



## **SYNOPSIS**

Applicant is 49 years old and has worked for a federal contractor as a software instructor since 2004. Prior to retiring from the Army, he started a business. He was unfamiliar with the tax consequences and also how to manage it. He lost a significant contract and experienced financial difficulties. When he was discharged from the service he was underemployed for a period of time. He now has a substantially better paying job, has taken a financial management course, and repaid all of his delinquent debt. He pays his monthly expense on time, does not incur unnecessary expenses, and lives within his means. Applicant has successfully mitigated security concerns raised by Guideline F, financial considerations. Clearance is granted.

## STATEMENT OF THE CASE

The Defense Office of Hearings and Appeals (DOHA) declined to grant or continue a security clearance for Applicant. On June 16, 2006, under the applicable Executive Order<sup>1</sup> and Department of Defense Directive,<sup>2</sup> DOHA issued a Statement of Reasons (SOR), detailing the basis for its decision—security concerns raised under Guideline F, (financial considerations). Applicant answered the SOR in writing on July 25, 2006, and elected to have a hearing before an administrative judge. In his Answer, Applicant admitted all of the allegations under the Guideline. The case was assigned to me on March 8, 2007. A notice of hearing was issued on March 28, 2007, scheduling the hearing for April 17, 2007. I conducted the hearing as scheduled to consider whether it is clearly consistent with the national interest to grant or continue a security clearance. The Government offered six exhibits for admission in the record marked as Government Exhibits (GE) 1-6. The exhibits were admitted into evidence without objections. Applicant testified on his own behalf and offered fifteen exhibits for admission into the record. They were marked as Applicant's Exhibits (AE) A-O and admitted into evidence without objections. DOHA received the hearing transcript (Tr.) on April 26, 2007.

## FINDINGS OF FACT

Applicant's admissions to the allegations in the SOR, are incorporated herein. In addition, after a thorough and careful review of the pleadings, exhibits, and testimony, I make the following findings of fact:

Applicant is 49 years old, married and has two children and one stepchild. His two children live at home. Applicant has been employed with a federal contractor as a software instructor since July 2004. His wife is employed at a base commissary. He was honorably discharged and retired from the Army in 2001, as a Sergeant First Class (E-7).

Approximately a year before he retired he started a building cleaning business. He was unfamiliar with complexities and financial requirements for starting and maintaining a business. He did not understand the tax requirements for the business. He also did not understand how to budget his finances. He filed for Chapter 13 Bankruptcy protection in November 2000. Around the same time he was retiring from the service his business lost the cleaning contract which was its source of revenue.<sup>3</sup> He also was using credit cards to keep up with his expenditures. When he was discharged he had a low paying job and could not keep up with the bankruptcy payments and requested a reduction in his monthly payments.<sup>4</sup> The request was denied and the bankruptcy was dismissed in January 2002. Applicant was then obligated to pay all of his creditors that were included in the

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<sup>1</sup>Exec. Or. 10865, *Safeguarding Classified Information within Industry* (Feb. 20, 1960) as amended and modified.

<sup>2</sup>Department of Defense Directive 5220.6, *Defense Industrial Personnel Security Clearance Review Program* (Jan. 2, 1992), as amended and modified.

<sup>3</sup>Tr. 52-53.

<sup>4</sup>Tr. 54-55.

bankruptcy. His debts remained delinquent until he secured a better paying job in July 2002. He left that job in 2004 to work for his present employer for better pay. Applicant's present job offers him opportunities for increased pay when he deploys to Kuwait and Iraq, which he has done. With his increased pay and the extra pay, he has been paying his debts. In approximately 2005, Applicant attended a budgeting class to learn how to manage his finances. This class taught him how to budget. He has not accepted any new credit cards. He pays his bills by allotment. He has not incurred any new expenses and is now paying his bills on time and living within his means.

The debt in SOR 1.a. was for a water purifying system for his residence, an appliance he deemed a necessity. The debt was settled and paid in July 2006.<sup>5</sup>

The debt in SOR 1.b was for a credit card used to pay for gas and emergencies. It was opened shortly before Applicant was discharged from the military. He stopped paying on it because after his discharge his pay was substantially reduced. This debt was paid in July 2006.<sup>6</sup>

The debt in SOR 1.c is a state tax lien attributed to Applicant's business. It was for employee wage taxes. Applicant paid the debt and was released from the lien in August 2005.<sup>7</sup>

The debt in SOR 1.d. is a state tax lien from a different state where Applicant had been stationed. He believed when he was transferred overseas and sold his house that all taxes were paid. It was not until he returned to the United States that he received notice of the tax debt. There was confusion due to the town listed on the debt. Applicant retrieved a credit report and contacted the state's tax office. The state had obtained a judgment against Applicant. He paid the judgment and the lien was released in August 2006.<sup>8</sup>

The debt in SOR 1.e was a consumer debt for furniture. Applicant opened the account in January 2000 and his last activity on the account was February 2002.<sup>9</sup> Applicant settled the debt in July 2006.<sup>10</sup>

The debt in SOR 1.f was for a gas credit card. Applicant opened the account in February 2000 and defaulted on the account in August 2002. He paid the account in May 2005.<sup>11</sup>

The debt in SOR 1.g was a medical debt that was incurred in 2002-2003. Applicant paid the debt in May 2006.

