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Applicant for security clearance

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January 7, 1997

ISCR OSD Case No. 96-0498

DECISION OF ADMINISTRATIVE JUDGE

WILFORD H. ROSS

APPEARANCES

FOR THE GOVERNMENT FOR THE APPLICANT

Martin H. Mogul, Esq. *Pro se*

Department Counsel

STATEMENT OF THE CASE

On July 10, 1996, 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 the attached Statement of Reasons (SOR) to (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 August 1, 1996, and requested a hearing. The case was received by the undersigned, and a Notice of Hearing was issued, on October 7, 1996.

A hearing was held on October 30, 1996, at which the Government presented five documentary exhibits, and examined the Applicant. Testimony was taken from the Applicant and one additional witness. The Applicant also submitted 13 exhibits, including three post-hearing exhibits (Applicant's Exhibits "K," "L," and "M"). The transcript was received on November 8, 1996.

FINDINGS OF FACT

The Applicant is 33, married with three children, and has an Associate Degree in Electronic Engineering. He is employed by a defense contractor as a Fabrication Technician, and he seeks to obtain a Secret-level 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 attached Statement of Reasons (SOR). The following findings of fact are entered as to each paragraph and criterion in the SOR. They are based on the Applicant's Answer to the SOR, the exhibits and the live testimony.

Paragraph 1 (Criterion F). The Government alleges in this paragraph that the Applicant is ineligible for clearance because he is financially overextended.

As of early 1996, it is alleged that the Applicant had approximately \$34,000 in past-due indebtedness. In May 1996, the Applicant informed the Defense Investigative Service that he would contact all of his creditors by July 1996 (Government Exhibit 3). He has done so, and each of the debts alleged in the SOR shall be examined in turn:

1.a. The Applicant has reached a financial settlement with this creditor, and successfully paid off this debt in September 1996. (Applicant's Exhibit "A.")

1.b. The Applicant has paid \$85 on this past due debt, and has reached a payment agreement with the creditor. He currently owes \$782. (Applicant's Exhibit "B.")

1.c. Credit Card Company A sold this debt to Bank B. Subsequently, Bank B issued a credit card to the Applicant with an opening balance in the amount of the debt. The Applicant has paid \$254.25 on this debt, and Bank B will deduct \$63 a month directly from the Applicant's savings account to pay the remainder. He currently owes \$1895.75 on this new credit line account. (Applicant's Exhibit "C.")

1.d. The Applicant has diligently attempted to contact this creditor without success. The existence and estimated amount of this debt was provided by the Applicant in his National Agency Questionnaire (Government Exhibit 1). The Credit Report Summaries of July 21, 1995 (Government Exhibit 5), and May 3, 1996 (Government Exhibit 4), do not provide any independent corroboration of the existence and amount of this debt.

1.e. The Applicant has paid \$70 on this past due debt, and has reached a payment agreement with the creditor. He currently owes \$275. (Applicant's Exhibit "D.")

1.f. The Applicant has submitted the required documentation to establish a payment plan with the Department of Education regarding these defaulted student loans. As of the date of the hearing, the Applicant had not heard from the Department concerning his loan repayment schedule. He has paid \$85 towards this debt. He continues to owe approximately \$22,000. (Applicant's Exhibit "E.")

1.g. The Applicant has diligently attempted to contact this creditor without success. The existence and estimated amount of this debt was provided by the Applicant in his National Agency Questionnaire (Government Exhibit 1). The Credit Report Summaries of July 21, 1995 (Government Exhibit 5), and May 3, 1996 (Government Exhibit 4), do not provide any independent corroboration of the existence and amount of this debt.

1.h. The Applicant has contacted this creditor, who states that it has no record of the Applicant having an account with them. The existence and estimated amount of this debt was provided by the Applicant in his National Agency Questionnaire (Government Exhibit 1). The Credit Report Summaries of July 21, 1995 (Government Exhibit 5), and May 3, 1996 (Government Exhibit 4), do not provide any independent corroboration of the existence and amount of this debt.

1.i. The Applicant has paid \$70 on this past due debt, the actual amount of which is \$260, and has reached a payment agreement with the creditor. He currently owes \$190. (Applicant's Exhibit "F.")

1.j. The Applicant has contacted this creditor, who states that it has no record of the Applicant having an account with them. The existence and estimated amount of this debt was provided by the Applicant in his National Agency Questionnaire (Government Exhibit 1). The Credit Report Summaries of July 21, 1995 (Government Exhibit 5), and May 3, 1996 (Government Exhibit 4), do not provide any independent corroboration of the existence and amount of this debt.

