

DATE: August 26, 2005

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In re:

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SSN: -----

Applicant for Security Clearance

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ISCR Case No. 03-23737

## **DECISION OF ADMINISTRATIVE JUDGE**

**DAVID S. BRUCE**

### **APPEARANCES**

#### **FOR GOVERNMENT**

Julie R. Edmunds, Esq., Department Counsel

#### **FOR APPLICANT**

*Pro Se*

### **SYNOPSIS**

A federal tax lien was filed against Applicant and his wife in 2000. Applicant did not disclose the tax lien or any other delinquent debts on his security clearance application (SF 86) in 2002, despite having listed the lien and more than 20 other debts on a voluntary bankruptcy petition he filed about six weeks after filing his SF 86. Applicant failed to mitigate the security concerns regarding Guideline E, personal conduct. Clearance is denied.

### **STATEMENT OF THE CASE**

On December 27, 2004, the Defense Office of Hearings and Appeals (DOHA), pursuant to Executive Order 10865, *Safeguarding Classified Information Within Industry*, dated February 20, 1960, as amended and modified, and Department of Defense Directive 5220.6, *Defense Industrial Review Program*, dated January 2, 1992, as amended and modified (Directive), issued a Statement of Reasons (SOR) to Applicant in response to his application for a security clearance. The SOR detailed why DOHA could not preliminarily determine under the Directive that it is clearly consistent with the national interest to grant or continue Applicant's request for a security clearance.

In a sworn statement dated February 4, 2005, Applicant responded to each of the SOR allegations and elected not to present his case at a hearing. Department Counsel subsequently submitted the government's File of Relevant Materials (FORM) on April 22, 2005, which contained ten itemized documents in support of the allegations. The complete file was forwarded to Applicant and received by him on May 5, 2005. Applicant was given 30 days to file objections to the government's case set forth in the FORM, and to submit materials in refutation, extenuation, or mitigation in support of his position. No further response or other materials were submitted by Applicant and the file was assigned to me on June 15, 2005.

### **FINDINGS OF FACT**

Applicant has admitted the factual allegation of subparagraph 1.a. (1) of the SOR pertaining to personal conduct under Guideline E, and has denied the allegations of subparagraph 1.a. pertaining to personal conduct, and subparagraph 2.a.

pertaining to criminal conduct under Guideline J. The admission is incorporated herein by reference.

After a complete and thorough review of the evidence in the record, I make the following additional findings of fact:

Applicant is 58 years old and has been married for 38 years. He and his wife have five adult children, and the family has lived at the same location for about the last 20 years. Applicant has been employed as a security officer for a federal contractor since October 2002 and submitted a security clearance application (SF 86) on November 6, 2002.

Applicant worked in similar positions for two other federal contractors beginning in 1999 before securing his present employment, interrupted by a period of unemployment for about a year from June 2001 to July 2002. (1)

Applicant is a 20 year veteran of the U.S. Army having been honorably discharged in 1985. (2) He was previously granted Defense Department top secret and secret security clearances in 1965 and 1975, presumably as a part of his active duty service in the military. (3) He is also a licensed, ordained minister and pastor of a small community church where he resides. (4)

From January 1993 until December 1999, Applicant was self employed and operated a day care facility in his home. In 1997, the Internal Revenue Service (IRS) audited his tax returns, and Applicant failed to provide sufficient documentation verifying certain expenses for his business, particularly, receipts for food. (5) The IRS ultimately assessed back taxes to be due from Applicant and his wife for approximately \$13,000.00. (6)

The IRS collections process and its federal tax lien procedure is lengthy and well defined. (7) In accordance with the procedure, no actual collection takes place without the IRS (1) assessing the amount of liability, (2) providing a Notice and Demand for Payment, (3) affording the taxpayer a reasonable time to make payment, and (4) filing a federal tax lien in the court records where the taxpayer resides. (8) It also provides taxpayers with numerous payment options and other opportunities to work out acceptable compromise agreements with the IRS specific to their circumstances. (9) Various due process considerations are also provided for the taxpayer's benefit as the process progresses to an actual levy of the taxpayer's personal property. (10)

