

KEYWORD: Financial

DIGEST: Applicant, a 14 year employee of a major defense contractor with 26 year of Navy service, mitigated security concerns relating to delinquent debts by showing that three delinquent debts which raised security concerns are being resolved through regular payment to the creditors, including the IRS for delinquent taxes. Applicant’s career history and credible testimony justified application of mitigating conditions and whole person analysis. Clearance is granted.

CASENO: 06-11957.h1

DATE: 04/30/2007

DATE: April 30, 2007

In Re:)	
)	
-----)	
SSN: -----)	ISCR Case No. 06-11957
)	
Applicant for Security Clearance)	
)	

**DECISION OF ADMINISTRATIVE JUDGE
CHARLES D. ABLARD**

APPEARANCES

FOR GOVERNMENT

Melvin A. Howry, Esq. , Department Counsel

FOR APPLICANT

Pro Se

SYNOPSIS

_____ Applicant, a 14 year employee of a major defense contractor with 26 year of Navy service, mitigated security concerns relating to delinquent debts by showing that three delinquent debts which raised security concerns are being resolved through regular payment to the creditors, including the IRS for delinquent taxes. Applicant's career history and credible testimony justified application of mitigating conditions and whole person analysis. Clearance is granted.

STATEMENT OF CASE

_____ On November 9, 2006, the Defense Office of Hearings and Appeals (DOHA), pursuant to Executive Order 10865, *Safeguarding Classified Information Within Industry*, 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, issued a Statement of Reasons (SOR) to 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 Applicant. DOHA recommended the case be referred to an administrative judge to determine whether a clearance should be granted, continued, denied, or revoked.

On November 29, 2006, Applicant responded to the SOR allegations and requested a hearing. The case was assigned to another judge on December 18, 2006, and re-assigned to me on January 5, 2007. A notice of hearing was issued on January 24, 2007, for a hearing on February 28, 2007, and held that day. The government offered in evidence four exhibits and Applicant offered ten. All were admitted. Applicant and his wife testified. The transcript was received on March 12, 2007.

FINDINGS OF FACT

_____ Applicant admitted two of the five SOR allegations but denied the other three financial allegations with explanatory information for all. After a complete review of the record, I make the following additional findings of fact:

Applicant is a 62-year-old employee of a defense contractor where he has been employed as a technical support specialist for naval exercises during the past 14 years. He has held a security clearance for 40 years since 1966. He served on active duty with the Navy for 26 years and retired as a senior chief petty officer. He has been married for 40 years and has three grown children.

The following is an analysis of the delinquent debts alleged in the SOR referenced by their number and their current status:

1. a.: IRS lien filed in 2001 for \$123,425 related to tax deficiencies for 1994-1997 and 1999. Applicant was aware of the deficiencies on taxes and that some payments had been made for several years from tax refunds owed to him. He did not receive the notice of the lien and was unaware of it until 2004 when it showed up during the investigation for his clearance. His wife who usually handled the bills was to work with IRS to resolve it but did not do so. He

established an installment agreement in July 2006 (Exh. A). Payments of \$500 per month have been and are being made through checks (Exh. K) and payroll deductions to resolve the deficiency.

1.b: Credit card debt of \$4,067 settled for \$2,500 (Exh. B) and payments have been made of \$375 for four months. Applicant has decided to pay the full amount owed and not the settlement figure in an effort to establish better credit rating. He has agreed with creditor to do so. He will pay \$300 per month until total amount is paid.

1.c.: Applicant questioned credit card debt of \$1,997 on credit report and determined debt was not his (Exh. C). Government withdrew allegation at the hearing (Tr. 80-81).

1.d.: Student loan debt of \$6,470 was incurred in 1992 and 1993. The debt was half of the student loan of Applicant's son which both agreed to pay. The debt was deferred while Applicant himself attended college and graduated in 2002. It was deferred further until September, 2006 (Exh. D). Payments of \$135 per month are being made through payroll deductions from Applicant's salary.

1.e.: Credit card debt of \$6,353 has been paid in full for some time (Exh. E). Government withdrew allegation at the hearing (Tr.80-81).

