

DATE: August 30, 2006

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In re:

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SSN: -----

Applicant for Security Clearance

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ISCR Case No. 05-08604

## **DECISION OF ADMINISTRATIVE JUDGE**

**MICHAEL J. BRESLIN**

### **APPEARANCES**

#### **FOR GOVERNMENT**

Richard A. Stevens, Esq., Department Counsel

#### **FOR APPLICANT**

*Pro Se*

### **SYNOPSIS**

Between 1993 and 2004, Applicant was twice married, separated, and divorced, resulting in a Chapter 13 bankruptcy action and numerous delinquent debts. Applicant paid some delinquent debts before the initiation of this action, and arranged a repayment plan for substantially all the remaining debts, mitigating the security concerns arising from his financial difficulties. Applicant twice submitted a security clearance application containing material information he knew to be inaccurate or incomplete. Applicant failed to mitigate the security concerns arising from his falsifications. Clearance is denied.

### **STATEMENT OF THE CASE**

Applicant submitted an application for a security clearance on July 6, 2004, and re-certified it on March 21, 2005. The Defense Office of Hearings and Appeals (DOHA) declined to grant or continue a security clearance for Applicant under Department of Defense Directive 5220.6, *Defense Industrial Personnel Security Clearance Review Program* (Jan. 2, 1992), as amended (the "Directive"). On arch 22, 2006, DOHA issued a Statement of Reasons (SOR) detailing the basis for its decision. The SOR alleges security concerns raised under Guideline F, Financial Considerations, and Guideline E, Personal Conduct, of the Directive.

Applicant answered the SOR in writing on April 6, 2006. He elected to have a hearing before an administrative judge.

I received the case assignment on May 11, 2006. With the concurrence of Applicant and Department Counsel, I convened the hearing on July 6, 2006. The government introduced Exhibits 1 through 6. Applicant presented Exhibits A through C and testified on his own behalf. At Applicant's request, I kept the record open until July 21, 2006, to allow Applicant time to submit additional matters. On July 19, 2006, Applicant provided four documents admitted as Exhibits D through F, without objection. DOHA received the transcript of the hearing (Tr.) on July 14, 2006.

### **FINDINGS OF FACT**

Applicant denied the allegations in ¶¶ 1.e, 1.j, 1.n, 1.s, and 1.t of the SOR, but admitted the remaining allegations, with explanations. (Applicant's Answer to SOR, dated April 6, 2006.) Those admissions are incorporated herein as findings of fact. After a complete and thorough review of the evidence in the record, I make the following additional findings of fact.

Applicant was born in July 1971. (Ex. 1 at 1.) In June 1989, at age 17, he joined the U.S. Navy where he served as an interior communications electrician. (Tr. at 16, 25; Ex. 1 at 4.)

Applicant was married in November 1993. (Ex. 1 at 3.) After seven months of marriage, the parties filed for divorce, which was granted in September 1995. (Tr. at 26.) Applicant alleged his wife ran up substantial debts during the marriage; he assumed those debts as part of the divorce settlement and paid them off over time. (Tr. at 26.)

He married for the second time in November 1995. (Ex. 1 at 3.) His second wife had three children from a previous relationship. (Tr. at 57.) Applicant and his second wife accumulated some marital debt. (Tr. at 26.) Applicant's second wife worked at times, but would also be unemployed at times. (Tr. at 57.) She had problems with alcohol and drugs, and went to rehabilitation several times, adding to the family expenses. (Tr. at 57.) He also alleged his second wife damaged two different apartments while he was away on official business, resulting in significant repair costs and the need to relocate to a new apartment. (Tr. at 26-27.) The landlords sued Applicant for the damages, obtained judgments, and garnished his salary for the amounts due. (Tr. at 26-27.)

In 1996, Applicant sought financial counseling but did not follow through with it because he was about to depart for temporary duty on board ship. (Tr. at 68-69.) Instead, he filed for personal bankruptcy protection under Chapter 13. (Tr. at 28.) He did so to be able to go on a lengthy cruise with the Navy, knowing his debts would be taken care of and his wife would also have sufficient funds for her support. (Tr. at 28, 79.) Applicant paid off the debts included in his Chapter 13 bankruptcy; the court ultimately discharged the debts in April 2001. (Ex. 4 at 1.)

