

DATE: October 25, 2006

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In re:

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SSN: -----

Applicant for Security Clearance

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ISCR Case No. 05-03540

**DECISION OF ADMINISTRATIVE JUDGE**

**SHARI DAM**

**APPEARANCES**

**FOR GOVERNMENT**

John Hammer, Esq., Department Counsel

**FOR APPLICANT**

*Pro Se*

**SYNOPSIS**

Applicant is 30 years old and works for a federal contractor. He accumulated a significant amount of debt during a period of unemployment or low paying positions, which he has been paying over the last year. When he completed his security clearance application in August 2003, he did not disclose two delinquent debts. He mitigated the security concerns raised by financial considerations and personal conduct. Clearance is granted.

**STATEMENT OF THE CASE**

On August 27, 2003, Applicant submitted a security clearance application (SCA). On November 23, 2005, the Defense Office of Hearings and Appeals (DOHA) issued a Statement of Reasons (SOR) to Applicant, under Executive Order 10865, *Safeguarding Classified Information Within Industry*, as amended, and Department of Defense Directive 5220.6, *Defense Industrial Security Clearance Review Program* (Directive), dated January 2, 1992, as amended. The SOR detailed reasons under Guidelines F (Financial Considerations) and E (Personal Conduct) why DOHA could not make a preliminary affirmative finding under the Directive that it is clearly consistent with the national interest to grant a security clearance to Applicant. DOHA recommended the case be referred to an administrative judge to determine whether a clearance should be granted.

On January 20, 2006, Applicant filed his Answer, and elected to have the case decided on the written record in lieu of a hearing. On June 28, 2006, Department Counsel prepared a File of Relevant Material (FORM) containing nine Items. The FORM was mailed to Applicant on June 29, 2006, and received on July 6, 2006. Applicant was afforded an opportunity to file objections and submit material in refutation, extenuation, or mitigation. On June 29, 2006, he submitted a one page letter to which Department Counsel did not object. I marked the letter as Item 10. On August 29, 2006, the case was assigned to me.

**FINDINGS OF FACT**

Based on the entire record, including Applicant's admissions in his Answer to the SOR, I make the following findings of fact:

Applicant is a 30-year-old employee of a defense contractor. He was married in 1997. From approximately January 2001 until October 2002, he was sporadically employed. As a result of periods of low pay and unemployment, he incurred debt, some of which became delinquent. (Item 4 at 2) In January 2003, he began his present position as a cable technician. (Item 1 at 2-3)

When Applicant signed his SCA, he certified his answers were "true, complete, and correct" to the best of his knowledge and belief. In response to Question 38. Your Financial Delinquencies - 180 Days (*In the last 7 years, have you been over 180 days delinquent on any debts(s)?*), he answered "Yes," and listed his mortgage, but did not list two debts. In response to Question 39. Your Financial Delinquencies - 90 Days (*Are you currently over 90 days delinquent on any debt(s)*), he answered "No," and did not list both debts.

During a meeting with a government investigator in February 2005 regarding his answers to the financial questions in the SCA, Applicant acknowledged the delinquent debts listed on a September 2003 and November 2004 credit report, including two debts subsequently included in the SOR. (Items 5 and 6). One of those debts was owed to a credit card company in the amount of \$8,719 and the other one related to a personal loan in the amount of \$14,000. Applicant indicated to the investigator he would make arrangements to pay off the credit card company, and noted he was currently paying the personal loan balance at \$258 per month. (Item 4 at 2-3)

In a September 2005 Personal Financial Statement, Applicant listed his monthly net income at \$1,766. His expenses and debt reduction payments for his mortgage and said two debts, totaled \$1,701, leaving a \$65 monthly remainder. (Item 4 at 5)

In November 2005, the Government filed a SOR, alleging that as of June 2005, Applicant owed the credit card company \$7,600 (¶ 1.a), and the loan company \$17,731 (¶ 1.b). Applicant admitted those allegations in his January 2006 answer. A June 2006 credit report noted that he reduced the \$7,600 debt to \$4,221, and the \$17,731 to \$17,025. (Item 8 at 1)

