

DATE: December 27, 2006

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In Re:

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SSN: -----

Applicant for Security Clearance

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CR Case No. 05-02033

**DECISION OF ADMINISTRATIVE JUDGE**

**JOHN GRATTAN METZ, JR**

**APPEARANCES**

**FOR GOVERNMENT**

Jason Perry, Esquire, Department Counsel

**FOR APPLICANT**

*Pro Se*

**SYNOPSIS**

Applicant's criminal conduct, deliberate falsification of his 25 February 2003 security clearance application and 12 May 2004 sworn statement, and his financial irresponsibility disqualify him for a security clearance. Clearance denied.

**STATEMENT OF THE CASE**

Applicant challenges the 21 September 2005 Defense Office of Hearings and Appeals (DOHA) Statement of Reasons (SOR) recommending denial or revocation of his clearance because of criminal conduct, personal conduct, and financial considerations. (1) Applicant answered the SOR on 3 October 2005 and requested a hearing. DOHA assigned the case to me 14 February 2006, and I convened a hearing on 27 March 2006. DOHA received the transcript 4 April 2006

**FINDINGS OF FACT**

Applicant admitted the Guideline J allegations, except for 1.b., (2) the Guideline E allegations, except for 2.a., and the Guideline F allegations, except for 1.a., 1.b., 1.d., and 1.f. Accordingly, I incorporate his admissions as findings of fact. He is a 28-year-old facility security officer employed by a defense contractor since January 2003. He previously held a clearance while in the military between 1995 and 2000.

In March 2000, while serving with U.S. Forces in Europe, Applicant was investigated on allegations of child abuse when workers at the military day-care center that Applicant's son attended reported suspicious wounds over the boy's body consistent with being beaten with a belt or similar object. Subsequent investigation established that on at least two occasions Applicant repeatedly struck his then-four-year-old son with a belt, resulting in several contusions, abrasions, bruises, and minor lacerations to the boy's lower torso, right thigh, lower right abdomen, groin area, and scalp. Applicant was charged with assault on a child under the age of 16 years under Article 128, Uniform Code of Military Justice (UCMJ), and referred to a summary court-martial (SCM) (3) in July 2000, where he was found guilty, sentenced to confinement at hard labor (CHL) for 30 days, (4) and ordered to attend parenting and anger management classes (G.E.

6, 7).

During investigation of the alleged assaults on his son in 2000, Applicant admitted--and continues to admit--that he repeatedly beat his son with a belt because of the boy's shortcomings in being potty trained. Applicant attributed his conduct to the long hours he served as a military policeman, coupled with trying to be a good single parent. Although he admits that he appeared at summary court-martial, received 30 days CHL, <sup>(5)</sup> and was ordered to attend parenting and anger management classes, he insists that he was found "not guilty" of the assault charges by the presiding officer. This is factually inconsistent with the report of disciplinary action (G.E. 6), and legally impossible under the UCMJ, as he could not have been sentenced to CHL without a guilty finding on the assault charge, or some lesser included offense.

When Applicant applied for an industrial clearance in February 2002 (G.E. 1), he answered "no" to a question requiring him to disclose any court-martial or disciplinary action under the UCMJ within the last seven years (question 25). He also failed to disclose his son in response to a question requiring him to disclose his relatives and associates (question 9), although he listed nine other required relatives.

Applicant asserts that he simply forgot to list his children (he also failed to list a daughter). He gives varying explanations for his failure to list his July 2000 SCM. Sometimes he suggests that he was told by his facility security officer (FSO) not to list the SCM. In other places he suggests that he told his FSO about the assault charges, and the FSO--who was entering Applicant's information into the electronic clearance application--made the decision to leave the SCM off the application. Undisputed is the fact that Applicant signed the clearance application, knowing he had been referred to SCM, regardless of formal finding, and punished.

Applicant did not volunteer any information about his SCM in a September 2003 sworn statement (G.E. 2) whose subject matter involved only his current financial situation. However, he misrepresented the circumstances of the SCM in a March 2004 sworn statement (G.E. 3), when he stated: "the U.S. Army had me down with a charge of assault. The charges were never brought against me. I was never court-martialed or received any Article 15. . . Reason I believe I received unfavorable action, GSA Criminal Investigation Office has misleading information that pertains to me that is incorrect." He has admitted that this statement was false. He did not disclose a more accurate version of his SCM until he was confronted with the report of disciplinary action (G.E. 6) and responded in a February 2005 sworn statement (G.E. 4). As with his false clearance application, Applicant has given varying explanations why he falsified his March 2004 sworn statement. Sometimes he claims that his FSO told him that he did not have to discuss anything that was not on his clearance application. Elsewhere, he acknowledges that he was not truthful because he realized he should not make a statement that was inconsistent with his clearance application.

