

DATE: December 29, 2006

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In Re:

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SSN: -----

Applicant for Security Clearance

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ISCR Case No. 05-08577

**DECISION OF ADMINISTRATIVE JUDGE**

**WILFORD H. ROSS**

**APPEARANCES**

**FOR GOVERNMENT**

Jennifer I. Goldstein, Esquire, Department Counsel

**FOR APPLICANT**

*Pro Se*

**SYNOPSIS**

The Applicant has not mitigated the security significance of his past due indebtedness. In addition, he falsified a security clearance application in 2004 concerning his financial circumstances, as well as an alcohol related arrest. It is not clearly consistent with the national interest to grant the Applicant a security clearance. Clearance is denied.

**STATEMENT OF THE CASE**

On January 31, 2006, the Defense Office of Hearings and Appeals (DOHA), pursuant to Executive Order 10865 (as amended) and Department of Defense Directive 5220.6 (Directive), dated January 2, 1992, issued a Statement of Reasons (SOR) to the Applicant, which detailed reasons why DOHA 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 the Applicant and recommended referral to an Administrative Judge to determine whether a clearance should be denied or revoked.

The Applicant responded to the SOR in writing on February 15, 2006, and requested a hearing. The case was originally assigned to another administrative judge on April 21, 2006. The case was received by the undersigned on July 6, 2006, and a Notice of Hearing was issued on August 25, 2006.

A hearing was held on September 12, 2006, at which the Government presented ten documentary exhibits. Testimony was taken from the Applicant, who also submitted one hearing exhibit and one post-hearing exhibit. The transcript was received on September 25, 2006.

**FINDINGS OF FACT**

The Applicant is 53 and married. He is employed by a defense contractor and he seeks to obtain a DoD security clearance in connection with his employment in the defense sector.

The Government opposes the Applicant's request for a security clearance, based upon the allegations set forth in the Statement of Reasons (SOR). The following findings of fact are entered as to each paragraph and guideline in the SOR. They are based on the Applicant's Answer to the SOR, the exhibits and the live testimony.

Paragraph 1 (Guideline F - Financial Considerations). The Government alleges in this paragraph that the Applicant is ineligible for clearance because he is financially overextended and therefore at risk of having to engage in illegal acts to generate funds. The Applicant admitted all of the allegations under this paragraph. Those admissions are hereby deemed findings of fact.

The available credit reports show that the Applicant owes eleven creditors approximately \$48,111.64 in past due debts. The three credit reports are dated May 14, 2004 (Government Exhibit 2); November 11, 2005 (Government Exhibit 7); and April 11, 2006 (Government Exhibit 10.) The current status of these debts is as follows:

1.a. The Applicant is indebted to a bank in the amount of \$27,333.14 for a property loan. This debt has been past due and owing since about December 2001. (Transcript at 28-30.)

1.b. The Applicant is indebted to a bank in the amount of \$1,787.00 for a credit card debt. This debt has been past due and owing since about June 2003. (Transcript at 30-31.)

1.c. The records show that the Applicant has owed a bank \$541.50 since February 2004. The Applicant admits the debt, but was unable to say what the debt was for or whether it was paid. Based on the available evidence, I find that this debt has not been paid. (Transcript at 32, Government Exhibit 4 at 3.)

1.d. The Applicant is indebted to a medical provider in the amount of \$411.00 This debt has been past due and owing since about November 2003. (Transcript at 32-33.)

1.e. The Applicant was indebted to a medical provider in the amount of \$121.00. This debt had been past due and owing since about June 2002. The Applicant testified that he believed this debt had been paid. (Transcript at 33.) The Applicant was given an opportunity to submit proof of payment. He submitted a statement after the hearing stating, "I do not have any documentation for paid bills." (Applicant's Exhibit B.) Based on the available evidence, I find that this debt has not been paid.

1.f. The Applicant was indebted to two medical providers in the total amount of \$4,013.00. These debts have been past due and owing since about March 2005. (Government Exhibit 10 at 1.) The Applicant testified that he believed these debts had been paid. (Transcript at 34.) The Applicant was given an opportunity to submit proof of payment. He submitted a statement after the hearing stating, "I do not have any documentation for paid bills." (Applicant's Exhibit B.) Based on the available evidence, I find that these debts have not been paid.

1.g. The Applicant is indebted to a credit card provider in the amount of \$2,513.00. This debt has been past due and owing since October 2005. (Transcript at 34-35.)