Applicant separated from his second wife for a time. (Tr. at 41.) He signed a lease helping her to get an apartment. (*Id.*) Later they reconciled; the landlord held Applicant liable for unpaid debt arising from his wife's apartment, and obtained a judgment against him in October 1999. (Tr. at 41; SOR, ¶ 1.b.) Applicant was unaware of this judgment. (Tr. at 42.)

Applicant separated from his second wife again, and left her in the apartment they had shared. He claimed his wife damaged the apartment, resulting in additional charges. (Tr. at 27.) The landlord sued Applicant for the damages, obtained a judgment, and garnished Applicant's wages for the amount due. (Tr. at 27.)

While serving in the Navy, Applicant's evaluations were above average. (Tr. at 71.) He held a security clearance successfully. (Ex. 1 at 6; Tr. at 30.) He was promoted to petty officer second class (E-5). (Ex. 1 at 4.) His awards and decorations include three Navy Good Conduct Medals, the National Defense Service Medal, three Sea Service Deployment Ribbons, the Southwest Asia Service Medal with the Bronze Star device, the Armed Forces Expeditionary Medal, the Kuwait Liberation Medal, and Meritorious Unit Citations. (Ex. 3.) His last assignment was as an instructor at basic training. (Tr. at 70.)

Applicant left active duty in the Navy in April 2000 with an Honorable Discharge. (Tr. at 69; Ex. 1 at 2.) He worked as a supervisor for a brick company for several months. (Ex. 1 at 2.)

In August 2000, Applicant began working in his present position as a field service technician for a defense contractor. (Tr. at 16; Ex. 1 at 2.) He carried over the security clearance he held while in the Navy and worked at several job sites where a clearance was required. (Tr. at 16-17.)

Applicant was divorced from his second wife in February 2004. (Ex. 1 at 3.) As part of the divorce, he assumed the marital debts. (Tr. at 59.) He is no longer responsible for her support or the support of her children. (Tr. at 60.)

In May 2005, his employer received a message indicating the DoD could not find any security clearance paperwork for Applicant. (Tr. at 16.) The employer pulled Applicant off his job, gave him paperwork to apply for a security clearance, and instructed him to complete the application right away. (Tr. at 16-18, 31.) According to Applicant, he did not have access to all his financial records but submitted the application at once to satisfy his employer. (Tr. at 17, 33.)

Applicant completed the form by filling in an electronic database. (Tr. at 33.) Question 37 on the Security Clearance Application asked whether Applicant had any judgments against him within the last seven years that had not been paid. He answered "No" to this question. (Ex. 1 at 6.) Question 38 inquired whether Applicant had been over 180 days delinquent on any debts within the preceding seven years. (Ex. 1 at 6.) Applicant answered "Yes," and reported one debt to a finance company. Finally, in response to Question 39, Applicant denied being over 90 delinquent on any debts at that time. (Ex. 1 at 6.) About one year later, the paperwork was returned to Applicant, who re-certified it and submitted it again. (*Id.*)

In about July 2005, a security investigator interviewed Applicant about his application for a clearance. (Tr. at 17.) Applicant claimed he was unaware of some of the debts incurred by his former wives, but admitted he was aware of some of the outstanding debts. (Tr. at 17.)

Shortly before the hearing, Applicant contacted a law firm for assistance in getting his debts resolved. (Tr. at 19.) The firm contacted Applicant's creditors and arranged a repayment plan, often in amounts substantially less than originally claimed. (Ex. A; Ex. D.) The plan calls for Applicant to make regular payments of \$367.47 for 18 months. (Ex. A at 1.) Applicant signed up for regular payroll deductions, and has authorized payment of the first two months' installments. (Ex. A at 3.) Also, Applicant intends to pay off two debts separately-his car loan and his Veteran's Administration (VA) debt for educational assistance. (Tr. at 54.) If Applicant goes back to school under the VA program, his initial benefit checks would be used to satisfy this debt. (Tr. at 54.)

At the hearing, Applicant admitted falsifying his security clearance application. (Tr. at 17, 43.) According to Applicant, one of the reasons he did it was because the company pressured him to turn in the paperwork right away. (Tr. at 17-18, 21, 33-34.)

