

KEYWORD: Financial; Personal Conduct; Alcohol; Criminal Conduct

DIGEST: The Applicant owes at least 39 different creditors approximately \$252,675.11. He has no valid, current plans to pay these debts off. In addition, the Applicant falsified a Government questionnaire concerning his debt situation. Adverse inference is not overcome. Clearance is denied.

CASENO: 04-09750.h1

DATE: 01/23/2007

DATE: January 23, 2007

In Re:)	
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SSN: -----)	ISCR Case No. 04-09750
)	
Applicant for Security Clearance)	
)	

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

APPEARANCES

FOR GOVERNMENT

Jennifer I. Goldstein, Esquire, Department Counsel

FOR APPLICANT

Michael J. Wenstrup, Esquire

SYNOPSIS

The Applicant owes at least 39 different creditors approximately \$252,675.11. He has no valid, current plans to pay these debts off. In addition, the Applicant falsified a Government questionnaire concerning his debt situation. Adverse inference is not overcome. Clearance is denied.

STATEMENT OF THE CASE

On September 14, 2005, 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 October 10, 2005, and November 25, 2005, and requested a hearing. The case was received by the undersigned on August 16, 2006, and Notices of Hearing were issued on August 25, 2006, and September 19, 2006.

A hearing was held by video teleconference on October 4, 2006, at which the Government presented 14 documentary exhibits. Testimony was taken from the Applicant, who also submitted four exhibits. The transcript was received on October 18, 2006.

FINDINGS OF FACT

The Applicant is 66 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 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 concerns). 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 SOR alleges that the Applicant owes at least 39 different creditors approximately \$252,675.11.¹ (SOR allegations 1.a. through 1.mm.) The available documentary evidence confirms

¹Several of the creditors listed in the SOR are collection agencies who may be representing multiple clients to whom the Applicant owes money.

that all of these debts are in the Applicant's name. (Government Exhibits 2, 3, 4, 5, 6, 7, 8, 9, 14 and 15.)

The Applicant made no argument concerning the validity and/or payment status of the following debts: SOR 1.c., 1.d., 1.f., 1.i., 1.r., 1.s., 1.t., 1.u., 1.v., 1.w., 1.x., 1.cc., 1.dd., 1.ee., 1.ff., 1.gg., 1.hh., 1.ii., 1.jj., 1.ll. Accordingly, these specific debts are found to be valid, current obligations of the Applicant.

The Applicant made specific statements concerning the validity and/or payment status of several of the debts. They will be discussed below:

SOR 1.a. The Applicant has been married four times. When he was divorced from his second wife in 1988, they agreed that he would pay her \$40,235.00 in exchange for the second wife relinquishing her rights to real property the two of them owned. According to the written divorce agreement, the Applicant was to pay his second wife \$305.00 per month beginning in April 1988. (Government Exhibit 2 at 13.) The Applicant testified that he and the second wife had a verbal agreement that he would not have to pay her anything as long as he had other outstanding debts from the marriage. (Transcript at 31-32.) There is no written confirmation of this alleged agreement. (Transcript at 80-81.) The Applicant did not make any payments and his second wife went to court in 1992 to have the divorce decree enforced. A judgement was entered for the second wife on May 27, 1992, in the amount of \$17,165.71. (Government Exhibit 2 at 20-26.) Many attempts were made by the second wife's lawyer to enforce the judgment in the ensuing years. (Government Exhibit 2 at 54-66.) Some money was collected during those years. By 1999, the last year for which records are available, the judgment debt had grown from \$17,165.71 to \$22,524.93. (Government Exhibit 2 at 63.) In addition to the past due amount, the Applicant still owes his second wife approximately \$25,000.00 from the original agreement. Based on the available evidence, I find that this is a valid debt and the Applicant continues to owe a considerable sum to his second wife. He has no current plans to pay this debt.

SOR 1.b. This is the Applicant's largest creditor, a collection agency. The Applicant owes them at least \$177,201.11. The underlying creditors consist of medical and non-medical entities. Over the years, the records indicate that the Applicant has paid approximately \$8,000.00 towards this indebtedness. This remains a valid debt of the Applicant. The Applicant has no current plans to pay this debt. (Transcript at 35-36; Government Exhibit 15.)

SOR 1.g., 1.h., 1.j., 1.k., 1.l., 1.m., 1.n., 1.o., 1.p., 1.q., 1.aa., 1.bb. The Applicant argues that these particular debts were medical bills run up by his second and third wives, without his permission, during their marriages. The Applicant was married to these women at the time that the expenses were incurred. He presented no evidence, other than his testimony, that these were not valid debts of his marriages. (Transcript at 44-45.) Under the particular facts of this case, his testimony is insufficient to show that these debts are not his valid obligations.

