

KEYWORD: Financial

DIGEST: Applicant has mitigated security concerns over his financial problems by his continuing and ongoing efforts to resolve the debts that resulted from his efforts to fund his children's college education through credit cards. He has borrowed from his 401 (k) and used the proceeds from the sale of his house to resolve the majority of his debts; he has developed no new debts. Significantly, he has demonstrated his outstanding performance and character on the job where he is seen as a person of excellence and integrity. Overall, he has taken several steps to reform his conduct and stated an intent to resolve all his debts; so he demonstrated sufficient positive changes in behavior to mitigate financial concerns. Clearance is granted.

CASENO: 06-15364.h1

DATE: 09/06/2007

DATE: September 6, 2007

In Re:)	
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-----)	ISCR Case No. 06-15364
SSN: -----)	
)	
Applicant for Security Clearance)	

**DECISION OF ADMINISTRATIVE JUDGE
KATHRYN MOEN BRAEMAN**

APPEARANCES

FOR GOVERNMENT

John Bayard Glendon, Esquire, Department Counsel

FOR APPLICANT

Pro Se

SYNOPSIS

Applicant has mitigated security concerns over his financial problems by his continuing and ongoing efforts to resolve the debts that resulted from his efforts to fund his children's college education through credit cards. He has borrowed from his 401 (k) and used the proceeds from the sale of his house to resolve the majority of his debts; he has developed no new debts. Significantly, he has demonstrated his outstanding performance and character on the job where he is seen as a person of excellence and integrity. Overall, he has taken several steps to reform his conduct and stated an intent to resolve all his debts; so he demonstrated sufficient positive changes in behavior to mitigate financial concerns. Clearance is granted.

STATEMENT OF THE CASE

The Defense Office of Hearings and Appeals (DOHA) issued a Statement of Reasons (SOR) to the Applicant on November 17, 2006. The SOR detailed reasons why the Government could not make the preliminary positive finding that it is clearly consistent with the national interest to grant or continue a security clearance for the Applicant.¹ The SOR alleged specific concerns over Financial Considerations (Guideline F) in paragraph 1 based on the revised Adjudicative Guidelines² issued on December 29, 2005, and implemented by the Department of Defense, to be effective September 1, 2006. Applicant responded to these SOR allegations in a notarized Answer dated December 11, 2007. He requested a hearing.

Department Counsel on March 16, 2007, indicated the case was ready to proceed. The matter was assigned to me on March 19, 2007. Subsequently, a mutually convenient date for hearing was agreed to; and a Notice of Hearing, issued on March 30, 2007, set the matter for May 17, 2007, at a location near where Applicant works and lives.

At the hearing the Government offered seven exhibits (Exhibit 1-7), which were admitted into evidence. Applicant testified, and called two witnesses. Applicant offered three documents (Exhibits A - C), which were admitted into evidence without objection. I granted Applicant two weeks to submit additional evidence to which the Government consented, and Department Counsel had one week to review it. (TR 53; 69-70) Applicant submitted his evidence on May 30, 2007. (Exhibit D) Department counsel responded on June 5, 2007, that he had no objection; however, he noted that several of the documented payments of debts did not relate to SOR allegations. The document was admitted into evidence and the record closed on June 5, 2007. The transcript (TR) was received on June 6, 2007.

FINDINGS OF FACT

¹ This procedure is required by Executive Order 10865, as amended, and Department of Defense Directive 5220.6, dated January 2, 1992 (Directive), as amended by Change 4, April 20, 1999.

² Applicant did receive a copy of the DoD Directive 5220.6 which was sent with his Statement of Reasons (SOR).