On September 27, 2000, an IRS Notice of Federal Tax Lien specifying the exact amounts found to be due, \$12,265.94 for 1995, and \$1,034.79 for 1997, was filed with the Clerk of the Court in the state and county where Applicant resides, listing Applicant and his wife as the taxpayers. (11) For a time after the IRS audit determination was made, a credit counseling service assisted Applicant and his wife regarding their IRS liability and arranged for monthly payments to be made against the debt in the amount of \$50.00 per month. (12) These payments were discontinued sometime after December 1999, when Applicant and his wife decided to no longer utilize the services of the counseling service, and when their personal tax accountant became involved in litigation with the IRS. (13) No information was provided by Applicant as to the nature or subject matter of this litigation, or whether or not the litigation was related to Applicant's case.

On December 16, 2002, Applicant and his wife filed a voluntary Chapter 13 bankruptcy petition to reorganize payment of their personal indebtedness. Among 17 other debts, they also listed on their Schedule F (Creditors Holding Unsecured Nonpriority Claims) the same 1995 and 1997 IRS tax assessments, and approximated the tax claims to total \$18,000.00 at that time. (14)

Applicant signed his SF 86 on November 3, 2002. He answered "No" to Question 36. *Your Financial Record - Tax Lien. In the last 7 years, have you had a lien placed against your property for failing to pay taxes or other debts?* (15) As to Questions 38 and 39 regarding existing debt delinquencies over 90 or 180 days, Applicant also did not list any of the 17 other unsecured debts totaling more than \$62,000.00 he would later list on his Chapter 13 bankruptcy petition. (16) He further omitted from the SF 86 his and his wife's six secured debts listed in the bankruptcy case totaling over \$106,000.00. (17)

Applicant maintains he had no knowledge of the actual filing of the tax lien against him and his wife by the IRS, and that he was never served any formal paperwork concerning the matter. (18) He further submits, he thought, based on information received from others about IRS collection procedures, that so long as he and his wife made payments toward their taxes no lien would be filed. (19) He indicates as well that he did not list any of his other overdue secured or unsecured accounts on his SF 86 because he did not believe any of them were delinquent over 90 days, and he did not believe any of them had reached collection status. (20)

On April 29, 2003, the Bankruptcy Court entered an Order Confirming Chapter 13 Plan in Applicant's case. (21) Commencing May 16, 2003, the Order required Applicant and his wife to pay the Standing Trustee named in the case \$888.00 per month for 56 months for periodic distribution to the approved creditors. No information has been provided indicating the identity of any approved creditors for payment, or any payment amounts made to each, including the IRS. Applicant submits the monthly payments are being made by automatic allotment from Applicant's military retirement pay. (22)

## POLICIES

Enclosure 2 of the Directive, *Adjudicative Guidelines For Determining Eligibility For Access To Classified Information*, sets forth the criteria which must be evaluated when determining security clearance eligibility. The adjudicative guidelines specifically distinguish between those factors that are considered in denying or revoking an employee's request for access to classified information (Disqualifying Conditions), together with those factors that are considered in granting an employee's request for access to classified information (Mitigating Conditions). By acknowledging that individual circumstances of each case are always different, the guidelines provide substantive standards to assist an administrative judge in reaching fair and impartial common sense decisions.

The adjudicative process requires thorough consideration and review of all available, reliable information about the applicant, past and present, favorable and unfavorable, to arrive at well informed decisions. Section E2.2. of Enclosure 2 of the Directive describes the essence of scrutinizing all appropriate variables in a case as the "whole person concept." In evaluating the conduct of the applicant and the circumstances in any case, the factors an administrative judge should consider pursuant to the concept are: (1) the nature, extent, and seriousness of the conduct; (2) the circumstances surrounding the conduct, to include knowledgeable participation; (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 the 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.

Protecting national security is the paramount concern in reaching a decision in any case, and is dependent upon the primary standard that issuance of a clearance must be clearly consistent with the interests of national security. Granting an applicant's clearance for access to classified information is predicated on a high degree of trust and confidence in the individual. Accordingly, decisions under the Directive must include consideration of not just the *actual* risk of disclosure of such information, but also consideration of any *possible* risk an applicant may deliberately or inadvertently compromise classified information in any aspect of his or her life. Any doubt about whether an applicant should be allowed access to classified information must be resolved in favor of protecting classified information. (23) The decision to deny a security clearance request to an individual is not necessarily a determination of the loyalty of the applicant. (24) It is merely an indication the applicant has not met the strict guidelines established by the Department of Defense for issuing a clearance.

