

DATE: June 17, 2005

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In Re:

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SSN: -----

Applicant for Security Clearance

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ISCR Case No. 03-23511

**DECISION OF ADMINISTRATIVE JUDGE**

**WILFORD H. ROSS**

**APPEARANCES**

**FOR GOVERNMENT**

Kathryn A. Trowbridge, Esquire, Department Counsel

**FOR APPLICANT**

*Pro Se*

**SYNOPSIS**

The Applicant has either paid off, is in the process of paying off, or successfully disputed, all of the debts alleged in the Statement of Reasons. His debt problems were aggravated by health problems he suffered, as well as a family illness. Adverse inference has been overcome. Clearance is granted.

**STATEMENT OF THE CASE**

On May 17, 2004, the Defense Office of Hearings and Appeals (DOHA), pursuant to Executive Order 10865 (as amended) and Department of Defense Directive 5220.6 (Directive), dated January 2, 1992, issued a Statement of Reasons (SOR) to the 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 the Applicant and recommended referral to an Administrative Judge to determine whether a clearance should be denied or revoked.

The Applicant responded to the SOR in writing on June 14, 2004, and requested that the Decision be made without a hearing. The Department Counsel submitted the File of Relevant Material (FORM) to the Applicant on August 20, 2004. The Applicant was given 30 days after receipt of the FORM to submit any additional information to the Administrative Judge. The Applicant acknowledged receipt the FORM on August 31, 2004, and submitted additional information on September 30, 2004 (Applicant's Exhibit A). Department Counsel indicated on October 28, 2004, that she had no objection to the additional information. The case was received by the undersigned for Decision on November 9, 2004.

**FINDINGS OF FACT**

The Applicant is 50, married and has a Bachelor of Science degree. He is employed by a defense contractor as Manufacturing Engineer Senior, and he seeks to obtain a DoD security clearance in connection with his employment in the defense sector.

The Government opposes the Applicant's request for a security clearance, based upon the allegations set forth in the Statement of Reasons (SOR). The following findings of fact are entered as to each paragraph and guideline in the SOR. They are based on the Applicant's Answer to the SOR and the exhibits.

Paragraph 1 (Guideline F - Financial Concerns). The Government alleges in this paragraph that the Applicant is ineligible for clearance because he is financially overextended, and therefore at risk of having to engage in illegal acts to obtain funds.

The Applicant admits that he had financial difficulties for several years. The Applicant had serious health problems from the fall of 1999 until September 2002. The end result of this was that the Applicant had quadruple bypass surgery. At that point, his elderly mother became seriously ill and had to live with the Applicant and his wife until her death in December 2003. This restricted the ability of the Applicant to get current on his debts because his wife could not work. (Item 3 at 1.) The Applicant and his wife are now working and have been able to get a handle on their past due indebtedness. (Applicant's Exhibit A at 16-19.)

Subparagraph 1.a. The Applicant has consistently denied that he had ever had an account with First USA Bank and has disputed the debt. (Item 3 at 3; and Item 5 at 1.) Applicant's Exhibit A at 8 is a letter from Bank One/First USA, dated July 14, 2004, wherein the bank states it is deleting the account from the Applicant's credit bureau reports.

Subparagraph 1.b. The Applicant has consistently denied that he had ever had an account with Stillwater Bank and has disputed the debt. (Item 3 at 3, 8; and Item 5 at 1.) In his Response to the FORM the Applicant states he has had no reply to his letter. (Applicant's Exhibit A at 4-5.)

Subparagraph 1.c. The Applicant admits that he has a debt to Citi. He states in Applicant's Exhibit A at 5 that a payment plan is in place.

Subparagraph 1.d. The Applicant admits that he has a debt to MBNA. The Applicant states, "Regular payments have been made to MBNA to resolve this debt. y wife has been making regular payments to them for over two years." (Applicant's Exhibit A at 5.)

Subparagraph 1.e. The Applicant has consistently denied that he had ever had an account with Wachovia Bank and has disputed the debt. (Item 3 at 4.) Applicant's Exhibit A at 10 is a letter from Wachovia Bank, dated June 30, 2004, wherein the bank states it is deleting the account from the Applicant's credit bureau reports.

Subparagraph 1.f. The Applicant admits that he had a debt to Capital One Bank. The Applicant submitted documentary evidence that this debt was paid off October 21, 2004. (Applicant's Exhibit A at 11-12.)

Subparagraph 1.g. . The Applicant has consistently denied that he had ever had an account with First USA Bank and has disputed this debt, which is different than the one set forth in subparagraph 1.a. (Item 3 at 5; and Item 5 at 1.) In his Response to the FORM the Applicant states that this debt is still in dispute. (Applicant's Exhibit A at 6, 15.)

Subparagraph 1.h. The Applicant admits that he had a debt to Shermanacq. The Applicant submitted documentary evidence that this debt was paid off October 19, 2004. (Applicant's Exhibit A at 13.)

