

KEYWORD: Financial

DIGEST: The Applicant was not responsible for the debts in the SOR becoming past due. His ex-wife was a bad money manager during the time he was deployed for the military, and she also fraudulently signed his name to several credit card applications. In their divorce, the ex-wife agreed to be solely responsible for paying the debts. The Applicant has acted responsibly under the circumstances, which are unlikely to recur, and do not cast doubt on his reliability, trustworthiness or good judgment. Clearance is granted.

CASENO: 05-18033.h1

DATE: 01/31/2007

DATE: January 31, 2007

In Re:)	
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-----)	ISCR Case No. 05-18033
SSN: -----)	
)	
Applicant for Security Clearance)	

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

APPEARANCES

FOR GOVERNMENT

Jennifer I. Goldstein, Esquire, Department Counsel

FOR APPLICANT

Pro Se

SYNOPSIS

The Applicant was not responsible for the debts in the SOR becoming past due. His ex-wife was a bad money manager during the time he was deployed for the military, and she also fraudulently signed his name to several credit card applications. In their divorce, the ex-wife agreed to be solely responsible for paying the debts. The Applicant has acted responsibly under the circumstances, which are unlikely to recur, and do not cast doubt on his reliability, trustworthiness or good judgment. Clearance is granted.

STATEMENT OF THE CASE

On March 29, 2006, 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 April 25, 2006, and requested a hearing (Answer). The case was received by the undersigned on July 6, 2006, and a Notice of Hearing was issued on August 22, 2006.

A hearing was held on September 14, 2006, at which the Government presented three documentary exhibits. Testimony was taken from the Applicant, who called one additional witness, and also submitted six exhibits. The transcript was received on September 25, 2006.

FINDINGS OF FACT

The Applicant is 50 and married. He is employed by a defense contractor, and he seeks to retain a Secret-level DoD security clearance previously granted in connection with his employment in the defense sector.

The Government opposes the Applicant's request for a continued 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 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 generate funds.

The SOR alleges that the Applicant owes ten creditors approximately \$37,673.00 (SOR 1.a. through 1.j.). The Applicant has repeatedly denied any responsibility for these debts, stating that they were entered into by his ex-wife without his knowledge or permission. Furthermore, he states

that his ex-wife forged his name to several credit applications. The ex-wife provided a sworn statement, attached to the Answer, stating, “The debts listed below [same debts as in the SOR] are mine and were incurred without the knowledge or permission of [the Applicant].” (Applicant’s Exhibit B.)

The Applicant and his ex-wife were married in 1989 and divorced in 2005. (Government Exhibit 1 at question 8; Applicant’s Exhibits A, C and D.) The Applicant was in the Coast Guard during most of their marriage, often deployed at sea. Accordingly, his ex-wife by necessity had control of the family finances. Her financial mismanagement was one of the primary reasons for the divorce. (Transcript at 55-61.)

The ex-wife agreed to take responsibility for all debts of the marriage when the couple filed for divorce. (Applicant’s Exhibit A at 2.) She further submitted a statement to the state court stating, “I . . . am the responsible party for the financial payment of the debt incurred during the marriage. I request that it be ordered that [the Applicant’s] name be removed from all joint accounts and that it be ordered that he is no longer responsible for payments to the accounts that I am taking financial responsibility for.” (Applicant’s Exhibit C.) Finally, in the divorce decree, the court specifically found, “The written agreements between the petitioners concerning spousal maintenance and tax consequences, if any, division of property, including retirement benefits, and allocation of obligations are just.” (Applicant’s Exhibit D at 1.) (*See* Transcript at 11.)

The Applicant’s ex-wife has done more than accept responsibility legally for these debts, she is working to resolve them. Applicant’s Exhibit E consists of documentation from a financial management organization the ex-wife is using to help resolve her past due indebtedness. The Department Counsel at the hearing expressed her concern that all of the debts in the SOR are not included in the ex-wife’s repayment plan. A close examination of the documents resolves this concern. The specific debts the ex-wife proposes to resolve through the debt management organization are set forth on pages 12 and 13 of Applicant’s Exhibit E. Comparing the account numbers found in the credit reports (Government Exhibits 2 and 3) with Applicant’s Exhibit E’s pages 12 and 13 shows the following: SOR 1.a. is creditor 7; SOR 1.c. is creditor 3; SOR 1.d. is creditor 5; SOR 1.e. is creditor 2; SOR 1.f. is creditor 9; SOR 1.g. is creditor 11; SOR 1.h. is creditor 4; SOR 1.i. is creditor 1.

