

DATE: February 17, 2005

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In Re:

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SSN: -----

Applicant for Security Clearance

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ISCR Case No. 03-04970

## **DECISION OF ADMINISTRATIVE JUDGE**

**THOMAS M. CREAN**

### **APPEARANCES**

#### **FOR GOVERNMENT**

Nichole Noel, Esq., Department Counsel

#### **FOR APPLICANT**

Pro Se

### **SYNOPSIS**

Applicant is a personnel security specialist for a defense contractor. He had a security clearance while on active military duty. As part of his employment with the defense contractor, he completed a security clearance application for a security up-grade. His credit report showed significant delinquent debt. Applicant petitioned for discharge in bankruptcy after receiving the SOR and all his debts were discharged in bankruptcy. Bankruptcy discharge did not relieve security concerns for financial consideration. He did not list his delinquent debts, all tax liens, all repossessions, or judgments against him on the security clearance application. Applicant knew he had past due debts, judgments, repossession, and tax lien so he deliberately omitted or concealed the relevant information with the intent to deceive. Clearance is denied.

### **STATEMENT OF THE CASE**

On April 12, 2004, the Defense Office of Hearing and Appeals (DOHA) issued a Statement of Reasons (SOR) detailing the basis for its decision to not grant a security clearance to Applicant. The action was taken under Executive Order 10865, *Safeguarding Classified Information within Industry* (February 20, 1990), as amended and modified, and Department of Defense Directive 5220.6, *Defense Industrial Personnel Security Clearance Review Program* (January 2, 1992), as amended and modified (Directive). Applicant acknowledged receipt of the SOR on April 19, 2004. The SOR alleges security concerns under Guideline F (Financial Considerations), and Guideline E (Personal Conduct) of the Directive.

Applicant answered the SOR in writing on June 24, 2004. He admitted the allegations under Guidelines F and E and requested a hearing before an administrative judge. The request for a hearing was received by DOHA on June 28, 2004. Department Counsel was prepared to proceed with the case on November 17, 2004, and the case was assigned to me on November 19, 2004. A notice of hearing was initially issued on November 24, 2004, for a hearing scheduled for January 6, 2005. A notice of hearing termination was issued on December 20, 2004, because Applicant's former employer notified Department Counsel that Applicant was no longer employed by them and did not require a security clearance. Subsequently, Applicant's new employer notified Department Counsel that Applicant did require a security clearance and Applicant wanted to proceed with the hearing. A new notice of hearing was issued on January 3, 2005, for a hearing

scheduled for January 6, 2005. The hearing was held on January 6, 2005. Since this was the date of the original hearing, Applicant waived the 15 day notice provision.<sup>(1)</sup> Twelve government exhibits, three Applicant exhibits, and the testimony of the Applicant were received during the hearing. The transcript was received on January 12, 2005.

### **FINDINGS OF FACT**

Applicant is a 36 year old personnel security specialist for a defense contractor. Applicant's employer considers him to be honest, reliable, and trustworthy.<sup>(2)</sup> Applicant had a security clearance while on active military duty. As part of his employment with the defense contractor, Applicant submitted a security clearance application on June 7, 2002, to upgrade his level of security access.<sup>(3)</sup> A credit report for Applicant showed significant delinquent debt.<sup>(4)</sup> Based on this report, the SOR alleges 20 delinquent debts under Guideline F totaling approximately \$28,000, and four allegations under Guideline E for false or incomplete answers to questions on the security clearance application. The delinquent debts included 2 tax liens, 3 judgments, and 2 repossessions.

Applicant's debts were incurred both before and after he and his wife voluntarily left active military duty without immediate employment. The debts were for credit cards and ordinary expenses, such as, telephone bills, trash collection service, and home gas utility service. Applicant and his wife lost one full income in 1997 when his wife left active duty and attended school part-time and worked part time. Applicant also worked part-time jobs to increase their income. Even though there was additional income from part-time work, there was no indication ordinary expenses or delinquent debts were being paid. One car was voluntarily repossessed in 2000, because they could not make the payments. Applicant left active duty in 2000, was unable to find steady full time employment, and held five jobs as well as part-time employment in two years. During this time, he and his wife were experiencing marital problems and were unable to keep up with their debts. A second car was voluntarily turned in for repossession in 2001. They were finally divorced in 2002 after they had accumulated substantial delinquent debt.<sup>(5)</sup>

