

KEYWORD: Financial

DIGEST: Applicant mitigated financial security concerns relating to delinquent debts and his Chapter 13 bankruptcy discharged in 2000. He was in bankruptcy process since 1997, and incurred additional debt that became delinquent during a one year period of unemployment in 2002 after the bankruptcy was completed. Clearance is granted.

CASENO: 06-17919.h1

DATE: 03/30/2007

DATE: March 30, 2007

In Re:)	
)	
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SSN: -----)	ISCR Case No. 06-17919
)	
Applicant for Security Clearance)	
)	

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

APPEARANCES

FOR GOVERNMENT

Eric H. Borgstrom, Esq., Department Counsel

FOR APPLICANT

Pro Se

SYNOPSIS

____ Applicant mitigated financial security concerns relating to delinquent debts and his Chapter 13 bankruptcy discharged in 2000. He was in bankruptcy process since 1997, and incurred additional

debt that became delinquent during a one year period of unemployment in 2002 after the bankruptcy was completed. Clearance is granted.

STATEMENT OF CASE

_____ On August 29, 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 6, 2006, Applicant responded to the SOR allegations and requested a hearing. The case was assigned to me on January 8, 2007. A notice of hearing was issued on January 10, 2007, for a hearing on January 26, 2007, and held that day. The government offered in evidence six exhibits and Applicant offered seven. All were admitted. The transcript was received on February 5, 2007. The record was left open until March 2, 2007, for the submission of additional materials. Two post-hearing submissions were received and admitted without objection. The first consisted of seven items and the second of three.

FINDINGS OF FACT

_____ Applicant admitted the specifics of all of the SOR allegations relating to bankruptcy and eight delinquent debts of almost \$10,000. After a complete review of the record, I make the following additional findings of fact:

Applicant is a 45-year-old employee of a defense contractor where he has been employed since December 2004 as a security guard. In 1997 he filed for Chapter 13 bankruptcy and after a number of payments under a plan for \$9,000 in debts, his bankruptcy was converted to Chapter 7 in April 1999, and discharged in March 2000 (Exh. F). Since then he was unemployed for almost a year in 2002 during which time other debts accumulated and became delinquent leading to this matter.

Applicant was divorced in 2002 and remarried in 2003. His annual salary is \$26,000 and his wife's is \$35,000. They work for the same government contractor. He has four children two of whom are adults by his first wife and two small children by his second wife.

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

1. Par. 1.a.: Bankruptcy filed in 1997 and discharged in 2000.
2. Par. 1.b: Tax lien for \$167 filed in 1998. Exh. B indicates that there is no outstanding tax lien.
3. Par. 1.c.: Credit card debt of \$1,823. Payments of \$60 per month made over a year reducing debt to \$800 (Exh. G and Exhs. B and C of Second Post-Hearing Submission).
4. Par. 1.d.:Card debt for \$4,021. Settled for less and payments made of \$50 per month (Exh. E).
5. Par. 1.e.:Credit card debt of \$1,883. Applicant erroneously believed it was included in bankruptcy but is now paid under a settlement agreement (Exhs. B and C. of Second Post Hearing Submission).
6. Par. 1.f.: Credit card debt of \$1,089. Government stipulated debt has been paid (Exh. C).
7. Par. 1.g.:Credit card debt of \$628. Paid in full (Exh. D).
8. Par. 1.h.:Account for \$56 dental bill and government stipulated that it had been paid (Tr. 50).

Applicant is well regarded by his company for his work as a well-motivated, competent performer who meets objectives (Exhs. F, Second Post Hearing Submission). He is active in his church and tithes regularly. He wife and he have a budget plan to which they adhere. He does not now have a credit card. He and his wife have rental payments with a housing facility that bases the payments on their income. He has modest auto payments. He recently received a \$5,000 tax refund which permits him to settle in full the remaining accounts on which he is making payment.

Applicant served on active duty with the Army for ten years and was discharged as an E 5. He hoped to stay in the Army but was discharged for unsatisfactory performance.

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. (E2.A6.1.1.) Conditions that could raise a security concern and may be disqualifying include a history of not meeting financial obligations (E2.A6.1.2.1.), and evidence of inability or unwillingness to satisfy debts. (E2.A6.1.2.3.) Mitigating Conditions (MC) might include the fact that the person has initiated a good faith effort to repay overdue creditors or otherwise resolve debts. (E2.A6.1.3.6.)

While Applicant had one bankruptcy that was discharged seven years ago, he incurred other debts because of his unemployment. He now has changed his practices regarding budgeting and does not use credit cards, which led to his recent problems. He is a responsible family man.

Mitigating conditions apply since the problems have now been resolved to the satisfaction of nearly all the creditors with the ability to resolve those that remain through payment programs 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.

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.

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
	Subparagraph 1.f.:	For Applicant
_____	Subparagraph 1.g.:	For Applicant
	Subparagraph 1.h.:	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