In accordance with the Directive, the government bears the burden of proof in the adjudicative process to first establish conditions which indicate it is not clearly consistent with the national interest to grant or continue an applicant's access to classified information. (25) The legal standard for the burden of proof is something less than a preponderance of the evidence. (26) When the government meets this burden, the corresponding heavy burden of rebuttal then falls on the applicant to present evidence in refutation, explanation, extenuation or mitigation sufficient to overcome the position of the government, and to ultimately demonstrate it is clearly consistent with the national interest to grant or continue the applicant's clearance. (27)

Upon consideration of all the evidence submitted in this matter, the following adjudicative guidelines are appropriate for evaluation with regard to the facts of this case:

**Guideline E - Personal conduct is a security concern because conduct involving questionable judgment, trustworthiness, unreliability, lack of candor, dishonesty, or unwillingness to comply with rules and regulations could indicate that the person may not properly safeguard classified information.**

**Guideline J - Criminal conduct is a security concern because a history or pattern of criminal activity creates doubt about a person's judgment, reliability and trustworthiness.**

The Guideline E and Guideline J disqualifying and mitigating conditions, either raising security concerns or mitigating security concerns applicable to this case are set forth and discussed in the Conclusions section below.

### CONCLUSIONS

I have thoroughly considered all the facts in evidence in this case and the legal standards required by the Directive. The government has established a *prima facie* case for disqualification under Guideline E - Personal Conduct.

Based on all the evidence, Personal Conduct Disqualifying Condition (PC DC) 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.*) applies here. Applicant knew of the existence of the federal tax lien. It was filed more than two years prior to preparing his application, and the tax deficiency originated at least five years before the filing of the SF 86. He further acknowledged the IRS obligation then totaling \$18,000.00, on his bankruptcy petition prepared only six weeks after filing his SF 86. Applicant submits he did not list the lien because he had been making \$50.00 monthly payments on the debt. Nonetheless, Applicant also admitted terminating those payments in December 1999, and could reasonably have concluded at the time that further collection proceedings, including the lien process, would logically follow, which is exactly what occurred. Applicant was also aware that he had other considerable delinquent debt - the obvious reason he was filing for bankruptcy protection. He listed many secured and unsecured debts on his bankruptcy petition, but failed to list any of them on his SF 86 filed only six weeks earlier. One objective of the security clearance process is to determine all relevant and material information concerning an applicant. Based upon truth and honesty, the process requires full and open disclosure by the applicant of all requested information. Any intentional misrepresentation or omission by an applicant raises serious concerns about the character and overall integrity of the individual.

I have considered all the Personal Conduct Mitigating Conditions (PC MC), specifically PC MC E2.A5.1.3.3. (*The individual made prompt, good-faith efforts to correct the falsification before being confronted with the facts.*), and conclude it does not apply. Applicant had an affirmative obligation to determine the status of the federal tax lien and his delinquent debts, and to fully disclose the tax information and each delinquent debt on his SF 86 questionnaire. The conflicting information regarding the omissions from his SF 86, as opposed to full disclosure of the items on the bankruptcy petition prepared by Applicant so close in time, had to have been apparent to Applicant. As prepared, each of the documents had clear, self serving, deliberate objectives. Applicant provided a sworn statement to the Defense Security Service Special Agent 11 months after filing the SF 86, and 10 months after filing of the bankruptcy petition. Applicant made no effort in the interim to correct the misleading omissions from the SF 86. Applicant attributes the omission of the tax lien information from the SF 86 to error on his part, by simply denying any knowledge of it. Considering all the circumstances, however, his candor and credibility are questionable given the chronology of the events set forth above. Accordingly, Applicant has failed to successfully mitigate the personal conduct security concern.

