

DATE: June 30, 2006

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In Re:

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SSN: -----

Applicant for Security Clearance

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ISCR Case No. 04-09916

**DECISION OF ADMINISTRATIVE JUDGE**

**PAUL J. MASON**

**APPEARANCES**

**FOR GOVERNMENT**

Daniel F. Crowley, Esq., Department Counsel

**FOR APPLICANT**

*Pro Se*

**SYNOPSIS**

Applicant's bankruptcy discharge in September 1995, followed by continuing financial problems, are not mitigated or extenuated by his periodic unemployment. Applicant, rather than events outside his control, was the reason for his unemployment. In addition, he has not mitigated the deliberate omission of his security clearance application in June 2003. Clearance is denied.

**STATEMENT OF CASE**

The Defense Office of Hearings and Appeals (DOHA) declined to grant or continue a security clearance for Applicant. On June 24, 2005, under Executive Order 10865 and Department of Defense Directive 5200.6, DOHA issued a Statement of Reasons (SOR) detailing the reasons for its security concerns raised under the financial considerations guideline (Guideline F) of the Directive. In his answer dated July 28, 2005, Applicant requested a decision be made on the record in lieu of a hearing. A copy of the Government's File of Relevant Material (FORM, the Government's evidence in support of the SOR) was sent to Applicant on April 3, 2006. Applicant received the FORM on April 11, 2006. Applicant's response to the FORM was due by May 11, 2006. No response was received. The case was assigned to me for decision on June 14, 2006.

**FINDINGS OF FACT**

Applicant admitted the nine allegations (an unpaid judgment and seven delinquent debts) under the financial considerations guideline, and three allegations under the personal conduct guideline. Applicant is 50 years old and employed by a defense contractor. He seeks a secret security clearance.

**Financial Considerations.** In September 1995 (1.a. of the SOR), Applicant received a Chapter 7 discharge of approximately \$25,000.00 in debt. A judgment for \$4,148.00 (1.b.) was entered against Applicant in September 1997, which has not been satisfied. When interviewed in July 2004, Applicant was uncertain of the origin of the judgment, but surmised it related to the sale of property. The past due debt in 1.c. (\$105.00) is for medical services received by

Applicant's daughter in July 1999.

Subparagraph 1.d. is an overdue debt of \$343.00 that was transferred for collection by the creditor in January 2000. Applicant is indebted to another collection agency (1.e.) in the amount of \$93.00 for an insurance deficiency. Subparagraphs 1.f. and 1.h. are two delinquent credit card debts of \$1,644.00 and \$1,491.00, belonging to the same creditor. Finally, Applicant owes \$383.00 (charged off as a bad debt in January 2005) to the creditor identified in 1.i.

The eight delinquent debts identified in the SOR are based on information derived from credit bureau reports (CBRs) dated June 2003, May 2004, and May 2005. The total amount past due debt is \$14,081.00 owed to eight creditors. Though Applicant provided no explanation in his answer to the SOR and no response to the FORM, he did provide an explanation for his debt problems in his sworn statement submitted to the Defense Security Service (DSS) in July 2004 (Item 8). Applicant blamed his termination from his dealer position at a regional casino in State Y for not complying with procedures for dealers and supervisors. He stated, "I attribute this to my sometimes taking "shortcuts," which is not uncommon for people who have been involved in the gaming industry for a long time such as I had." (Item 8) Though he did not detail the nature or type of his noncompliance, he claims he did nothing to defraud or cheat the casino or the gamblers.

Appellant's security clearance application (SCA, Item 5) reflects he was fired July 2002 (module 20, employment record) from his position as "dealer/floor person" from a casino in State Y for failing to follow procedures. However, the same SCA (module 6, employment activities) shows he was rehired in December 2002 to the position of "slot booth cashier."

According to his sworn statement (Item 8, July 2004) and his SCA, before his employment in the State Y casino, Applicant was employed in the State X casino from January to August 1999 as a "slot/booth cashier." His accumulation of too many points or missing too much work led to his termination in August 1999 (SCA, module 6).

In his answers to interrogatories dated October 27, 2004, Applicant cited limited earnings since 1998 making impossible to pay the delinquent debt.

**Personal Conduct.** On June 23, 2003, Applicant executed an SCA. He answered "no" to question 37 (unpaid judgments, 2.a.), question 38 (any debts over 180 days delinquent in the last 7 years, 2.b.) and question 39 (any debts currently over 90 days delinquent, 2.c.). In his sworn statement (Item 8, July 2004), Applicant did not dispute the delinquent debts appearing in his CBR, but stated he was not aware of them or had forgotten about them. He admitted the debts in 1.c., 1.d., 1.f., and 1.h. While he was unsure of the 1.b. debt in his sworn statement, he admitted he owed the debt in his answer to the SOR. Considering Applicant's admissions to the personal conduct allegations, I find he deliberately concealed financial information on his SCA.

