

KEYWORD: Financial

DIGEST: Applicant failed to mitigate security concerns arising from \$13,000 in delinquent debts that included three judgments despite evidence that the failure to pay the debts was largely attributable to his wife's drug use and resultant depletion of their bank account to pay for the drugs. Applicant's failure to monitor the accounts and willingness to continue to trust her with their accounts after he had been learned of her prior conviction for embezzlement, showed lack of judgment in financial matters. Clearance is denied.

CASENO: 06-22200. h1

DATE: 05/30/2007

DATE: May 30, 2007

In Re:)	
)	
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SSN: -----)	ISCR Case No. 06-22200
)	
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 failed to mitigate security concerns arising from \$13,000 in delinquent debts that included three judgments despite evidence that the failure to pay the debts was largely attributable to his wife's drug use and resultant depletion of their bank account to pay for the drugs. Applicant's failure to monitor the accounts and willingness to continue to trust her with their accounts after he had been learned of her prior conviction for embezzlement, showed lack of judgment in financial matters. Clearance is denied.

STATEMENT OF CASE

_____ On February 9, 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 February 21, 2007, Applicant responded to the SOR allegations, and requested a hearing. The matter was assigned to me on March 28, 2007. A notice of hearing was issued on March 29, 2007, for a hearing on April 11, 2007, and held that day. The government offered six exhibits (Exhs. 1-6) and Applicant offered eleven (Exhs. A-K) into evidence. All were accepted. Applicant and his mother testified on his behalf. The transcript was received on May 2, 2007.

FINDINGS OF FACT

_____ Applicant admitted all six of the SOR allegations relating to delinquent debts with explanation. 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 since August 2005 working as a security guard. He has delinquent debts of almost \$14,000 and a salary of approximately \$20,000 per annum. He has not been a good financial manager in the past (Tr. 85). When he married on October 2004 his wife assumed responsibility for managing their joint bank account and paying the couple's bills. His wife worked as a waitress. Unbeknownst to Applicant, his wife had been addicted to drugs and depleted the bank account on a regular basis to pay for drugs (Exh. H). The result was that the account was depleted and bills were not paid. Instead the bills were stuffed in drawers and files. Applicant was unaware that they were not being paid and did not take any action to make certain they were paid even though reminder notices from creditors continued to arrive.

Several months after his marriage the family discovered that his wife had been convicted before the marriage of embezzlement of \$3,000 from an employer (Tr. 23). Despite this information, she was allowed to continue to manage their accounts. In addition, it has recently come to the

family's attention that she obtained Applicant's mother's credit card and used it illegally charging approximately \$3,000. His mother intends to file a lawsuit against his wife for the funds. Applicant and his wife are separated and planning to divorce, but he has yet to file a divorce petition.

The following is an analysis of the delinquent debts alleged in the SOR:

1. SOR 1.a.: \$1,825 judgment of State of New York for state college fees incurred by Applicant entered August 2005 and not paid.
2. SOR 1.b.: \$1,825 judgment of State of New York for state college fees incurred by Applicant entered July, 2005 and not paid. While this superficially appears to be the same debt as the above, it is not since there were two debts for fees to the college (Tr. 14).
3. SOR 1.c.: \$2,164 judgment for hospital care entered February 2002 and not paid. This debt was incurred before his marriage (Tr.12).
4. SOR 1.d.: \$153. delinquent telephone debt placed for collection in March 2006 and not paid. This debt was incurred before his marriage. He has not checked with the creditor (Tr. 46).
5. SOR 1.e.: \$7,515 delinquent credit card debt taken out by his wife and charged off in February 2005. Applicant has been paying \$100 per month for four months to settle this debt (Tr. 44).
6. SOR 1.f.: \$450 delinquent credit card debt charged off in July 2005. This card was taken out by his wife. Applicant has not been in contact with the company.