1.k. The Applicant has paid \$70 on this past due debt, the actual amount of which is \$119.96, and has reached a payment agreement with the creditor. He currently owes \$49.96. (Applicant's Exhibit "G.")

1.l. The Applicant has reached a financial settlement with this creditor on this disputed debt. The Applicant has paid \$60 on this debt, which has been reduced to \$1000. He currently owes \$940. (Applicant's Exhibit "H.")

1.m. This defaulted student loan was incurred by the Applicant's wife. The school closed before she could complete the course of study. She has applied to have the loan discharged. As of the date of the hearing, the Applicant and his wife had not heard from the Department of Education concerning whether the loan would be discharged. During the period when her application is being processed, the loan is in a forbearance period. (Applicant's Exhibit "I.")

1.n. The Applicant has paid off this debt. (Applicant's Exhibit "J.")

The Applicant incurred most of these debts between 1987 and 1992. This was the time immediately surrounding the Applicant's marriage. Before that, he had lived with his parents, where he did not have to pay rent or any expenses. Accordingly, he did not have proper money management skills when he got married. Subsequent to the marriage, the Applicant went to school to get his degree. He had considerable difficulty after graduation finding a well-paying job. Before starting his current employment in February 1995, the Applicant had several periods of unemployment. In addition, when he was employed, the jobs were often low-paying. As a result, while the Applicant could keep up on his living expenses, he was not able to make payments on his past-due indebtedness.

Since beginning his current job, the Applicant is financially stable and able to make the payments to the creditors as he has arranged. In addition, the Applicant has been able to pay his current indebtedness and buy several pieces of furniture successfully on time over the past 18 months. (Transcript at 48-50.) The Applicant testified credibly that he is now a better money manager, and will be able to satisfy his past-due indebtedness in a reasonable fashion.

Mitigation. Applicant's Exhibit "L" consists of a laudatory performance appraisal and a notice of the granting of an annual merit award to the Applicant. Applicant's Exhibit "M" consists of five letters of recommendation from co-workers and supervisors. These people find the Applicant to be "honest," "trustworthy," and "a self-starter." An electrical engineer stated, "His character and integrity appear to be solid; therefore, I recommend (the Applicant) for a DOD security clearance."

POLICIES

Security clearance decisions are not made in a vacuum. Accordingly, the Department of Defense, in Enclosure 2 and Section F.3. 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 criterion. 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 are:

Criterion F (Financial considerations)

Conditions that could raise a security concern:

(1) a history of not meeting financial obligations;

(3) inability or unwillingness to satisfy debts;

Conditions that could mitigate security concerns:

(1) the behavior was not recent;

(3) 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);

(6) the individual initiated a good-faith effort to repay overdue creditors or otherwise resolve debts.

In addition, as set forth in Enclosure 2 of the Directive at page 2-1, "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 criteria 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 financial mismanagement 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 *prima facie* 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 *prima facie* 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 *prima facie* evidence that the Applicant has had serious financial problems (Criterion F).

The Applicant, on the other hand, has successfully mitigated the Government's case. The record shows that the Applicant has had severe financial difficulties. However, the bulk of the past-due debt was incurred during a period when the Applicant, by his own admission, was immature and not financially intelligent. In addition, the Applicant also suffered several bouts of unemployment that made it difficult for him to pay his current living expenses, much less that which was past-due.

The evidence is clear that the Applicant is able to handle his current financial responsibilities. Excluding the student loans of the Applicant and his wife, the Applicant has paid, settled, or otherwise disposed of, over half of the remaining indebtedness. He currently owes a little over \$5,000 in past-due debts and has a logical plan in place to pay off the rest. I specifically find that, in those cases where creditors do not acknowledge that the Applicant has an outstanding balance, the Applicant's admission is insufficient to show that there is a current debt. Absent unexpected circumstances, the Applicant should be able to pay off all of his past-due indebtedness, with the exception of the student loans, by mid-1997. The Applicant is doing the best that he can, his creditors find his proposed payment plan acceptable, and I am satisfied that he has mitigated the Government's case against him. Criterion F is found for the Applicant.

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: For the Applicant.

Subparagraphs 1.a. through 1.n.: For the Applicant.

DECISION

In light of all the circumstances presented by the record in this case, it is clearly consistent with the national interest to grant or continue a security clearance for the Applicant.

Wilford H. Ross

Administrative Judge