

KEYWORD: Financial; Criminal Conduct

DIGEST: In the 1990s, Applicant received a general discharge under honorable conditions from the Army after an extensive unauthorized absence, was prosecuted for bouncing checks, and accrued a child support delinquency in excess of \$15,000. He violated the order by failing to pay the restitution on time, and failed to provide a satisfactory, candid explanation for the accrual of the child support delinquency at the hearing. Clearance is denied.

CASENO: 06-22871.h1

DATE: 07/30/2007

DATE: July 30, 2007

In re:	)	
	)	
-----	)	
SSN: -----	)	ISCR Case No. 06-22871
	)	
Applicant for Security Clearance	)	
	)	

**DECISION OF ADMINISTRATIVE JUDGE  
MARC E. CURRY**

**APPEARANCES**

**FOR GOVERNMENT**

Ray T. Blank, Esq., Department Counsel

**FOR APPLICANT**

*Pro Se*

**SYNOPSIS**

\_\_\_\_\_ In the 1990s, Applicant received a general discharge under honorable conditions from the Army after an extensive unauthorized absence, was prosecuted for bouncing checks, and accrued a child support delinquency in excess of \$15,000. He violated the order by failing to pay the restitution on time, and failed to provide a satisfactory, candid explanation for the accrual of the child support delinquency at the hearing. Clearance is denied.

### **STATEMENT OF THE CASE**

On January 30, 2007, the Defense Office of Hearings and Appeals (DOHA) issued Applicant a Statement of Reasons (SOR) explaining why it was not clearly consistent with the national interest to grant or continue a security clearance. This action was taken under Executive Order 10865, dated February 20, 1960, as amended, and DoD Directive 5220.6, dated January 2, 1992, as amended. Applicant answered the SOR on February 23, 2007 and requested a hearing.

I was assigned the case on March 30, 2007. DOHA issued a notice of hearing on May 30, 2007, scheduling it for June 15, 2007. During the hearing, I received six government exhibits, three Applicant exhibits, and Applicant's testimony. At Applicant's request, I left the record open at the close of the hearing to allow him to submit additional exhibits. He then submitted three additional exhibits which I received as Exhibits D through F. DOHA received the transcript on June 27, 2007.

### **FINDINGS OF FACT**

\_\_\_\_\_ The SOR admissions are incorporated into the findings of fact. In addition, I make the following findings of fact.

Applicant is a 37-year-old man with two children, ages 15 and 13. He lives with his wife and his two stepchildren. He has been married since 2003, and was married previously from 1989 to 1995.<sup>1</sup> He is a high school graduate.

Applicant works for his employer as a process operator.<sup>2</sup> He is a highly respected employee who frequently "works above and beyond" his designated job responsibilities.<sup>3</sup> His supervisor characterizes him as a man of honesty with strong team-building skills.<sup>4</sup>

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<sup>1</sup>Exhibit E, Final Decree of Divorce, dated October 6, 1995.

<sup>2</sup>Exhibit 1, Security Clearance Application, dated July 28, 2005, at 2.

<sup>3</sup>Exhibit A, Supervisor's Recommendation Letter, dated June 14, 2007.

<sup>4</sup>Exhibit B, Supervisor's Recommendation Letter, dated June 4, 2007.

From 1990 to 1991, Applicant served in the Army.<sup>5</sup> During that time, he was having marital problems with his first wife. In May 1993, he obtained a weekend pass to visit her in an attempt to save their marriage, and stayed longer than authorized.<sup>6</sup> He was later arrested.

A subsequent investigation revealed that he had written bad checks in the amount of \$765, which he used to purchase items on base.<sup>7</sup> He was charged with larceny and being absent without official leave.<sup>8</sup> Consequently, he was orally admonished and given a general discharge under honorable conditions.<sup>9</sup>

In 1994, Applicant was arrested and charged with one felony count of writing a bad check, and one misdemeanor count of writing a bad check.<sup>10</sup> He pleaded guilty to the lesser charge, and on June 28, 1995, was sentenced to 60 days in prison with 55 suspended, and ordered to pay restitution within six months of the order. He did not pay the restitution until 2002.<sup>11</sup>