After a complete and thorough review of the evidence in the record, and upon due consideration of that evidence, I make the following Findings of Fact:

Applicant, 61 years old, has worked for a defense contractor from September 1977 to present as a maintenance supervisor. He completed an Electronic Questionnaire for Investigations Processing (e-QIP) (SF 86) to obtain a security clearance in August 2005. He previously was granted a Secret clearance. He received a certificate from a vocational technical education school in December 1972. (Exhibit 1) Applicant has served in the military from 1962 to 1966. (Exhibit 1) Applicant stated he has had a clearance since 1977. (Exhibit 3)

Applicant married in 1979. He has four children born ages 19, 21, 26 and 27. (Exhibit 1; TR 36, 50-51) He and his wife were divorced in May 2006. (TR 45) She has remarried, so he has no future financial obligations to her. They have no children under 18. (TR 46)

Finances

Applicant's financial problems began when he had two children in college, and he started financing their college expenses and his family expenses with credit cards. The interest became so onerous that he could not keep up even with the interest in 2003. He then got a loan on his 401(k) to address his financial issues. (TR 38, 40; 61-62) He currently has only one child financially dependent on him. (TR 36) He later explained that this child is now living independently. (TR 51)

Applicant explained on his e-QIP that he had several large credit card debts he was unable to pay and defaulted. He reported owing \$11,199.54 for one credit card, \$10,000 for a second credit card, and \$3,645 on a third debt. He reported a residential lien of \$5,000 placed in July 2003. He had cleared three debts by August 2005 and reported he had four more to pay. His wages were garnished \$1,000 for back taxes in July 2001. He is still making payments on his federal taxes in 2007. (Exhibit 1; TR 65-67) At the time of his divorce, he considered filing for bankruptcy but chose not to do so. (TR 69) The current status of these debts is as follows:

SOR ¶	TYPE OF DEBT (date)	AMOUNT	CURRENT STATUS
1.a.	Credit Card acquired in 1985 and charged off. (2000)	\$12,248.00	Applicant stated he paid it off in a settlement in August 2003 by taking a \$40,000 loan on his 401 (k). (Answer; Exhibits 3, 4, 6; Exhibits C, TR 41; 46-49)
1.b.	Credit Card charged off. (2001)	\$11,199.00	Applicant stated he and his wife split the debt; he paid it in September 2006 with proceeds from the sale of the house. (Answer; Exhibits 3, 4, 6; Exhibits C, TR 42; 49-52)

1.c.	Collection for a financial group. (2004)	\$ 10,546.00	Initially, Applicant stated he paid it of in a settlement in August 2003. (Answer; Exhibits 3, 4, 6; Exhibits C, TR 41; 54-55-56) He then documented a settlement payment of \$7,250 in October 2006. (Exhibit D)
1.d.	Collection for account sold to another collection agency. (2001)	\$ 3,698.00	Unpaid. He testified that a settlement offer is pending. He hopes to begin payments in summer 2007. (Answer; TR 42)
1.e.	Collection for charged off account. (2001)	\$3,645.00	Unpaid. He planned to use the proceeds of his house to settle this account. In May 2007 he was not sure who owned this account as it had been sold to a different collection company. (Answer; Exhibit 3; TR 44; 59-61; 68)
1.f.	Collection for charged off account. (2001)	\$ 6,119.00	Paid. The bank obtained a judgment and sold the debt to a collection agency who placed a lien on the home; the lien was paid when they sold the house in September 2006. (Answer; Exhibit 3; Exhibit C; TR 44-45; 62-63)

Applicant reported on a Personal Financial Statement in April 2006 that his monthly net income of \$3,800 was expended on \$1,350 in expenses and \$1,673 in debt. He had assets of \$110,000 for his home and a 401(k) account worth \$135,000. However, he had borrowed against it to make some debt payments. In order to repay the loan on his 401(k) he makes a \$700-800 monthly payment. (Exhibit 2; TR 58-59) In September 2006 he stated that his “debt situation has stabilized.” All of the debts stemmed from 2000 to 2004 period; he has not incurred any other non-payment of debts since that period. (Exhibit 3) His May 2007 budget reflected monthly income of \$3,130, expenses of \$2,867.22 (including \$600 per month average costs for his daughter’s university tuition and \$775 for her other living expenses) with \$263 remainder. (Exhibit A)

