

DATE: February 26, 2007

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In re:

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SSN: -----

Applicant for Security Clearance

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CR Case No. 06-07133

**DECISION OF ADMINISTRATIVE JUDGE**

**MICHAEL H. LEONARD**

**APPEARANCES**

**FOR GOVERNMENT**

Emilio Jaksetic, Esq., Department Counsel

**FOR APPLICANT**

*Pro Se*

**SYNOPSIS**

Applicant has a history of financial problems, to include judgments, delinquent accounts, and an unresolved federal tax liability for more than \$40,000 for tax year 2001. When he completed a security-clearance application in June 2004, he did not disclose his IRS debt even though he was aware of his tax liability since 2002. Clearance is denied.

**STATEMENT OF THE CASE**

Applicant contests the Defense Department's preliminary decision to deny or revoke his eligibility for a security clearance. Acting under the relevant Executive Order and DoD Directive, [\(1\)](#) the Defense Office of Hearings and Appeals (DOHA) issued a statement of reasons (SOR) to Applicant on August 7, 2006. The SOR--which is in essence the administrative complaint--details the factual basis for the action and alleges security concerns under Guideline F for financial considerations, Guideline E for personal conduct (falsification of the security-clearance application), and Guideline J for criminal conduct (making a false statement within the jurisdiction of a federal agency in violation of 18 U.S.C. § 1001). Applicant timely replied to the SOR and requested a decision without a hearing.

On October 31, 2006, the government submitted its written case consisting of all relevant and material information that could be adduced at a hearing. This so-called file of relevant material (FORM) was mailed to Applicant and received by him on November 8, 2006. Applicant did not submit any information or objections within the 30-day period after receiving the FORM. The case was assigned to me January 30, 2007.

**FINDINGS OF FACT**

The SOR alleges that Applicant is indebted to creditors for nine delinquent or unpaid debts for about \$2,224 in total. It alleges that the IRS filed a tax lien against Applicant in the amount of \$40,225 for tax year 2001. Also, it alleges that he is unable to pay his indebtedness based on a May 2006 personal financial statement that shows a monthly net remainder of a negative \$1,590. In addition, it alleges he gave false answers in response to three questions about his financial

record. Concerning the Guideline F allegations, his reply was mixed. He denied the falsification allegations and related criminal conduct. His admissions will be discussed below. And I make the following findings of fact.

1. Applicant is a 56-year-old senior designer for a defense contractor. He has held this job since January 2004, although he held a similar position during 1981-2001. He held a Defense Department security clearance during most of that period.
2. To obtain a security clearance, Applicant completed a security-clearance application in June 2004 (Exhibit 5). He signed the form and certified that his statements were true, complete, and correct to the best of his knowledge and belief and made in good faith. He also certified that he understood that a knowing and willful false statement on the application could be punished under federal law by a fine or imprisonment or both.
3. The application contains several questions asking applicants to provide information about their financial record. Applicant's response to all such questions was "no." In particular, in response to Question 37--in the last seven years, have you had any judgments against you that have not been paid--he denied any unpaid judgments. In response to Question 38--in the last seven years, have you been over 180 days delinquent on any debts--he denied any such indebtedness. In response to Question 39--are you now currently over 90 days delinquent on any debts--he denied any such indebtedness. Question 43 of the application allows an applicant to provide any additional general remarks. Applicant made about four general remarks on various matters, but he did not indicate that he was then experiencing any financial problems or difficulties.
3. As part of the background investigation, a credit report was obtained in September 2004, and it revealed unfavorable information (Exhibit 6). For example, the public record section of the report lists five judgments taken against Applicant, two of which were satisfied. The collections section of the report lists five collection accounts. Another credit report was obtained in November 2005, and it further revealed unfavorable information (Exhibit 7). For example, the public record section of the report lists two judgments, one of which was satisfied, and it lists a federal tax lien in the amount of \$40,225, which was filed in August 2004. The collections section of the report lists four collection accounts.
4. Based on the unfavorable financial information, DOHA issued interrogatories to Applicant and he replied on May 26, 2006 (Exhibit 8). The information he provided will be mentioned, when necessary, during a review of the indebtedness alleged in the SOR.
5. Starting with the largest debt as alleged in SOR subparagraph 1.h, Applicant does not dispute his indebtedness to the IRS for more than \$40,000 for tax year 2001. As of May 15, 2006, the balance had grown to \$46,302 although the IRS has applied refunds due Applicant in recent years. The basis for the debt is that Applicant took a withdrawal from a 401(k) plan to resolve a home foreclosure and other financial problems when he was unable to work in 2000 due to illness. In addition, he was separated from his wife during most of 2001 when he lived with friends and relatives. He suffered from depression during this time due to his strained relationship with his wife and inability to find employment. He and his wife got back together in 2002, but the relationship was strained. They struggled to pay their bills and their home mortgage (in his wife's name), and that house went into foreclosure in 2002. By December 2003, Applicant and his wife were again living separately. He moved away from the community where his wife lived when he started his current job in January 2004. The current status of his marriage is not known.
6. In his response to the interrogatories, Applicant explained that he has been working with the IRS on this matter since 2002. He said a payment plan was unworkable and that he was negotiating an offer in compromise. In his reply to the SOR, Applicant said he is doing the best he can to resolve the IRS debt, but he did not provide details of his efforts. To date, he has not provided further information on the status of his IRS debt.
7. The \$834 debt in SOR subparagraph 1.a is from a judgment taken against Applicant in 1998. Applicant denies this allegation, because he maintains it was paid several years ago. A check of court records on or about October 30, 2006, indicate that the judgment has not yet been satisfied (Exhibit 9). Applicant did not provide documentary information to rebut the presumed validity of the court records.
8. The \$242 and the \$190 debts in SOR subparagraphs 1.b and 1.c are owed to the same creditor for a cable TV account. Applicant denies these debts, because he maintains he did not receive the services the creditor maintains it provided.