1.h. The Applicant is indebted to a bank for a credit card in the amount of \$1,297.00. This debt has been past due and owing since October 1999. (Transcript at 36.)

1.i. The Applicant is indebted to a bank for a credit card in the amount of \$1,438.00. This debt has been past due and owing since December 1999. (Transcript at 37.)

1.j. The Applicant was indebted to a telephone company in the amount of \$243.00. This debt had been past due and owing since November 1999. The Applicant testified that he believed this debt had been paid. (Transcript at 37.) The Applicant was given an opportunity to submit proof of payment. He submitted a statement after the hearing stating, "I do not have any documentation for paid bills." (Applicant's Exhibit B.) Based on the available evidence, I find that this debt has not been paid.

1.k. The Applicant is indebted to a credit union in the amount of \$8,414.00, the balance owed after his automobile was surrendered to the credit union and sold. This debt has been past due and owing since approximately April 2004.

(Transcript at 38-39.)

The Applicant testified that his financial problems have been of long standing. He further stated that some of the financial problems were caused by his state of residence billing him for the juvenile incarceration of his son. (Transcript at 24-25.) However, the record shows that his debt problems pre-date the time that the state began this action.

For several years the Applicant has contemplated filing for bankruptcy. However, as of the date of the hearing, no bankruptcy had been filed. (Transcript at 28, 31-32.) The Applicant stated that he is living "pretty much" pay check to pay check. (Transcript at 47.)

Paragraph 2 (Guideline E - Personal conduct). The Government alleges in this paragraph that the Applicant is ineligible for clearance because he intentionally falsified material aspects of his personal background during the clearance screening process.

On March 22, 2004, the Applicant completed an official DoD questionnaire in which he stated that he had never been charged with a criminal offense related to alcohol. (Government Exhibit 1, question 24.) This answer was false in that the Applicant had been arrested and charged with Driving Under the Influence of Alcohol and Refusing to Submit to a Chemical Test in August 1999. (Government Exhibit 3.)

The same questionnaire also asks the Applicant whether, in the last seven years, he has had any property repossessed. (Government Exhibit 1, question 35.) The Applicant answered, "No." The Applicant had an automobile repossessed in 2003. The available credit report states that it was an involuntary repossession. (Government Exhibit 2 at 2.) The Applicant has consistently maintained that he voluntarily returned the vehicle to the credit union. (Government Exhibit 4 at 2, Transcript at 38-39.) Based on the available evidence, I find that the Applicant did not falsify this answer since he had a good faith belief that his automobile was not repossessed.

Question 38 of Government Exhibit 1 asks whether, within the last seven years, the Applicant has been more than 180 days delinquent on any debt. Question 39 asks whether, as of the date he completed Government Exhibit 1, the Applicant was 90 days delinquent on any debt. He answered "No" to both of these questions. Those statements were false answers to material questions pertaining to the Applicant's financial situation.

The Applicant stated that he falsified his answers concerning his alcohol related arrest and his financial delinquencies because he wanted to get a security clearance. He testified, "I thought to myself that if I fill this stuff [the questionnaire] the way it's supposed to be filled out I wouldn't get it [security clearance]. So this is probably one of the reasons why I did this. (Transcript at 53.)

### Mitigation.

The Applicant submitted his latest performance review. That document shows the Applicant to be an Excellent employee. (Applicant's Exhibit A.)

## **POLICIES**

Security clearance decisions are not made in a vacuum. Accordingly, the Department of Defense, in Enclosure 2 of the 1992 Directive, has set forth policy factors which must be given "binding" consideration in making security clearance determinations. These factors should be followed in every case according to the pertinent guideline. However, the factors are neither automatically determinative of the decision in any case, nor can they supersede the Administrative Judge's reliance on his own common sense, as well as his knowledge of the law, human nature and the ways of the world, in making a reasoned decision. Because each security clearance case presents its own unique facts and circumstances, it cannot be assumed that these factors exhaust the realm of human experience, or apply equally in every case. Based on the Findings of Fact set forth above, the factors most applicable to the evaluation of this case will be set forth under CONCLUSIONS, below.

In addition, as set forth in Enclosure 2 of the Directive at pages 16-17, "In evaluating the relevance of an individual's conduct, the [Administrative Judge] should consider the following factors [General Factors]:

- a. The nature, extent and seriousness of the conduct
- b. The circumstances surrounding the conduct, to include knowledgeable participation
- c. The frequency and recency of the conduct
- d. The individual's age and maturity at the time of the conduct
- e. The voluntariness of participation
- f. The presence or absence of rehabilitation and other pertinent behavior changes
- g. The motivation for the conduct
- h. The potential for pressure, coercion, exploitation or duress
- i. The likelihood of continuation or recurrence."