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<sup>5</sup>Tr. 68-69; AE I.

<sup>6</sup>Tr. 72-73; GE 4 and 5; AE J.

<sup>7</sup>Tr. 74-76; AE H.

<sup>8</sup>Tr. 79-83. AE F.

<sup>9</sup>GE 5 at 6.

<sup>10</sup>Tr. 84-85; AE L.

<sup>11</sup>Tr 86-88; Answer.

The debt in SOR 1. h was for a consumer credit card opened in July 1998 and the last activity on the account was October 2002. Applicant had been paying this debt through the bankruptcy order for approximately six months. When it was dismissed, he was required to pay the debt without the protection. Applicant settled and paid the account in June 2006.<sup>12</sup>

The debt in SOR 1.i was a credit card debt. Applicant settled and paid this account in June 2006.<sup>13</sup>

Applicant used the extra funds from deploying to dangerous areas and a loan against he and his wife's life insurance policies, to pay their debts. He has an allotment set up to repay his life insurance. He anticipates another deployment. With both he and his wife working, they are able to maintain their budget and pay their bills on time. Through his budgeting class, he learned to live within his means and better understands how finances work. He does not have any delinquent debts.<sup>14</sup> He makes all of his monthly expense payments on time.

Applicant's supervisors describes him as a person whose ethics and character are beyond reproach. They believe he has the highest personal integrity. He follows procedures and is considered a invaluable asset to his company.<sup>15</sup> He is described as a professional who has earned the respect of the military and civilian personnel he serves.<sup>16</sup>

## POLICIES

Enclosure 2 of the Directive sets forth adjudicative guidelines to be considered in evaluating a person's eligibility to hold a security clearance. Included in the guidelines are disqualifying conditions (DC) and mitigating conditions (MC) applicable to each specific guideline. Additionally, each security clearance decision must be a fair and impartial commonsense decision based on the relevant and material facts and circumstances, the whole-person concept, along with the factors listed in the Directive. Specifically these are: (1) the nature and seriousness of the conduct and surrounding circumstances; (2) the frequency and recency of the conduct; (3) the age of the applicant; (4) the motivation of the applicant, and the extent to which the conduct was negligent, willful, voluntary, or undertaken with knowledge of the consequences; (5) the absence or presence of rehabilitation; and (6) the probability that the circumstances or conduct will continue or recur in the future. Although the presence or absence of a particular condition or factor for or against clearance is not outcome determinative, the adjudicative guidelines should be followed whenever a case can be measured against this policy guidance.

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<sup>12</sup>Tr. 90-91; GE 5 at 5; Answer.

<sup>13</sup>Tr. 91-92; AE E; Answer.

<sup>14</sup>Tr. 98-105.

<sup>15</sup>AE A.

<sup>16</sup>AE B.

The sole purpose of a security clearance determination is to decide if it is clearly consistent with the national interest to grant or continue a security clearance for an applicant.<sup>17</sup> The government has the burden of proving controverted facts.<sup>18</sup> The burden of proof is something less than a preponderance of evidence.<sup>19</sup> Once the government has met its burden, the burden shifts to an applicant to present evidence of refutation, extenuation, or mitigation to overcome the case against him.<sup>20</sup> Additionally, an applicant has the ultimate burden of persuasion to obtain a favorable clearance decision.<sup>21</sup>

No one has a right to a security clearance<sup>22</sup> and “the clearly consistent standard indicates that security clearance determinations should err, if they must, on the side of denials.”<sup>23</sup> Any reasonable doubt about whether an applicant should be allowed access to sensitive information must be resolved in favor of protecting such sensitive information.<sup>24</sup> The decision to deny an individual a security clearance is not necessarily a determination as to the loyalty of an applicant.<sup>25</sup> It is merely an indication that the applicant has not met the strict guidelines the President and the Secretary of Defense have established for issuing a clearance.

Conditions that could raise a security concern and may be disqualifying, as well as those which would mitigate security concerns, pertaining to the adjudicative guideline are set forth and discussed in the conclusions below.

## CONCLUSIONS

I have carefully considered all the facts in evidence and the legal standards discussed above. I reach the following conclusions regarding the allegations in the SOR.

Based upon consideration of the evidence, I find the following adjudicative guideline most pertinent to the evaluation of the facts in this case:

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<sup>17</sup>ISCR Case No. 96-0277 at 2 (App. Bd. Jul 11, 1997).

<sup>18</sup>ISCR Case No. 97-0016 at 3 (App. Bd. Dec. 31, 1997); Directive, Enclosure 3, ¶ E3.1.14.