Applicant and his wife are currently involved in a custody dispute over their one-year-old child. As a result of her drug addiction his wife was treated at an addiction facility and released (Exh. I). He now has custody of their daughter during the week and pays \$50 per week for child care. His wife lives with her parents and has custody on weekends. He lives in a duplex home owned by his parents and pays \$350 per month in rent. He no longer has a credit card but has a debit card. All of his other bills are current. He owns a 2000 automobile and pays \$167 per month in insurance because of a number of traffic tickets he had incurred. He has a savings account of \$350 and a checking account of \$1,000.

Applicant's mother has provided a \$1,500 retainer payment for his child custody counsel but is not certain how he will pay the balance (Tr. 67). His family provides him no continuing financial support. His father-in-law gave him \$3,000 because of the problems his daughter, Applicant's wife, had created for him, and the money was used to pay other bills not at issue in this proceeding.

Applicant has a high school education and was studying to be a grade school teacher. He attended the state university where his delinquent debts were incurred and now are owed to the state. He is within a semester of graduation but is not allowed to enroll because of his debts to the state. Student loans for prior semesters at another school for \$10,000 have been deferred but soon will require payment.

Applicant had one meeting with a credit counseling service in January 2007 but has not met with them again. Because of his limited income, he was advised that it appeared unlikely they could be of help (Tr. 63). He does intend to meet with them again after his divorce becomes final. At a custody hearing in April 2007 concerning his daughter, he discussed a plan to pay his debts with his counsel but no additional action had been taken at the time of the hearing in this matter.

Applicant intends to pay the judgment on the two college fee delinquent debts with his 2006 tax refund. However, despite the difficulties he has had with her handling finances, he gave his wife responsibility for filing their joint return for 2006. When he checked with the Internal Revenue Service in May the return had not been filed so is uncertain when and if he will receive a refund.

Before his present employment, Applicant worked between 1997 and 2005 as a house painter for his father's company. During that employment he also worked for six months in 1999 for a restaurant but was fired (Exh. 1). Applicant is highly thought of by his family friends and associates at work for his dedication to his daughter, willingness to go the last mile for friends, and acceptance of inconvenient work assignments (Exhs. A-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. *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, I conclude the following with respect to all allegations set forth in the SOR:

Applicant's three judgments and delinquent credit card 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. 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). Applicant has such a history and he has been unable to satisfy the debts even when they became known to him. He is paying on only one of the larger debts but at a rate that it is unlikely to be resolved in the near future, and he has not paid the two smallest debts, which are each less than \$500.

Mitigating Conditions (MC) might include the fact that the conditions that resulted in the behavior were largely beyond the person's control and the individual acted responsibly under the circumstances (AG ¶ 20 b), and the person initiated a good faith effort to repay overdue creditors or otherwise resolve debts. (AG ¶ 20 d). There is evidence the debts resulted from conditions relating primarily to his wife's failure to manage their accounts and pay the delinquent debts. While his wife's drug habit and her spending on drugs was the principal cause of the continuing escalation of debts, four of the debts were incurred before they were married (SOR 1.a.-d.). One judgment was entered two years before their marriage (SOR 1.c.) Also, even if her conduct was the primary cause of the failure to resolve the delinquent debt problems, his failure to monitor their accounts was negligent particularly after he learned after their marriage of her embezzlement of a former employer's accounts. He also continued to demonstrate poor judgment to permit his wife, from whom he was separated, to be responsible for filing their tax return this year despite her history of financial misconduct.

While Applicant has had one session with a credit counselor and intends to seek more he has not taken sufficient steps in that direction to justify establishing a MC for counseling (AG ¶ 20 c). Also, it appears both from what he was advised by the counselor and his financial information, he may not be able to benefit from counseling due to limited income and the extent of his present debts as well as his future debts from his education loan (Tr. 63). Thus, I conclude that no mitigating conditions are applicable.

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 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. While Applicant is well regarded by his friends, associates, and supervisor at work, there has been no proof, other than good intentions, that the debt problems are being resolved now or will be in the near future.

After considering all the evidence in its totality, and as an integrated whole to focus on the

whole person of Applicant, I conclude 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

_____ **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