

DATE: July 22, 2005

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In re:

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SSN: -----

Applicant for Security Clearance

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ISCR Case No. 03-09011

## **DECISION OF ADMINISTRATIVE JUDGE**

**DAVID S. BRUCE**

### **APPEARANCES**

#### **FOR GOVERNMENT**

Kathryn D. MacKinnon, Esq., Department Counsel

#### **FOR APPLICANT**

*Pro Se*

### **SYNOPSIS**

Applicant is 42 years old, married, and has been employed by a defense contractor since 1999. He has been steadily employed since 1990. Applicant has \$23,804.00 in delinquent debt dating back about ten years. Applicant and his wife separated in 2001, and Applicant contends his wife is responsible for \$22,874.00 of the delinquencies. Applicant has not discussed the debts with his wife for many years and has not attempted to resolve them with his creditors. Applicant failed to disclose any of the debts on his security clearance application, and refused to allow the Defense Security Service access to his accounts. Clearance is denied.

### **STATEMENT OF THE CASE**

On May 4, 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 May 17, 2004, Applicant responded to each of the allegations set forth in the SOR and further represented he did not wish to personally present his case at a hearing. Department Counsel subsequently submitted the government's File of Relevant Materials (FORM) on July 27, 2004, which contained seven itemized documents in support of its contentions. The complete file was forwarded to Applicant and received by him on August 9, 2004. Applicant was given thirty 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 May 27, 2005.

### **FINDINGS OF FACT**

Applicant has admitted the factual allegations of subparagraphs 1.a., 1.b., 1.d., and 1.g. of the SOR, and denied the allegations of subparagraphs 1.c., 1.e., and 1.f., as to specifically listed debts. The admissions are incorporated herein by reference. Applicant did not directly respond to the factual allegations of subparagraphs 2.a. through 2.c. of the SOR, but in the separate statement attached to his responses, Applicant ostensibly admitted all the paragraph 2 allegations, with explanations.<sup>(1)</sup>

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

Applicant is 42 years old and married in 1991. He and his wife have a son together who was born in 1995. The parties experienced marital difficulties thereafter, exacerbated by a downturn in the business of Applicant's employer and slow periods for Applicant's work, resulting in financial problems for the family. Applicant and his wife separated in 2001, but have remained married.<sup>(2)</sup> Applicant's son resides with his mother and Applicant pays \$490.00 per month to his wife as child

support.

Applicant did not know the information contained in his credit report while he and his wife were experiencing financial problems. He applied for credit a few times during the period to receive promotional items, but the actual credit requests were always denied. Applicant was unsuccessful on a couple of occasions in attempting to obtain a copy of his credit report.<sup>(3)</sup> He never pursued why he was denied credit, nor did he ever obtain a copy of his credit report after he encountered difficulty.

Applicant has been involved in another relationship for some time and has been residing with his girlfriend for about five years.<sup>(4)</sup> He has been employed with a defense contractor since November 1, 1999, working as a technician for a contractor involved with government marine vessels. He was employed by a different company immediately prior to his present work dating back to April 1, 1990, with no employment interruptions.<sup>(5)</sup> Applicant served three years in the U.S. Army from May 1980, to May 1983.<sup>(6)</sup> He has never held a security clearance.<sup>(7)</sup>

Applicant admits owing the following creditors:

1. Installment account - \$707.00.
2. Cable bill - \$70.00.
3. Medical bill - \$75.00.
4. Medical insurance bill - \$78.00.

The Installment account debt represents charges owed for merchandise purchased at a retail appliance store and referred to collection by the original credit source, which charges were incurred about nine years ago. On March 28, 2003, Applicant stated he would satisfy this debt "if necessary," but he has failed to do so.<sup>(8)</sup>

The cable debt represents an account referred to collection in 1997, which remains unpaid.

Applicant also stated he "intends" to satisfy this debt, but has not done so.<sup>(9)</sup>

Applicant offered no explanation of the unpaid medical bill other than to note that he knew the current balance to be \$75.00, larger than \$31.00 as first reported.<sup>(10)</sup> This debt was sent to collection in 1999.