Reference

The site manager has known Applicant since October 1986 and has been his direct supervisor during all of his time at the site. Applicant exercises technical control over maintenance for three site locations and supervises a staff of six engineers and technicians. The supervisor attested that all of his experiences with Applicant have been positive. He is directly responsible for initiatives that have saved the military hundreds of thousands of dollars because of his development of techniques which have improved maintenance activities. Under his leadership, "his staff has reached the highest levels of productivity and professionalism." He is well respected by the military community as a leading expert and has earned the trust and respect of the military customer, peers and subordinates. For example he was entrusted to hand-carry extremely fragile \$700,000 camera components between the vendor and the sites, including international travel. His "honesty, integrity and loyalty have been above reproach." (Exhibit B)

The program manager for the program where Applicant works testified on Applicant's behalf. The manager has been in the program for ten years and oversees three sites with sixty people. Previously he served in the military for 21 years and has a secret clearance or higher throughout his entire 30-year career. This manager has known him for ten years and attested to Applicant's important and responsible position in overseeing maintenance for a multi-million dollar system. "And without his expertise, we would have suffered in terms of our ability to keep the system operational when it was needed to perform." He is the only contractor approved to carry expensive replacement cameras internationally. He serves in a "highly trusted position involving immense responsibilities and of very important significance to our nation." This manager oversees the evaluation process and reported that applicant consistently gets outstanding evaluations which are given to only the top people in the program. He reported Applicant is "up there right at the top." He recommended him for a position of trust. (TR 19-26)

A military officer who is the detachment commander where Applicant works also testified on Applicant's behalf. He does the daily quality assurance evaluations of the contractor and has had a top secret clearance since 2000. He has daily interactions with Applicant on site operations. He supervises and evaluates his performance for the government and has given him an "excellent" rating, the "highest rating possible." He testified that Applicant has demonstrated "absolute integrity on the issues regarding accountability." He recommended that Applicant's security clearance be continued. (TR 28-33)

POLICIES

Enclosure 2 of the Directive sets forth adjudicative guidelines to consider in evaluating an individual's security eligibility which are divided into conditions that could raise a security concern and may be disqualifying and conditions that could mitigate security concerns. In deciding whether to grant or continue an individual's access to classified information, the administrative judge considers the evidence as a whole in evaluating this case and weighs relevant revised Adjudication Guidelines: the mere presence or absence of any adjudication policy condition is not decisive.

The responsibility for producing evidence initially falls on the Government to demonstrate that it is not clearly consistent with the national interest to grant or continue Applicant's access to classified information. Then the Applicant presents evidence to refute, explain, extenuate, or mitigate in order to overcome the doubts raised by the Government, and to demonstrate

persuasively that it is clearly consistent with the national interest to grant or continue the clearance. Under the provisions of Executive Order 10865, as amended, and the Directive, a decision to grant or continue an applicant's security clearance may be made only after an affirmative finding that to do so is clearly consistent with the national interest. In reaching the fair and impartial overall common sense determination, the Administrative Judge may draw only those inferences and conclusions that have a reasonable and logical basis in the evidence of record.

Section 7 of Executive Order 10865 specifically provides industrial security clearance decisions shall be “in terms of the national interest and shall in no sense be a determination as to the loyalty of the applicant concerned.” The decision to deny an individual a security clearance is not necessarily a determination as to the allegiance, loyalty, and patriotism of an applicant.³ 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 security clearance.

CONCLUSIONS

Guideline F: Financial Considerations

¶ 18. *The Concern.* Failure or inability to live within one’s means, satisfy debts, and meet financial obligations may indicate poor self-control, clack of judgment, or unwillingness to abide by rules and regulations, all of which can raise questions about an individual’s reliability, trustworthiness and ability to protect classified information. An individual who is financially overextended is at risk of having to engage in illegal acts to generate funds. Compulsive gambling is a concern as it may lead to financial crimes including espionage. Affluence that cannot be explained by known sources of income is also a security concern. It may indicate proceeds from financially profitable criminal acts.

The government provided substantial evidence of Applicant’s financial problems reflected by his accumulating substantial credit card debts that have persisted. Consequently, Financial Considerations Disqualifying Condition (DC), AG ¶ 19(a), (*inability or unwillingness to satisfy debts*) and AG ¶ 19(c), (*a history of not meeting financial obligations*) apply.