I have further considered all the facts in evidence in this case as set forth above and conclude the government has also established its case for disqualification under Guideline J - Criminal Conduct. Based on all the evidence, Criminal Conduct Disqualifying Condition (DD DC) E2.A10.1.2.1. (*Allegations or admissions of criminal conduct, regardless of whether the person was formally charged*) applies in this case. Title 18 U.S.C. Â§ 1001, provides that knowingly and willfully submitting materially false, fictitious, or fraudulent information in any matter within the jurisdiction of the U.S. Government is a crime punishable by a fine and up to five years imprisonment. <sup>(28)</sup> Applicant's conduct in

deliberately omitting substantial material information required to be provided as a part of his SF 86 qualifies as serious uncharged criminal conduct within the meaning of Guideline J.

I have considered all the Criminal Conduct Mitigating Conditions (CC MC), and specifically CC MC E2.A10.1.3.2. (*The crime was an isolated incident*), and find that it does apply in this case. Applicant honorably served 20 years in the U.S. Army attaining the rank of E-7, and has been a gainfully employed, productive U.S. citizen all of his adult life. He has been married 38 years and has apparently supported and raised five children. He is an ordained minister of a small church and meaningfully contributes to his community in this regard. He is 58 years old and has never been convicted of a criminal offense of any kind. Accordingly, Applicant has successfully mitigated the security concern raised under Guideline J by showing his criminal conduct was an isolated incident. Accordingly, Guideline J is decided in favor of Applicant.

I have further reviewed all the record evidence in this case with respect to the "whole person" concept required by the Directive in evaluating Applicant's vulnerability in protecting our national security as to Guideline E. I am persuaded by the totality of the evidence in this case that it is not clearly consistent with the national interest to grant Applicant a security clearance. For the reasons stated, Applicant has failed to mitigate the security concerns caused by the personal conduct issues raised in this case. Accordingly, Guideline E is decided against Applicant.

### **FORMAL FINDINGS**

In accordance with Section E3.1.25 of Enclosure 3 of the Directive, the following are the formal findings as to each allegation in the SOR:

Paragraph 1. Personal Conduct (Guideline E) AGAINST THE APPLICANT

Subparagraph 1.a. Against the Applicant

Paragraph 2. Criminal Conduct (Guideline J ) FOR THE APPLICANT

Subparagraph 2.a. For 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 Applicant. Clearance is denied

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David S. Bruce

Administrative Judge

DATE:

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In re:

BYNUM, Maurice

SSN: 490-52-5891

Applicant for Security Clearance

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**SYNOPSIS**

A federal tax lien was filed against Applicant and his wife in 2000. Applicant did not disclose the tax lien or any other delinquent debts on his security clearance application (SF 86) in 2002, despite having listed the lien and more than 20 other debts on a voluntary bankruptcy petition he filed about six weeks after filing his SF 86. Applicant failed to mitigate the security concerns regarding Guideline E, personal conduct. Clearance is denied.

**STATEMENT OF THE CASE**

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**FINDINGS OF FACT**

Applicant has admitted the factual allegation of subparagraph 1.a. (1) of the SOR pertaining to personal conduct under Guideline E, and has denied the allegations of subparagraph 1.a. pertaining to personal conduct, and subparagraph 2.a. pertaining to criminal conduct under Guideline J. The admission is incorporated herein by reference.

After a complete and thorough review of the evidence in the record, I make the following additional findings of fact:

Applicant is 58 years old and has been married for 38 years. He and his wife have five adult children, and the family has lived at the same location for about the last 20 years. Applicant has been employed as a security officer for a federal contractor since October 2002 and submitted a security clearance application (SF 86) on November 6, 2002.

Applicant worked in similar positions for two other federal contractors beginning in 1999 before securing his present employment, interrupted by a period of unemployment for about a year from June 2001 to July 2002. (29)

Applicant is a 20 year veteran of the U.S. Army having been honorably discharged in 1985. (30) He was previously granted Defense Department top secret and secret security clearances in 1965 and 1975, presumably as a part of his active duty service in the military. (31) He is also a licensed, ordained minister and pastor of a small community church where he resides. (32)

From January 1993 until December 1999, Applicant was self employed and operated a day care facility in his home. In 1997, the Internal Revenue Service (IRS) audited his tax returns, and Applicant failed to provide sufficient documentation verifying certain expenses for his business, particularly, receipts for food. (33) The IRS ultimately assessed back taxes to be due from Applicant and his wife for approximately \$13,000.00. (34)

