

DATE: March 31, 2004

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In re:

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SSN: -----

Applicant for Security Clearance

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ISCR Case No. 02-33581

**DECISION OF ADMINISTRATIVE JUDGE**

**JAMES A. YOUNG**

**APPEARANCES**

**FOR GOVERNMENT**

Eric H. Borgstrom, Esq., Department Counsel

**FOR APPLICANT**

Dan L. Jeffries, Personal Representative

**SYNOPSIS**

Applicant had delinquent debts of over \$166,000 and approximately \$6,000 to child support agencies of two states and he failed to list these debts in response to question 38 on his security clearance application (SCA). Despite his recent agreement with the child support agency in State 1, Applicant failed to fully mitigate the financial considerations security concern. His failure to list the debts on his SCA was mitigated by credible evidence he misunderstood the question. Clearance is denied.

**STATEMENT OF THE CASE**

The Defense Office of Hearings and Appeals (DOHA) declined to grant or continue a security clearance for Applicant. On 15 July 2003, DOHA issued a Statement of Reasons (SOR)<sup>(1)</sup> detailing the basis for its decision-security concerns raised under Guideline F (Financial Considerations) and Guideline E (Personal Conduct) of the Directive. Applicant answered the SOR in writing on 17 September 2003 and elected to have a hearing before an administrative judge. The case was assigned to me on 27 October 2003. A hearing was initially scheduled for 15 December 2003, but was postponed due to inclement weather. On 19 February 2004, I convened a hearing to consider whether it is clearly consistent with the national interest to grant or continue a security clearance for Applicant. DOHA received the hearing transcript (Tr.) on 25 February 2004. I kept the record open so Applicant could submit additional documentation to support his case. Applicant submitted three documents: (1) a letter from his attorney in State 1 who handled the child support issue (Ex. BB); (2) An Agreed Order of Support (Ex. CC) from State 1; and (3) a Child Support Data Sheet (Ex. DD). Department Counsel had no objections, and the exhibits were admitted into evidence.

**FINDINGS OF FACT**

Applicant is a 40-year-old truck driver for a defense contractor. He married his first wife in November 1983. They had a child in July 1985 and divorced in arch 1986. Ex. 1 at 1, 3. Over the next couple of years they tried reconciling, resulting in the birth of two more children, one in January 1987 and another in August 1988. Ex. 2 at 2; Ex. 1 at 3. In

1989, it became clear the reconciliation would not work. Applicant left his wife and three children in State 1, returned home, and lived with his parents in State 2. Applicant's ex-wife obtained a court order for support of the three children. Applicant turned over his pay checks to his mother so she could pay his bills. He worked as a truck driver, but had periods of unemployment. He had another child in June 1989 with a woman in State 2. He was ordered to pay child support for that child. Ex. 2 at 2.

Applicant paid at least some child support to his first wife up until February 1988. Ex. AA. His child support payments for his child in State 2 appear to have started in 1995. Ex. X. All of the monies paid to State 2 for child support did not go to his last child. Instead, State 2 sent some of the money to State 1 to support Applicant's three children there, although the amounts rarely exceeded \$50 and often were as low as \$4.

Applicant has had a position with his current employer since January 1996. Ex. 1 at 1. He started driving a tractor with a woman he married in 2002. Applicant's new wife owns both the tractor they drive and the house in which they live. In an Agreed Order for Support, filed on 26 February 2004 in State 1, Applicant agreed to pay \$77 in child support and \$250 in arrearages each month. He acknowledged being over \$166,000 in arrears on child support payments to State 1. As part of the order, State 1 agreed not to seek any more monies from Applicant's child support payments to State 2. He has not resolved his child support arrearages to State 2 on which he owes approximately \$6,000. Ex. 3.

Applicant completed a security clearance application (SCA) on 10 January 2002. Question 38 asked if, in the previous seven years, applicant had *any* debts that had been more than 180 days' delinquent. Despite his child support debts, Applicant answered "no." Ex. 1 at 8. Applicant's wife helped him fill out the SCA and convinced him the question referred only to debts from credit cards and bank loans.

Applicant's employer, friends, and family believe Applicant is a "kind and caring" man who is honest, trustworthy, and hardworking. They do not believe he is a security risk.

## 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. The President has restricted eligibility for access to classified information to United States citizens "whose personal and professional history affirmatively indicates loyalty to the United States, strength of character, trustworthiness, honesty, reliability, discretion, and sound judgment, as well as freedom from conflicting allegiances and potential for coercion, and willingness and ability to abide by regulations governing the use, handling, and protection of classified information." Exec. Or. 12968, *Access to Classified Information* § 3.1(b) (Aug. 4, 1995). Eligibility for a security clearance is predicated upon the applicant meeting the security guidelines contained in the Directive.

