

DATE: March 15, 2007

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In re:

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SSN: -----

Applicant for Security Clearance

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CR Case No. 06-11811

## **DECISION OF ADMINISTRATIVE JUDGE**

**SHARI DAM**

### **APPEARANCES**

#### **FOR GOVERNMENT**

Robert E. Coacher, Esq., Department Counsel

#### **FOR APPLICANT**

*Pro Se*

### **SYNOPSIS**

Applicant is a 35-year-old welder who works for a federal contractor. From approximately 1996 to the present, Applicant accumulated about \$14,000 in delinquent debt, including unpaid judgments. To-date, the debts remain unresolved. In 2002, he was denied a security clearance based on security concerns raised under financial considerations and other guidelines. When he completed his recent security clearance application, he did not disclose the denial and the delinquent debts. He failed to mitigate the security concerns raised by financial considerations and personal conduct. Clearance is denied.

### **STATEMENT OF THE CASE**

On December 12, 2005, Applicant electronically submitted a National Security Position application (e-QIP). The Defense Office of Hearings and Appeals (DOHA) declined to grant or continue a security clearance for Applicant. As required by Department of Defense Directive 5220.6 ¶ E3.1.2. (Jan. 2, 1992), as amended, DOHA issued a Statement of Reasons (SOR) on October 25, 2006, detailing the basis for its decision-security concerns raised under Guidelines F (Financial Considerations) and E (Personal Conduct) of the Adjudicative Guidelines (AG) issued on December 29, 2005, and implemented by the Department of Defense effective September 1, 2006. The revised guidelines were provided to Applicant when the SOR was issued. Applicant answered the SOR in writing on November 27, 2006, and elected to have a hearing before an administrative judge. The case was initially assigned to another administrative judge and reassigned to me on January 3, 2007. DOHA issued a Notice of Hearing on January 11, 2007, setting the case for January 31, 2007.

At the hearing Department Counsel introduced Government Exhibits (GX) 1-12 into evidence without objections. Applicant testified in his case and introduced Applicant Exhibit (AX) A into evidence without an objection. DOHA received the hearing transcript (Tr.) on February 12, 2007.

### **FINDINGS OF FACT**

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

Applicant is a 35-year-old welder for a federal contractor. He is married and has two step children. From September 1989 to March 1992, he served in the U.S. Navy. He was an E-3 at the time of his honorable discharge (Tr. 33 ). He has worked for his current employer since June 2004. From approximately May 1996 to his present job, he has been employed as a construction worker, welder, printer, and in customer services (GX 1; Tr. 17-20). While working as a welder at a naval shipyard in 1999, he submitted a security clearance application (SCA). In June 2002, the U.S. Department of Navy, Central Adjudication Facility denied his request for a clearance on the basis of security concerns under several guidelines: financial considerations, personal conduct, criminal conduct, drug involvement and emotional issues (GX 2). In December 2005, he completed another security clearance application, referred to as an e-QIP, on which he did not list certain information.

In response to *Section 26: Your Investigations Record* on the 2005 e-QIP regarding prior security clearance investigations, Applicant failed to disclose the 2002 denial of his application for a security clearance by the U.S. Navy. Applicant did not list the information because he did not realize the E-QIP was another application for access to classified information. He appeared to be very confused by the process and information requested. He did not have any assistance from his company in completing the form (Tr. 52-55). He "was thinking that this was two totally different applications. I didn't know that it was the same application coming back to me." (Tr. 52) He did not deliberately attempt to mislead the Government (Tr. 35).

In response to *Section 28: Your Financial Delinquencies* on the e-QIP, Applicant failed to disclose that he was both 180 and 90 days delinquent on numerous debts. He admitted that he knew he had some debts that fell into that range. He could not explain why he did not list them, and said, "I just wasn't thinking and I just put no." (Tr. 54) When he completed *Section 28: Your Financial Delinquencies* of the 1999 SCA, he also failed to disclose debts that were either 180 or 90 days' delinquent. Subsequent to completing that SCA, he was interviewed by the government about his debts and other matters. In a written statement, dated July 2000, he noted he would begin resolving the debts. He stated, "I intend to consolidate all of my delinquencies, and judgments. My intentions are to begin setting up a payment plan with a consolidation agency. I will do what I can at this point." (GX 10 at 4). He could not explain why he left out the financial information on the 1999 SCA (Tr. 54).