Paragraph 2 of the SOR alleged that Applicant falsified his SCA because he did not list the above two debts under Question 38 as 180 days delinquent, or under Question 39 as 90 days delinquent. In the FORM, Government acknowledged the debt on the personal loan would not have been 90 days delinquent at the time Applicant completed the application, and thus it did not establish the allegations related to that debt contained in SOR ¶¶ 2.a and 2.b. (FORM at 7)

In his Answer, Applicant denied that he falsified either question, but did not offer an explanation for failing to list the credit card debt. However, in his June 2006 response, he attributed the omission to his wife who paid the bills and did not inform him of the problem. Because they were experiencing financial difficulties when the debts became delinquent, she did not want him to worry about them. (Item 10) His explanation is credible.

## POLICIES

Enclosure 2 of the Directive, *Adjudicative Guidelines for Determining Eligibility for Access to Classified Information*, sets forth criteria, which must be evaluated when determining security clearance eligibility. Within those adjudicative guidelines are factors to consider in denying or revoking an individual's request for access to classified information (Disqualifying Conditions), and factors to consider in granting an individual's request for access to classified information (Mitigating Conditions). By recognizing that individual circumstances of each case are different, the guidelines provide substantive standards to assist an administrative judge in weighing the evidence in order to reach a fair, impartial and common sense decision.

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 a balanced decision. 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 disqualifying and mitigating conduct an administrative judge should consider: (1) the nature, extent, and seriousness of the conduct; (2) the circumstances surrounding the conduct; (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 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.

Granting an applicant's clearance for access to classified information is based on a high degree of trust and confidence in the individual. Accordingly, decisions under the Directive must

include consideration of not only the *actual* risk of disclosure of classified information, but also consideration of any *possible* risk an applicant may deliberately or inadvertently compromise classified information. Any doubt about whether an applicant should be allowed access to classified information must be resolved in favor of protecting classified information. Directive ¶ E2.2.2. The decision to deny an individual a security clearance is not necessarily a judgment about an applicant's loyalty. Exec. Or. 10865, § 7. Instead, it is a determination that an applicant has not met the strict guidelines established by the Department of Defense for issuing a clearance.

Initially, the Government must establish, by substantial evidence, conditions in the personal or professional history of the applicant that disqualify, or may disqualify, the applicant from being eligible for access to classified information. *Departments of the Navy v. Egan*, 484 U.S. 518, 531 (1988). The Directive presumes a rational connection between past proven conduct under any disqualifying conditions and an applicant's present security suitability. ISCR Case No. 95-0611 at 2 (App. Bd. May 2, 1996).

Once the Government establishes a disqualifying condition by substantial evidence, the corresponding burden of rebuttal shifts to the applicant to present evidence in refutation, extenuation, or mitigation sufficient to overcome the position of the government. ISCR Case No. 01-20700 at 3 (App. Bd. Dec. 19, 2002); Directive ¶ E3.1.15. An applicant "has the ultimate burden of demonstrating that it is clearly consistent with the national interest to grant or continue his clearance." *Id.*

Based upon the allegations contained in the SOR and a consideration of the evidence as a whole, the following adjudicative guidelines are pertinent to an evaluation of the facts of this case:

Guideline F - Financial Considerations: A security concern may exist when 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 acts.

Guideline E - Personal Conduct: A security concern may exist when 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.

The disqualifying and mitigating conditions, raising either security concerns or mitigating security concerns applicable to this case, are set forth and discussed in the Conclusions section below.

## CONCLUSIONS

I considered all facts in evidence and legal standards, including the "whole person" concept, and concluded the following with respect to the allegations set forth in the SOR.