Both of these accounts appear as unpaid collection accounts in the two credit reports mentioned above. To date, Applicant has not presented proof-of-payment and these accounts are unresolved.

9. The \$122, \$26, and \$271 debts in SOR subparagraphs 1.d, 1.e, and 1.g are collection accounts handled by the same creditor. Applicant believes he may owe something and indicated that he would contact the creditor to verify and if necessary resolve these debts. To date, Applicant has not presented proof-of-payment and these accounts are unresolved.

10. The \$235 debt in SOR subparagraph 1.f is from a delinquent account referred for collection. Applicant denies this debt. He maintains he has no idea about this debt. The debt appears in the two credit reports mentioned above. To date, Applicant has not presented proof-of-payment and this account is unresolved.

11. The \$137 debt in SOR subparagraph 1.i is for a direct TV account that became delinquent and was referred to collection. Applicant denies this account, and he explains that he is a customer with a current account. He indicated that he contacted the company and they have no record of a delinquent account. The debt appears as a collection account in the 2005 credit report. To date, Applicant has not presented proof-of-payment and this account is unresolved.

12. The \$167 debt in SOR subparagraph 1.j is from a delinquent account referred for collection. Applicant admitted this debt and indicated that he would settle it by paying the bill. To date, Applicant has not presented proof-of-payment and this account is unresolved.

13. The allegation in SOR subparagraph 1.k does not concern a particular debt, but instead it asserts that Applicant is unable to pay his delinquent debts due to a negative monthly cash flow of about \$1,590. Applicant admitted this allegation, and it is supported by a personal financial statement he submitted in response to the interrogatories.

14. Concerning the falsification allegations, Applicant denies all three. He denies giving a false answer to Question 37, because he believed he had satisfied the judgment in SOR subparagraph 1.a when he answered the question. He denies giving false answers to Questions 38 and 39, because he claims he was unaware of the delinquent accounts in SOR subparagraphs 1.b-1.h when he answered the questions. It appears Applicant was interviewed by a special agent of the Defense Security Service in December 2005, however, the results of that interview are not in the record by way of a sworn statement or some other means.

15. To explain his current financial situation, Applicant pointed out in his response to the interrogatories that he has only been working full-time since January 2004, and he is making progress to resolve his financial problems. For example, he paid off a state tax lien for almost \$7,000 in August 2004. He also points out that he has held a security clearance in the past for many years without a negative incident or problem, and he believes he would do the same in the future.

