

DATE: October 11, 2005

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In Re:

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SSN: -----

Applicant for Security Clearance

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ISCR Case No. 04-07743

## DECISION OF ADMINISTRATIVE JUDGE

ARTHUR E. MARSHALL, JR.

### APPEARANCES

#### FOR GOVERNMENT

Julie R. Edmunds, Esq., Department Counsel

#### FOR APPLICANT

*Pro Se*

### SYNOPSIS

Applicant is a 41-year-old supply technician who has worked for the same defense contractor since January 2003. After completing his security clearance application, a number of debts and delinquencies were discovered. Applicant claimed he paid off one debt and attempted to work with his creditors on the remaining debts, but he failed to corroborate these assertions with substantive documentation. Moreover, he admitted that he deliberately failed to disclose his delinquent obligations, partly because he feared it would jeopardize his security clearance application. Applicant has failed to meet his burden. Clearance is denied.

### STATEMENT OF THE CASE

On March 8, 2005, 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 Personnel Security Clearance Review Program* (Directive), dated January 2, 1992, as amended and modified, issued a Statement of Reasons (SOR). That SOR detailed why, pursuant to Guideline F (Financial Considerations) and Guideline E (Personal Conduct), it 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. By letter signed on April 1, 2005, Applicant admitted to the allegations listed under Guideline F, to two of the four allegations noted under Guideline E, and admitted in part, denied in part, the remaining two allegations set forth under Guideline E of the SOR. He requested a determination without hearing.

The Government's case was submitted on March 8, 2005, and a complete copy of the file of relevant material (FORM) [\(1\)](#) was provided to Applicant. Submitted as part of the FORM was a Motion to Amend the Statement of Reasons with regard to the allegations raised pursuant to Guideline E. [\(2\)](#) Although Applicant signed for a copy of the FORM on June 27, 2005, and was afforded the opportunity to file objections and submit evidence in refutation, extenuation, or mitigation, he chose to neither submit additional materials or argument, nor address the Motion to Amend. I was assigned this case on August 24, 2005. In the absence of any objection, I grant the Motion to Amend the Statement of

Reasons.

## FINDINGS OF FACT

Applicant has admitted to all of the allegations in the SOR except for two sub-allegations, which he admits in part, denies in part. [\(3\)](#)

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

Applicant is a 41-year-old employee who has worked as a supply technician for a government contractor since January 27, 2003. His life experience includes 20 years in the active military and a brief period of college-level instruction. Applicant has been married for 19 years. He has both a stepchild and a child, aged 21 and 17, respectively.

Applicant fell behind on his bills at a time during which he had several deployments to the Middle East, his wife assumed part-time employment, [\(4\)](#) and he and his wife had just had a new born child. [\(5\)](#) No more is known of the origin of these obligations.

Specifically, the debts that arose, remain, and are now at issue are: [\(6\)](#)

**1.a** - A state tax lien for \$358;

**1.b** - A federal tax lien for \$613;

**1.c** - A debt owed (Bank A) that was put into collections in the amount of \$109;

**1.d** - A debt owed (Bank B) that was charged off in the amount of \$3,189;

**1.e** - A debt owed (Bank C) that was charged off in the amount of \$481; and

**1.f** - A debt owed (Bank D) that was charged off in the amount of \$1,613.

With regard to Personal Conduct, Applicant:

**2.a** - Falsified material facts on his SF 86 form by failing to disclose that tax liens had been placed against his property in the 7 years prior to his security clearance application;

**2.b** - Falsified material facts on his SF 86 form by failing to disclose that he had been 180 days delinquent on a debt or debts in the 7 years prior to his security clearance application, including those debts noted above as 1.a, 1.b, 1.d, and 1.f, as well as -

i. a debt to a private label, military charge card (Bank E), and

ii. a debt to (Bank F);

**2.c** - Falsified material facts on his SF 86 form by failing to disclose that he was then 90 days delinquent on a debt or debts, including those debts cited above as 1.a, 1.b, 1.d, and 1.f, as well as - i. a debt to a private label, military charge card (Bank E),

ii. a debt to (Bank F), and

iii. A debt to (Bank G); and

**2.d** - Failed to disclose the negative financial information referenced above in subparagraphs 2.a through 2.c, as referenced on his SF 86 as subparagraphs 2.a through 2.c, because he was afraid the negative information would adversely affect his security clearance.