Applicant did not file state tax returns in 1998 and 1999. Applicant was on active duty in the military and had both military and non-military income. Since he was not a resident for tax purposes of the state, he was not liable for state income tax on his military income but was on his non-military income. Since Applicant did not file a return with the state, the state did not know Applicant was in the military and placed a tax lien against Applicant for the entire amount of his income. Applicant subsequently filed the tax returns for 1998 and 1999<sup>(6)</sup> and he is due a refund for the two years.<sup>(7)</sup> Applicant did not file a state tax return in the state he moved to after leaving active duty and that state also placed a tax lien on his property.

Applicant was interviewed by a special agent of the Defense Security Service (DSS) in 2002 and admitted all of the delinquent debt. He told the agent he would file bankruptcy for discharge from the delinquent debts.<sup>(8)</sup> However, Applicant did not file for bankruptcy until 2004 because he did not have the financial resources to pay an attorney to file the bankruptcy petition for him.<sup>(9)</sup> He was discharged in bankruptcy on September 15, 2004.<sup>(10)</sup> This discharge in bankruptcy satisfied all of Applicant's debts in the SOR.

Applicant answered "no" to question 38 on his security clearance application asking if in the last 7 years he was over 180 days delinquent on any debts. Applicant answered "no" to question 39 asking if he was currently over 90 days delinquent on any debts.<sup>(11)</sup> At the time, Applicant was more than 180 days delinquent on 18 debts incurred within the last 7 years and thus currently over 90 days past due on the debts.<sup>(12)</sup>

Applicant answered "yes" to question 35 on his security clearance application asking if in the last 7 years he had any property repossessed for any reason.<sup>(13)</sup> He listed one repossession when there were two repossessions. Applicant turned in cars for voluntary repossession twice when he was unable to make the payments for the cars.<sup>(14)</sup>

Applicant answered "no" to question 36 on his security clearance application asking if in the last 7 years he had a lien placed against his property for failing to pay taxes or other debts.<sup>(15)</sup> In fact, Applicant had two tax liens from two separate states for failure to file and pay state income taxes. One of the tax situations was not resolved until 2004 when Applicant filed a tax return with the state and was owed a refund. The other state tax situation was resolved in

bankruptcy.<sup>(16)</sup>

Applicant answered "no" to question 37 on his security clearance application asking if in the last 7 years he had any unpaid judgments against him.<sup>(17)</sup> In fact, Applicant had 3 unpaid judgments against him from creditors.<sup>(18)</sup>

Applicant did not handle the family finances when he was married and was not fully aware of all of the delinquent debts of the family. Most of the delinquent debts were incurred since the mid-1990s and were for ordinary or credit card expenses. Applicant claimed he became aware of the extent of the indebtedness when questioned by the DSS special agent. Applicant was aware of some of the delinquent debts, but not all of them, and the repossessions and the three judgments before completing the security clearance application on June 7, 2002. Applicant knew he had financial problems but he did not try to learn the true state of his finances or obtain his own credit report. After learning of the extent of his indebtedness, Applicant made little to no effort to contact creditors and paid only one of the creditors a few payments. Applicant did not seek financial counseling. He filed for bankruptcy to resolve his financial situation.<sup>(19)</sup>

## POLICIES

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."<sup>(20)</sup> 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 judgement, 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."<sup>(21)</sup> Eligibility for a security clearance is predicated upon the applicant meeting the security guidelines contained in the Directive.

The Directive sets out the adjudicative guidelines for making decisions on security clearances. Enclosure 2 of the Directive sets forth adjudicative guidelines for determining eligibility for access to classified information, and lists the disqualifying conditions (DC) and mitigating conditions (MC) for each guideline. Each clearance decision must be fair, impartial, and a commonsense decision based on the relevant and material facts and circumstances, the whole person concept, and the factors listed in the Directive ¶ 6.3.1 through ¶ 6.3.6

"The adjudicative process is an examination of a sufficient period of a person's life to make an affirmative determination that the person is eligible for a security clearance."<sup>(22)</sup> An administrative judge must apply the "whole person concept," and consider and carefully weigh the available, reliable information about the person.<sup>(23)</sup> An administrative judge should consider: (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 applicant's age and maturity at the time of the conduct; (5) the voluntariness of 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 of recurrence.<sup>(24)</sup>