Applicant has a history of financial difficulties as reflected in credit reports dated March 2003 (five collection/charge off, one lien/judgment, one slow pay)(G.E. 8), August 2005 (four collection/ charge off, two judgments, one slow pay) (G.E. 9), <sup>(6)</sup> and January 2006 (the accounts previously reported, plus additional collection accounts not alleged in the SOR)(A.E. C). <sup>(7)</sup> Based on the August 2005 credit report, the SOR alleged six delinquent accounts totaling over \$7,300, falling past due between January 1999 and December 2004. Applicant admitted two debts (SOR 1.c. and 1.e.) totaling approximately \$1,600. He claimed sporadic payments on the debt at 1.c. (supported by A.E. C), but acknowledged at hearing that he was not making regular payments on the account, and had no payment plan with the creditor. Of the five debts Applicant denied (SOR 1.a., 1.b., 1.d., 1.f.), he claimed to have paid two (SOR 1.a. and 1.f.), but provided no corroboration of that claim. Regarding SOR 1.d., he provided corroboration of his answer that the account had been reduced to \$35.00 by October 2005, and paid in January 2006 (A.E. E). Regarding SOR 1.b., Applicant did not recognize the creditor in the allegation, but the record reflects that the creditor listed is the successor-in-interest for the debt that Applicant reported on his clearance application (as past due since 1997), reduced to judgment, and morphed through several different collection agents until Applicant provided proof at hearing that the account had been settled and paid in January 2006 (A.E. D).

Applicant attributes his financial difficulties to the high cost of living in the area where he is employed, but otherwise cites no particular circumstances contributing to his difficulties. He says he has "something" of a budget.

Applicant's character references (AE A, B) consider him a trustworthy employee and an involved parent. Neither appears to be aware of the allegations of the SOR.

## POLICIES AND BURDEN OF PROOF

The Directive, Enclosure 2 lists adjudicative guidelines to be considered in evaluating an Applicant's suitability for access to classified information. Administrative Judges must assess both disqualifying and mitigating conditions under each adjudicative issue fairly raised by the facts and circumstances presented. Each decision must also reflect a fair and impartial common sense consideration of the factors listed in Section 6.3. of the Directive. The presence or absence of a disqualifying or mitigating condition is not determinative for or against Applicant. However, specific adjudicative guidelines should be followed whenever a case can be measured against them, as they represent policy guidance governing the grant or denial of access to classified information. Considering the SOR allegations and the evidence as a whole, the relevant, applicable, adjudicative guidelines are Guideline J (Criminal Conduct), Guideline E (Personal Conduct), and Guideline F (Financial Considerations).

Security clearance decisions resolve whether it is clearly consistent with the national interest to grant or continue an Applicant's security clearance. The government must prove, by something less than a preponderance of the evidence, controverted facts alleged in the SOR. If it does so, it establishes a *prima facie* case against access to classified information. Applicant must then refute, extenuate, or mitigate the government's case. Because no one has a right to a security clearance, the Applicant bears a heavy burden of persuasion.

Persons with access to classified information enter into a fiduciary relationship with the government based on trust and confidence. Therefore, the government has a compelling interest in ensuring each Applicant possesses the requisite judgement, reliability, and trustworthiness of those who must protect national interests as their own. The "clearly consistent with the national interest" standard compels resolution of any reasonable doubt about an Applicant's suitability for access in favor of the government. <sup>(8)</sup>

## CONCLUSIONS

The government established a case for disqualification under Guideline J disqualifying conditions 1 and 2, <sup>(9)</sup> and Applicant did not mitigate the security concerns. His physical abuse of his four-year-old son, while not recent or repeated, represents an egregious breach of his most fundamental obligation to his child, and raises serious questions on his judgment and reliability. Further, his insistence that he was not found guilty at his SCM in 2000 suggests that he does not fully accept responsibility for his conduct. In addition, he deliberately concealed this court-martial from the government on his February 2003 clearance application, and misrepresented the circumstances of that court-martial on his May 2004 sworn statement in violation of 18 U.S.C. §1001. I resolve Guideline J against Applicant.