Applicant denied the obligation to Bank E, for a military charge card, stating that he had paid off this obligation in full with the proceeds from his 2002 tax refund, plus a small additional amount paid for by a money order dated October 3, 2002. He does not, however, proffer any documentary evidence substantiating this claim in any way. In contrast, Applicant admits to the remaining bank debts and the two liens. Although in the past he has noted plans to make contact with his creditors, Applicant has provided no documentation or recent argument that might tend to indicate such contact or initiative ever transpired.

With regard to the allegations concerning falsifications, Applicant admits the allegations. Indeed, regarding the issue as to why he failed to disclose the negative financial information, he initially cites to his then-lack of access to his financial records when he made his security clearance application, then clearly enunciates his personal fear "that by reporting the financial information on the form that it would adversely affect (his security) clearance."<sup>(7)</sup>

## POLICIES

Enclosure 2 of the Directive sets forth adjudicative guidelines which must be considered in the evaluation of security suitability. In addition to brief introductory explanations for each guideline, these adjudicative guidelines are subdivided into those that may be considered in deciding whether to deny or revoke one's eligibility for access to classified information (Disqualifying Conditions) and those that may be considered in deciding whether to determine one could still be eligible for access to classified information (Mitigating Conditions).

In application, an Administrative Judge is not strictly bound to the adjudicative guidelines. As guidelines, they are but part of an amalgam of elements for the Administrative Judge to consider in assessing an applicant in light of the circumstances giving rise to the SOR, as well as in assessing the applicant as a whole. The concept of the "whole person" means that all available, reliable information about the person - whether it is good or bad, present or past - should be considered in making a fair, impartial, and meaningful decision as to his or her suitability to hold a security clearance. To that end, Enclosure 2 also sets forth factors to be considered during this part of the adjudicative process, including: (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 participation; (6) the presence or absence of rehabilitation and other pertinent behavioral changes; (7) the motivation of the conduct; (8) the potential for pressure, coercion, exploitation, or duress; and (9) the likelihood of continuation or recurrence.

After a full and thorough examination, however, the final assessment must comport with the considerable gravity of the final decision. There is no right to a security clearance<sup>(8)</sup>

and one seeking access to classified information must be prepared to enter into a fiduciary relationship with the United States Government that is inherently predicated on trust and confidence. Therefore, when the facts proven by the Government raise doubts as to an applicant's judgment, reliability, or trustworthiness, the applicant has the heavy burden of persuasion to demonstrate that he or she is nonetheless security worthy. As noted by the United States Supreme Court, "the clearly consistent standard indicates that security clearance determinations should err, if they must, on the side of denials."<sup>(9)</sup> Therefore, any doubts will be resolved in favor of the national security, not the applicant

Finally, it should be noted that Applicant's allegiance, loyalty, and patriotism are not at issue in these proceedings. Section 7 of Executive Order 10865 specifically provides that industrial security clearance decisions shall be "in terms of the national interest and shall in no sense be a determination as to the loyalty of the applicant concerned." Therefore, nothing in this Decision should be construed to suggest I have based this decision, in whole or in part, on any express or implied determination as to Applicant's allegiance, loyalty, or patriotism.

Based upon a consideration of the evidence as a whole, I find the following adjudicative guidelines most pertinent to an evaluation of the facts in this case:<sup>(10)</sup>

**Guideline F - Financial Considerations. *The Concern: An individual who is financially overextended is at risk of having to engage in illegal acts to generate funds. Unexplained affluence is often linked to proceeds from financially profitable criminal.***

**Guideline E - Personal Conduct. 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.**

Specific conditions that could raise a security concern and may be disqualifying, as well as those which could mitigate security concerns pertaining to this adjudicative guideline, are set forth and discussed below.

**CONCLUSIONS**

Upon consideration of all the facts in evidence, and after application of all legal precepts, factors, and conditions, including those described briefly above, I find the following with respect to the allegations set forth in the SOR:

With respect to Guideline F (Financial Considerations), the Government has established its case. Applicant admits to both the two liens and to all but one of the debts (Bank E) <sup>(11)</sup>

at issue. Consequentially, I find that both Financial Considerations Disqualifying Condition (FC DC) E2.A6.1.2.1 (*[a] history of not meeting financial obligations*) and FC DC E2.A6.1.2.3 (*[i]nability or unwillingness to satisfy debts*) apply.

