Applicant's finances. The facts established, in turn, support a case against continuing Applicant's access to classified information.

Applicant has been in financial difficulty for nearly 10 years. Until the week preceding the hearing, he had taken little action on his own to resolve any of his delinquent debts despite having the resources to do so. His history of excessive indebtedness is the result of poor financial decision making. Also noteworthy are at least two instances of dishonest financial dealings - his receipt of unemployment benefits to which he was not entitled, and his improper claim of his girlfriend's children as his own to get tax deductions to which he was not entitled. Based on the foregoing, Guideline F disqualifying condition (DC) 1,<sup>(19)</sup> DC 2,<sup>(20)</sup> and DC 3<sup>(21)</sup> apply here.

By contrast, of the Guideline F mitigating conditions (MC), only MC 3<sup>(22)</sup> has any application here. Applicant's initial financial problems arose when his ex-girlfriend abused her power of attorney and failed to pay his obligations while he was away on deployment. Further, Applicant's use of the federal bankruptcy laws was reasonable at the time. Had he been able to resolve those debts through his bankruptcy petition, and restored his finances to a reasonable state, there might not be a current security concern about his finances. However, his failure to complete the payment plan and his continued generation of delinquent debts vitiates the weight of MC 3 here. Although he has paid some of the debts alleged in the SOR, Applicant has not demonstrated he has changed the way he handles his finances. On balance, I conclude Guideline F against the Applicant.

Under Guideline E, a security concern arises where it is shown an applicant has exhibited questionable judgment, untrustworthiness, unreliability, lack of candor, dishonesty, or unwillingness to comply with rules and regulations. Such conduct may indicate the person may not properly safeguard classified information.<sup>(23)</sup> Here, the government questions Applicant's trustworthiness because it appears he deliberately omitted from his SF 86 facts about his arrest record (SOR ¶ 2.a) and his financial difficulties (SOR ¶¶ 2.b and 2.c).

As to the allegation in SOR ¶ 2.a, Applicant claims he answered "no" to question 21 and did not disclose his felony arson arrest because the charge was ultimately dismissed. In deciding if Applicant intentionally falsified his answer to question 21, his interpretation of the question is relevant. Had Applicant been arrested and released without being charged, or if the charge was dropped before any trial, or if the charge was made but later reduced to a misdemeanor his explanation might be acceptable. Such circumstances might support a claim that Applicant misunderstood what he was obliged to disclose. Here, however, the Applicant was indicted, arrested, fingerprinted, photographed, and jailed. He later appeared at trial on the same charge for which he was indicted. Not until the prosecution had rested its case at a trial with Applicant present was the charge dismissed. The issue here is not whether Applicant actually committed the crime for which he was indicted, but whether he was "charged with or convicted of any felony offense." The answer to the question was clearly "yes" and not subject to other interpretation because Applicant may have misunderstood what had happened.

As to the allegation in SOR ¶ 2.b, Applicant has not presented a plausible explanation for why he failed to list in question 37<sup>(24)</sup> any of the unpaid judgments in place against him at the time he filled out the SF 86. Even if one accepts his claim he thought one of them was his girlfriend's responsibility, that left two judgments that should have been listed. In response to SOR ¶ 2.c,<sup>(25)</sup> Applicant claims he did not list any debts as either 180 days or 90 days past due because he thought he was current on his debts at the time. In light of the totality of information showing Applicant has had numerous delinquent debts since at least 1996, this explanation is simply not credible.

Based on all of the foregoing, Guideline E DC 2<sup>(26)</sup> applies. Having reviewed the listed mitigating conditions under Guideline E, I find none is applicable. I have also considered that Applicant did disclose other financial difficulties in response to questions 33, 34, and 35. However, when considered along with the omission of his numerous unpaid debts totaling more than \$19,000, and his omission of a felony arson indictment, I conclude Applicant was, at the very least, trying to minimize the extent of his financial problems. On balance, I conclude Guideline E against the Applicant.

I have carefully weighed all of the evidence, and I have applied the disqualifying and mitigating conditions as listed under the applicable adjudicative guideline. A fair and commonsense assessment<sup>(27)</sup> of Applicant's lack of candor and his ongoing financial problems, taken in the context of all of the information before me shows that reasonable doubts persist about Applicant's ability to protect classified information and to exercise the requisite good judgment and discretion expected of one in whom the government entrusts its interests. Absent substantial information to mitigate these doubts, which Applicant failed to provide, I cannot conclude he has otherwise overcome the government's case.

