

KEYWORD: Financial

DIGEST: The Applicant's financial delinquencies were based, in part, on his wife's inability to obtain a well-paying job. Accordingly, she made the decision to stay home and watch their children starting in 1999. The Applicant began working for a Defense contractor in 2006 and, that same year, began working with his mother-in-law, a bookkeeper, on a financial plan. One debt has been paid. He is working with a consumer credit counseling service to pay his two remaining past due debts. Applicant is eligible for a security clearance. Clearance is granted.

CASENO: 06-25838.h1

DATE: 09/19/2007

DATE: September 19, 2007

In Re:)	
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SSN: -----)	ISCR Case No. 06-25838
)	
Applicant for Security Clearance)	
)	

**DECISION OF ADMINISTRATIVE JUDGE
WILFORD H. ROSS**

APPEARANCES

FOR GOVERNMENT

Candace Le'i, Esquire, Department Counsel

FOR APPLICANT

Pro Se

SYNOPSIS

The Applicant's financial delinquencies were based, in part, on his wife's inability to obtain a well-paying job. Accordingly, she made the decision to stay home and watch their children starting in 1999. The Applicant began working for a Defense contractor in 2006 and, that same year, began working with his mother-in-law, a bookkeeper, on a financial plan. One debt has been paid. He is working with a consumer credit counseling service to pay his two remaining past due debts. Applicant is eligible for a security clearance. Clearance is granted.

STATEMENT OF THE CASE

On March 15, 2007, 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 an unknown date and on May 14, 2007, and requested a hearing. The case was received by the undersigned on August 13, 2007, and a Notice of Hearing was issued on August 17, 2007.

A hearing was held on August 30, 2007, at which the Government presented five documentary exhibits. Testimony was taken from the Applicant, who called two additional witnesses, and also submitted seven exhibits. The transcript was received on September 12, 2007.

FINDINGS OF FACT

The Applicant is 40, married with two children, and has a high school diploma and the equivalent of an Associate of Science degree. He is employed by a defense contractor as an Electronics Technician, 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 obtain funds.

The Applicant worked for Company A from 1994 until December 2005. Company A is not a Defense contractor. During this time the Applicant married his wife and they began a family. The

Applicant's financial difficulties began after the birth of his second child in 2001. His salary was stagnating at Company A, and his wife was not working. The Applicant's wife made the decision to stay home with their children because she did not have the education that would allow her to make enough money to afford child care. (Transcript at 64-66.) In about 2003 the Applicant and his wife began using credit cards to pay everyday debts. By 2004 the debts became overwhelming. (Transcript at 37-38.)

In 2005, the Applicant's wife began working with a debt repayment company. This company recommended that the Applicant allow his debts to become delinquent, then the company would make payment arrangements. This company has received a great deal of money in fees, but did not successfully negotiate payment arrangements with any of their creditors. (Transcript at 37-39, 49-51; Applicant's Exhibit C.)

By early 2007, the Applicant realized that he would have to do something about his past due debts. At that point, he began working with a non-profit consumer credit counseling service. As opposed to the other group, once the Applicant began the program, the service immediately began paying his past due debts. (Transcript at 39-40, 51-53; Applicant's Exhibit B.)

In order to help make the payments, the Applicant has also begun working part-time for his brother. The Applicant makes \$300.00 to \$400.00 a month working for his brother. (Transcript at 47-48; Applicant's Exhibit G.)

The Applicant's mother-in-law is a bookkeeper. In about September 2006, the Applicant and his wife informed her of their financial problems. She has put the Applicant and his wife on a budget since that time. She controls their finances and prepares checks for the Applicant's signature. They are paying their current debts in a timely manner and are staying within the budget. (Transcript at 74-80; Government Exhibit 2; Applicant's Exhibit E.)

Turning to the specific debts mentioned in the SOR:

1.a. The Applicant admits owing a past due Discover Card debt in the original amount of \$9,154.00. As of August 25, 2007, this debt had been reduced to \$8,517.84. (Applicant's Exhibit B at 5.)¹

1.b. The Applicant admits owing a past due Bank of America debt in the original amount of \$10,694.00. As of August 25, 2007, this debt had been reduced to \$9,920.53. (Applicant's Exhibit B at 5.)²

1.c. The Applicant admits owing a past due Chevron debt in the original amount of \$286.00. This debt was paid in full as of April 9, 2007. (Applicant's Exhibit F.)

¹The most recent credit report provided by the Government, dated August 30, 2007, states that the past due amount is \$7,958.00. (Government Exhibit 5 at 1.)

²The most recent credit report provided by the Government, dated August 30, 2007, states that the past due amount is \$8,850.00. (Government Exhibit 5 at 2.)

Mitigation.

The Applicant submitted a packet of character reference letters from co-workers, his supervisor, and a Government employee he works with. He is described as being “committed, loyal and devoted,” a person with “excellent work ethics,” and “hardworking, diligent and conscientious.” (Applicant’s Exhibit C.)

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 18-19, “In evaluating the relevance of an individual’s conduct, the [Administrative Judge] should consider the following factors [General 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 behavior changes
- (7) The motivation for the conduct
- (8) The potential for pressure, coercion, exploitation or duress
- (9) 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 financial irresponsibility 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 past due debts, one of which he has paid off, and the other two are being paid off (Guideline F). The Applicant, on the other hand, has successfully mitigated the Government's case.

The evidence shows that the Applicant has had financial difficulties in the past. Accordingly, Disqualifying Conditions 19.a. (*Inability or unwillingness to satisfy debts*), and 19.c. (*A history of not meeting financial obligations*) apply.

The evidence also shows, however, that the Applicant's inability to pay his debts was in large part related to his family and work situation between 1999 and 2005. In 2006 the Applicant and his wife made the undoubtedly difficult personal decision to approach his mother-in-law, a bookkeeper, admit their financial problems, and ask for her professional assistance. He also made the decision to change from a for-profit debt resolution firm that was not working and work with a not-for-profit consumer credit counseling service. Both of these decisions have resulted in one of the three debts

in the SOR being paid and the other two debts being paid down approximately 10% since April of this year. He is able to maintain a budget and pay his current indebtedness,

The Applicant testified that he intends to resolve the remaining debts as soon as possible. This testimony is credible and worthy of belief. His credit reports show that he does not abuse credit. The following Mitigating Conditions apply: 20.a. (*The behavior happened so long ago, was so infrequent, or occurred under such circumstances that it is unlikely to recur and does not cast doubt on the individual's current reliability, trustworthiness or good judgment*), 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 20.d. (*The individual initiated a good-faith effort to repay overdue creditors or otherwise resolve debts*).

I have also examined this case under the Whole Person concept as described in the General Factors, and as set out at length above. They also support a finding for the Applicant. Paragraph 1 is found for the Applicant. He is eligible for a security clearance.

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.c.: 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