The IRS collections process and its federal tax lien procedure is lengthy and well defined. (35) In accordance with the procedure, no actual collection takes place without the IRS (1) assessing the amount of liability, (2) providing a Notice and Demand for Payment, (3) affording the taxpayer a reasonable time to make payment, and (4) filing a federal tax lien in the court records where the taxpayer resides. (36) It also provides taxpayers with numerous payment options and other opportunities to work out acceptable compromise agreements with the IRS specific to their circumstances. (37) Various due process considerations are also provided for the taxpayer's benefit as the process progresses to an actual levy of the taxpayer's personal property. (38)

On September 27, 2000, an IRS Notice of Federal Tax Lien specifying the exact amounts found to be due, \$12,265.94 for 1995, and \$1,034.79 for 1997, was filed with the Clerk of the Court in the state and county where Applicant resides, listing Applicant and his wife as the taxpayers. (39) For a time after the IRS audit determination was made, a credit counseling service assisted Applicant and his wife regarding their IRS liability and arranged for monthly payments to be made against the debt in the amount of \$50.00 per month. (40) These payments were discontinued sometime after December 1999, when Applicant and his wife decided to no longer utilize the services of the counseling service, and when their personal tax accountant became involved in litigation with the IRS. (41) No information was provided by Applicant as to the nature or subject matter of this litigation, or whether or not the litigation was related to Applicant's case.

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\$106,000.00.<sup>(45)</sup>

Applicant maintains he had no knowledge of the actual filing of the tax lien against him and his wife by the IRS, and that he was never served any formal paperwork concerning the matter.<sup>(46)</sup> He further submits, he thought, based on information received from others about IRS collection procedures, that so long as he and his wife made payments toward their taxes no lien would be filed.<sup>(47)</sup> He indicates as well that he did not list any of his other overdue secured or unsecured accounts on his SF 86 because he did not believe any of them were delinquent over 90 days, and he did not believe any of them had reached collection status.<sup>(48)</sup>

On April 29, 2003, the Bankruptcy Court entered an Order Confirming Chapter 13 Plan in Applicant's case.<sup>(49)</sup> Commencing May 16, 2003, the Order required Applicant and his wife to pay the Standing Trustee named in the case \$888.00 per month for 56 months for periodic distribution to the approved creditors. No information has been provided indicating the identity of any approved creditors for payment, or any payment amounts made to each, including the IRS. Applicant submits the monthly payments are being made by automatic allotment from Applicant's military retirement pay.<sup>(50)</sup>

### POLICIES

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Protecting national security is the paramount concern in reaching a decision in any case, and is dependent upon the primary standard that issuance of a clearance must be clearly consistent with the interests of national security. Granting an applicant's clearance for access to classified information is predicated on a high degree of trust and confidence in the individual. Accordingly, decisions under the Directive must include consideration of not just the *actual* risk of disclosure of such information, but also consideration of any *possible* risk an applicant may deliberately or inadvertently compromise classified information in any aspect of his or her life. Any doubt about whether an applicant should be allowed access to classified information must be resolved in favor of protecting classified information.<sup>(51)</sup> The decision to deny a security clearance request to an individual is not necessarily a determination of the loyalty of the applicant.<sup>(52)</sup> It is merely an indication the applicant has not met the strict guidelines established by the Department of Defense for issuing a clearance.

In accordance with the Directive, the government bears the burden of proof in the adjudicative process to first establish conditions which indicate it is not clearly consistent with the national interest to grant or continue an applicant's access to classified information.<sup>(53)</sup> The legal standard for the burden of proof is something less than a preponderance of the evidence.<sup>(54)</sup> When the government meets this burden, the corresponding heavy burden of rebuttal then falls on the applicant to present evidence in refutation, explanation, extenuation or mitigation sufficient to overcome the position of



the government, and to ultimately demonstrate it is clearly consistent with the national interest to grant or continue the applicant's clearance. <sup>(55)</sup>

Upon consideration of all the evidence submitted in this matter, the following adjudicative guidelines are appropriate for evaluation with regard to the facts of this case:

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**Guideline J - Criminal conduct is a security concern because a history or pattern of criminal activity creates doubt about a person's judgment, reliability and trustworthiness.**

The Guideline E and Guideline J disqualifying and mitigating conditions, either raising security concerns or mitigating security concerns applicable to this case are set forth and discussed in the Conclusions section below.