A person granted access to classified information enters into a special relationship with the government. The government must be able to repose a high degree of trust and confidence in those individuals to whom it grants access to classified information. The decision to deny an individual a security clearance is not necessarily a determination as to the loyalty of the applicant.<sup>(25)</sup> 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 present evidence to establish controverted facts in the SOR that disqualify or may disqualify the Applicant from being eligible for access to classified information.<sup>(26)</sup> Thereafter, Applicant is responsible for presenting evidence to rebut, explain, extenuate, or mitigate facts.<sup>(27)</sup> An applicant "has the ultimate burden of demonstrating that it is clearly consistent with the national interest to grant or continue his security clearance."<sup>(28)</sup> "[T]he Directive presumes there is a nexus or rational connection between proven conduct under any of the Criteria listed therein and an applicant's security suitability."<sup>(29)</sup> "Any doubt as to whether access to classified information is clearly

consistent with national security will be resolved in favor of the national security." (30)

## CONCLUSIONS

I carefully considered all of the facts in evidence and the legal standards discussed above. I reach the following conclusions regarding the allegations in the SOR:

Under Guideline F (Financial Conditions), a security concern exists for an individual who is financially irresponsible. An individual who is financial irresponsible may also be irresponsible, unconcerned, or careless in their obligations to protect classified information. Behaving responsibly or irresponsibly in one aspect of life provides an indication of how a person may behave in other aspects of life. (31) Applicant's delinquent debts brings the matter within Financial Consideration Disqualifying Conditions Directive ¶ E2.A6.1.2.2 (*history of not meeting financial obligations*); and Directive ¶ E2.A6.1.2.3 (*inability or unwillingness to satisfy debts*). Applicant admitted to long term delinquent debts, repossessions of property, and judgments against him for failure to pay debts. He has a history since 1996 of not paying his debts and meeting his financial obligations. The debts were for ordinary expenses and credit cards. Applicant made little effort to keep up with his ordinary living expenses and to understand the extent of his delinquent debt. After learning of the extent of his indebtedness, he made even less effort to contact creditors and try to resolve his indebtedness. From 1996 to 2000, Applicant was on active military duty and working a part-time job. His wife was also on active duty for part of this time and worked part time after leaving active duty. There were financial resources to pay the bills. Applicant's failure to even address them with the creditors shows an unwillingness to satisfy his debts. Bankruptcy is a legal and permissible means of resolving debts. Applicant's 2004 discharge in bankruptcy relieved him of the debts but does not preclude consideration of the security significance of the actions leading to the delinquent debts. (32) Applicant's failure to address delinquent debts outstanding for as long as nine years until pressed to use bankruptcy because of security concerns shows Applicant's unwillingness to satisfy debts. I conclude the disqualifying conditions have been established.

Applicant raises the potential application of Financial Considerations Mitigating Conditions Directive ¶ E2.A6.1.3.3 (*the conditions that resulted in the behavior were largely beyond the person's control (e.g. loss of employment, . . . divorce or separation)*); and Directive ¶ E2.A6.1.3.6 (*the individual initiated a good-faith effort to repay overdue creditors or otherwise resolve debts*). Applicant claims his delinquent debts arose because he and his wife left active duty, lost two full time incomes and then were divorced. However, Applicant had incurred most of the delinquent debt, to include the two car repossessions, before leaving active duty. The circumstances of his indebtedness were not beyond his control. Applicant's lack of effort to learn of his credit problems and pay creditors for many years until forced by security concerns to turn to the legal and permissible remedy of bankruptcy shows a lack of good-faith effort. I conclude Applicant has not mitigated the security concerns for financial considerations.

Under Guideline E (Personal Conduct), a security concern exists for conduct involving questionable judgment, untrustworthiness, unreliability, lack of candor, dishonesty, or unwillingness to comply with rules and regulations. Any of these characteristics in a person could indicate that the person may not properly safeguard classified information. (33) Applicant's failure to provide the correct responses to four questions on the security clearance application brings the matter under Directive ¶ 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 security clearance eligibility or trustworthiness. . .*). At the time he completed the security clearance application, Applicant knew he had past delinquent debts, judgments, tax liens, and repossessions. He made no attempt to learn the true state of his finances so he could accurately complete the form. He deliberately omitted, concealed or falsified relevant information concerning his delinquent debts, judgments, repossessions, and tax liens. I conclude the personal conduct disqualifying conditions have been established.

