

DATE: October 25, 2006

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In Re:

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SSN: -----

Applicant for Security Clearance

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CR Case No. 04-06167

**DECISION OF ADMINISTRATIVE JUDGE**

**JOSEPH TESTAN**

**APPEARANCES**

**FOR GOVERNMENT**

Jennifer I. Goldstein, Department Counsel

**FOR APPLICANT**

*Pro Se*

**SYNOPSIS**

Applicant's long-standing financial difficulties, pattern of dishonesty and rule violations, and criminal conduct preclude a finding that it is clearly consistent with the national interest to grant him access to classified information. Clearance is denied.

**STATEMENT OF THE CASE**

On August 15, 2005, the Defense Office of Hearings and Appeals (DOHA), pursuant to Executive Order 10865 and Department of Defense Directive 5220.6 (Directive), dated January 2, 1992, 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 and recommended referral to an Administrative Judge to determine whether clearance should be denied or revoked.

Applicant responded to the SOR in writing on September 12, 2005, and elected to have his case determined on a written record in lieu of a hearing. Department Counsel (DC) submitted the Government's written case (FORM) on or about October 4, 2005. Applicant filed a response to the FORM on or about April 21, 2006. The case was assigned to me on July 12, 2006.

**RULINGS ON PROCEDURE**

Department Counsel's Motion to Amend SOR Allegation 2c is denied.

**FINDINGS OF FACT**

Applicant is a 42 year old employee of a defense contractor.

**SOR Allegation 1a:** Applicant filed a Chapter 7 bankruptcy petition in 1998. His unsecured debts in the approximate

amount of \$68,343.00 were discharged by the bankruptcy court in May 1998.

**SOR Allegation 1b:** Applicant has been indebted to this creditor in the approximate amount of \$132.00 for at least two years (Exhibit 8). In response to the SOR, applicant admitted the debt. In response to the FORM, he stated he paid it "by money transfer from my saving account." He did not, however, submit any documentation to corroborate his statement.

**SOR Allegation 1c:** Applicant has been indebted to Bank of America in the approximate amount of \$2,596.00 since at least 2001. In his response to the SOR, he denied he is indebted to Bank of America. In fact, he stated: "I don't have any current or past loans or money borrowed in any way with Bank of America." In a signed, sworn statement he gave to the Defense Security Service (DSS) in March 2001 (Exhibit 15), he gave a different story. In pertinent part he stated:

The second account is with Bank of America and pertains to my government travel card. I went on two weeks temporary duty for training at [AFB]. Over the weekend, I decided to attend the reunion of my youth camp in Michigan. I used the government charge card to pay for all trip expenses . . . I charged about \$2,100.00 in personal expenses on the government card. At the time I incurred the expenses, I knew it was wrong and constituted misuse of the government card. I can only say in my defense that I'm not good with credit cards. I have been unable to pay the personal charges . . . I will make full restitution to Bank of America upon receipt of my 2000 tax refund of \$5,500.00.

**SOR Allegation 1d:** In his response to the SOR, applicant admitted he was indebted to this creditor in the approximate amount of \$377.00 and that the debt had been placed in collection. In response to the FORM, he stated he paid it and offered a copy of a Western Union receipt as proof. Since applicant offered no explanation for why the receipt (1) is in the amount of \$650.00, (2) has a different account number, and (3) is made out to a different creditor, it does not support applicant's statement that he paid the debt.

**SOR Allegation 1e:** Applicant is indebted to this creditor in the approximate amount of \$541.00. In his response to the SOR, applicant denied having an account with this creditor. In response to the FORM, he stated he paid the creditor \$955.00 by "money transfer from my saving account." He did not, however, submit any documentation to support this claim.

**SOR Allegation 1f:** Applicant is indebted to Diners Corp. in the past-due amount of approximately \$2,007.00 He claims that the debt was discharged in bankruptcy, but the debt was not listed in his bankruptcy schedules filed with the court.

**SOR Allegation 1g:** Applicant paid this \$25.00 debt in March 2006.

**SOR Allegation 1h:** Applicant paid this \$265.00 debt in March 2006.

**SOR Allegation 1i:** Applicant paid this \$203.00 debt in March 2006.

**SOR Allegation 1j:** Applicant's AMEX debt was included in his bankruptcy petition and presumably discharged in 1998.

**SOR Allegation 1k:** Applicant intentionally misused a Diners Club credit card issued to him by his employer by charging personal items on it and then letting the account go delinquent. A May 1999 letter from his employer to DSS (Exhibit 11) states the following about this matter:

On 12 March 1999, [applicant] was terminated from employment . . . When asked to turn in his Corporate Diners Club card, he stated he had lost it and had reported it to Diners Club. [Applicant] made 15 unauthorized charges on the card that day through 14 April when we were notified of a delinquent bill. Upon reviewing the Corporate billing statement, it was discovered that he had previously made several unauthorized charges totaling \$1,056.50. He currently has a delinquent balance of \$1,803.64. [Applicant] did not tell the truth about the status of his credit card and continued using it after he was terminated.

