

KEYWORD: Financial; Personal Conduct

DIGEST: Applicant, an electrician employed by a defense contractor, mitigated financial security concerns arising from bankruptcy filed in 1996 and, after two re-filings, discharged in 2004, a state tax lien paid in 2005, and a medical bill paid in 2006. Also mitigated were personal conduct allegations relating to his failure to report the three financial matters on his security clearance application (SF 86) in 2004. He regarded the bankruptcy as over seven years old and outside the reporting requirement. He did not know of the other two debts until after the SF 86 filing. Clearance in granted.

CASENO: 06-19985.h1

DATE: 05/31/2007

DATE: May 31, 2007

In Re:)	
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-----)	ISCR Case No. 06-19985
SSN: -----)	
)	
Applicant for Security Clearance)	
)	

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

APPEARANCES

FOR GOVERNMENT

Eric H. Borgstrom, Esq., Department Counsel

FOR APPLICANT

Joseph C. Rullo, Sr., Personal Representative

SYNOPSIS

_____Applicant, an electrician employed by a defense contractor, mitigated financial security concerns arising from bankruptcy filed in 1996 and, after two re-filings, discharged in 2004, a state tax lien paid in 2005, and a medical bill paid in 2006. Also mitigated were personal conduct allegations relating to his failure to report the three financial matters on his security clearance application (SF 86) in 2004. He regarded the bankruptcy as over seven years old and outside the reporting requirement. He did not know of the other two debts until after the SF 86 filing. Clearance in granted.

STATEMENT OF CASE

_____On November 21, 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, and subject to the revised Adjudicative Guidelines effective September 1, 2006, 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 December 12, 2006, Applicant responded to the SOR allegations and requested a hearing. The matter was assigned to me on February 12, 2007. A notice of hearing was issued on March 2, 2007, for a hearing on March 22, 2007, and held that day. The government offered 15 exhibits. Applicant offered none into evidence at the hearing but provided five in a post hearing submission on May 23, 2007. All of the offered exhibits were admitted in evidence. The transcript was received on April 3, 2007.

FINDINGS OF FACT

_____Applicant admitted three SOR allegations relating to bankruptcy and denied the two relating to a debt and a lien with explanation. He denied allegations relating to omissions on his SF 86 with explanation. After a complete review of the record, I make the following additional findings of fact:

Applicant is a 39-year-old employee of a defense contractor working as an electrician doing cable installation since his employment in 2003. In the mid-1990's he had financial difficulties stemming from mismanagement of his family finances. His wife was the financial manager for the family. The debts were for a home mortgage, credit cards and medical expenses. After they separated, he discovered extensive diversions by his wife from their account to her parents who had financial problems stemming from a failed business of her father.

In March 1996 Applicant and his wife filed for chapter 13 bankruptcy in the midst of a divorce. In December 1997, as a result of confusion as to who was to make the payments on the bankruptcy, some payments were missed and it was dismissed. It was re-filed in February 1998 and

dismissed in July 1998 for non-compliance. It was again re-filed in August 1998 and, after a dismissal, reconsideration, and re-opening, was discharged on January, 6, 2004 (Exhs. 9-14). Applicant and his wife were divorced in 2004.

The three filings were alleged in the SOR as separate bankruptcies. While each of these three filings used different file numbers, the amounts involved in all were approximately the same with assets and liabilities of between \$77,000 and \$79,000. Applicant was represented throughout the bankruptcy proceedings by two different lawyers but both were with the same law firm. He followed their advice and did what they advised him to do. Although he knew he had been to court a number of times and signed several papers, he believed all the documents related to only a single bankruptcy (Tr. 32-35).

In addition to bankruptcy, two other debts were alleged in the SOR. Applicant had a delinquent medical bill of \$103 which was paid in December 11, 2006 (Exh. A 1), the same day he learned about it when he was shown a credit report for this proceeding. The debt was for pediatric services for one of his children. Although his wife was responsible for paying those bills for the children with health insurance, he paid the bill and did not question it.

Applicant also had a state tax lien of \$1,439 filed in 2004 which was paid and released on August 5, 2005 (Exh. 15). He was unaware of it until the spring of 2005 since he was working overseas and the notice of the lien was not sent to him. The government stipulated at the hearing that it had been paid. Originally it was an underpayment of approximately \$100 that grew exponentially from interest and late charges.

Applicant filed his first security clearance application (SF 86) in January 2000 and listed the 1998 bankruptcy in response to Question 33 and one financial delinquency not now at issue for delinquent debts of both 180 and 90 days in response to Questions 38 and 39 (Exh. 2). The application was withdrawn when his job prospect did not materialize. When he filed a second SF 86 in September 2004 for his current employer, he did not list the bankruptcy at Question 33, the tax lien at Question 36, and the medical bill as a delinquent debt of over 180 days at Question 38 (Exh. 1). When he completed the SF 86 he viewed the bankruptcy from its inception from the first filing in 1996. Thus, it was then over seven years old and beyond the reach of the question which called for bankruptcies within the past seven years. He did not know about the tax lien until 2005 or the medical bill until 2006. The omission of the bankruptcy information was done in good faith based on a reasonable interpretation, and the other two alleged omissions concerned information about which he then was unaware. He had no intent to deceive (Tr. 58).