SOR 1.e. The Applicant admits that he has a judgment against him in the amount of \$15,737.00. The judgment has grown to \$20,000.00. He further states that \$10,000.00 of this judgment has been paid when he sold two pieces of land in October and November 2005. (Applicant's Exhibits A and B.) The Applicant submitted an Earnest Money Receipt and Purchase Agreement concerning a third piece of property. He testified that \$5,000.00 of the \$41,000.00

selling price of that third property will be used to pay this judgment down to \$5,000.00. (Applicant's Exhibit C.) The final \$5,000.00 will be paid when he sells another piece of his real property. (Transcript at 39-40, 45-47.)

SOR 1.y. and 1.z. These past due debts were property taxes owed by the Applicant to the local government. They were paid off under the terms of his first property sale in October 1995. (Transcript at 47-48; Applicant's Exhibit A at 1.)

SOR 1.kk. The Applicant testified that he had made good this past due debt for \$186.00, related to an insufficient fund check. (Transcript at 50-51, 53.)

SOR 1.mm. The Applicant testified that he had made good this past due debt for \$120.00, related to an insufficient fund check. (Transcript at 53-55.)

The Applicant testified that he would be able to pay all of the debts except those set forth in SOR 1.a. and 1.b. out of the \$40,000.00 proceeds of his current land sale. (Transcript at 40-41; Applicant's Exhibit C.) Excluding those two debts, the Applicant owes approximately \$32,753.00. However, the fact remains that it was a proposed sale and the Applicant has not produced any additional documentation showing that the sale was completed or that the bills were paid.

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 April 22, 2002, the Applicant completed an official DoD questionnaire in which he stated that he had no unpaid judgments within the previous seven years. (Government Exhibit 1, question 37.) This was a false answer because, at that time, the Applicant had two judgments against him. (SOR 1.a. and 1.e.) The Applicant credibly testified that, at the time he filled out the questionnaire, he had a good faith belief that the judgment in SOR 1.a. had been paid and he had no knowledge of the judgment in SOR 1.e. (Transcript at 20-21, 57-59.) Subparagraph 2.a. is found for the Applicant.

In the same questionnaire the Applicant stated that he had not been 180 days delinquent on any debts within the previous seven years (question 38); and that he was currently 90 days delinquent only on a medical debt for \$25,000.00 as of the date he filled out the questionnaire (question 39). These statements were false answers to material questions pertaining to the Applicant's financial situation at that time.

With regards to question 38, the Applicant testified, "It's obvious the medical bills were out there, but I was referring to debts like utility bills or rent or car payments and this sort of thing. And I had not been delinquent in those." (Transcript at 21-22, 59-60.)

The Applicant had no real explanation as to why he did not say he was currently 90 days delinquent on debts in 2002. In his testimony, the Applicant admits that some of his past due debts have existed since 1993, and that he had knowledge of them. (Transcript at 61-63.)

The Applicant's explanations for falsifying questions 38 and 39 of the questionnaire are rejected. His debt situation is extensive, and of long standing. The Applicant knew, or should have known, about at least some of these debts. The explanations he attempted to make about why he did not answer the questions truthfully are not credible.

Paragraph 3 (Guideline G - Alcohol abuse). The Government alleges in this paragraph that the Applicant is ineligible for clearance because he abuses intoxicants to excess.

The Applicant was arrested for Driving Under the Influence of Alcohol in May 2004. He plead guilty to a reduced charge of Reckless Driving and received a sentence including suspended jail time, a fine, one year probation and his driver's license was suspended for 30 days. From all indications, this was a solitary incident which occurred because of unique events that were occurring in the Applicant's life. The Applicant takes responsibility for this incident and credibly testified that he had not engaged in this conduct previously and would not do so in the future. (Transcript at 22-24, 75-78.)

Paragraph 4 (Guideline J - Criminal conduct). The Government alleges in this paragraph that the Applicant is ineligible for clearance because he has engaged in criminal acts.

As found above, the Applicant knowingly and willfully provided false material information to DoD during the clearance screening process. In so doing the Applicant violated the felony criminal provisions of 18 U.S.C. §1001.

The arrest and conviction set forth under paragraph 3, above, will be considered under this paragraph as well.