When asked about Question 37 (unpaid judgments) Applicant admitted his answer was incorrect, but denied that he intended to deceive the government. (Tr. at 43.) He testified that he was aware of only two judgments (SOR, ¶¶ 1.c and 1.d), but thought they had been paid. (Tr. at 44.) He produced copies of pay statements showing his pay was garnished to satisfy the judgments. (Ex. B at 2; Ex. C at 2.) He testified that when the garnishments stopped, he concluded the judgments were paid or otherwise satisfied. (Tr. at 35, 37-38, 44, 67-68.)

When asked about Question 38 (debts over 180 days in last seven years) Applicant testified that he listed the only debt he could remember at that time. (Tr. at 45-46.) He denied any intent to deceive. (Tr. at 49.) At the same time, he admitted that he knew the answer he submitted in response to Question 38 was inaccurate because it was incomplete. (Tr. at 49.) Similarly, he admitted knowing his answer to Question 39 was inaccurate because he did not have the information available. (Tr. at 49.)

The current status of the debts alleged in the SOR is shown in the table below.

¶	Account	Status	Evidence
1.a	Chap. 13 Bankruptcy \$17,551,81	Discharged April 2001	Ex. 4.
1.b	Judgment (Landlord) 1,100.00 (ex-wife's apartment)	Payment Plan	Ex. D at 2; Tr. at 80-82.
1.c	Judgment (Landlord) 5,154.00 (ex-wife's apartment)	Payment Plan	Ex. D at 2; Tr. at 36-38; Ex. B; Ex. C (part payment through garnishment).
1.d	Judgment (Landlord) 6,016.03 (ex-wife's apartment)	Payment Plan	Ex. D at 2; Tr. at 36-38; Ex. B; Ex. C (part payment through garnishment).
1.e	Medical Bill (Ex-wife) 135.00	Challenged	Tr. at 84-85.
1.f	Credit Company 724.00	Payment Plan	Ex. D at 3; Tr. at 86.
1.g	Collection Agency 479.00	Payment Plan	Ex. D at 2; Tr. at 88.

1.h	Collection Agency 951.00 (telephone services)	Payment Plan	Ex. D at 3; Tr. at 88-89.
1.i	Collection Agency 458.00 (cable services)	Payment Plan	Ex. D at 4; Tr. at 89.
1.j	Collection Agency 218.00 (ex-wife's bad check)	Payment Plan	Ex. D at 4; Tr. at 89-90.
1.k	Utility Bill 293.00	Payment Plan	Ex. D at 4; Tr. at 90-91.
1.l	Insurance Bill 77.00	Paid	Tr. at 91.
1.m	Credit Company 864.00	Payment Plan	Ex. D at 3.
1.n	Collection Agency 131.00	Payment Plan	Ex. D at 3.
1.o	Finance Company 1,819.00	Payment Plan	Ex. D at 3; Tr. at 23.
1.p	Collection Agency 462.00 (telephone services)	Payment Plan	Ex. D at 2; Tr. at 94-95.
1.q	Veteran's Admin. 1,313.33 (educational benefits)	Unpaid	Tr. at 20, 54-55.
1.r	Collection Agency 86.00 (cable services)	Paid	Ex. G.
1.s	Collection Agency 198.00	Paid	Ex. F.
1.t	Medical Bill 155.00	Unpaid.	Tr. at 98-99.
1.u	Credit Company 12,613.00	Current	Ex. E at 2; Tr. at 100.

Applicant is now unmarried and has no children. (Tr. at 60.) He is still working for his regular employer, although his duties are limited. (Tr. at 18-19.) He current on his routine financial obligations, including his payments on his car loan. (Tr. at 60; Ex. E at 2.)

### **POLICIES**

The President has "the authority to . . . control access to information bearing on national security and to determine whether an individual is sufficiently trustworthy to occupy a position . . . that will give that person access to such information." (*Department of the Navy v. Egan*, 484 U.S. 518, 527 (1988).) In Executive Order 10865, *Safeguarding Classified Information Within Industry* (Feb. 20, 1960), the President set out guidelines and procedures for safeguarding classified information within the executive branch.

To be eligible for a security clearance, an applicant must meet the security guidelines contained in the Directive. Enclosure 2 of the Directive sets forth personnel security guidelines, as well as potentially disqualifying and mitigating conditions under each guideline.