The remaining two debts in the SOR are not covered by the repayment plan. The ex-wife admitted responsibility for the \$754.00 debt in SOR 1.b. She testified that, since the debt was less than \$1,000.00, the financial management organization would not handle this debt. She further indicated that she would pay this bill herself. (Transcript at 18.) SOR 1.j. is a \$57.00 long distance telephone bill that the ex-wife is disputing, stating it had been paid. (Transcript at 17.)

The Department Counsel asked the ex-wife, “Even though you accepted responsibility [for the debts] as part of your marriage dissolution, has your husband - - ex-husband offered to help you get this [debt repayment] going faster?” The ex-wife replied, “No, and I don’t expect him to.” (Transcript at 22.) The Applicant testified about his willingness to pay some portion of the debt, which the court ordered his wife to pay. (Transcript at 57.)

The Applicant testified that he did not know about most of the accounts until the divorce. He specifically stated that his ex-wife would forge his name to credit applications. The Applicant

understands that he could formally accuse his ex-wife of forgery. However, for the sake of his son who is still living with his ex-wife, he will not do that. (Transcript at 35, 38-39.)

The Applicant further stated that, in general, he does not use credit except for large purchases. He further stated, and the exhibits confirm, that he has no past due debts other than those in the SOR. (Transcript at 54-55.)

It was obvious during the hearing that a considerable amount of animosity still exists between the Applicant and his ex-wife. The Applicant testified that it is difficult for him to have a discussion with his ex-wife about finances. (Transcript at 54.) I have considered these facts in making a credibility determination with regards to the testimony of each of them.

Mitigation.

The Applicant testified at length about his career in the Coast Guard. He is proud of what he accomplished, while primarily serving at sea. (Transcript at 38-39, 59-60, 62-63.)

The Managing Partner of the Applicant's employer submitted a statement on the Applicant's behalf. He stated that the Applicant has been promoted and received merit raises because of, "His excellent performance and demonstrated interest in ensuring that contractual requirements are met." (Applicant's Exhibit F.)

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 financial problems that demonstrates poor judgment, 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 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 a history of not meeting his financial obligations (Guideline F). Disqualifying Condition E2.A6.1.2.1. applies as there is, “A history of not meeting financial obligations.”

The Applicant, on the other hand, has successfully mitigated the Government's case. The Applicant's ex-wife has admitted that she entered into many of these credit accounts without the Applicant's knowledge, and often by forging his name. She has also agreed to be legally responsible for the debts. Both parties agree that his knowledge of the family's true financial situation when these debts were incurred was minimal, at best. In fact, it is obvious that these financial problems, brought about primarily by the actions of his ex-wife, were a primary cause of the divorce. Mitigating Condition E2.A6.1.3.3. applies as, “The conditions that resulted in the behavior were largely beyond the person's control (e.g., . . . divorce or separation).”

I find that Mitigating Condition E2.A6.1.3.6. also applies to this case. (“The individual initiated a good-faith effort to repay overdue creditors or otherwise resolve debts.”) In making this finding, I have specifically considered the fact that none of the debts have been paid. However, for the following reasons, I find that this is a case where the condition still applies. The state where they live specifically allows for marital debts to be divided between the parties, as here. After their divorce, both the Applicant and his ex-wife acted with the good faith belief that the ex-wife was the only person legally responsible for the debts. However, in fact, “The proposition seems universally settled that a divorce decree incorporating an agreement between divorcing spouses does not affect the rights of third-party creditors.”¹ That being said, the legal agreement of the ex-wife to be solely responsible for the debts has some weight. In addition, she was vehement in stating that she did not expect the Applicant to help her pay the debts off, and she has engaged in actions to pay them off herself. The Applicant and his ex-wife understand that these past due debts exist and, within their abilities, are attempting to resolve them. Based on the totality of the evidence, it is clear that the Applicant has acted responsibly under the particular circumstances of this case.²

In addition, application of the General Factors and the whole person concept is appropriate and supports a decision in the Applicant's favor. The circumstances surrounding the conduct are unique and, in my opinion, will not recur (factor b); there is little to no likelihood or recurrence (factor i); and, under the circumstances, there is no potential for pressure, coercion, exploitation or duress (factor h).

On balance, it is concluded that the Applicant has successfully overcome the Government's case opposing his request for a DoD security clearance. Accordingly, the evidence supports a finding for the Applicant as to the factual and conclusionary allegations expressed in Paragraph 1 of the Government's Statement of Reasons.

¹*Murray v. Ledbetter*, 14 P.3d 492, 501 n.42 (Alaska S. Ct. 2006).

²See ISCR Case No. 03-23511 at 3 (App. Bd. Feb. 15, 2006.)

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.j.: 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