### **FORMAL FINDINGS**

Formal findings regarding each SOR allegation are as follows:

Paragraph 1, Guideline F (Financial): AGAINST THE APPLICANT

Subparagraph 1.a: Against the Applicant

Subparagraph 1.b: Against the Applicant

Subparagraph 1.c: Against the Applicant

Subparagraph 1.d: Against the Applicant

Subparagraph 1.e: Against the Applicant

Subparagraph 1.f: Against the Applicant

Subparagraph 1.g: Against the Applicant

Subparagraph 1.h: Against the Applicant

Subparagraph 1.i: Against the Applicant

Subparagraph 1.j: Against the Applicant

Subparagraph 1.k: Against the Applicant

Subparagraph 1.l: Against the Applicant

Subparagraph 1.m: Against the Applicant

Subparagraph 1.n: Against the Applicant

Subparagraph 1.o: Against the Applicant

Subparagraph 1.p: Against the Applicant

Subparagraph 1.q: Against the Applicant

Subparagraph 1.r: Against the Applicant

Subparagraph 1.s: Against the Applicant

Subparagraph 1.t: Against the Applicant

Subparagraph 1.u: For the Applicant

Subparagraph 1.v: Against the Applicant

Paragraph 2, Guideline E (Personal Conduct): AGAINST THE APPLICANT

Subparagraph 2.a: Against the Applicant

Subparagraph 2.b: Against the Applicant

Subparagraph 2.c: Against the Applicant

### **DECISION**

In light of all 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 the Applicant. Clearance is denied.

Matthew E. Malone

Administrative Judge

1. Required by Executive Order 10865, as amended, and by DoD Directive 5220.6 (Directive), as amended.
2. Applicant denied the allegation of delinquent debt in SOR ¶ 1.u and the allegation about his net monthly income in 1.v. He also denied the allegations of intentional falsification in SOR ¶¶ 2.a, 2.b, and 2.c.
3. GE 2.
4. AE D; Tr., 54 - 55.
5. GE 2.
6. AE C.
7. Id.
8. AE B.
9. Tr., 27 - 28.
10. AE E; Tr., 28,
11. Tr., 32.
12. Tr., 45 - 46; GE 8.
13. Directive, Enclosure 2.
14. Commonly referred to as the "whole person" concept, these factor are as follows:
  1. Nature and seriousness of the conduct and surrounding circumstances.
  2. Frequency and recency of the conduct.
  3. Age of the applicant.

4. Motivation of the applicant, and the extent to which the conduct was negligent,

willful, voluntary, or undertaken with knowledge of the consequences involved.

5. Absence or presence of rehabilitation.

6. Probability that the circumstances or conduct will continue or recur in the future;

15. *See Department of the Navy v. Egan*, 484 U.S. 518 (1988).

16. *See Egan*, 484 U.S. at 528, 531.

17. *See Egan*; Directive E2.2.2.

18. Directive, E2.A6.1.1.

19. Directive, E2.A6.1.2.1. A history of not meeting financial obligations;

20. Directive, E2.A6.1.2.2. Deceptive or illegal financial practices such as embezzlement, employee theft, check fraud, income tax evasion, expense account fraud, filing deceptive loan statements, and other intentional financial breaches of trust;

21. Directive, E2.A6.1.2.3. Inability or unwillingness to satisfy debts;

22. Directive, E2.A6.1.3.3. The conditions that resulted in the behavior were largely beyond the person's control (e.g., loss of employment, a business downturn, unexpected medical emergency, or a death, divorce or separation);

23. Directive, E2.A5.1.1.

24. SOR ¶ 2.b lists question "36" rather than question "37" as listed in the SF 86 (GE 1), but this appears to be a typographical error. The rest of the allegation quotes the correct question as contained in the SF 86.

25. SOR ¶ 2.c lists question "37" as addressing debts greater than 180 days past due rather than question "38" as listed in the SF 86 (GE 1), but this also appears to be a typographical error. The rest of the allegation quotes the correct question as contained in the SF 86.

26. Directive, E2.A5.1.2.2. The deliberate omission, concealment, or falsification 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;

27. Directive, E2.2.3.