

DATE: December 22, 2004

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In Re:

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SSN: -----

Applicant for Security Clearance

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ISCR Case No. 03-01579

## **ECISION OF ADMINISTRATIVE JUDGE**

**JOAN CATON ANTHONY**

### **APPEARANCES**

#### **FOR GOVERNMENT**

Stephanie C. Hess, Esq., Department Counsel

#### **FOR APPLICANT**

*Pro Se*

### **SYNOPSIS**

Applicant admits 10 financial delinquencies, several of which date back to 2000 and 2001. Another delinquency dates to 1995. Applicant falsified material facts about his financial liabilities on the security clearance application he completed and certified in July 2002. Applicant's financial problems and his lack of candor raise serious security concerns. 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 September 22, 2003, under the applicable Executive Order <sup>(1)</sup> and Department of Defense Directive, <sup>(2)</sup> DOHA issued a Statement of Reasons (SOR) 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 November 3, 2003, and requested that his case be determined on the record in lieu of a hearing. The Government compiled its File of Relevant Material (FORM) on December 4, 2003. The FORM contained documents identified as Items 1 through 7. By letter dated December 12, 2003, a copy of the FORM was forwarded to Applicant, with instructions to submit any additional information and/or objections within 30 days of receipt. Applicant did not submit additional information or objections within that time period. On February 25, 2004, the case was assigned to me for a decision.

### **FINDINGS OF FACT**

The SOR contains 12 allegations of disqualifying conduct. Eleven allegations relate to conduct charged under Guideline F, Financial Considerations, and one allegation related to conduct charged under Guideline E, Personal Conduct. In his answer to the SOR, Applicant admitted all 12 allegations. His admissions are incorporated as findings of fact.

Applicant is a 47-year-old electrician employed by a defense contractor. He was married in 1987. He and his wife

separated in August 1999. When he completed and signed his security clearance (SF-86) in July 2002, he listed his marital status as "separated." It does not appear from the record that the couple had any children. Applicant was unemployed from December 2001 to July 2002.

Applicant has numerous debts and admits responsibility for 10 delinquent accounts totaling approximately \$7,871. The financial statement he prepared and submitted with his signed, sworn statement indicates he lacks sufficient resources to pay the debts.

In a signed, sworn statement to a special agent of the Defense Security Service, dated November 2002, Applicant identified three debts to medical service providers, incurred in 2001 and 2002, that he said were his former wife's. He said his wife incurred those debts after their separation, and he would not pay them because they were not his. (3) He said his seven-month period of unemployment (December 2001 to July 2002) severely affected his finances. He said since he was no longer unemployed and had acquired a job, he intended to pay all his debts. In his answer to the SOR, dated October 30, 2003, Applicant again expressed his intent to satisfy his financial delinquencies. He said he would arrange a repayment plan through a credit counselor a plan to pay the debts. He presented no credible evidence to show that he settled or paid his delinquent accounts.

Applicant completed and certified a security clearance application (SF-86) on July 31, 2002. Applicant answered "no" to Questions 38 and 39. Question 38 on the SF-86 reads as follows: "Your Financial Delinquencies - 180 Days. In the last 7 years, have you been over 180 days delinquent on any debt(s)?" Question 39 on the SF-86 reads as follows: "Your Financial Delinquencies - 90 Days. Are you currently over 90 days delinquent on any debt(s)?" Applicant did not offer a credible explanation for answering "no" to both questions.

The debts listed in subparagraphs 1.a, 1.c., 1.e., 1.g., and 1.h. of the SOR were currently over 90 days delinquent at the time Applicant completed and certified his SF-86.

### 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**

The Government's concern under Guideline F, Financial Considerations, is that individuals who are financially overextended and unable or unwilling to pay their just debts may try to generate funds by engaging in illegal acts. Applicant has a history of not meeting his financial obligations, and this financial history suggests an inability or unwillingness to satisfy his debts, conditions which raise security concerns under subparagraphs E2.A6.1.2.1. and E2.A6.1.2.3. of Guideline F. DOHA's Appeal Board has concluded that "[a] person who is unwilling to fulfill his legal obligations does not demonstrate the high degree of good judgment and reliability required of persons granted access to classified information." ISCR Case No. 98-0810 at 4 (App. Bd. June 8, 2000).