**SOR Allegation 1l:** Applicant made unauthorized purchases with his government credit card and then let the account go delinquent.

**SOR Allegation 1m:** Applicant misused a Visa card issued to him by his employer by purchasing personal items with it and then letting the account go delinquent (Exhibit 10).

**SOR Allegation 2a:** In the late 1990s, applicant was employed by a State as a Juvenile Parole Officer. He abused his position by, among other things, running a private business out of the parole office, and by charging parolees under his supervision and their parents for parole services that were provided free by the State and then keeping the money for himself. An investigation of his activities resulted in his termination in February 1997, and his indictment on three fraud-related felony counts in September 1998. On August 25, 1999, he pleaded no contest to, and was found guilty of, one felony. Applicant claims the whole affair was a misunderstanding and that he had no criminal intent. He was ordered to pay \$700.00 in restitution and to complete 350 hours of community service.

**SOR Allegation 3c:** Between September 2000 and March 2001, applicant solicited and received money from four individuals by telling them he was opening a business. When applicant began misleading them and not producing a business plan as promised, they demanded their money back. They eventually were repaid, but not before the police became involved. Applicant claims that each individual knew the risks of investing in the business, and it was a "fair business [deal]."

**SOR Allegation 3d:** Exhibit 18 supports the allegation that applicant was fired from his job in March 1999 for, among other things, lack of (1) technical competence, (2) common sense, and (3) and good judgment.

**SOR Allegations 3e:** Applicant admits that on a Security Clearance Application (SCA) he executed on August 7, 1999, he denied that he had ever been charged with a felony offense. In fact, as noted above, he had been charged with three felonies the previous year. In his response to the SOR, applicant stated the following:

My purpose was not to conceal but because my court records indicated that my offense was being reduced to a misdemeanor that is why I said no.

Based on the evidence in the record, I find that applicant intentionally tried to conceal his felony charge from the Government.

Numerous character letters supporting applicant were attached to applicant's response to the SOR. None of these letters can be given much weight in light of the fact none of the authors indicated they are aware of applicant's fraud-related conviction or other dishonest conduct.

### CONCLUSIONS

With respect to Guideline F, the evidence establishes that applicant (1) has a long history of not meeting his financial obligations, (2) is still indebted to numerous creditors listed in the SOR for past-due debts, and (3) has engaged in questionable business and financial practices involving numerous breaches of trust. This conduct reflects adversely on his judgment and reliability, and suggests he cannot be relied upon to safeguard classified information. With respect to the Financial Considerations guideline, Disqualifying Conditions E2.A6.1.2.1 (*a history of not meeting financial obligations*), E2.A6.1.2.2 (*deceptive financial practices . . .*), and E2.A6.1.2.3 (*inability or unwillingness to satisfy debts*) are applicable.

Once the Government established a *prima facie* case under Guideline F, the burden shifted to applicant to show he has reformed. Applicant failed to meet his burden. Although he satisfied a few small debts alleged in the SOR, he offered no credible evidence that he is in a position to significantly reduce his past-due indebtedness anytime soon, or that he is unlikely to experience additional financial difficulties. More importantly, even if he had presented such evidence, he still would be ineligible for a clearance under Guideline F because he failed to establish that his pattern of dishonest financial practices is unlikely to continue. Applicant does not qualify for any Mitigating Condition, and Guideline F is found against him.

With respect to Guideline J, applicant's 1999 felony conviction raises serious concerns about his judgment, reliability and trustworthiness. These concerns are compounded by the fact he lied to the Government when he completed the SCA

[\(1\)](#)

in 1998. Disqualifying Condition E2.A10.1.2.2 (*a single serious crime or multiple lesser offenses*) is applicable. No Mitigating Conditions are applicable, and Guideline J is found against applicant..

With respect to Guideline E, the evidence establishes that applicant has a long history of bad judgment, unreliability and trustworthiness. In fact, applicant's conduct, including his misuse of at least three credit cards issued by his employers, his fraudulent criminal conduct, and his concealment of his felony charge from the Government, fits squarely within the concern expressed by Guideline E. <sup>(2)</sup> Disqualifying Conditions E2.A5.1.2.1 (*reliable, unfavorable information provided by associates, employers, coworkers, neighbors, and other acquaintances*), E2.A5.1.2.2 (*the deliberate concealment of relevant and material facts from any SCA*), and E2.A5.1.2.5 (*a pattern of dishonesty or rule violations*) clearly apply. No Mitigating Conditions are applicable, and Guideline E is found against applicant.

### **FORMAL FINDINGS**

PARAGRAPH 1: AGAINST THE APPLICANT

PARAGRAPH 2: AGAINST THE APPLICANT

PARAGRAPH 3: 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.

Joseph Testan

Administrative Judge

1. This conduct is a felony under 18 U.S.C. 1001.
2. E2.A5.1.1. *The Concern*: Conduct involving questionable judgment, untrustworthiness, unreliability, lack of candor, dishonesty, or unwillingness to comply with rules and regulations could indicate that the person may not properly safeguard classified information.