Paragraph 1 of the SOR alleges that Applicant has eleven delinquent debts, totaling approximately \$14,000, that have been outstanding since 1996 (Tr. 56-58). Five of the debts (¶¶ 1.g, 1.h, 1.i, 1.j, and 1.k) are judgments that were listed on the Summary of Disqualifying Information that was the basis of the denial of his first SCA (GX 12 at 3). During his testimony, Applicant admitted owing all of the listed debts, except one (¶ 1.g), and provided proof that he paid one the collection account of \$94 after October 2006 (¶ 1.d). He did not provide any documentation to confirm his assertion that he had disputed the judgment noted in ¶ 1.g.

Applicant's net monthly income is approximately \$3,000. After paying his monthly expenses, he has a small amount of money left that could be used to resolve his debts (Tr. 57). When he completed budget forms in July 2000 and August 2006, he confused his gross monthly income with his net monthly income. That confusion led to the allegations contained in SOR ¶¶ 1. l and 1.m (GX 8 at 5; GX 10 at 6; Tr. 41-42). Although he understands the importance of clearing up his financial obligations for purposes of holding a security clearance, he has not contacted a debt consolidation company or taken other actions to resolve the debts. Six of the debts total less than a \$1,000 and could have been paid by now.

Applicant admitted that in 1998, he and his friend were charged with theft after he was caught with jersey shirts belonging to his employer. He repaid the company and performed community service as ordered by the court (Tr. 31-32).

### POLICIES

"[N]o one has a 'right' to a security clearance." *Department of the Navy v. Egan*, 484 U.S. 518, 528 (1988). As Commander in Chief, the President has "the authority . . . 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." *Id.* at 527. The President authorized the Secretary of Defense or his designee to grant applicants eligibility for access to classified information "only upon a finding that it is clearly consistent with the national interest to do so." Exec. Or. 10865, *Safeguarding Classified Information within Industry* § 2 (Feb. 20, 1960). Each security clearance decision "must be a fair and impartial common sense determination based upon consideration of all relevant and material information and the pertinent criteria and adjudication policy." Directive ¶ 6.3. 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).

The pertinent revised Adjudicative Guidelines set forth potentially disqualifying conditions (DC) and mitigating conditions (MC) under the Conclusions section below. In evaluating the security worthiness of an applicant, the administrative judge must also assess the adjudicative process factors listed in ¶ 6.3 of the Directive. The decision to deny an individual a security clearance is not necessarily a determination as to the loyalty of the applicant. *See* Exec. Or. 10865 § 7. It is merely an indication the applicant has not met the strict guidelines the President and the Secretary of Defense have established for issuing a clearance.

## CONCLUSIONS

Upon consideration of all facts in evidence and application of all appropriate adjudicative factors and legal standards, I conclude the following with respect to the allegations set forth in the SOR:

### Guideline F: Financial Considerations

*The Concern. Failure or inability to live within one's means, satisfy debts, and meet financial obligations may indicate poor self-control, lack of judgment, or unwillingness to abide by rules and regulations, all of which can raise questions about an individual's reliability, trustworthiness and ability to protect classified information. An individual who is financially overextended is at risk of having to engage in illegal acts to generate funds.*

Based on the evidence, including Applicant's admissions, the Government established a disqualification under Financial Considerations Disqualifying Condition (FC DC) ¶ 19(a) (*inability or unwillingness to satisfy debts*), and FC DC ¶ 19(c) (*a history of not meeting financial obligations*). Applicant has been unable to manage his debts since approximately 1996.