Applicant was a late arrival for college education. He did not attend college until he was in his 50's graduating in 2002 with a business degree. It was during school period that the family debts grew since he was working full time while he attended school and paying tuition. He did not have a student loan. During this same period his wife's employment and income ceased.

Applicant's monthly income is now \$2,400 (Exh. J) since he received a promotion in September 2006 that will provide an additional \$200 per month (Exhs. I and J). He receives \$1,000 per month from military retirement and \$218 per month from Veterans Administration for a partial disability. His wife is not employed except for daycare provided for her grandchildren for which she receives \$500 per month. He has a 401K valued at \$50,000.

Applicant is well regarded by his company for his work as a deserving employee and quality performer (Exhs I and J).

POLICIES

"[N]o one has a 'right' to a security clearance." *Department of the Navy v. Egan*, 484 U.S. 518, 528 (1988). As Commander in Chief, the President has "the authority to control access to information bearing on national security and to determine whether an individual is sufficiently trustworthy to occupy a position that will give that person access to such information." *Id.* at 527.

An evaluation of whether the applicant meets the security guidelines includes consideration of the following factors: (1) the nature, extent, and seriousness of the conduct; (2) the circumstances surrounding the conduct; (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 behavioral changes; (7) the motivation for the conduct; (8) the potential for pressure, coercion, exploitation, or duress; and (9) the likelihood of continuation or recurrence. Directive, ¶ E2.2.1. Security clearances are granted only when “it is clearly consistent with the national interest to do so.” Executive Order No. 10865 § 2. *See* Executive Order No. 12968 § 3.1(b). Initially, the Government must establish, by something less than a preponderance of the evidence, that conditions exist in the personal or professional history of the applicant which disqualify, or may disqualify, the applicant from being eligible for access to classified information *See Egan*, 484 U.S. at 531.

The applicant then bears the burden of demonstrating it is clearly consistent with the national interest to grant or continue a security clearance. “Any doubt as to whether access to classified information is clearly consistent with national security will be resolved in favor of the national security.” Directive, ¶ E2.2.2. “[S]ecurity clearance determinations should err, if they must, on the side of denials.” *Egan*, 484 U.S. at 531.

CONCLUSIONS

Upon consideration of all the facts in evidence, and after application of all appropriate adjudicative factors, I conclude the following with respect to all allegations set forth in the SOR:

Applicant’s delinquent debts prompted the allegation of security concerns under Guideline F since an individual who is financially overextended is at risk of having to engage in illegal acts to generate funds. (AG ¶ 18) Conditions that could raise a security concern and may be disqualifying include a history of not meeting financial obligations (AG ¶ 19 c), and evidence of inability or unwillingness to satisfy debts (AG ¶ 19 a).

Mitigating Conditions (MC) might include the fact that the person has initiated a good faith effort to repay overdue creditors or otherwise resolve debts (AG ¶ 20 d). In view of the fact that the government withdrew two of the five delinquent debt allegations and two of the remaining are being paid, the most serious concerns the IRS deficiency that resulted in the filing of a tax lien. That debt is also being resolved although Applicant candidly admits he failed to resolve it in a timely manner thinking that his wife was handling the matter. When he realized that she was not taking care of it, he did so. They had a reasonable belief that it was being resolved through the overpayments from other tax years. They presented credible testimony that they were unaware of the lien probably occasioned by moving their residence about the time it would have been served on them.

Mitigating conditions apply since the problems have now been resolved to the satisfaction of all the creditors, and he is resolving the one debt that remain through a payment program now in effect. An applicant is not required to prove that all delinquent debts are resolved to be granted a security clearance, but only that efforts be made to resolve the debts and to show that the matters are being diligently pursued with an ability to resolve them. The documentation submitted by Applicant establish his good faith efforts to resolve the debts.

The “whole person” concept recognizes we should view a person by the totality of their acts and omissions. Each case must be judged on its own merits taking into consideration all relevant circumstances, and applying sound judgment, mature thinking, and careful analysis. Applicant