Applicant served three years in the Navy. He trained as a fire control officer but had difficulty with the math and served most of his tour as a boatswain. He has a high school education and some technical instruction in his field.

Applicant's job takes him overseas for various assignments aboard Navy ships, and he has had a number of such tours in the past years. Because of his work assignments he has no permanent residence other than living with his parents between assignments.

Applicant's monthly take-home pay after deductions is \$2,400 (Tr. 110 and Exh. A 3). He

is paid \$18 an hour for his work. When he is overseas he receives \$60 a day per diem allowance. He also receives \$106 per month for 10% veteran's disability (Tr. 127). He has received tax refunds of \$3,700 for 2005 and \$618 for 2006 (Exh A 4 and 5). He has two teenage children living with his former wife and pays child support of \$595 per month plus a \$40 per month allowance for the younger child. He recently purchased an automobile for one of his children. He has no credit cards and has only one more payment left to make on his own car. The child support and auto loan are his only debts. He has two bank accounts each with a balance of approximately \$1,000. He also has two 401(k) accounts with his employer totaling over \$30,000 in assets (Tr. 111).

Applicant recently re-married and his wife travels with him on his overseas assignments when she is permitted to do so depending on the assignment. He believes she will soon be employed and contribute to their income.

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. *See* Executive Order No. 12968 § 3.1(b).

CONCLUSIONS

Upon consideration of all the facts in evidence, and after application of all appropriate adjudicative factors under the revised Adjudicative Guidelines (AG) and E2.2. factors in the Directive, I conclude the following with respect to all allegations set forth in the SOR:

Applicant's one delinquent debt, a tax lien, and bankruptcy prompted the allegation of security concern under Guideline F of the adjudicative guidelines (AG) 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) that might apply include the fact that the behavior happened so long ago or under such circumstances that it is unlikely to recur and does not cast doubt on the individual's current reliability, trustworthiness, or good judgment (AG ¶ 20 a), or the conditions that resulted in the behavior were largely beyond the person's control as a result of divorce or separation (AG ¶ 20 b), or there are clear indications that the problem is being resolved or is under control (AG ¶ 20 c), or the person has initiated a good-faith effort to repay overdue creditors or otherwise resolve debts (AG ¶ 20 d).

While it may be technically correct that Applicant filed three bankruptcies as alleged, the fact that they all stemmed from the same debts and he was relying on advice of counsel in all the steps he took, leads me to conclude that for practical purposes there was only one and that he should not be held responsible for three. He has a high school education and was not skilled in the world of bankruptcy, so he relied on his counsel during the entire course of the bankruptcy proceeding. In any event, whether one or three, the matter was successfully resolved in 2004, more than three years ago and his financial situation since that time has significantly improved. The factors leading to the financial problems in the 1990's are no longer extant. The alleged delinquent medical bill was small and unknown to him until 2006. He paid it the same day he learned of it. The tax deficiency was small in the beginning and grew as a result of Applicant's not knowing of it because of his employment at many different locations with no fixed address after his divorce. It was paid in 2005. All mitigating conditions are applicable.

Applicant's failure to report his financial delinquencies, tax lien, and bankruptcy at Questions 33, 36 and 38 on his SF 86 raises issues under Guideline E that might indicate questionable judgment, unreliability, and unwillingness to comply with rules and regulations and could indicate that the person may not properly safeguard classified information (AG ¶ 15). Specifically, the deliberate omission, concealment, or falsification of relevant and material facts from a personnel security application could raise a security concern and be disqualifying. (AG ¶ 16 a) The bankruptcy was reported on his 2000 SF 86 but was not on his 2004 SF 86. He considered the bankruptcy filing as the first in 1996, which was more than seven years before his September 2004 filing and thus beyond the requirement to report. He did not list the tax lien because he did not know about it until 2005. The medical bill was not known by him until 2006 so he could not report either in 2004. Thus, I conclude that the bankruptcy omission was not deliberate as required by the guideline and the information on the other two allegations was not available to him at the time he filed the SF 86.

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.

The "whole person" concept recognizes we should view a person by the totality of his 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

impressed me at the hearing as a credible, hard-working person whose debts compared to his assets had accumulated to the point that he filed for bankruptcy with his former wife. Their divorce complicated his problems. He is sufficiently chagrined by the financial problems he has had that it is unlikely to recur. He has taken significant corrective steps and established to my satisfaction that he is financially responsible and did not intend to deliberately withhold information on his SF 86.

After considering all the evidence in its totality, and as an integrated whole to focus on the whole person of Applicant, 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
_____ Paragraph 2. Guideline E:	FOR APPLICANT
Subparagraph 2.a.:	For Applicant
Subparagraph 2.b.:	For Applicant
Subparagraph 2.c.:	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