Applicant separated from his first wife in 1994, and moved to another state. Shortly afterwards, she filed for divorce. The court finalized the divorce in October 1995. In approximately September 1996, his ex-wife obtained a court order for him to pay child support. Applicant testified that he “didn’t know that she was going to file for child support”<sup>12</sup> when they separated, and did not know of the order until he received a notice of wage garnishment in September 2002. By this time, he was approximately \$15,000 in arrears.<sup>13</sup> He remained in contact with his wife and children after the separation.<sup>14</sup>

Since September 2002, he has been paying consistently through the garnishment.<sup>15</sup> Also, all of Applicant’s income tax returns are applied toward the arrearage.

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<sup>5</sup>See note 2 at 5.

<sup>6</sup>Exhibit 2, Commander’s Report of Disciplinary or Administrative Action, dated September 13, 1993 at 2.

<sup>7</sup>*Id.* at 3.

<sup>8</sup>*Id.*

<sup>9</sup>Tr. 57.

<sup>10</sup>Answer, dated February 23, 2007, at 2.

<sup>11</sup>Payment Receipts, as listed in Answer at 12 through 15.

<sup>12</sup>Tr. 24.

<sup>13</sup>Tr. 47.

<sup>14</sup>Tr. 62.

<sup>15</sup>Exhibit F, Child Support Payment Records, for the period August 1, 1996 through July 19, 2007.

Applicant's ex-wife has remarried. In 2001, Applicant relinquished his parental rights to enable his children's stepfather to adopt them. Since then, he has not been responsible for any prospective child support. The current balance of the arrearage is \$12,000.<sup>16</sup>

As of January 2007, Applicant owed a credit card company \$377. He paid the bill the following month, and no late fees were assessed.<sup>17</sup>

Subparagraph 1.b alleges a \$1,433 delinquent medical bill. Applicant researched it, and discovered another person was responsible for it. In June 2007, the creditor confirmed Applicant did not owe it.<sup>18</sup>

## POLICIES

Enclosure 2 of the Directive sets forth adjudicative guidelines which must be considered in the evaluation of security suitability. In addition to brief introductory explanations for each guideline, the adjudicative guidelines are divided into those that may be considered in deciding whether to deny or revoke an individual's eligibility for access to classified information (disqualifying conditions) and those that may be considered in deciding whether to grant an individual's eligibility for access to classified information (mitigating conditions).

Because the entire process is a scrutiny of a number of variables known as the "whole person concept," all available, reliable information about the person, past and present, favorable and unfavorable, should be considered in making a meaningful decision. Specifically these are: (1) the nature and seriousness of the conduct and surrounding circumstances; (2) the frequency and recency of the conduct; (3) the age of the applicant; (4) the motivation of the applicant, and the extent to which the conduct was negligent, willful, voluntary, or undertaken with knowledge of the consequences; (5) the absence or presence of rehabilitation; and (6) the probability that the circumstances or conduct will continue or recur in the future.

The following adjudicative guidelines are raised:

Guideline F - Financial Considerations: Failure or inability to live within one's means, satisfy debts, and meet financial obligations may indicate poor self-control, lack 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.

Guideline J - Criminal Conduct: Criminal activity creates doubt about a person's judgment, reliability, and trustworthiness. By its very nature, it calls into question a person's ability or willingness to comply with laws, rules and regulations.

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<sup>16</sup>See note 12 at 3.

<sup>17</sup>Letter from Creditor, dated February 23, 2007, as listed in Answer at 7.

<sup>18</sup>Answer at 1, Exhibit D, Letter from Creditor, dated June 25, 2007, at 2.

Conditions pertaining to these adjudicative guidelines that could raise a security concern and may be disqualifying, as well as those which could mitigate security concerns, are set forth and discussed in the conclusions below.

Since the protection of national security is the paramount consideration, the final decision in each case must be reached by applying the standard that the issuance of the clearance is “clearly consistent with the national interest.”<sup>19</sup> In reaching this decision, I have drawn only those conclusions that are based on the evidence contained in the record.