"The adjudicative process is an examination of a sufficient period of a person's life to make an affirmative determination that the person is eligible for a security clearance." (Directive, ¶ E2.2.1.) An administrative judge must apply the "whole person concept," and consider and carefully weigh the available, reliable information about the person. (*Id.*) An administrative judge should consider the following factors: (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 for the conduct; (8) the potential for pressure, coercion, exploitation, or duress; and (9) the likelihood of continuation or recurrence. (*Id.*)

Initially, the government must present evidence to establish controverted facts in the SOR that disqualify or may disqualify the applicant from being eligible for access to classified information. (Directive, ¶ E3.1.14.) Thereafter, the applicant is responsible for presenting evidence to rebut, explain, extenuate, or mitigate the facts. (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 security clearance." (ISCR Case No. 01-20700 at 3 (App. Bd. Dec. 19, 2002).) "Any doubt as to whether access to classified information is clearly consistent with national security will be resolved in favor of the national security." (Directive, ¶ E2.2.2.)

A person granted access to classified information enters into a special relationship with the government. The government must be able to repose a high degree of trust and confidence in those individuals to whom it grants access to classified information. The decision to deny an individual a security clearance is not a determination as to the loyalty of the applicant. (Exec. Ord. 10865, § 7.) It is merely an indication that the applicant has not met the strict guidelines the President has established for issuing a clearance.

## CONCLUSIONS

### **Guideline F, Financial Considerations**

The security concern under Guideline F, Financial Considerations, is that "An individual who is financially overextended is at risk of having to engage in illegal acts to generate funds." (Directive, ¶ E2.A6.1.1.) The Directive sets out conditions that could raise a security concern and may be disqualifying, as well as those which could mitigate security concerns under this adjudicative guideline.

Paragraph E2.A6.1.2.1 of the Directive provides that it may be disqualifying if the evidence reveals "[a] history of not meeting financial obligations." Similarly, under ¶ E2.A6.1.2.3, an "[i]nability or unwillingness to satisfy debts" may be disqualifying. Applicant failed to meet some significant financial obligations between about 2000 and 2006. I conclude the available evidence raises these potentially disqualifying conditions.

Security concerns arising from an applicant's financial difficulties can be mitigated. Under the Directive, ¶ E2.A6.1.3.1, it may be mitigating where "the behavior was not recent." The behavior in question is his failure to pay or otherwise resolve the delinquent debts. While Applicant paid some of the debts before the initiation of this action, and arranged for a repayment plan, most of his debts remained unpaid even at the time of the hearing. I find this potentially mitigating condition does not apply.

Paragraph E2.A6.1.3.2 of the Directive provides that it may be mitigating where the financial difficulty "was an isolated incident." Applicant had several delinquent debts that arose at different times; therefore, this was not an isolated incident. I conclude this mitigating condition is not a factor here.

Under ¶ E2.A6.1.3.3, it may be mitigating where, "[t]he 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)." Applicant's financial problems arose as a result of conditions largely beyond his control. Marital separations that eventually led to divorce on two occasions resulted in bankruptcy and continuing financial strain. I conclude this mitigating condition must be considered.

Proof that "[t]he 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," may be mitigating under ¶ E2.A6.1.3.4 of the Directive. Applicant did not present evidence that he sought or received financial counseling, therefore this mitigating condition is not raised. I note, however, he received assistance with his finances as part of his bankruptcy in 1996, and is currently contracting for the services of a law firm in resolving his debts.

Paragraph E2.A6.1.3.6 of the Directive states it may be mitigating where, "[t]he individual initiated a good-faith effort to repay overdue creditors or otherwise resolve debts." Applicant began paying overdue bills before the initiation of this action. (Ex. 6 at 2; Ex. E; Ex. G.) He provided documentary evidence that he has arranged a payment plan for 12 of the remaining delinquent debts, has authorized payment of the first two months' installments, and set up automatic payment from his bank account. I conclude this potentially mitigating condition applies.

### **Guideline E, Personal Conduct**

The security concern under Guideline E, Personal Conduct, is that "Conduct involving questionable judgment, untrustworthiness, unreliability, lack of candor, dishonesty, or unwillingness to comply with rules and regulations could indicate that the applicant may not properly safeguard classified information." (Directive, ¶ E2.A5.1.1.) Under the Directive, ¶ E2.A5.1.2.2, "[t]he deliberate omission, concealment, or falsification of relevant and material facts from any personnel security questionnaire" could be disqualifying.