## POLICIES

Enclosure 2 of the Directive sets forth guidelines containing disqualifying conditions (DC) and mitigating conditions (MC) that should be given binding consideration in making security clearance determinations. These conditions must be considered in every case along with the general factors of the whole person concept. However, the conditions are not automatically determinative of the decision in any case nor can they supersede the Administrative Judge's reliance on his own common sense.

## **Burden of Proof**

Initially, the government must establish, by substantial evidence, that conditions exist in the personal or professional history of the applicant which disqualifies, or may disqualify, the applicant from being eligible for access to classified information. *See Department of the Navy v. Egan*, 484 U.S. 518, 531 (1988) "[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." ISCR Case No. 95-0611 at 2 (App. Bd. May 2, 1996) (quoting DISCR Case No. 92-1106 (App. Bd. Oct. 7, 1993)).

Once the government establishes a disqualifying condition by substantial evidence, the burden shifts to the applicant to

rebut, explain, extenuate, or mitigate the facts. "[S]ecurity clearance determinations should err, if they must, on the side of denials." *See Egan*, 481 U.S. at 531; *see* Directive E2.2.2.

### **Financial Considerations (Guideline F)**

An individual who is financially overextended is at risk of having to engage in illegal acts to generate funds.

#### **Personal Conduct**

Actions involving poor judgment or dishonesty may disqualify the person from security clearance access.

### **CONCLUSIONS**

**Financial Considerations (FC).** An individual who is financially overextended is at risk of engaging in illegal acts to generate funds. Of the five disqualifying conditions (DC) listed in the FC guideline, 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. Applicant's history of financial problems falls within the scope of FC DC E2.A6.1.2.1., because in September 1995, he received a Chapter 7 discharge of \$25,000.00 in debt, with continuing financial indebtedness totaling more than \$14,000.00 owing to eight creditors by May 2005. Applicant's monthly remainder of \$86.00 (item 9, answers to interrogatories) substantiates his inability to pay the overdue debt.

There are six mitigating conditions (MC) under the FC guideline that potentially could alleviate the security concerns of Applicant's financial problems. Neither FC MC E2.A6.1.3.1. (*the behavior was not recent*) nor FC MC E2.A6.1.3.2. (*it was not an isolated incident*) apply. The debts are recent because Applicant has failed to pay the debts off, and there are eight delinquent debts.

Applicant's claim of periodic unemployment is verified by his SCA. The loss of work should be the type of unforeseen circumstance that activates FC MC E2.A6.1.3.3. (*the conditions that resulted in the behavior were largely beyond the person's control*). However, the unemployment that caused in Applicant's financial problems was not caused by events outside of his control, but his poor judgment in choosing to pursue the "shortcut," or in choosing to stay away from work, rather than complying with casino procedures and casino attendance regulations. FC MC E2.A6.1.3.3. does not apply to these facts.

Neither FC MC E2.A6.1.3.4. (*the person has received or is receiving counseling for the problem and there are clear indications that the problem is being resolved or is under control*) nor FC MC E2.A6.1.3.6. (*the individual initiated a good-faith effort to repay overdue creditors or otherwise resolve debts*) apply as Applicant has presented no evidence of counseling to demonstrate he has control over his past due debt. Even after he stated he would pay off the delinquent debt in September 2004 (sworn statement), Applicant did nothing to follow through with his stated intentions. I find against Applicant under the FC guideline.

**Personal Conduct (PC).** Applicant's "no" answers to questions 38, 39, and 40 constitutes a deliberate falsification of material information within the scope of PC DC E2.A5.1.2.2. (*the deliberate omission of relevant and material facts from any personnel security questionnaire used to determine security clearance eligibility or trustworthiness*). Even though he had a unpaid judgment and seven delinquent accounts as of June 2003, Applicant intentionally omitted all information about the judgment and the accounts from his SCA.

There are no MC conditions applicable to justify or excuse Applicant's dishonest conduct. PC MC E2.A5.1.3.1. (*the information was unsubstantiated or not pertinent to a determination of judgment*) does not apply because honesty must be demonstrated during all phases of the security clearance investigation. Applicant's later admission to his earlier deliberate omission of material information does not excuse his earlier dishonest conduct. Neither PC MC E2.A5.1.3.2. (*the falsification was an isolated incident, was not recent, and the individual has subsequently provided correct information voluntarily*) nor PC MC E2.A5.1.3.3. (*the individual-made prompt, good-faith, efforts to correct the falsification before being confronted with the facts*) apply, because of the recency of the falsification and the fact Applicant had to be confronted with the delinquent debts before he acknowledged them. Applicant has not mitigated the security concerns triggered by his personal conduct. In finding against Applicant under the FC and PC guidelines, I have

considered the evidence as a whole, including the general factors of the whole person model cited at E2.2. of the Directive.

### **FORMAL FINDINGS**

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.

Subparagraph 1.h. Against the Applicant.

Subparagraph 1.i. 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.

Paul J. Mason

Administrative Judge