### CONCLUSIONS

I have thoroughly considered all the facts in evidence in this case and the legal standards required by the Directive. The government has established a *prima facie* case for disqualification under Guideline E - Personal Conduct.

Based on all the evidence, Personal Conduct Disqualifying Condition (PC DC) 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.*) applies here. Applicant knew of the existence of the federal tax lien. It was filed more than two years prior to preparing his application, and the tax deficiency originated at least five years before the filing of the SF 86. He further acknowledged the IRS obligation then totaling \$18,000.00, on his bankruptcy petition prepared only six weeks after filing his SF 86. Applicant submits he did not list the lien because he had been making \$50.00 monthly payments on the debt. Nonetheless, Applicant also admitted terminating those payments in December 1999, and could reasonably have concluded at the time that further collection proceedings, including the lien process, would logically follow, which is exactly what occurred. Applicant was also aware that he had other considerable delinquent debt - the obvious reason he was filing for bankruptcy protection. He listed many secured and unsecured debts on his bankruptcy petition, but failed to list any of them on his SF 86 filed only six weeks earlier. One objective of the security clearance process is to determine all relevant and material information concerning an applicant. Based upon truth and honesty, the process requires full and open disclosure by the applicant of all requested information. Any intentional misrepresentation or omission by an applicant raises serious concerns about the character and overall integrity of the individual.

I have considered all the Personal Conduct Mitigating Conditions (PC MC), specifically PC MC E2.A5.1.3.3. (*The individual made prompt, good-faith efforts to correct the falsification before being confronted with the facts.*), and conclude it does not apply. Applicant had an affirmative obligation to determine the status of the federal tax lien and his delinquent debts, and to fully disclose the tax information and each delinquent debt on his SF 86 questionnaire. The conflicting information regarding the omissions from his SF 86, as opposed to full disclosure of the items on the bankruptcy petition prepared by Applicant so close in time, had to have been apparent to Applicant. As prepared, each of the documents had clear, self serving, deliberate objectives. Applicant provided a sworn statement to the Defense Security Service Special Agent 11 months after filing the SF 86, and 10 months after filing of the bankruptcy petition. Applicant made no effort in the interim to correct the misleading omissions from the SF 86. Applicant attributes the omission of the tax lien information from the SF 86 to error on his part, by simply denying any knowledge of it. Considering all the circumstances, however, his candor and credibility are questionable given the chronology of the events set forth above. Accordingly, Applicant has failed to successfully mitigate the personal conduct security concern.

I have further considered all the facts in evidence in this case as set forth above and conclude the government has also established its case for disqualification under Guideline J - Criminal Conduct. Based on all the evidence, Criminal Conduct Disqualifying Condition (DD DC) E2.A10.1.2.1. (*Allegations or admissions of criminal conduct, regardless of*

*whether the person was formally charged*) applies in this case. Title 18 U.S.C. Â§ 1001, provides that knowingly and willfully submitting materially false, fictitious, or fraudulent information in any matter within the jurisdiction of the U.S. Government is a crime punishable by a fine and up to five years imprisonment. (56) Applicant's conduct in deliberately omitting substantial material information required to be provided as a part of his SF 86 qualifies as serious uncharged criminal conduct within the meaning of Guideline J.

I have considered all the Criminal Conduct Mitigating Conditions (CC MC), and specifically CC MC E2.A10.1.3.2. (*The crime was an isolated incident*), and find that it does apply in this case. Applicant honorably served 20 years in the U.S. Army attaining the rank of E-7, and has been a gainfully employed, productive U.S. citizen all of his adult life. He has been married 38 years and has apparently supported and raised five children. He is an ordained minister of a small church and meaningfully contributes to his community in this regard. He is 58 years old and has never been convicted of a criminal offense of any kind. Accordingly, Applicant has successfully mitigated the security concern raised under Guideline J by showing his criminal conduct was an isolated incident. Accordingly, Guideline J is decided in favor of Applicant.