Applicant was unaware of the medical insurance debt when confronted with it as a part of his security background investigation on March 28, 2003, but acknowledges it is likely for services rendered to his son who resides with his estranged wife but is covered by health insurance provided by his employer.<sup>(11)</sup> Applicant has paid nothing on this account since becoming aware of it, nor has he provided any information that he is resolving it with the insurance

company.

In Applicant's answer to the SOR, he denies knowledge and responsibility for the following debts:

1. Collection account - \$4,539.00.
2. Credit finance company - \$347.00.
3. Commercial bank - \$17,988.00.

Applicant claims no knowledge of the specifically listed collection debt, saying only that it must have been for a credit account opened by his wife and later assigned for collection, implying it was her responsibility to pay it. <sup>(12)</sup> He offers no explanation at all for the finance company debt. A personal judgment, however, was entered against him in 2000 on the basis of this obligation that remains unsatisfied. The commercial bank debt was for an automobile installment loan obtained in 1995 by his wife that he maintains had been "charged off." <sup>(13)</sup> Applicant was residing with his wife when these debts were incurred, yet he has not contacted any of the creditors in an attempt to resolve them, and no recent payments have been made by Applicant to any of the listed creditors.

Applicant has never sought nor has he received any credit counseling. He has not filed bankruptcy, and he has not otherwise attempted to pay or settle the claims in any way, either before or after separating from his wife. Applicant has made no effort to investigate the debts of which he was either unaware or which he claims are the obligation of his wife.

Applicant completed his Security Clearance Application (SF 86) on October 1, 2001. He answered no to Question 37: Your Financial Record - Unpaid Judgments. *In the last 7 years, have you had any judgments against you that have not been paid?* He also answered no to Question 38: Your Financial Delinquencies 180 Days. *In the last 7 years, have you been over 180 days delinquent on any debt(s),* and to Question 39: *Are you currently over 90 days delinquent on any debts?*

Applicant refused to consent and grant a credit release to the Special Agent of the Defense Security Service (DSS) assigned to investigate Applicant's background. <sup>(14)</sup> His preference is to contact the creditors directly himself once he begins making more money. As a result, no specific history or other information was obtained concerning any of the listed debts. Applicant did, however, provide a financial statement as requested which he submitted showed he was unable to make any payments toward the delinquent debts shown on his credit report. <sup>(15)</sup>

At the time the financial statement was provided on March 28, 2003, Applicant owned no assets other than his truck and motorcycle worth \$13,000.00, and he had a positive net income of \$228.00 per month. No information was provided concerning financial contributions to the income or expenses of his household from any third parties living at his residence.

## 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), and 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 meritorious 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. <sup>(16)</sup> The decision to deny a security clearance request to an individual is not necessarily a determination of the loyalty of the applicant. <sup>(17)</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>(18)</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>(19)</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:

**Guideline F - Financial considerations are a security concern because an individual who is financially overextended is at risk of having to engage in illegal or unethical acts to generate funds to meet financial obligations. Unexplained affluence is often linked to proceeds from financially profitable criminal acts. A security concern exists when a person has significant delinquent debts. An individual who is financially irresponsible may also be irresponsible, unconcerned or careless in their obligation to protect classified information.**

**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.**

The Guideline F and Guideline E 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 F - Financial Considerations.

Considering all the evidence, Financial Considerations Disqualifying Conditions (FC DC) FC DC E2.A6.1.2.1. (*a history of not meeting financial obligations*), and, FC DC E2.A6.1.2.3. (*Inability or unwillingness to satisfy debts*), apply in this case. Applicant admits having significant outstanding debts that accrued during a bad period of his marriage, but he has made no effort to resolve them for many years.

I have considered all the Financial Considerations Mitigating Conditions (FC MC), and specifically considered FC MC E2.A6.1.3.3 (*The conditions that resulted in the behavior were largely beyond the person's control (e.g., loss of*

*employment, a business downturn, unexpected medical emergency, or a death, divorce or separation*), and conclude it does not apply. Applicant began experiencing financial difficulties several years before he and his wife separated in 2001. Applicant was gainfully employed throughout the time period. In fact, Applicant has been consistently employed throughout the marriage since 1991. In spite of his consistent work history, however, Applicant has not made any attempt to contact his creditors, set up payment plans, or even discuss the parties' mutual debts with his wife to resolve their delinquent accounts over a very long period of time, both before and after their separation. An applicant with good or even exemplary job performance may engage in conduct that has negative security implications. While the stress associated with the parties' marital problems and a downturn in Applicant's work may have contributed to their financial difficulties, Applicant cannot rely on placing blame on his estranged wife for failure to pay her portion of their debt. He has made no effort to even satisfy the modest amount of debts he acknowledges are his responsibility. Applicant's deliberate and irresponsible inattention to his and his wife's debts causes great concern, particularly considering the fact that the parties are still married.