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 have past due indebtedness and be involved in acts of falsification of Government forms, alcohol abuse and criminal conduct 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 or continued

holding 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 over \$200,000.00 in past due debts that he cannot, or will not, pay (Guideline F); that he intentionally made false material statements to DoD, in violation of a felony criminal statute (Guidelines E and J); and that he has one alcohol related arrest (Guidelines G and J).

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:

Under Paragraph 1 (Guideline F), subparagraphs 1.e., 1.y., 1.z., 1.kk. and 1.mm. are found for the Applicant as he has paid, or is paying, those specific debts.

Subparagraph 2.a. under Paragraph 2 (Guideline E) is found for the Applicant as I have determined that the falsification in this subparagraph was not willful.

Finally, Paragraph 3 (Guideline G) and subparagraph 4.a. under Paragraph 4 (Guideline J) are found for the Applicant. Alcohol Abuse Disqualifying Condition E2.A7.1.2.1. applies to this incident as it was alcohol-related. However, there is no evidence indicating that this incident is part of a pattern. (Alcohol Abuse Mitigating Condition E2.A7.1.3.1.) The circumstances relating to the arrest were unique and, in my opinion, the activity was aberrational on the part of the Applicant and not likely to be repeated. (General Factors b. and i.)

The Applicant has an extensive history of past due indebtedness. It is obvious that he has had knowledge of the majority of his debt problems for more than ten years. His attitude appears to be that, as long as his assets were more than his indebtedness, he was all right. He further testified, “[As] long as they [the creditors] weren’t complaining, I was only going to pay what I absolutely had to pay to get through from one payday to the next. I would apply what I could. I didn’t want to sell the assets [real property] if I didn’t have to. (Transcript at 83-84.) The end result of this attitude was that hardly any of his creditors got paid, and there is little likelihood of their getting paid in the foreseeable future. Disqualifying Conditions E2.A6.1.2.1. and E2.A6.1.2.3. apply to this case as there is “A history of not meeting financial obligations,” and an “Inability or unwillingness to satisfy debts.”

None of the Mitigating Conditions apply to this case. The behavior is recent, indeed continuing. It is not an isolated incident nor, in my opinion, were the conditions that resulted in the behavior beyond the Applicant’s control. The recent sale of two pieces of property, and the expected sale of a third, does not arise to the level of a good faith attempt to repay overdue creditors or otherwise resolve debts. Except as set forth above, Paragraph 1 and its subparagraphs are 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 the facts of 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). None of the Mitigating Conditions apply. Guidelines E and J are 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, 2 and 4 of the Government's Statement of Reasons. As set forth above, Paragraph 3 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: 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.: For 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.
- Subparagraph 1.l.: Against the Applicant.
- Subparagraph 1.m.: Against the Applicant.
- Subparagraph 1.n.: Against the Applicant.
- Subparagraph 1.o.: Against the Applicant.
- Subparagraph 1.p.: Against the Applicant.
- Subparagraph 1.q.: Against the Applicant.
- Subparagraph 1.r.: Against the Applicant.
- Subparagraph 1.s.: Against the Applicant.
- Subparagraph 1.t.: Against the Applicant.
- Subparagraph 1.u.: Against the Applicant.
- Subparagraph 1.v.: Against the Applicant.
- Subparagraph 1.w.: Against the Applicant.
- Subparagraph 1.x.: Against the Applicant.

Subparagraph 1.y.: For the Applicant.
Subparagraph 1.z.: For the Applicant.
Subparagraph 1.aa.: Against the Applicant.
Subparagraph 1.bb.: Against the Applicant.
Subparagraph 1.cc.: Against the Applicant.
Subparagraph 1.dd.: Against the Applicant.
Subparagraph 1.ee.: Against the Applicant.
Subparagraph 1.ff.: Against the Applicant.
Subparagraph 1.gg.: Against the Applicant.
Subparagraph 1.hh.: Against the Applicant.
Subparagraph 1.ii.: Against the Applicant.
Subparagraph 1.jj.: Against the Applicant.
Subparagraph 1.kk.: For the Applicant.
Subparagraph 1.ll.: Against the Applicant.
Subparagraph 1.mm.: For the Applicant.

Paragraph 2: Against the Applicant.

Subparagraph 2.a.: For the Applicant.
Subparagraph 2.b.: Against the Applicant.
Subparagraph 2.c.: Against the Applicant.

Paragraph 3: For the Applicant.

Subparagraph 3.a.: For the Applicant.

Paragraph 4: Against the Applicant.

Subparagraph 4.a.: For the Applicant.
Subparagraph 4.b.: 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