Subparagraph 1.i. The Applicant has consistently denied owing this debt, stating that it was a medical debt which should have been paid by his insurance carrier. (Item 5 at 1.) The applicant submitted a billing statement from the creditor dated March 26, 2004, showing that this debt was paid by his insurance carrier. (Applicant's Exhibit A at 6,14.)

### **POLICIES**

Security clearance decisions are not made in a vacuum. Accordingly, the Department of Defense, in Enclosure 2 of the 1992 Directive, has set forth policy factors which must be given "binding" consideration in making security clearance determinations. These factors should be followed in every case according to the pertinent guideline. However, the factors are neither automatically determinative of the decision in any case, nor can they supersede the Administrative Judge's reliance on his own common sense, as well as his knowledge of the law, human nature and the ways of the

world, in making a reasoned decision. Because each security clearance case presents its own unique facts and circumstances, it cannot be assumed that these factors exhaust the realm of human experience, or apply equally in every case. Based on the Findings of Fact set forth above, the factors most applicable to the evaluation of this case will be described under CONCLUSIONS, below.

In addition, as set forth in Enclosure 2 of the Directive at pages 16-17, "In evaluating the relevance of an individual's conduct, the [Administrative Judge] should consider the following factors [General Factors]:

- a. The nature, extent and seriousness of the conduct
- b. The circumstances surrounding the conduct, to include knowledgeable participation
- c. The frequency and recency of the conduct
- d. The individual's age and maturity at the time of the conduct
- e. The voluntariness of participation
- f. The presence or absence of rehabilitation and other pertinent behavior changes
- g. The motivation for the conduct
- h. The potential for pressure, coercion, exploitation or duress
- i. The likelihood of continuation or recurrence."

The eligibility guidelines established in the DoD Directive identify personal characteristics and conduct which are reasonably related to the ultimate question of whether it is "clearly consistent with the national interest" to grant an Applicant's request for access to classified information.

In the defense industry, the security of classified industrial secrets is entrusted to civilian workers who must be counted upon to safeguard such sensitive information twenty-four hours a day. The Government is therefore appropriately concerned where available information indicates that an Applicant for clearance may be involved in acts of financial mismanagement that demonstrates poor judgement, untrustworthiness or unreliability on the Applicant's part.

The DoD Directive states, "Each adjudication is to be an overall common sense determination based upon consideration and assessment of all available information, both favorable and unfavorable, with particular emphasis placed on the seriousness, recency, frequency, and motivation for the individual's conduct; the extent to which conduct was negligent, willful, voluntary, or undertaken with the knowledge of the circumstances or consequences involved; and, to the extent that it can be estimated, the probability that conduct will or will not continue in the future." The Administrative Judge can only draw those inferences or conclusions that have a reasonable and logical basis in the evidence of record. The Judge cannot draw inferences or conclusions based on evidence which is speculative or conjectural in nature. Finally, as emphasized by President Eisenhower in Executive Order 10865, "Any determination under this order...shall be a determination in terms of the national interest and shall in no sense be a determination as to the loyalty of the applicant concerned."

## CONCLUSIONS

It is the Government's responsibility to present substantial evidence to support the finding of a nexus, or rational connection, between the Applicant's conduct and the granting or continued holding of a security clearance. If such a case has been established, the burden then shifts to the Applicant to go forward with evidence in rebuttal, explanation or mitigation which is sufficient to overcome or outweigh the Government's case. The Applicant bears the ultimate burden of persuasion in proving that it is clearly consistent with the national interest to grant him or her a security clearance.

In this case the Government has met its initial burden of proving by substantial evidence that the Applicant has had a

debt problem for several years (Guideline F). Accordingly, Disqualifying Condition E2.A6.1.2.1. *A history of not meeting financial obligations* applies.

The Applicant, on the other hand, has successfully mitigated the Government's case. The evidence shows that the Applicant has paid off, is in the process of paying off, or has successfully disputed, the debts alleged in the SOR. The Applicant's ability to pay off his debts was adversely affected by his own health problems, and those of his mother. The end result was to put a serious crimp in his family financial situation for several years. In my opinion, Mitigating Conditions 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)* and E2.A6.1.3.5. *The individual initiated a good-faith effort to repay overdue creditors or otherwise resolve debts* also apply.

On balance, it is concluded that the Applicant has successfully overcome the Government's case opposing his request for a DoD security clearance. Accordingly, the evidence supports a finding for the Applicant as to the factual and conclusionary allegations expressed in Paragraph 1 of the Government's Statement of Reasons.

### **FORMAL FINDINGS**

Formal findings For or Against the Applicant on the allegations in the SOR, as required by Paragraph 25 of Enclosure 3 of the Directive, are:

Paragraph 1: For the Applicant.

Subparagraphs 1.a. through 1i.: For the Applicant.

### **DECISION**

In light of all the circumstances presented by the record in this case, it is clearly consistent with the national interest to grant or continue a security clearance for the Applicant.

Wilford H. Ross

Administrative Judge