The government is responsible for presenting evidence to establish facts in the SOR that have been controverted. The applicant is responsible for presenting evidence to rebut, explain, extenuate, or mitigate facts admitted by the applicant or proven by the government, and has the ultimate burden of persuasion as to obtaining a favorable security decision.

## CONCLUSIONS

### **Financial Considerations**

The government did not present any evidence that Applicant’s \$377, credit card bill, as alleged in subparagraph 1.c, was actually delinquent before he paid it. It creates no security concern.

The remaining two delinquencies and the bounced checks trigger the application of Financial Considerations Disqualifying Condition (FC DC) 19(a): *inability or unwillingness to satisfy debts*. Applicant successfully demonstrated that subparagraph 1.b was not his responsibility. Financial Considerations Mitigating Condition (FC MC) 20(e): *the individual has a reasonable basis to dispute the legitimacy of the past-due debt which is the cause of the problem and provides documented proof to substantiate the basis of the dispute or provides evidence of actions to resolve the issue*, applies.

Paying a debt through a garnishment order does not constitute a good-faith repayment effort within the meaning of FC MC 20(d): *the individual initiated a good-faith effort to repay creditors or otherwise resolve debts*. Moreover, Applicant’s testimony that he remained in contact with his ex-wife after their separation, but did not know she had filed for child support until he received a notice of garnishment several years after their separation was not credible. Consequently, although he has been consistently making the required payments through the garnishment for six years, it remains a security concern because of his failure to discuss it candidly at the hearing.

The 1994 bounced checks also remain a security concern. He ignored the 1995 court order, left the state, and did not pay until he returned several years later. The positive security implication generated by the length of time that has elapsed since he paid them is outweighed by the lack of trustworthiness demonstrated by taking more than seven years to satisfy them, in contravention of a court order. Applicant has not mitigated the financial considerations security concern.

### **Criminal Conduct**

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<sup>19</sup>See generally, Directive, Sec. 2.3, Sec. 2.5.3, Sec. 3.2, and Sec. 4.2.

Applicant’s 1993 non-judicial punishment received while in the Army, and his 1994 arrest for writing checks with insufficient funds generates security concerns under Criminal Conduct Disqualifying Condition (CC DC) 31(a): *a single serious crime or multiple lesser offenses*, and CC DC 31(c): *allegations or admission of criminal conduct, regardless of whether the person was formally charged, formally prosecuted, or convicted*. Thirteen years have elapsed since the commission of these crimes. Although Applicant’s failure to pay restitution on time generates lingering financial considerations security concerns, the criminal conduct implication of this behavior is outweighed by the passage of time, the isolated nature of the criminal activities, and the rehabilitation demonstrated through his exemplary job performance since that time. Criminal Conduct Mitigating Condition (CC MC) 32(a): *so much time has elapsed since the criminal behavior happened, or it happened under such unusual circumstances that it is unlikely to recur, and does not cast doubt on the individual’s reliability, trustworthiness, or good judgment*, and CC MC 32(d): *there is evidence of successful rehabilitation; including but not limited to the passage of time without recurrence of criminal activity, remorse or restitution, job training or higher education, good employment record, or constructive community involvement*, apply. Applicant has mitigated the criminal conduct security concern.

**Whole-Person Concept**

Applicant’s failure to provide court-ordered assistance to his children for five years raises a significant security concern. This concern was heightened by his failure to testify credibly about it at the hearing. Moreover, paying restitution for the 1994 bounced checks seven years after being court-ordered to do so, was a flagrant violation of the court order. He ultimately satisfied them, and has been making payments toward the satisfaction of the child support delinquency for the past six years. These positive factors do not outweigh the negative security implications generated by his repeated violation of court orders and his lack of credibility displayed at the hearing. Clearance is denied

**FORMAL FINDINGS**

Paragraph 1 – Guideline F:	AGAINST APPLICANT
Subparagraph 1.a:	Against Applicant
Subparagraph 1.b:	For Applicant
Subparagraph 1.c:	For Applicant
Subparagraph 1.d:	Against Applicant
Paragraph 2 - Guideline J:	FOR APPLICANT
Subparagraph 2.a:	For Applicant
Subparagraph 2.b:	For Applicant

**DECISION**

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

Marc E. Curry  
Administrative Judge