The eligibility guidelines established in the DoD Directive identify personal characteristics and conduct which are reasonably related to the ultimate question of whether it is "clearly consistent with the national interest" to grant an Applicant's request for access to classified information.

In the defense industry, the security of classified industrial secrets is entrusted to civilian workers who must be counted upon to safeguard such sensitive information twenty-four hours a day. The Government is therefore appropriately concerned where available information indicates that an Applicant for clearance may be involved in acts of falsification and/or have financial problems that demonstrates poor judgement, untrustworthiness or unreliability on the Applicant's part.

The DoD Directive states, "Each adjudication is to be an overall common sense determination based upon consideration and assessment of all available information, both favorable and unfavorable, with particular emphasis placed on the seriousness, recency, frequency, and motivation for the individual's conduct; the extent to which conduct was negligent, willful, voluntary, or undertaken with the knowledge of the circumstances or consequences involved; and, to the extent that it can be estimated, the probability that conduct will or will not continue in the future." The Administrative Judge can only draw those inferences or conclusions that have a reasonable and logical basis in the evidence of record. The Judge cannot draw inferences or conclusions based on evidence which is speculative or conjectural in nature. Finally, as emphasized by President Eisenhower in Executive Order 10865, "Any determination under this order...shall be a determination in terms of the national interest and shall in no sense be a determination as to the loyalty of the applicant concerned."

## CONCLUSIONS

It is the Government's responsibility to present substantial evidence to support the finding of a nexus, or rational connection, between the Applicant's conduct and the granting of a security clearance. If such a case has been established, the burden then shifts to the Applicant to go forward with evidence in rebuttal, explanation or mitigation which is sufficient to overcome or outweigh the Government's case. The Applicant bears the ultimate burden of persuasion in proving that it is clearly consistent with the national interest to grant him or her a security clearance.

In this case the Government has met its initial burden of proving by substantial evidence that the Applicant has had financial problems for several years (Guideline F); and that he intentionally made false material statements to DoD (Guideline E).

The Applicant, on the other hand, has not introduced persuasive evidence in rebuttal, explanation or mitigation which is sufficient to overcome the Government's case against him, except in part. Regarding Paragraph 2 (Guideline E): Subparagraph 2.b. is found for the Applicant because that particular answer was not made with the intent to deceive.

Turning first to Guideline F. The Applicant has a history of bad debts going back several years, which he has been either unable or unwilling to resolve. He has indicated several times that he may file for bankruptcy, but he has not yet done so. The Applicant was unable to state when, or whether, he can pay these debts. All of the debts stated in the SOR remain past due and owing. Disqualifying Conditions E2.A6.1.2.1. (*A history of not meeting financial obligations*) and E2.A6.1.2.3. (*Inability or unwillingness to satisfy debts*) apply to the facts of this case.

An Applicant who is financially irresponsible may also be irresponsible, unconcerned, negligent or careless in properly handling and safeguarding classified information. None of the Mitigating Conditions apply. Paragraph 1 is found against the Applicant.

The Government relies heavily upon the integrity and honesty of clearance holders, and it is a negative factor for security clearance purposes where an Applicant has deliberately provided false information about material aspects of his or her personal background. Disqualifying Condition E2.A5.1.2.2. applies to this case (*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*).

Various conditions can mitigate security concerns arising from personal conduct. However, none of them apply to the facts of this case. With the exception of subparagraph 2.b., Guideline E is found against the Applicant.

On balance, it is concluded that the Applicant has failed to overcome the Government's information opposing his request for a security clearance. Accordingly, the evidence supports a finding against the Applicant as to the conclusionary allegations expressed in Paragraphs 1 and 2 of the Government's Statement of Reasons.

### **FORMAL FINDINGS**

Formal findings For or Against the Applicant on the allegations in the SOR, as required by Paragraph 25 of Enclosure 3 of the Directive, are:

Paragraph 1: 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.

Subparagraph 1.j.: Against the Applicant.

Subparagraph 1.k.: Against the Applicant.

Paragraph 2: Against the Applicant.

Subparagraph 2.a.: Against the Applicant.

Subparagraph 2.b.: For 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 or continue a security clearance for the Applicant.

Wilford H. Ross

Administrative Judge