The government also established a case for disqualification under Guideline E case under disqualifying conditions 2 and 3, <sup>(10)</sup> and Applicant did not mitigate the security concerns. Applicant provided false answers on his clearance application and misleading information on his May 2004 sworn statement. Ordinarily, I might consider the omission of a child from a clearance application to be neither relevant or material. However, I conclude otherwise here, because the child Applicant omitted was the victim of the assaults that lead to the court-martial that Applicant sought to conceal.

Applicant's falsifications and misrepresentations demonstrate a lack of candor required of cleared personnel and suggest he is willing to put his personal needs ahead of legitimate government interests. The government has an interest in examining all relevant and material adverse information about an applicant before making a clearance decision, and relies on applicants to truthfully disclose that adverse information. Further, an applicant's willingness to report adverse information about himself provides some indication of his willingness to report inadvertent security violations or other security concerns in the future, something the government relies on in order to perform damage assessments and limit the compromise of classified information. I resolve Guideline E against Applicant.

Finally, the government established a case for disqualification under Guideline F disqualifying conditions 1 and 3, <sup>(11)</sup> and Applicant did not mitigate the security concerns. Applicant has delinquent accounts going as far back as 1997. He articulates no reason, except cost of living, that his problems might be considered beyond his control. <sup>(12)</sup> Although he has paid some of his delinquent debts over the years, he continues to accrue new delinquencies. One of the debts he satisfied on the eve of the hearing was the debt that had been past due since 1997. Applicant's failure to respond in a

systematic and timely matter to his past due debts does not demonstrate good faith in addressing his debts. [\(13\)](#) I resolve Guideline F against Applicant.

### **FORMAL FINDINGS**

Paragraph 1. Guideline J: AGAINST APPLICANT

Subparagraph a: For Applicant

Subparagraph b: Against Applicant

Subparagraph c: Against Applicant

Paragraph 2. Guideline E: AGAINST APPLICANT

Subparagraph a: Against Applicant

Subparagraph b: Against Applicant

Subparagraph c: Against Applicant

Paragraph 3. Guideline F: AGAINST APPLICANT

Subparagraph a: Against Applicant

Subparagraph b: Against Applicant

Subparagraph c: Against Applicant

Subparagraph d: Against Applicant

Subparagraph e: Against Applicant

Subparagraph f: Against 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 denied.

**John G. Metz, Jr.**

**Administrative Judge**

1. Required by Executive Order 10865 and Department of Defense Directive 5220.6, as amended (Directive).
2. Although Applicant admitted the allegation of SOR 1.a., the government acknowledged (Tr. 59-60), and I conclude, that Applicant's backing an Army truck into a fence in November 1996 lacks security significance. Consequently, I find that allegation for Applicant.
3. Under the UCMJ, Applicant had the right to refuse trial by SCM, however, he elected to have the charges resolved in that forum.
4. Under the UCMJ, 30 days CHL was the maximum confinement that could be awarded to Applicant.
5. Which actually consisted of 30 days of cleaning up the base--a typical activity for sentenced prisoners.

6. One of the delinquent accounts is reflected as both a collection account and a judgment account. One collection item from the March 2003 credit report had been paid, but replaced with a different delinquent account. The slow pay account balance had grown from approximately \$1,500 in March 2003 to nearly \$2,400 in August 2005.

7. Applicant's exhibit is a combined credit report on which each of the three main credit reporting firms report poor credit scores based on the number and seriousness of the delinquencies, the number of collection/judgment accounts, and the number of recent credit inquiries.

8. *See, Department of the Navy v. Egan*, 484 U.S. 518 (1988).

9. E2.A10.1.2.1. Allegations or admissions of criminal conduct, regardless of whether the person was formally charged; E2.A10.1.2.2. A single serious crime or multiple lesser offenses.

10. 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, . . . [or] determine security clearance eligibility or trustworthiness. . . ; E2.A5.1.2.2. Deliberately providing false or misleading information concerning relevant and material matters to an investigator, . . . in connection with a personnel security or trustworthiness determination;

11. E2.A6.1.2.1. A history of not meeting financial obligations; E2.A6.1.2.3. Inability or unwillingness to satisfy debts.

12. E2.A6.1.3.3. The conditions that resulted in the behavior were largely beyond the person's control (e.g. loss of employment. . . ).

13. E2.A6.1.3.6. The individual initiated a good-faith effort to repay overdue creditors or otherwise resolve debts.