

KEYWORD: Financial; Personal Conduct

DIGEST: Applicant incurred significant, unpaid debt when she used credit cards to finance medical treatment for her uninsured, alcoholic husband. She often works two jobs, which pay her a modest income. She lives within her financial means. She has mitigated the government's concerns about her finances under the whole person concept as her unpaid debt belongs to her estranged husband. The government did not establish that she intentionally falsified her answers on her SF-85P. Eligibility for a position of trust is granted.

CASENO: 06-15034.h1

DATE: 04/30/2007

DATE: April 27, 2007

In Re:)	
)	
)	
-----)	ISCR Case No. 06-15121
SSN: -----)	
)	
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 mitigated financial security concerns relating to delinquent debts arising from family debts incurred in 2002 and 2003 by completion of bankruptcy proceedings in 2006. He has re-financed a motorcycle debt on which he is making regular payment. All other debts have been satisfied. Applicant has held a security clearance for nearly 30 years both as a civilian and during 18 years of active duty in the Navy without incident. Clearance is granted.

STATEMENT OF CASE

_____On October 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 3, 2006, Applicant responded to the SOR allegations and requested a hearing. The case was assigned to another judge on December 21, 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 27, 2007, and held that day. The government offered in evidence six exhibits and Applicant offered seven. All were admitted. The transcript was received on March 5, 2007.

FINDINGS OF FACT

_____Applicant admitted the specifics of all of the SOR allegations relating to bankruptcy but denied the three allegations about specific debts. After a complete review of the record, I make the following additional findings of fact:

Applicant is a 46-year-old employee of a defense contractor where he has been employed for ten years as an electronic security systems technician. On May 14, 2004, he filed for Chapter 13 bankruptcy for debts of approximately \$20,000 incurred in 2002 and 2003. After making payments of \$1,100 per month for nearly two years his bankruptcy was converted to Chapter 7 on July 25, 2006, and the balance of his debts were discharged on October 24, 2006 (Exh. A). He took several part time jobs during this period to be able to make the bankruptcy payments. He was advised by a bankruptcy attorney during all these steps. He believed at the time he engaged those services that he was to receive credit counseling but instead was advised to file bankruptcy which he now thinks was unnecessary in view of his assets and income and regrets having done so. His initial filing under Chapter 13 was because his income did not qualify for Chapter 7. Two years later after making payments, his expenses rose because of payments he was making on a home his wife had purchased and counsel advised him that, as a result, he was qualified to convert to a Chapter 7 to eliminate the

balance of what was then owed. He did so.

Applicant has been divorced twice and re-married in 2003. He has two daughters from former marriages. One is a minor for whom he pays child support. In 2002 he was behind on those payments but is now current. The second divorce was a principal reason for his debt problems arising from loss of a joint income, division of property, and obligations he assumed for his former wife. His monthly salary is \$5,000 from his employer and an additional \$1,000 from his military retirement. His assets are nearly \$450,000 (Exh. C).

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

1. Par. 1.a.: Credit card debt of \$2,753 taken out with former wife and included in the bankruptcy. Payments were made during Chapter 13 proceedings and balance discharged in Chapter 7.
2. Par. 1.b: Debt to Navy Federal Credit Union for \$5,970 for motorcycle. This debt was not in bankruptcy and was re-financed in September 2006 (Exh. B) with payments required of \$169 per month but actual payments of \$300 to \$500 per month have been made (Exh. E).
3. Par. 1.c.: Debt of \$4,064 for a motor home that was re-possessed after his second divorce. This amount was the difference in the balance owed on the home and amount recovered by the creditor in repossession. This was included in bankruptcy and balance discharged.

The last two allegations (d) and (e) in the SOR concern the facts related to the filing of the Chapter 13 and conversion to Chapter 7.

One other repossession was acknowledged at Question 35 and 38 of his SF 86. This was for a truck on which Applicant was co-signer on a note with his son who used the vehicle and had been making payments. The son defaulted on payments and the truck was re-possessed without Applicant's knowledge. The son died and Applicant included this debt of \$7,000 in his bankruptcy.

Applicant is well regarded by his employer for his work as a well-motivated, competent, and reliable performer (Exh. D). He has held a security clearance since 1977 when he was first on active duty with the Navy. He took early retirement after 18 years as an E5, with an honorable discharge and retirement pay.

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).

While Applicant a Chapter 7 bankruptcy that was discharged only in 2006, he paid on those debts while the debts were part of a Chapter 13. His present income indicates that he has sufficient assets and income to avoid future financial problems.

Mitigating conditions apply since the problems have now been resolved to the satisfaction of all the creditors with the ability to resolve the one debt that remain through a payment program 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. From the documentation submitted by Applicant, I have no difficulty in making that determination.

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 established that he is a hard-working professional. His debts accumulated but he has resolved all of them satisfactorily and has the financial means to remain out of debt.

In all adjudications the protection of our national security is of paramount concern. Persons who have access to classified information have an overriding responsibility for the security concerns of the nation. The objective of the security clearance process is the fair-minded, commonsense assessment of a person's trustworthiness and fitness for access to classified information. Applicant has held a security clearance for 30 years with no problems. He holds a responsible position and is a respected employee of his company. He has had some financial problems but the amounts in question were not extensive compared to his annual income and his assets. Also, they are not now and have not been so great as to create any significant potential for pressure that would give rise to security concerns. He made some errors of judgment based on professional advice he received but might have resolved the financial problems without the need for bankruptcy.

After considering all the evidence in its totality, I conclude that a security clearance should be granted.

FORMAL FINDINGS

Formal findings as required by the Directive (Par. E3.1.25) are as follows:

_____	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

DECISION

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

Charles D. Ablard
Administrative Judge