

DATE: October 31, 2005

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In Re:

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SSN: -----

Applicant for Security Clearance

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ISCR Case No. 03-23879

**DECISION OF ADMINISTRATIVE JUDGE**

**CHARLES D. ABLARD**

**APPEARANCES**

**FOR GOVERNMENT**

Julie R. Edmunds, Esq. , Department Counsel

**FOR APPLICANT**

*Pro Se*

**SYNOPSIS**

Applicant failed to mitigate allegations of financial considerations relating to delinquent debts exceeding \$40,000.00 including two judgments for small debts. He also failed to mitigate personal conduct allegations relating to failure to report these debts on his SF 86 offering only the excuse that he had forgotten about some since they were over six years old. Clearance is denied.

**STATEMENT OF CASE**

On March 1, 2005, 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 March 17, 2005, 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 May 31, 2005. 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 19, 2005.

**FINDINGS OF FACT**

Applicant is a 50-year-old employee of a defense contractor. He admitted all but one of the allegations concerning financial considerations and admitted the allegations relating to personal conduct. He offered some explanatory information about the allegations and stated an intent to pay most of them in monthly payments. 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 has delinquent debts to which he admits of slightly exceeding \$40,000.00 of which approximately \$37,000.00 are for three hospital and doctor's bills (SOR 1.f., g., and k.). One of the debts resulted in a judgment for over \$6,000.00 (SOR 1.k.). The remaining four are for a few hundred dollars each but two of them resulted in judgments being entered against Applicant (SOR 1.e. and i.). Applicant filed for Chapter 7 bankruptcy in 1996 and for Chapter 13 in 1999, and the debts extant at that time were discharged in both proceedings. In his investigative statements in 2003, he indicated that he intends to pay sum certain amounts on admitted debts. He entered into one payment agreement (FORM Item 11) which is in evidence but no proof of payment on any of the debts was submitted. The one allegation denied by Applicant was denied only because the mortgage debt has been transferred to another creditor. He does not intend to file for bankruptcy again.

Applicant admitted making false statements in 1996 causing a company he owned to be paid over \$6,500.00 in government funds to which he was not entitled. The U.S. Attorney in his state declined to prosecute.

Applicant failed to acknowledge the delinquent debts and unpaid judgments on his application for security clearance (SF 86) at Questions 37, 38, and 39 filed in 2002. His excuse for not reporting the debts was that he had forgotten most of them as some were over six years old.

### 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 (E2.A6.1.3.3.) The assertion in his answer that he intended to pay the debts without any proof of having even begun to do so is insufficient to provide grounds for application of mitigating conditions under Guideline F.

Applicant's conduct regarding the receipt of government funds to which he was not entitled raises concerns under E2.A2.1.2.2. regarding deceptive or illegal financial practices and other financial breaches of trust. Applicant admitted making false statements to secure the funds.

Also alleged under Guideline E is Applicant's failure to acknowledge the judgments and delinquent debts in response to relevant questions on his SF 86 indicates 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.). His conduct falls under E2.A5.1.2.2 regarding the deliberate omission of relevant and material facts from any personnel security questionnaire . No mitigating conditions are applicable since his only excuse for the omissions was that he forgot about the debts.

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

Subparagraph 1.i.: Against Applicant

Subparagraph 1.j.: Against Applicant

Subparagraph 1.k.: Against Applicant

Paragraph 2.Guideline E: AGAINST APPLICANT

Subparagraph 2.a.: Against Applicant

Subparagraph 2.b.: Against Applicant

Subparagraph 2.c.: 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