

KEYWORD: Financial

DIGEST: Applicant is a 52-year-old machinist employed by a defense contractor since June 2004. He has a history of not meeting his financial obligations. He has six outstanding debts totaling approximately \$32,304 and \$29,736 of that amount represents child support. Applicant proffered evidence that he has been paying on this child support debt for the past eight years. He continues to owe \$2,568 for five other outstanding delinquent debts. Applicant has not mitigated the financial considerations security concerns. Clearance is denied.

CASENO: 06-07320.h2

DATE: 08/27/2007

DATE: August 27, 2007

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In re:)	
)	
-----)	ISCR Case No. 06-07320
SSN: -----)	
)	
Applicant for Security Clearance)	
)	

**REMAND DECISION OF ADMINISTRATIVE JUDGE
JACQUELINE T. WILLIAMS**

APPEARANCES

FOR GOVERNMENT

James B. Norman, Esq., Department Counsel

FOR APPLICANT

Pro Se

SYNOPSIS

Applicant is a 52-year-old machinist employed by a defense contractor since June 2004. He has a history of not meeting his financial obligations. He has six outstanding debts totaling approximately \$32,304 and \$29,736 of that amount represents child support. Applicant proffered evidence that he has been paying on this child support debt for the past eight years. He continues to owe \$2,568 for five other outstanding delinquent debts. Applicant has not mitigated the financial considerations security concerns. Clearance is denied.

REMAND STATEMENT OF THE CASE

On September 17, 2004, Applicant applied for a security clearance and completed a Security Clearance Application (SF 86).¹ On June 30, 2006, the Defense Office of Hearings and Appeals (DOHA) issued a Statement of Reasons (SOR) to Applicant, pursuant to Executive Order 10865, *Safeguarding Classified Information Within Industry*, dated February 20, 1960, as amended and modified, and Department of Defense Directive 5220.6, *Defense Industrial Personnel Security Clearance Review Program* (Directive), dated January 2, 1992, as amended and modified. The SOR detailed reasons under Guideline F (Financial Considerations) 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 Applicant, and recommended referral to an Administrative Judge to determine whether a clearance should be granted or revoked.

Applicant responded to the SOR allegations in a document sworn to on August 10, 2006 and elected to have his case decided on the written record in lieu of a hearing.² Department Counsel submitted the Government's written case on October 18, 2006. A complete copy of the file of relevant material (FORM)³ was provided to Applicant, and he was afforded an opportunity to file objections and submit material in refutation, extenuation, or mitigation. He had 30 days to respond to the FORM and chose not to respond. The case was assigned to me on December 1, 2006.

On January 31, 2007, I issued a decision denying Applicant a clearance. I concluded Applicant had not mitigated the financial considerations security concerns. On February 15, 2007, Applicant filed a notice of appeal with the Appeal Board. The Chief Department Counsel declined to brief the issue or contest Applicant's appeal. On July 25, 2007, the Appeal Board remanded the case for a new decision, which takes into account Applicant's submission in response to the FORM. In the Appeal Board's decision, the Board indicated that the original file before me, on which I based my decision, contained Applicant's response to the FORM, dated November 17, 2006, which was forwarded to Department Counsel on November 21, 2006.

REMAND FINDINGS OF FACT

Based on the entire record, including Applicant's submission in response to the FORM, I make the following findings of fact:

Applicant is a 52-year-old machinist who has worked for a defense contractor since June 2004. He attended college in September 1976 and was awarded a degree in February 1978. Applicant is married. He divorced his first wife in 1979. The record is devoid of the number of children in his family. He did not list his children on his SF 86.

¹Item 4 (Security Clearance Application, signed September 17, 2004).

²Item 2 (Applicant's Answer, dated August 10, 2006).

³The Government submitted six items in support of the allegations in the SOR.

A May 8, 2006, credit bureau report, which serves as a basis for allegations in the SOR, indicated that Applicant has six delinquent debts, totaling approximately \$32,304. The debts at issue are these:

¶ **1.a/DirectTV/Nationwide (\$86)** This account has been placed for collection. As of May 8, 2006, this debt has not been paid. In his response to the FORM, Applicant did not specifically address this debt but indicated he owed \$201.00 for a delinquent television bill. In his note on November 17, 2006, explaining his finances, he indicated that the television bill was “unpaid,” the amount owed is “\$201.00,” and the explanation “[w]ill be paid by 01/06/07.” In his note with his appeal in March 2007, regarding an explanation of his finances, he lists a debt for a delinquent television account. The status is “unpaid,” amount owed is “\$201.00,” explanation “[w]ill be paid as soon as possible.”⁴

¶ **1.b/DirectTV/RSKMGMTNAN (\$86)** This account has been placed for collection. As of May 8, 2006, this debt has not been paid. *See* ¶ 1.a above.

¶ **1.c/Child Support Enforcement (\$29,736)** This debt is for delinquent child support. Question 34 of his SF 86 stated (*Your Financial Record - Wage Garnishments In the last 7 years, have you had your wages garnished for any reason*). He answered “yes” and noted that in 1998 his paycheck was garnished for child support. Applicant indicated that the balance on this account is now \$27,346.87. He stated that “this account was set up and collected \$50.00 every week for the past 6 years after remaining dormant/settled for 3 years.” “For the past two years, \$65.00 per week has been paid on this balance. (Nonstop, uninterrupted payments have been made for the past 8 years total.)”⁵

¶ **1.d/Medical creditor (\$970)** This account has been placed for collection. As of May 8, 2006, this debt has not been paid. Applicant did not address this debt when he submitted his response to the FORM.