Enclosure 2 of the Directive sets forth personal security guidelines, as well as the disqualifying conditions (DC) and mitigating conditions (MC) under each guideline. In evaluating the security worthiness of an applicant, the administrative judge must also assess the adjudicative process factors listed in ¶ 6.3 of the Directive. The decision to deny an individual a security clearance is not necessarily a determination as to the loyalty of the applicant. *See* Exec. Or. 10865 § 7. It is merely an indication that the applicant has not met the strict guidelines the President and the Secretary of Defense have established for issuing a clearance.

Initially, the Government must establish, by substantial evidence, conditions in the personal or professional history of the applicant that disqualify, or may disqualify, the applicant from being eligible for access to classified information. *See Egan*, 484 U.S. at 531. The Directive presumes a nexus or rational connection between proven conduct under any of the disqualifying conditions listed in the guidelines and an applicant's security suitability. *See* ISCR Case No. 95-0611 at 2 (App. Bd. May 2, 1996).

Once the Government establishes a disqualifying condition by substantial evidence, the burden shifts to the applicant to rebut, explain, extenuate, or mitigate the facts. ISCR Case No. 01-20700 at 3 (App. Bd. Dec. 19, 2002); *see* Directive ¶ E3.1.15. An applicant "has the ultimate burden of demonstrating that it is clearly consistent with the national interest to

grant or continue his security clearance." ISCR Case No. 01-20700 at 3.

## CONCLUSIONS

### **Guideline F-Financial Considerations**

In the SOR, DOHA alleged Applicant was indebted to State 1's child support agency for unpaid child support payments for AL in the amount of \$5,982 (¶ 1.a.) and State 1's child support agency for unpaid child support owed to DG in the amount of \$110,745 (¶ 1.b.). An applicant who is financially overextended is at risk of having to engage in illegal acts to generate funds. Directive ¶ E2.A6.1.1.

The Government established by substantial evidence and Applicant's admissions that he has a history of not meeting his financial obligations (DC E2.A6.1.2.1.) and was unable or unwilling to satisfy his child support obligations (DC E2.A6.1.2.3.). Applicant presented evidence that his child support debt may be, in part, due to conditions that were largely beyond his control (MC E2.A6.1.3.3.)-he suffered some periods of unemployment between 1989 and 1995. He has also made what appears to be a good-faith effort to resolve his child support debt to State 1. MC E2.A6.1.3.6. In weighing all the evidence in this case, it is clear Applicant failed to live up to his financial obligations to pay to support his children. The evidence supports a conclusion that the only money his three children in State 1 received since 1989 were the meager deductions State 2 deducted from his child support payments there and sent to State 1. Even with this settlement, his arrearages Applicant still owes over \$166,000 to State 2. He still has not resolved his child support arrearages with State 2.

Apparently, from the letters introduced into evidence and the testimony of the witnesses, Applicant is a kind and caring man who would do anything for anyone in need. If only he could have bestowed some of that kindness and caring upon the four children he failed to adequately support over the last 15 years. Applicant failed to establish he is able to meet his financial obligations and is not a security risk under the applicable criteria of Guideline F. I find against Applicant.

### **Guideline E-Personal Conduct**

In the SOR, DOHA alleged Applicant deliberately falsified material facts in answering question 38 on this SCA by denying that in the previous seven years he had been delinquent on any debts. Conduct involving questionable judgment, untrustworthiness, unreliability, lack of candor, dishonesty, or unwillingness to comply with rules and regulations could indicate that the applicant may not properly safeguard classified information. Directive ¶ E2.A5.1.1.

The Government established by substantial evidence that Applicant answered question 38 incorrectly. However, based on the credible evidence of Applicant and his wife, I find Applicant did not deliberately falsify his answer. He accepted his wife's contention the question was not asking him about his child support debt. Therefore, I find for Applicant.

## FORMAL FINDINGS

The following are my conclusions as to each allegation in the SOR:

Paragraph 1. Guideline F: AGAINST APPLICANT

Subparagraph 1.a.: Against Applicant

Subparagraph 1.b.: Against Applicant

Paragraph 2. Guideline E: FOR APPLICANT

Subparagraph 2.a.: For Applicant

## DECISION

In light of all of 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.

**James A. Young**

**Administrative Judge**

1. Pursuant to Exec. Or. 10865, *Safeguarding Classified Information within Industry* (Feb. 20, 1960), as amended and modified, and Department of Defense Directive 5220.6, *Defense Industrial Personnel Security Clearance Review Program* (Jan. 2, 1992), as amended and modified.