In the SOR, DOHA alleged Applicant had ten unpaid delinquent debts (§§ 1.a. through 1.j.) and insufficient resources to satisfy the ten debts (§ 1.k.). An applicant who is financially overextended is at risk of having to engage in illegal acts to generate funds. Directive § E2.A6.1.1.

In his response to the SOR, Applicant admitted owing the ten debts and stated he intended to pay them at some future and unspecified time. The Government has established, through the FORM and Applicant's admissions, a *prima facie* case that Applicant is financially overextended. Applicant provided no persuasive evidence to rebut the financial concerns specified in the SOR and identified as disqualifying conditions under §§ E2.A6.1.2.1. and E2.A6.1.2.3. of Guideline F.

We turn to a review of the several conditions that could mitigate the security concerns raised by Applicant's financial delinquencies. Applicant's acknowledged delinquencies involve long-standing debts which continue to be unsatisfied to this day. Thus, neither mitigating condition E2.A.6.1.3.1. nor mitigating condition E2.A6.1.3.2. applies. Applicant asserts his seven-month period of unemployment, from December 2001 to early July 2002, caused him to be delinquent in paying his debts. The record shows, however, that Applicant's financial difficulties go back as far as 1995 and that some delinquencies relate to debts incurred well after he obtained his present job. The record shows Applicant's delinquencies were not the result of circumstances beyond his control, and thus, mitigating condition E2.A6.1.3.3. does not apply.

Applicant stated he intended to seek counseling for his financial problems, but he submitted no persuasive evidence that he had developed and implemented a practical plan for resolving his indebtedness. Thus, neither mitigating condition E2.A6.1.3.4. nor E2.A6.1.3.6. applies to the facts of Applicant's case. Accordingly, the allegations in the SOR of financial delinquencies (subparagraphs 1.a. through 1.j.), and the allegation that Applicant lacks sufficient resources to pay his debts (subparagraph 1.k.) are concluded against the Applicant.

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

In the SOR, DOHA alleged Applicant deliberately falsified his answers on his SF 86 to questions 38 and 39 (§ 2.a.). Conduct involving questionable judgment, untrustworthiness, unreliability, lack of candor, dishonesty, or unwillingness to comply with rules and regulations could indicate that an applicant may not properly safeguard classified information. Directive § E2.A5.1.1.

With respect to the Guideline E conduct alleged in SOR subparagraphs 2.a., the Government has established its case. Applicant's assertions that he did not intend to falsify his responses to Questions 38 and 39 are not credible in light of his awareness of his financial problems over a period of several years, and his creditors' many attempts to put him on notice of delinquent debts. Additionally, Applicant's statement that he failed to list his financial delinquencies because he misunderstood the questions lacks credibility. He did not answer Questions 38 and 39 completely, truthfully, and correctly, and this raises a security concern under § E2.A5.1.2.2 of Guideline E.

Applicant's concealment of information he considered embarrassing or negative could make

him vulnerable to coercion or blackmail. E2.A5.1.2.4. His conduct raises additional concerns under ¶ E2.A5.1.2.5. because it suggests a pattern of dishonesty or rule violation. Applicant's reticence to reveal the truth about his conduct suggests that, under some circumstances, he may put his interests before those of the Government.

Mitigating condition E2.A5.1.3.1. does not apply to the facts of this case. The information withheld by Applicant is pertinent to a determination of his judgment, trustworthiness, and reliability. Two other mitigating conditions under Guideline E might be applicable to the instant case. The security concern raised by Applicant's disqualifying conduct could be mitigated if the falsification was an isolated incident, was not recent, and if the Applicant subsequently provided the correct information voluntarily. ¶ E2.A5.1.3.2. While Applicant supplied some of the correct information about his financial delinquencies when questioned by a special agent of the Defense Security Service in November 2002, his falsifications were not isolated incidents and they are recent. Mitigating condition E2.A5.1.3.3. is also inapplicable, since Applicant did not make prompt good faith efforts to correct the falsification before being confronted with the facts. Accordingly, the allegations in subparagraph 2.a. of the SOR are concluded against the 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

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

### **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.

Joan Caton Anthony

Administrative Judge

1. Exec. Or. 10865, *Safeguarding Classified Information within Industry* (Feb. 20, 1960), as amended and modified.
2. Department of Defense Directive 5220.6, *Defense Industrial Personnel Security Clearance Review Program* (Jan. 2, 1992), as amended and modified.
3. Applicant stated in his answer to the SOR that he had changed his position on the matter of his wife's medical bills and would pay them.