¶ **1.e/Medical creditor (\$1,000)** This account has been placed for collection. As of May 8, 2006, this debt has not been paid. Applicant did not address this debt when he submitted his response to the FORM.

¶ **1.f/Medical creditor (\$426)** This account has been placed for collection. As of May 8, 2006, this debt has not been paid. Applicant did not address this debt when he submitted his response to the FORM.

Applicant has offered proof that he has been paying on his child support debt for the past few years. At the time the SOR was filed, the child support debt was listed as being \$29,736, but has

⁴In his undated response to the FORM, Applicant listed four debts. However, the debts for Fashion Bug and Citifinancial were not mentioned in the SOR.

⁵Applicant’s Appeal, with attachments.

been reduced to \$27,347. In addition, Applicant has \$2,568 in unpaid delinquent debts for five other accounts, as indicated in subparagraphs 1.a, 1.b, 1.d, 1.e, and 1.f.

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 the policy guidance.

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.⁶ The Government has the burden of proving controverted facts.⁷ The burden of proof is something less than a preponderance of evidence.⁸ 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.⁹ Additionally, an applicant has the ultimate burden of persuasion to obtain a favorable clearance decision.¹⁰

No one has a right to a security clearance¹¹ and "the clearly consistent standard indicates that security clearance determinations should err, if they must, on the side of denials."¹² Any reasonable doubt about whether an applicant should be allowed access to sensitive information must be resolved in favor of protecting such sensitive information.¹³ The decision to deny an individual a security

⁶ISCR Case No. 96-0277 (July 11, 1997) at p. 2.

⁷ISCR Case No. 97-0016 (December 31, 1997) at p. 3; Directive, Enclosure 3, ¶ E3.1.14.

⁸*Department of the Navy v. Egan*, 484 U.S. 518, 531 (1988).

⁹ISCR Case No. 94-1075 (August 10, 1995) at pp. 3-4; Directive, Enclosure 3, ¶ E3.1.15.

¹⁰ISCR Case No. 93-1390 (January 27, 1995) at pp. 7-8; Directive, Enclosure 3, ¶ E3.1.15.

¹¹*Egan*, 484 U.S. at 531.

¹²*Id.*

¹³*Id.*; Directive, Enclosure 2, ¶ E2.2.2.

clearance is not necessarily a determination as to the loyalty of an applicant.¹⁴ 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.

CONCLUSIONS

I have carefully considered all the facts in evidence and the legal standards, and I reach the following conclusions.

Under Guideline F, a security concern exists for an individual who is financially overextended. The person 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 unconcerned, negligent, or careless in properly handling and safeguarding classified information. Applicant has a history of financial problems. He has an outstanding debt for child support that had been \$29,736 but has been reduced to \$27,347. Although he has been paying on this debt for the past eight years, there was a period of time when it was dormant and he is attempting to rectify that situation. Although he has been paying on the child support debt, it shows that he has been financially irresponsible in the past in handling this debt. Moreover, there are five other delinquent debts listed on Applicant's credit report totaling approximately \$2,568. He had made no movement toward paying them off. Thus, Financial Considerations Disqualifying Conditions (FC DC) 1 (*a history of not meeting financial obligations*) and FC DC 3 (*inability or unwillingness to satisfy debts*) apply.

Various conditions can mitigate security concerns arising from financial difficulties. Applicant has the burden of presenting evidence to establish mitigating circumstances. In his response to the FORM, he noted that a debt for \$201 for a delinquent television account would be paid by January 2007. However, in March 2007, he sent updated information with his appeal and indicated that this same debt would be paid as soon as possible. Payment of a debt in the future is not a good faith effort to pay a debt. Applicant has not provided any evidence regarding why these five debts are still delinquent. Moreover, in his submission in March 2007, he failed to provide information on three medical debts totaling \$2,396 that were listed in the SOR. Consequently, Financial Considerations Mitigating Conditions (FC MC) 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 4 (*the person has received or is receiving counseling for the problem and there are clear indications that the problem is being resolved or is under control*), and FC MC 6 (*the individual initiated a good-faith effort to repay overdue creditors or otherwise resolve debts*) do not apply.

I have considered all the evidence in the case. I have also considered the "whole person" concept in evaluating Applicant's risk and vulnerability in protecting our national interests. Applicant is financially irresponsible when it comes to paying his debts. He is to be commended for diligently paying child support for the past eight years. However, he has five other debts that have not been paid. Moreover, Applicant failed to explain why his financial situation is preventing him from paying these delinquent debts. In balancing all the information of record, I conclude Applicant has not mitigated

¹⁴Executive Order 10865 § 7.

the security concerns arising from his financial difficulties. Based on the evidence of record, it is not clearly consistent with the national interest to grant Applicant a security clearance.

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:

Paragraph 1. Guideline F (Financial Considerations):	AGAINST APPLICANT
Subparagraph 1.a:	Against Applicant
Subparagraph 1.b:	Against Applicant
Subparagraph 1.c:	For Applicant
Subparagraph 1.d:	Against Applicant
Subparagraph 1.e:	Against Applicant
Subparagraph 1.f:	Against Applicant

DECISION

In light of all of the circumstances in the case, it is not clearly consistent with the national interest to grant or continue a security clearance for Applicant. Clearance is denied.

Jacqueline T. Williams
Administrative Judge