<sup>19</sup>*Department of the Navy v. Egan*, 484 U.S. 518, 531 (1988).

<sup>20</sup>ISCR Case No. 94-1075 at 3-4 (App. Bd. Aug. 10, 1995); Directive, Enclosure 3, ¶ E3.1.15.

<sup>21</sup>ISCR Case No. 93-1390 at 7-8 (App. Bd. Jan. 27, 1995); Directive, Enclosure 3, ¶ E3.1.15.

<sup>22</sup>*Egan*, 484 U.S. at 531.

<sup>23</sup>*Id.*

<sup>24</sup>*Id.*; Directive, Enclosure 2, ¶ E2.2.2.

<sup>25</sup>Executive Order 10865 § 7.

Guideline F- Financial Considerations-a security concern exists when a person has significant delinquent debts. 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, or careless in their obligation to protect classified information. Behaving responsibly or irresponsibly in one aspect of life provides an indication of how a person may behave in other aspects of life.

Based on all the evidence, Financial Considerations Disqualifying Condition (FC DC) E2.A6.1.2.1 (*A history of not meeting financial obligations*), and FC DC E2.A6.1.2.3 (*Inability or unwillingness to satisfy debts*), apply in this case. Applicant accumulated debts that were placed for collection, charged off, or for which a lien was entered against him. They remained delinquent for a significant period of time.

I have considered all the Financial Considerations Mitigating Conditions (FC MC) and especially considered FC MC E2.A6.1.3.1 (*The behavior was not recent*), FC MC E2.A6.1.3.2 (*It was an isolated incident*), FC MC E2.A6.1.3.3 (*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)*), FC MC E2.A6.1.3.4 (*The person has received or in receiving counseling for the problem and there are clear indications that the problem is being resolve or is under control*), and FC MC E2.A6.1.3.6 (*The individual initiated a good-faith effort to repay overdue creditors or otherwise resolve debts*).

Applicant had many delinquent debts that were delinquent for a substantial period of time. All of the debts were paid in the last two years. These debts were not isolated and many remained unpaid until this past year. Therefore, FC MC E2.A6.1.3.1 and E2A6.1.3.2 do not apply.

Applicant started a business without full understanding of the financial requirements, or the tax requirements. He was having problems with the business at the same time he was being discharged from the military and his pay was substantially reduced. He used credit cards to help pay his expenses. He filed for bankruptcy, but could not keep up with the payments. Applicant's underemployment was beyond his control, but starting a business without taking the proper steps to understand the requirements were within his control. I find FC MC E2.A6.1.3.3 partially applies.

Applicant has literally dug himself out of a financial hole. Two years ago he took classes to learn how to manage his finances, budget his money, and pay his debts. He took what he learned and applied it to his financial situation. He has no new debts, has no new credit cards, and systematically settled and paid his outstanding debts. He has a better paying job and with bonus pay from deploying and a loan against his life insurance, he has paid the debts. He is repaying his life insurance. He also does not live beyond his means. Applicant got into financial problems, but instead of ignoring them he took appropriate action, learned from his mistakes, and resolved his debts. Therefore, I find FC MC E2.A6.1.3.4 and E2.A6.1.3.6 apply.

In all adjudications, the protection of our national security is the paramount concern. The objective of the security-clearance process is the fair-minded, commonsense assessment of a person's life to make an affirmative determination that the person is eligible for a security clearance. Indeed, the adjudicative process is a careful weighing of a number of variables in considering the "whole person" concept. It recognizes that we should view a person by the totality of their acts, omissions,

motivations and other variables. Each case must be adjudged on its own merits, taking into consideration all relevant circumstances, and applying sound judgment, mature thinking, and careful analysis.

I considered the whole person in analyzing the evidence. I considered Applicant's business difficulties and lengthy period his debts were delinquent. I also considered that he was proactive in learning how to manage his finances and then applied what he learned to his situation. He has settled and paid all of his debts. Equally important is that he set up a budget and is living within his means, so he does not have future problems. Therefore, I am persuaded by the totality of the evidence in this case, that it is clearly consistent with the national interest to grant Applicant a security clearance. Accordingly, Guideline F is decided for Applicant.

### **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:

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|---------------------------|---------------|
| Paragraph 1. Guideline F: | FOR APPLICANT |
| Subparagraph 1.a:         | For Applicant |
| Subparagraph 1.b:         | For Applicant |
| Subparagraph 1.c:         | For Applicant |
| Subparagraph 1.d:         | For Applicant |
| Subparagraph 1.e:         | For Applicant |
| Subparagraph 1.f:         | For Applicant |
| Subparagraph 1.g:         | For Applicant |
| Subparagraph 1.h:         | For Applicant |
| Subparagraph 1.i:         | For Applicant |
| Subparagraph 1.j:         | For Applicant |

### **DECISION**

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

Carol G. Ricciardello  
Administrative Judge