

KEYWORD: Financial

DIGEST: Applicant, a 38-year-old facility security officer for a defense contractor, failed to mitigate financial security concerns relating to delinquent debts of almost \$90,000 even though he filed a Chapter 13 bankruptcy in July 2007 and hopes to be able to discharge the debts. He has made only one payment. He was in Chapter 7 bankruptcy in 1996, and incurred additional debts that became delinquent during a seven year period after the bankruptcy was discharged. He did not resolve any of the smaller delinquent debts incurred except for regular payments on delinquent federal taxes for two tax years. His debts include repossessions for two automobiles purchased since the first bankruptcy was discharged. Clearance is denied.

CASENO: 06-22190.h1

DATE: 09/19/2007

DATE: September 19, 2007

| | | |
|----------------------------------|---|------------------------|
| In Re: |) | |
| |) | |
| |) | |
| ----- |) | ISCR Case No. 06-22190 |
| SSN: ----- |) | |
| |) | |
| 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, a 38-year-old facility security officer for a defense contractor, failed to mitigate financial security concerns relating to delinquent debts of almost \$90,000 even though he filed a Chapter 13 bankruptcy in July 2007 and hopes to be able to discharge the debts. He has made only one payment. He was in Chapter 7 bankruptcy in 1996, and incurred additional debts that became delinquent during a seven year period after the bankruptcy was discharged. He did not resolve any of the smaller delinquent debts incurred except for regular payments on delinquent federal taxes for two tax years. His debts include repossessions for two automobiles purchased since the first bankruptcy was discharged. Clearance is denied.

STATEMENT OF CASE

_____On April 6, 2007, 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 April 24, 2007, Applicant responded to the SOR allegations and requested a hearing. The case was assigned to me on June 6, 2007. A notice of hearing was issued on June 7, 2007, for a hearing on June 26, 2007, and held that day. The government offered in evidence 11 exhibits and Applicant offered six. All were admitted. The transcript was received on July 6, 2007. The record was left open for an interim report on July 24, 2007 and final submission on August 24, 2007, of additional materials. The interim documents and a final submission were received. All were admitted without objection.

FINDINGS OF FACT

_____Applicant admitted the specifics of all of the SOR allegations relating to a bankruptcy in 1996, and 19 delinquent debts of almost \$90,000. After a complete review of the record, I make the following additional findings of fact:

Applicant is a 38-year-old employee of a major defense contractor where he has been employed since April 2000 as a facility security manager. He holds a bachelor's degree in business administration. He has held a security clearance since 1988 with no security violations. Between 1988 and now he served in the Marine Corps for six years with a rank of E 5, worked for a government agency as an analyst, and for another government contractor.

In 1996 Applicant filed a Chapter 7 bankruptcy which was discharged in 1997. The primary cause for the bankruptcy arose when he was divorced in 1994 which resulted in his sole ownership of a home for which he could not make payments. However, the bankruptcy included not only the

home mortgage of \$101,000 but also over \$20,000 in consumer and credit card debt (Exh. 10). After the bankruptcy, Applicant bought a new car on which he could not make payments, and it is the subject of one of the auto repossessions in this proceeding (SOR ¶ 1. m.)

Applicant's present financial problems accelerated after a second marriage in 1999 when he acquired three step children. One of the children has severe health problems and a second was sexually assaulted twice with resulting emotional problems. Because of the problems relating to the children and custody issues arising with his wife and her ex-husband over the step-children, the family moved their residence nine times since 2000. He and his wife now have one child from their marriage. Although these problems have occurred, there is little evidence of the nexus between them and the financial difficulties of Applicant. The reason Applicant may not have known about some of the smaller delinquent debts is because of the large number of moves of his residence over a seven year period since any efforts to reach him would have followed a long trail of addresses.

Applicant's annual salary is \$64,000. In addition he has a second job for a delivery service at a salary of \$10,000 per annum. Through this job he receives free health care insurance for his family (Tr. 44). The second job is from 4 A.M. until 8 A.M. when he reports to his full time job. He commutes 90 miles each way to his work from their rented home which is located near his wife's family. In 2006 he fell asleep at the wheel driving to work, had an accident, and destroyed the car. His wife has received training as a legal assistant and is employed earning \$2,000 per month.

The 19 delinquent debts alleged in the SOR range from several debts to utilities and service providers of under \$200 and for two auto repossessions for over \$19,000 each (SOR ¶ 1.i. and m.). The first was the auto he bought after the first bankruptcy; the second was a voluntary repossession of a new minivan he bought in 2005. He now owns two autos on which he is making regular payments. He has two student loans for over \$25,000 that have been in default since 2003 (SOR ¶ 1.d. and q.). They were originally for under \$20,000 but delinquency fees have increased the debts. These debts were carried over after the first bankruptcy where they were listed but could not be discharged. The only delinquent debts that are being satisfied through regular monthly payments of \$75 (Tr. 53) are to pay delinquent federal taxes for tax years 2004 and 2005 totaling \$2,500 (SOR ¶ 1. r. and s.). He has been in negotiation with several of the creditors (SOR ¶ 1.c., f, k, l., and p.), but no settlements with them were reached (Exh. 4). Applicant acknowledges other debts in his candid interrogatory answers, but indicates no efforts to resolve them except to note the large number of his household moves (Exh. 4).