### Guideline F: Financial Considerations

The Government established a potential case for disqualification under this guideline. Based on the evidence, 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 (*Inability or unwillingness to satisfy debts*), apply to this case. Since mid-2003, Applicant has a history of failing to meet his financial obligations as evidenced by his admissions and the 2003 and 2004 credit reports. To-date two debts remain outstanding because he has been unable to pay them in full.

The Government having established a potential disqualification, the burden shifted to Applicant to mitigate or rebut the allegations. After reviewing all of the mitigating conditions, I conclude Financial Consideration Mitigating Condition

(FC MC) E2.A6.1.3.1 (*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)*) applies. Applicant's financial difficulties arose as the result of low paying positions and a period of unemployment, which were factors beyond his control.

As that mitigating condition standing alone is insufficient to overcome the Government's present concern, I 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 applies. Since meeting with the government investigator, Applicant reduced one debt by \$4,500, and the other debt by \$700. Both of the debts were listed on his September 2005 monthly budget plan, and are being paid, albeit one at a slower pace. Because the law does not require him to have paid-off every debt in full, his effort over the past year to pay the creditors, despite limited income, is sufficient mitigation under FC MC E2.A6.1.3.6. See ISCR Case No. 04-10671 at 3 (App.Bd. May 1, 2006).

#### Guideline E: Personal Conduct

The Government alleged that Applicant falsified his SCA by failing to disclose the credit card debt in response to Questions 38 and 39, which constituted a disqualification under Personal Conduct Disqualifying Condition (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*).<sup>(1)</sup> Applicant denied those allegations.

When a falsification allegation is controverted or denied, the government has the burden of proving it. Proof of an omission, standing alone, does not establish or prove an applicant's state of mind when the omission occurred. An administrative judge must consider the record evidence as a whole to determine whether there is direct or circumstantial evidence concerning an applicant's state of mind at the time the omission occurred. See ISCR Case No. 03-09483 at 4 (App. Bd. Nov. 17, 2004) (explaining holding in ISCR Case No. 02-23133 at 5 (App. Bd. Jun. 9, 2004)).

Although Applicant did not initially offer an explanation for omitting the credit card debt under Questions 38 and 39, he did provide one in July 2006. I find it credible based on the fact that he disclosed under Question 38 that his mortgage had become delinquent at one time, as well as other adverse information in the SCA, unrelated to the SOR allegations, and his later explanation for the omission. The failure to disclose the credit card debt was not intentional. Hence, the allegations contained in SOR ¶¶ 2.a and 2.b are decided in his favor.

#### The Whole Person Concept

In addition to evaluating the disqualifying and mitigating conditions, I considered the totality of the evidence in this case, including Applicant's age, his current job over the past three years, the \$5,000 reduction of debt made to date, and the \$21,000 of outstanding debt, along with his mortgage. Based on his efforts to pay his bills and establish a budget, he has made progress in building a track record of financial responsibility sufficient to warrant a security clearance and offer assurances that similar problems will not arise in the future. Accordingly, Applicant mitigated the security concerns raised by financial considerations and personal conduct. Guideline F and Guideline E are decided for him.

### **FORMAL FINDINGS**

Formal Findings for or against Applicant on the allegations set forth in the SOR, as required by Section E3.1.25 of Enclosure 3 of the Directive, are as follows:

#### Paragraph 1: Guideline F (Financial Considerations) FOR APPLICANT

Subparagraph 1.a: For Applicant

Subparagraph 1.b: For Applicant

#### Paragraph 2: Guideline E (Personal Conduct) FOR APPLICANT

Subparagraph 2.a: For Applicant

Subparagraph 2.b: For Applicant

**DECISION**

In light of all the circumstances and evidence presented in this case, it is clearly consistent with the national interest to grant a security clearance to Applicant. Clearance is granted.

Shari Dam

Administrative Judge

1. The Department acknowledged within the FORM that it did not establish the allegations under Guideline E, pertaining to disclosure of the personal loan, as referenced in SOR ¶ 1.b, and alleged in ¶¶ 2.a and 2.b.