With the government’s case established, the burden shifted to Applicant to present evidence of refutation, extenuation, or mitigation to overcome the case against him. Applicant’s debts grew out of his desire to fund his children’s college education and his poor judgment in trying to finance those expenses through credit cards. While he has a good income and limited expenses, he has struggled over several years to resolve his credit problems. In 2003 he took out a substantial loan from his 401(k) account to begin to resolve these debts rather than filing for bankruptcy. In 2006 he sold his family home and used some of those proceeds to resolve several other debts. While he has not erased all of his debts, he has demonstrated a conscientious and consistent approach to addressing and resolving the debts as money allows. He still has financial limitations from providing substantial resources to a child who remains in college. However, in May 2007 he reported she was financially independent. Overall, he has demonstrated his tenacity and

³Executive Order No. 10865 § 7.

persistence in resolving these debts.

Consequently, Applicant has established a case in mitigation. Applicant has demonstrated his responsibility by paying the majority of his debts and stating his intent to pay the remaining debts. He has developed a plan for how he might pay all his debts as his daughter's college expenses diminish. Thus, he meets AG ¶ 20(d), (*the individual initiated a good-faith effort to repay overdue creditors or otherwise resolve debts*). He has a professional and responsible position with a good income, and has limited his personal expenses in order to resolve these dated debts. To his credit, he has not developed any new debts.

While Applicant provided no evidence of his seeking counseling⁴ for these financial problems, he developed his own plan and made substantial steps to turn around his financial issues. He did not try to establish that the debts were due to conditions beyond his control⁵ even though he subsequently divorced. AG ¶ 20(a)⁶ does apply as the circumstances of his wanting to use his resources to fund his children's college education has changed as all his children, but one, are now financially independent.

Whole Person Analysis

Having considered both the record and Applicant in light of the "whole person" concept, I conclude he is an earnest person who has made many efforts to reform his financial practices and has paid off the majority of his debts. He has demonstrated amply his intent to resolve them all. Also, he has changed his financial practices and reduced his expenses in order to resolve his debts. He has developed a budget and understands where his money goes. The potential for pressure, coercion, exploitation, or duress is slight as he has a stable and impressive employment history. Notably, three key people at his site praise him highly and have confidence in his trustworthiness and good character. His direct supervisor since 1986 praised his performance and commended his ability to save hundreds of thousands of dollars with his innovative techniques to improve maintenance activities. He also noted Applicant's honesty, integrity and loyalty. The program manager who has known him for ten years attested to the importance of Applicant's expertise and attested to his outstanding performance ratings in a "highly trusted position." He recommended him for a security clearance. The military officer at the site who does the daily quality assurance evaluations commended his excellent performance and his integrity. He also recommended Applicant for a security clearance. Based on these assessments of three top officials who know Applicant well, I conclude favorably for him based on a whole person assessment. As he is earnestly working to resolve his financial problems, the likelihood of new debts and related

⁴ AG ¶ 20(c), (*the person has received or is receiving counseling for the problem and/or there are clear indications that the problem is being resolved or is under control*).

⁵ AG ¶ 20(b), (*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) and the individual acted responsibly under the circumstances*).

⁶ AG ¶ 20(a) *the behavior happened so long ago, was so infrequent, or occurred under such circumstances that it is unlikely to recur and does not cast doubt on the individual's current reliability, trustworthiness, or good judgment.*

problems is low.

After weighing the disqualifying and mitigating conditions, and all the facts and circumstances, in the context of the whole person, I conclude he has mitigated the security concerns pertaining to financial considerations. I rule for Applicant on subparagraphs 1.a. through 1.f. under SOR Paragraph 1.

FORMAL FINDINGS

After reviewing the allegations of the SOR in the context of the Adjudicative Guidelines in Enclosure 2 and the factors set forth under the Adjudicative Process section, I make the following formal findings:

Paragraph 1. Guideline F: FOR APPLICANT

Subparagraph 1.a through 1.f. For 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. Clearance is granted.

Kathryn Moen Braeman
Administrative Judge