Applicant made no effort to correct or provide complete and accurate information on his finances to the DSS special agents. At the hearing, he did not provide clear answers to questions concerning his financial situation. He could only state he had been discharged in bankruptcy. He has not established any mitigating conditions under Directive ¶ E2.A5.1.3.2 (*the falsification was an isolated incident, was not recent, and the individual has subsequently provided correct information voluntarily*); and Directive ¶ E2.A5.1.3.3 (*the individual made prompt, good-faith efforts to correct*

*the falsification before being confronted with the facts).*

I carefully considered all of the circumstances in light of the "whole person" concept. I conclude Applicant is not eligible for access to classified information.

### **FORMAL FINDINGS**

Formal findings for or against Applicant on the allegations set forth in the SOR, as required by Section E3.1.25 of Enclosure 3 of the Directive, are:

#### 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

Subparagraph 1.l. Against Applicant

Subparagraph 1.m. Against Applicant

Subparagraph 1.n.: Against Applicant

Subparagraph 1.o.: Against Applicant

Subparagraph 1.p.: Against Applicant

Subparagraph 1.q.: Against Applicant

Subparagraph 1.r.: For Applicant

Subparagraph 1.s.: Against Applicant

Subparagraph 1.t.: Against Applicant

#### Paragraph 2, Guideline E: AGAINST APPLICANT

Subparagraph 2.a.: Against Applicant

Subparagraph 2.b.: Against Applicant

Subparagraph 2.c.: Against Applicant

Subparagraph 2.d.: 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.

Thomas M. Crean

Administrative Judge

1. Tr. 8-9.
2. Tr. 54-57.
3. Exhibit 1 (Security Clearance Application, dated June 7, 2002); Tr. 26-28.
4. Exhibit 11 (Credit Report, dated July 14, 2003).
5. Tr. 28-32.
6. Exhibit B (State tax return, 1998) and Exhibit C (State tax return 1999).
7. Tr. 22-23.
8. Exhibit 2 (Statement of December 3, 2002) at 2.
9. Exhibit 10 (Voluntary Petition for Bankruptcy, dated June 4, 2004); Tr. 33, 39-40.
10. Exhibit A (Discharge in Bankruptcy, dated September 15, 2004).
11. Exhibit 1 (Security Clearance Application, dated June 7, 2002) at 11.
12. Exhibit 11 (Credit Report, dated July 14, 2003).
13. Exhibit 1, *supra*, note 10, at 10.
14. Exhibit 11, *supra* note 11.
15. Exhibit 1, *supra* note 10, at 10.
16. Exhibit 11, *supra* note 11.
17. Exhibit 1, *supra* note 10, at 11.
18. Exhibit 11, *supra* note 11.
19. Tr. 25-26; Tr. 41-49.
20. *Department of the Navy v. Egan*, 484 U.S. 518 (1988).
21. Exec. Or. 12968, *Access to Classified Information* § 3.1 (b) (Aug. 4, 1995).
22. Directive ¶ E2.2.1.

23. *Id.*
24. Directive ¶¶ E2.2.1.1 through E2.2.1.9.
25. *See* Exec. Or. 10865 § 7.
26. Directive ¶ E3.1.14.
27. ISCR Case No. 01-20700 at 3 (App. Bd. Dec. 19, 2002); *see* Directive ¶ E3.1.15.
28. ISCR Case No. 01-20700 at 3 (App. Bd. Dec. 19, 2002).
29. ISCR Case No. 95-0611 at 2 (App. Bd. May 2, 1996) (quoting DISCR Case No. 92-1106 (App. Bd. Oct. 7, 1993))
30. *Egan*, 484 U.S. at 531; *see* Directive ¶ E2.2.2.
31. Directive ¶ E2.A6.1.1.
32. ISCR Case No. 01-26675 (App. Bd. Jun. 13, 2003), at 3. *See*, ISCR Case No. 97-0016 (App. Bd. Dec. 13, 1997).
33. Directive ¶ E2.A5.1.1.