Furthermore, the Government has met its burden with regard to Guideline E (Personal Conduct). Applicant admits that because he feared the truth might negatively influence his security clearance, he deliberately gave untrue answers on his security clearance application which concealed material facts concerning his true financial situation. Therefore, I find that Personal Conduct Disqualifying Condition (PC DC) E2.A5.1.2.2 (*[t]he 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*) applies.

When the Government's initial burden has been met and a disqualifying condition raised, the burden shifts to the Applicant to show that it is clearly consistent with the national interest to grant him a security clearance. Specifically, the burden shifts to the Applicant to move forward with evidence in rebuttal, explanation, or mitigation which is sufficient to overcome or outweigh the Government's case. As such, it is his ultimate burden to present sufficient evidence to mitigate the security concerns that the disqualifying conditions raise.

Here, however, Applicant has introduced nothing except the bald, unsubstantiated assertion that one of his debts, a military private-label credit card (Bank E), has been satisfied; he admits to the rest of the allegations contained within the SOR without comment. As such, he has made no attempt and offered no evidence to mitigate any of the security concerns raised. Given such a scant record upon which to examine, I am unable to find that any of the mitigating conditions under Guideline F (Financial Considerations) or Guideline E (Personal Conduct) apply. <sup>(12)</sup>

I have considered both the facts before me and the Applicant under the "whole person" concept. Applicant is a mature family man with two decades of military service to his country. Because he has failed in his burden to mitigate the security concerns that his finances and personal conduct raise, however, I find for the Government with regard to paragraph 1, subparagraphs 1.a through 1.f, and paragraph 2, subparagraphs 2.a through 2.d, of the SOR.

**FORMAL FINDINGS**

Formal findings for or against Applicant on the allegations set forth in the SOR, as required by Section E3.1.2.5 of Enclosure 3 of the Directive, are:

Paragraph 1, 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

Paragraph 2, Guideline E: AGAINST THE APPLICANT

Subparagraph 2.a: Against the Applicant

Subparagraph 2.b: Against the Applicant

Subparagraph 2.c: Against the Applicant

Subparagraph 2.d: 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 a security clearance for Applicant. Clearance is denied.

Arthur E. Marshall, Jr

Administrative Judge

1. <sup>0</sup> The government submitted 7 items in support of its case.

2. This amendment specifically affected subparagraph 2.b and 2.c of the SOR. The amendment restricted the allegations that Applicant deliberately failed to disclose all the debts listed in subparagraphs 1.a through 1.f to only those cited in subparagraphs 1.a, 1.b, 1.d, and 1.f. Additionally, regarding subparagraph 2.c, the motion sought to add an additional, third, debt to those previously cited as having been then-90 days delinquent. *See page 2, infra.*

3. Specifically, Applicant denies, with regard to subparagraphs 2.b.i and 2.c.i of the SOR, that he ever falsified material facts or failed to disclose on his March 12, 2003, Security Clearance Application (SF 86), that he was 90 days and 180 days delinquent, respectively, on a specific debt to a military, private-label, charge card. Applicant, however, failed to introduce any substantiating documentary evidence that this debt was, in fact, satisfied.

4. Whether her shift to part-time work posed a reduction or an increase with regard to the family's income is unclear.

5. Although the allusion to Middle Eastern deployments might lead one to believe these debts were incurred in more recent times, the only one of these factors for which a date is discernable, based on the record, is the birth of his child with his wife. Applicant's 2003 SF 86 shows that his child was born in 1987.

6. These findings, as well as those regarding Personal Conduct, correspond numerically with the allegations set forth in the SOR, as amended.

7. Item 5 (DSS Interview dated November 28, 2003), at 1.

8. <sup>0</sup> *Department of the Navy v. Egan*, 484 U.S. 518, 528 (1988).

9. <sup>0</sup> *Id.*, at 531.

10. *See* Directive, Enclosure 2, Attachment 6, Guideline F, ¶ E2.A6.1.1, and Enclosure. 2, Attachment 5, Guideline E, ¶ E2.A5.1.1, respectively.

11. As discussed, *infra*, Applicant has proffered no documentation substantiating his assertion that the obligation to Bank E was ever satisfied.

12. *See* ¶E2.A6.1.3 and ¶E2.A5.1.3, respectively.