The SOR alleges Applicant falsified material facts on a security clearance application when, in response to Question 37, he denied having any unpaid judgments against him within the preceding seven years. (SOR, ¶ 2.a.) Applicant admitted the allegation, apparently believing that submitting the SF 86 with inaccurate information constituted the conduct alleged. Upon closer questioning, he indicated he was aware of only two judgments, and that he believed they had been paid or otherwise resolved through two successive garnishment actions. Applicant's explanation was credible. I note he also reported the two civil actions in question in response to Question 40 of the SF 86, which is inconsistent with an intent to conceal these matters. Considering all the facts, I find Applicant provided incorrect information in response to Question 37, but he did so unintentionally, without the intent to deceive the government about these debts. The evidence relating to the allegation in ¶ 2.a of the SOR does not raise security concerns.

The SOR, ¶¶ 2.b and 2.c, alleged Applicant falsified material facts on his security clearance application in response to Question 38 (debts over 180 days delinquent within the last 7 years) and Question 39 (debts over 90 days delinquent) on two occasions. In response to the SOR, Applicant admitted the allegations. At the hearing, he explained that he did not remember all the accounts that were overdue and did not have his records available, but acknowledged that he submitted the initial application knowing the information was incomplete. He asserted he did it, in part, because his employer insisted that the application be submitted immediately. He later re-certified the same document. I find the information about Applicant's delinquent debts was material to his application, and he submitted the SF 86 deliberately, on two occasions, knowing the information was inaccurate or incomplete. This conduct constituted deliberate falsification of material facts on his security clearance application and raises security concerns that are potentially disqualifying.

The Directive sets out several potentially mitigating conditions. Under ¶ E2.A5.1.3.2 of the Directive, it may be mitigating where, "[t]he falsification was an isolated incident, was not recent, and the individual has subsequently provided correct information voluntarily." Applicant submitted the application at issue on two separate occasions—July 2004 and March 2005. Therefore, I cannot find this was an isolated incident or that it was not recent. This potentially mitigating condition is not raised. However, Applicant's willingness to provide correct information subsequently will be considered among all the facts and circumstances. I considered carefully the remaining mitigating conditions, and conclude none apply.

### **The "Whole Person" Concept**

I considered the potentially disqualifying and mitigating circumstances in light of the "whole person" concept. Applicant is a mature individual with many years of service to this country as a service member and an employee of a defense contractor. The financial problems arose primarily due to circumstances beyond his control, including his separation and divorce two times. (Directive, ¶ E2.1.1.2.) He has made real progress toward resolving his financial delinquencies by establishing a workable plan to pay off his debts. Although he has not paid-or arranged to pay-all the obligations, those that are unresolved are not sufficient to raise security concerns. I am persuaded there is little likelihood of continuation or reoccurrence of financial problems. (Directive, ¶ E2.1.1.9.) I conclude Applicant mitigated the security concerns arising from his history of failing to meet his financial obligations and his inability to satisfy his debts.

Unfortunately, Applicant's deliberate falsification of his security clearance application on two occasions raises more significant concerns. (Directive, ¶ E2.1.1.2.) As a mature individual, Applicant knew or should have known of the significance of the documents. (Directive, ¶ E2.1.1.4.) His deliberate submission of inaccurate information—not once, but twice—is very troublesome. (Directive, ¶ E2.1.1.3.) He was motivated, in part, by his desire to submit the application promptly, but nonetheless recognized the information was not accurate. (Directive, ¶ E2.1.1.7.) When confronted, he candidly admitted his error and expressed his regret. (Directive, ¶ E2.1.1.6.) Weighing all the facts and circumstances, I find Applicant has not mitigated the security concerns arising from his falsification of his security clearance application.

### **FORMAL FINDINGS**

My conclusions as to each allegation in the SOR are:

Paragraph 1, Guideline F: FOR APPLICANT

Subparagraphs 1.a-1.u: For Applicant

Paragraph 2, Guideline E: AGAINST APPLICANT

Subparagraph 2.a: For Applicant

Subparagraph 2.b: Against Applicant

Subparagraph 2.c: Against Applicant

**DECISION**

In light of all of 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.

Michael J. Breslin

Administrative Judge