## **POLICIES**

The Directive sets forth adjudicative guidelines to consider when evaluating a person's security clearance eligibility, including disqualifying conditions (DC) and mitigating conditions (MC) for each guideline. In addition, each clearance decision must be a fair and impartial commonsense decision based upon consideration of all the relevant and material information, the pertinent criteria and adjudication factors, and the whole-person concept.<sup>(2)</sup> A person granted access to classified information enters into a special relationship with the government. The government must be able to have a high degree of trust and confidence in those persons to whom it grants access to classified information. The decision to deny a person a security clearance is not a determination of an applicant's loyalty.<sup>(3)</sup> Instead, it is a determination that the applicant has not met the strict guidelines the President has established for granting eligibility for a security clearance.

## **BURDEN OF PROOF**

The only purpose of a security-clearance decision is to decide if it is clearly consistent with the national interest to grant or continue a security clearance for an applicant.<sup>(4)</sup> There is no presumption in favor of granting or continuing access to classified information.<sup>(5)</sup> The government has the burden of presenting evidence to establish facts alleged in the SOR

that have been controverted.<sup>(6)</sup> An applicant is responsible for presenting evidence to refute, explain, extenuate, or mitigate facts that have been admitted or proven.<sup>(7)</sup> In addition, an applicant has the ultimate burden of persuasion to obtain a favorable clearance decision.<sup>(8)</sup>

No one has a right to a security clearance.<sup>(9)</sup> And as noted by the Supreme Court in *Department of Navy v. Egan*, "the clearly consistent standard indicates that security clearance determinations should err, if they must, on the side of denials."<sup>(10)</sup> Under *Egan*, Executive Order 10865, and the Directive, any doubt about whether an applicant should be allowed access to classified information will be resolved in favor of protecting national security.

## CONCLUSIONS

### ***1. The Personal Conduct Security Concern***

Personal conduct under Guideline E addresses issues of questionable judgment, untrustworthiness, unreliability, lack of candor, dishonesty, or unwillingness to comply with rules and regulations. In this regard, the deliberate omission, concealment, or falsification of a material fact in any written document or oral statement to the government when applying for a security clearance or in other official matters is a security concern. It is deliberate if it is done knowingly and willfully. An omission of relevant and material information is not deliberate if the person genuinely forgot about it, inadvertently overlooked it, misunderstood the question, or genuinely thought the information did not need to be reported.

The record evidence here is not sufficient to prove that Applicant made a deliberately false statement when he answered Question 37 about unpaid judgments. Applicant's claim that he believed he had paid the \$834 judgment is plausible and reasonable, even if the court records reflect the judgment is still unsatisfied. I reach the same conclusions concerning Questions 38 and 39, except for the delinquent tax bill for more than \$40,000. Given Applicant's health problems, his marital troubles, and his financial struggles, it is plausible and reasonable to conclude that he was not fully aware of the full spectrum of his indebtedness. But based on the size and significance of his IRS debt--coupled with his admission that he has been working with the IRS since 2002-- it is difficult to understand why he did not disclose his tax liability in response to Question 38 or 39 or both. Given these circumstances, it is logical to conclude that Applicant, a clearance holder in the past, did not disclose his tax liability because he knew it might prevent him from obtaining a clearance. Accordingly, I conclude Applicant gave false answers to Questions 38 and 39 when he failed to disclose his IRS debt.

I reviewed the MC under the guideline and conclude none apply. Falsification of a security-clearance is a serious matter, not easily explained away, extenuated, or mitigated.

### ***2. The Criminal Conduct Security Concern***

The criminal conduct at issue here (making a false statement within the jurisdiction of a federal agency in violation of 18 U.S.C. § 1001) is a cross-allegation to the falsification allegations. Because I concluded that Applicant gave deliberately false answers to Questions 38 and 39, the criminal conduct concern is decided against Applicant for the same reasons.

### ***3. The Financial Considerations Security Concern***

Under Guideline F, a security concern typically exists for two different types of situations--significant unpaid debts or unexplained affluence. An individual who is financially overextended is at risk of having to engage in illegal or unethical acts to generate funds to meet financial obligations. Similarly, an individual who is financially irresponsible may also be irresponsible, unconcerned, negligent, or careless in properly handling and safeguarding sensitive or classified information.