Applicant tried to avoid a second bankruptcy by taking the second job. However, he recently engaged counsel and filed a petition for Chapter 13 bankruptcy in July 2007 (Exh. I 3). He began payments under the plan in August 2007. The plan requires payments of \$850 per month over the next five years depending on the number and amounts of the debts that are actually included in the bankruptcy and the possibility of settling some for lesser amounts (Tr. 62). After the bankruptcy is discharged, he will be required to begin payment on his education loans. He now does not have enough left over to pay \$850 per month (Tr. 65) but is decreasing his family expenses to improve his ability to make the payments (Tr. 66).

Applicant acknowledges that he has done more in the past six months to resolve his financial problems than in the last six or seven years. He has no excuses for his failure to pay some of the smaller debts (Tr. 51) particularly in view of his work responsibilities as a facility security officer

where he counsels other people on security issues (Tr. 9). He has received training through his employment as a certified facility security officer.

Applicant now has two credit cards on which he makes regular payments. He recently returned to the mortgage a home he owned for which he could not make mortgage payments. This was done as a deed in lieu of foreclosure (Exh. H). He believes there will be no additional charges passed on to him as a result of the transaction. He and his wife now own two cars with total payments of over \$700 per month on which he is current and regular.

Applicant is well regarded by his supervisor for his honesty and hard work. He is a well-motivated, competent performer who is working two jobs to support his family and hopefully get out of debt. (Exh. F).

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 of the revised 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) include a condition that the person has initiated a good faith effort to repay overdue creditors or otherwise resolve debts. (AG ¶ 20 d), the conditions that resulted in the financial problem were largely beyond the person's control, and the person acted responsibly under the circumstances (AG ¶ 20 b) , and there is clear indications that the problem is being resolved or is under control (AG ¶ 20 c).

After Applicant had a Chapter 7 bankruptcy that was discharged in 1997, he had many family problems that were beyond his control. However, he offered little evidence to establish a nexus between the family problems and the severe financial difficulties he now has. Even if there was a firmly established nexus, the fact that he has done so little to settle or pay even the smallest accounts over the past seven years does not establish responsible behavior by Applicant. While the many household moves may well have made it difficult for creditors to reach him, it is no excuse for not making better efforts to resolve debts that he should have known to exist. This is particularly so in view of the position he has held as a security officer responsible for enforcing the security requirements on others.

The Chapter 13 bankruptcy has just been initiated although Applicant has considered doing so at least since 2006. Thus, there is no payment record for the bankruptcy or even a definitive listing of the amounts likely to be resolved by the bankruptcy. There is also some doubt concerning his ability to make the payments as he hopes to do in view of the need to cut his expenses to have enough at the end of the month to make the payments to the bankruptcy trustee. Thus, I conclude that it is premature to conclude that mitigating conditions apply to him.

Applicant is a very hard-working person to hold two jobs with extreme hours of work to care for his family. He was very candid in his answers to interrogatories and in his testimony. However, Applicant has made many choices over the past seven years as to how to spend his money and where he lived. Those were his choices to make.

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. While Applicant is a person of considerable energy and ability, I cannot conclude that the conditions required for application of the whole person standard have been satisfied in view of his lack of responsible behavior over such a long period of time.

After considering all the evidence in its totality, I conclude that it is premature to grant a security clearance.

FORMAL FINDINGS

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

| | | |
|-------|---------------------------|-------------------|
| _____ | Paragraph 1. Guideline F: | AGAINST APPLICANT |
| | Subparagraph 1.a.: | Against Applicant |
| | Subparagraph 1.b.: | Against Applicant |
| _____ | Subparagraph 1.c.: | Against Applicant |
| _____ | Subparagraph 1.d.: | Against Applicant |
| | Subparagraph 1.e.: | Against Applicant |
| | Subparagraph 1.f.: | Against Applicant |
| _____ | Subparagraph 1.g.: | Against Applicant |
| | Subparagraph 1.h.: | Against Applicant |
| _____ | Subparagraph 1.i.: | Against Applicant |
| | Subparagraph 1.j.: | Against Applicant |
| | Subparagraph 1.k.: | Against Applicant |
| | Subparagraph 1.l.: | Against Applicant |
| | Subparagraph 1.m.: | Against Applicant |
| _____ | Subparagraph 1.n.: | Against Applicant |
| _____ | Subparagraph 1.o.: | Against Applicant |
| | Subparagraph 1.p.: | Against Applicant |
| _____ | Subparagraph 1.q.: | Against Applicant |
| _____ | Subparagraph 1.r.: | For Applicant |
| | Subparagraph 1.s.: | For Applicant |
| _____ | Subparagraph 1.t.: | For Applicant |

DECISION

In light of all of the circumstances presented by the record in this case, it is not clearly consistent with the national interest to grant or renew a security clearance for Applicant. Clearance is denied.

Charles D. Ablard
Administrative Judge