After the Government raised a security concern, the burden shifted to Applicant to mitigate or rebut the allegations. Various conditions can mitigate security concerns arising from financial difficulties. However, after reviewing all of them, in particular Financial Considerations Mitigating Condition (FC MC) ¶ 20(c) (*the person has received or is receiving counseling for the problem and/or there are clear indications that the problem is being resolved or is under control*), and FC MC ¶ 20(d) (*the individual initiated a good-faith effort to repay overdue creditors or otherwise resolve debts*), I conclude they do not apply. Although Applicant became aware of the effect that delinquent debts could have on his job in 1999, he has not obtained any credit counseling or taken affirmative steps to resolve his financial obligations, other than paying one \$94 bill. There is no evidence indicating that the problems are being resolved or under control. Nor is there any documentation to establish a good-faith effort to resolve the debts over the past several years.

### Guideline P: Personal Conduct

*The Concern: Conduct involving questionable judgment, lack of candor, dishonesty, or unwillingness to comply with rules and regulations can raise questions about an individual's reliability, trustworthiness and ability to protect classified information. Of special interest is any failure to provide truthful and candid answers during the security clearance process or any other failure to cooperate with the security clearance process.*

The Government alleged a potential disqualification under Personal Conduct Disqualifying Condition (PC DC) ¶ 16(a), (*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 determines security clearance eligibility or trustworthiness, or award fiduciary responsibilities*). SOR ¶¶ 2.a and 2.b allege that Applicant falsified his e-QIP by failing to disclose the 2002 denial of a SCA and debts that were 180 and 90 days delinquent, and ¶ 2.c alleges that he failed to disclose delinquent debts on his

1999 SCA. Although Applicant admitted he did not disclose the information, he denied that he intentionally attempted to deceive the Government.

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. 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).

While I can understand Applicant's confusion over the two applications and find his explanation for not disclosing the 2002 SCA denial credible, I do not find his explanation for failing to disclose his delinquent debts on the 1999 or 2005 security clearance applications credible. I believe he knew he had a number of judgments and delinquent debts when he completed the 1999 application, and clearly knew of them when he completed the 2005 application, having addressed the problems in a 2000 statement. Hence, I conclude he did not intentionally falsify the e-QIP as alleged in SOR ¶ 2.a, but did intentionally leave out the financial information as alleged in ¶¶ 2.b and 2.c. After reviewing all of the mitigating conditions under this guideline, I conclude none apply to the two allegations.

### Whole Person Analysis

In addition to evaluating the disqualifying and mitigating conditions under each guideline, 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. The essence of scrutinizing all appropriate variables in a case is known as the "whole person" analysis. Directive ¶ E2.2. In evaluating the conduct of the applicant, 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.

I considered the totality of the evidence in view of the whole person concept, including Applicant's age, his demeanor while testifying and candid discussion about his finances. While Applicant expressed a willingness to resolve his financial obligations, he previously expressed the same willingness in 2000. However, to date, he has neither resolved his obligations nor established a financial plan to do so. Until he commits to managing his finances and demonstrates a track record of financial responsibility, I believe similar problems will recur in the future, indicating his lack of reliability and good judgment. In considering the issues raised by his personal conduct, I took into account that his debts were brought to his attention in 1999 and acknowledged by him in the years following. Based on the scope and age of the debts, as well as his various responses regarding them since 1999, I believe he chose to ignore them while completing both applications, rather than being confused by the questions. Accordingly, Applicant failed to mitigate the security concerns raised by financial considerations and personal conduct. Hence, all allegations under Paragraph 1 of the SOR are concluded against him, except ¶¶ 1.d, 1.l, and 1.m. The allegations under Paragraph 2 of SOR are decided against him, except ¶ 2.a. Accordingly, Guidelines F and E are concluded against 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) AGAINST APPLICANT

Subparagraphs 1.a-1.c.: Against Applicant

Subparagraph 1.d: For Applicant

Subparagraph 1.e-1.k: Against Applicant

Subparagraph 1.l: For Applicant

Subparagraph 1.m: For Applicant

Supbaragraph 1.n: Against Applicant

Paragraph 2: Guideline P (Personal Conduct) 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 clearly not consistent with the national interest to grant Applicant a security clearance. Clearance is denied.

Shari Dam

Administrative Judge