Here, based on the record evidence, a security concern is raised by significant unpaid debts. Applicant has a history of not meeting financial obligations as well as inability to pay just debts. What is noteworthy here is his indebtedness to the IRS for more than \$40,000 for tax year 2001. In time, the balance has grown to more than \$46,000, and the IRS filed a tax lien against Applicant in 2004. The only payments that Applicant has made so far are the tax refunds the IRS applied

to the debt.

I reviewed the mitigating conditions (MC) under the guideline and conclude he receives some credit in mitigation. Each MC is discussed below.

The first MC--the behavior was not recent--does not apply. His financial problems are current and ongoing, as opposed to matters from the distant past.

The second MC--it was an isolated incident--does not apply. Applicant's financial problems are multiple, involving tax debt, consumer debt, and judgments taken against him.

The third MC--the conditions that resulted in the behavior were largely beyond the person's control--applies in his favor. Starting in 2000, Applicant experienced unemployment, health problems, and marital troubles. These circumstances, taken together, must have had a negative effect on Applicant's ability to pay his bills and on his overall financial situation.

The fourth MC--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--does not apply. There is no evidence that Applicant has sought financial or credit counseling. Moreover, at this time, it is far too soon to say that his financial problems are being resolved or are under control, especially in light of the unresolved IRS debt.

The fifth MC--the affluence resulted from a legal source--is not applicable here.

The sixth MC--the individual initiated a good-faith effort to repay overdue creditors or otherwise resolve debts--applies somewhat. Applicant indicates he has been working with the IRS since 2002, and that he paid off a state tax debt in 2004. These circumstances show that he had made some efforts to address his financial problems.

Viewing the record evidence as a whole, here we have an individual who has a sizeable federal tax liability and unresolved consumer debts of far lesser amounts. It appears that Applicant wants to resolve these matters, but his efforts are not sufficient to overcome the case against him. Indeed, what's missing here is: (1) a comprehensive, realistic approach for paying off, settling, or otherwise resolving his indebtedness; (2) documented actions taken in furtherance of that approach; and (3) a substantial improvement to his financial situation. It is likely that his financial problems will continue as evidenced by the unresolved IRS debt, which has grown to more than \$46,000 as of May 2006. Based on this record, Applicant is financially overextended and he does not have the ability to pay his indebtedness now or in the foreseeable future.

To conclude, Applicant's falsification of his security-clearance application and the related criminal conduct--along with his history of past and ongoing financial problems--militate against a favorable decision. Given these circumstances, I conclude Applicant did not meet his ultimate burden of persuasion to obtain a favorable clearance decision. In reaching this conclusion, I also considered Applicant's case under the whole-person concept, which a detailed discussion thereof would not change the outcome of this case.

### **FORMAL FINDINGS**

Here are my conclusions for each allegation in the SOR:

SOR ¶ 1-Guideline F: Against Applicant

Subparagraphs a-k: Against Applicant

SOR ¶ 2-Guideline E: Against Applicant

Subparagraph a: For Applicant

Subparagraphs b-c: Against Applicant

SOR ¶ 3-Guideline J: Against Applicant

Subparagraph a: Against Applicant

### DECISION

In light of all the facts and circumstances, it is not clearly consistent with the national interest to grant or continue a security clearance for Applicant. Clearance is denied.

Michael H. Leonard

Administrative Judge

1. Executive Order 10865, dated February 20, 1960, as amended, and DoD Directive 5220.6, dated January 2, 1992, as amended (Directive).
2. Directive, Enclosure 2, Item E2.2.1 (setting forth nine factors to consider under the whole-person concept).
3. Executive Order 10865, § 7.
4. ISCR Case No. 96-0277 (July 11, 1997) at p. 2.
5. ISCR Case No. 02-18663 (March 23, 2004) at p. 5.
6. Directive, Enclosure 3, Item E3.1.14.
7. Directive, Enclosure 3, Item E3.1.15.
8. Directive, Enclosure 3, Item E3.1.15.
9. *Department of Navy v. Egan*, 484 U.S. 518, 528 (1988) ("it should be obvious that no one has a 'right' to a security clearance"); *Duane v. Department of Defense*, 275 F.3d 988, 994 (10<sup>th</sup> Cir. 2002) ("It is likewise plain that there is no 'right' to a security clearance, so that full-scale due process standards do not apply to cases such as Duane's.") (citations omitted).
10. 484 U.S. at 531.