I have further reviewed all the record evidence in this case with respect to the "whole person" concept required by the Directive in evaluating Applicant's vulnerability in protecting our national security as to Guideline E. I am persuaded by the totality of the evidence in this case that it is not clearly consistent with the national interest to grant Applicant a security clearance. For the reasons stated, Applicant has failed to mitigate the security concerns caused by the personal conduct issues raised in this case. Accordingly, Guideline E is decided against Applicant.

### **FORMAL FINDINGS**

In accordance with Section E3.1.25 of Enclosure 3 of the Directive, the following are the formal findings as to each allegation in the SOR:

Paragraph 1. Personal Conduct (Guideline E) AGAINST THE APPLICANT

Subparagraph 1.a. Against the Applicant

Paragraph 2. Criminal Conduct (Guideline J ) FOR THE APPLICANT

Subparagraph 2.a. For 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 Applicant. Clearance is denied

David S. Bruce

Administrative Judge

1. Item 1 (Applicant's Security Clearance Application dated November 6, 2002), at 2-3.
2. *Id.*, at 6.
3. *Id.*, at 9.
4. Item 3 (Applicant's answer to SOR dated February 4, 2005) at 2.
5. Item 5 (Applicant's sworn statement dated October 1, 2003 to Defense Security Service Special Agent) at 2.
6. *Id.*
7. Item 9 (IRS Publication 595, What You Should Know About the Collection Process, consisting of 12 pages).

8. *Id.*, at 7.
9. *Id.*, at 5-6.
10. *Id.*, at 8-9.
11. Item 6 (Notice of Federal Tax Lien filed September 27, 2000).
12. Item 5, *supra* note 5, at 2.
13. *Id.*
14. Item 8 (Bankruptcy Court records for case filed December 16, 2002) at 14-16.
15. Item 1, *supra* note 1, at 10.
16. *Id.*
17. Item 8, *supra* note 10, at 11-12.
18. Item 3, *supra* note 4, at 1.
19. Item 5, *supra* note 5, at 2.
20. *Id.*
21. Item 8, *supra* note 14, at 19.
22. Item 5, *supra* note 5, at 1.
23. Directive, Enclosure 2, Para. E2.2.2.
24. Executive Order 10865 Â§ 7.
25. ISCR Case No. 96-0277 (July 11, 1007) at p. 2.
26. *Department of the Navy v. Egan*, 484 U.S. 518, 531 (1988).
27. ISCR Case No. 94-1075 (August 10, 1995) at pp. 3-4; Directive, Enclosure 3, Para. E3.1.15.
28. Item 10 (Copy of Title 18 U.S.C. Â§1001, Chapter 47, Fraud and False Statements).
29. Item 1 (Applicant's Security Clearance Application dated November 6, 2002), at 2-3.
30. *Id.*, at 6.
31. *Id.*, at 9.
32. Item 3 (Applicant's answer to SOR dated February 4, 2005) at 2.
33. Item 5 (Applicant's sworn statement dated October 1, 2003 to Defense Security Service Special Agent) at 2.
34. *Id.*
35. Item 9 (IRS Publication 595, What You Should Know About the Collection Process, consisting of 12 pages).

36. *Id.*, at 7.
37. *Id.*, at 5-6.
38. *Id.*, at 8-9.
39. Item 6 (Notice of Federal Tax Lien filed September 27, 2000).
40. Item 5, *supra* note 5, at 2.
41. *Id.*
42. Item 8 (Bankruptcy Court records for case filed December 16, 2002) at 14-16.
43. Item 1, *supra* note 1, at 10.
44. *Id.*
45. Item 8, *supra* note 10, at 11-12.
46. Item 3, *supra* note 4, at 1.
47. Item 5, *supra* note 5, at 2.
48. *Id.*
49. Item 8, *supra* note 14, at 19.
50. Item 5, *supra* note 5, at 1.
51. Directive, Enclosure 2, Para. E2.2.2.
52. Executive Order 10865 Â§ 7.
53. ISCR Case No. 96-0277 (July 11, 1007) at p. 2.
54. *Department of the Navy v. Egan*, 484 U.S. 518, 531 (1988).
55. ISCR Case No. 94-1075 (August 10, 1995) at pp. 3-4; Directive, Enclosure 3, Para. E3.1.15.
56. Item 10 (Copy of Title 18 U.S.C. Â§1001, Chapter 47, Fraud and False Statements).