I have also considered FC MC E2.A6.1.3.4. (*The person is receiving counseling for the problem and there is a clear indication that the problem is being resolved or is under control*), and conclude it does not apply. Applicant never sought or received any credit counseling.

I have also considered FC MC E2.A6.1.3.6. (*The individual initiated a good-faith effort to repay overdue creditors or otherwise resolve debts*), and conclude it does not apply as well. Applicant has been consistently employed for at least 15 years. His outstanding debts are relatively small, and it appears he has chosen to ignore certain marriage related debts, in spite of having had a modest ability to accomplish at least partial repayment. He has not elected bankruptcy, presumably upon recognition of his consistent positive income. It is clear Applicant has intentionally ignored and avoided selected debts, for personal reasons. Applicant's failure to satisfy his debts in a timely manner questions his judgment, reliability and trustworthiness.

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 E - Personal Conduct.

Based on all the evidence, the following Personal Conduct Disqualifying Condition (PC DC) E2.A5.1.1.2. (*Refusal to complete required security forms, releases, or provide full, frank and truthful answers to lawful questions of investigators, security officials or other official representatives in connection with a personnel security or trustworthiness determination.*), and 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.*), apply in this case. Applicant refused to grant DSS access to review his credit records. Applicant was aware or had reason to know of his delinquent debts, and failed to list them on his SF 86. 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), and specifically considered 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 all his debts and fully disclose each one on his SF 86 questionnaire. Applicant acknowledged his debts in his statement of March 28, 2003, when confronted by the DSS investigator, but at the same time indicated he had been denied credit previously on a couple of occasions. He never obtained a credit report to determine the reason for rejection. In his statement attached to his answer to the SOR dated May 4, 2004, Applicant attributes the omission to misjudgment or error on his part. Nevertheless, his candor and credibility are questionable when he earlier assessed blame to his wife. The deliberate omission of all of his debts has not been mitigated considering all the circumstances.

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. 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 financial considerations and personal conduct issues. Accordingly, Guideline F and Guideline E are 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 and the government's otion to Amend:

#### Paragraph 1. Financial Considerations (Guideline F) AGAINST THE APPLICANT

Subparagraph 1.a. Against the Applicant

Subparagraph 1.b. Against the Applicant

Subparagraph 1.c. Against the Applicant

Subparagraph 1.d. Against the Applicant

Subparagraph 1.e. Against the Applicant

Subparagraph 1.f. Against the Applicant

Subparagraph 1.g. Against the Applicant

#### Paragraph 2. Personal Conduct (Guideline E) AGAINST THE APPLICANT

Subparagraph 2.a. Against the Applicant

Subparagraph 2.b. Against the Applicant

Subparagraph 2.c. Against 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 3 (Applicant's handwritten response to SOR) at 4 and 5.
2. Item 4 (Applicant's Security Clearance Application dated October 1, 2001), at 2. It is noted that Applicant indicates in his statement dated March 28, 2003, Item 5 at 3, that he and his wife separated in 1995, presumably in error.
3. Item 5 (Applicant's statement dated March 28, 2003) at 3.
4. *Id.*, at 5.
5. Item 4, *supra* note 2, at 1-2.
6. *Id.*, at 3.
7. *Id.*, at 7.
8. Item 5, *supra* note 3, at 2.

9. *Id.*, at 2.

10. *Id.*, at 3.

11. *Id.*, at 3.

12. *Id.*, at 2.

13. *Id.*, at 1.

14. *Id.*, at 3.

15. *Id.*, at 3-4.

16. Directive, Enclosure 2, Para. E2.2.2.

17. Executive Order 10865, Section 7.

18. ISCR Case No. 96-0277 (July 11, 1997) at page 2.

19. ISCR Case No. 94-1075 (August 10, 1995) at pp. 3-4; Directive, Enclosure 3, Para. E3.1.15.