

KEYWORD: Financial

DIGEST: The Applicant has owed over \$15,000.00 in past due debts to three creditors since at least 2004. He does not have the ability to pay off or otherwise resolve these debts. He is not currently eligible for security clearance. Clearance is denied.

CASENO: 06-22983.h1

DATE: 09/12/2007

DATE: September 12, 2007

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In Re:)	
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-----)	ISCR Case No. 06-22983
SSN: -----)	
)	
Applicant for Security Clearance)	
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**DECISION OF ADMINISTRATIVE JUDGE
WILFORD H. ROSS**

APPEARANCES

FOR GOVERNMENT

Jeff Nagel, Esquire, Department Counsel

FOR APPLICANT

Pro Se

SYNOPSIS

The Applicant has owed over \$15,000.00 in past due debts to three creditors since at least 2004. He does not have the ability to pay off or otherwise resolve these debts. He is not currently eligible for security clearance. Clearance is denied.

STATEMENT OF THE CASE

On December 14, 2006, the Defense Office of Hearings and Appeals (DOHA), pursuant to Executive Order 10865 (as amended) and Department of Defense Directive 5220.6 (Directive), dated January 2, 1992, issued a Statement of Reasons (SOR) to the 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 the Applicant and recommended referral to an Administrative Judge to determine whether a clearance should be denied or revoked.

The Applicant responded to the SOR in writing on January 16, 2007, and requested a hearing. The case was assigned to another Administrative Judge on February 12, 2007. Notices of Hearing were issued on February 16 and March 1, 2007. The case was reassigned to me on March 6, 2007.

A hearing was held on March 29, 2007, at which the Government presented five documentary exhibits. Testimony was taken from the Applicant, who also submitted nine exhibits. The transcript was received on April 13, 2007.

FINDINGS OF FACT

The Applicant is 60, single and has a high school education. He is employed by a defense contractor as a Security Officer, and he seeks to obtain a DoD security clearance in connection with his employment in the defense sector.

The Government opposes the Applicant's request for a security clearance, based upon the allegations set forth in the Statement of Reasons (SOR). The following findings of fact are entered as to each paragraph and guideline in the SOR. They are based on the Applicant's Answer to the SOR, the exhibits and the live testimony.

Paragraph 1 (Guideline F - Financial Considerations). The Government alleges in this paragraph that the Applicant is ineligible for clearance because he is financially overextended and therefore at risk of having to engage in illegal acts to generate funds. The Applicant admitted subparagraphs 1.a., 1.b., and 1.c. of the Statement of Reasons. Those admissions are hereby deemed findings of fact.

The Applicant endured a long period of unemployment in 2003-2004. The majority of his past-due debts were accrued during that time. In addition, the Applicant stated that he had been taken advantage of by a con artist during that time. The Applicant was trying to make headway in

a different field and was working with a person who manipulated the Applicant to continue to pay bills using his credit cards. (Transcript at 57-58, Applicant's Exhibit D at 7.) He has been working for his current employer since 2004. However, he has not been able to repay the vast majority of his past-due debts since that time.

1.a. The Applicant admits that he owes at least \$8,820.00 on a delinquent credit card account. The Applicant has not made any payments on this account in several years. He intends to contact this creditor at some point in the future and make payment arrangements. (Transcript at 41-44, Government Exhibit 5 at 2.)

1.b. The Applicant admits that he owes at least \$1,264.00 on a second delinquent credit card account. The Applicant has not made any payments on this account in several years. He intends to contact this creditor at some point in the future and make payment arrangements. (Transcript at 45-46, Government Exhibit 5 at 2.)

1.c. The Applicant admits that he owes at least \$5,881.00 on a third delinquent credit card account. The Applicant was making payments on this debt in 2003, but has not made any payments on this account in several years. He intends to contact this creditor at some point in the future and make payment arrangements. (Transcript at 48-49, Government Exhibit 5 at 2.)

The Applicant stated that, as of the date of the hearing, he had been setting aside money to pay his taxes. Once his taxes are paid, he can begin again saving money to resolve the indebtedness to the three creditors set forth above. (Transcript at 47-48.)

1.d. The Applicant testified that he had no knowledge of this alleged \$53.00 past due debt to a telephone company until receiving the SOR. Once he received the SOR he paid this debt off. (Transcript at 49-51.) He presented copies of his wireless telephone bill for July 2006 (Applicant's Exhibit F) and his home telephone bill for November and December 2006 (Applicant's Exhibit H). None of these bills shows this particular past due amount. This subparagraph is found for the Applicant.

1.e. The Applicant denied that he currently has \$1,480.00 in money available every month after he pays his regular debts. That figure was based on his making overtime on a consistent basis, something that as of the time of the hearing was not happening. He stated that \$400.00 to \$500.00 a month in extra cash is a more likely figure over the past three years. (Transcript at 51-54.) However, the Applicant could not answer questions about how he used his extra money, approximately \$18,000.00 over the past three years, even using his own figures. (Transcript at 67-68.)

Mitigation.

The Applicant testified that he is very knowledgeable about security practices. He further testified that he assisted the Federal Government on an important potential espionage case in the 1990s. (Transcript at 39-41, Applicant's Exhibit B.)

The Applicant's work supervisor submitted a letter on the Applicant's behalf. He states that the Applicant is "reliable, trustworthy, and an asset to both myself, and the client." (Applicant's Exhibit B.)

The Applicant presented evidence showing that he had successfully paid off a past due debt, not alleged in the SOR, in 2006. He accepted a payment arrangement offered by a credit card company and paid them \$563.00 on a debt of approximately \$2,500.00. (Transcript at 62-63, Government Exhibit 5.)

POLICIES

Security clearance decisions are not made in a vacuum. Accordingly, the Department of Defense, in Enclosure 2 of the 1992 Directive, has set forth policy factors which must be given "binding" consideration in making security clearance determinations. These factors should be followed in every case according to the pertinent guideline. However, the factors are neither automatically determinative of the decision in any case, nor can they supersede the Administrative Judge's reliance on his own common sense, as well as his knowledge of the law, human nature and the ways of the world, in making a reasoned decision. Because each security clearance case presents its own unique facts and circumstances, it cannot be assumed that these factors exhaust the realm of human experience, or apply equally in every case. Based on the Findings of Fact set forth above, the factors most applicable to the evaluation of this case will be set forth under CONCLUSIONS, below.

In addition, as set forth in Enclosure 2 of the Directive at pages 18-19, "In evaluating the relevance of an individual's conduct, the [Administrative Judge] should consider the following factors [General Factors]:

- (1) The nature, extent and seriousness of the conduct
- (2) The circumstances surrounding the conduct, to include knowledgeable participation
- (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 pertinent behavior changes
- (7) The motivation for the conduct
- (8) The potential for pressure, coercion, exploitation or duress
- (9) The likelihood of continuation or recurrence."

The eligibility guidelines established in the DoD Directive identify personal characteristics and conduct which are reasonably related to the ultimate question of whether it is "clearly consistent with the national interest" to grant an Applicant's request for access to classified information.

In the defense industry, the security of classified industrial secrets is entrusted to civilian workers who must be counted upon to safeguard such sensitive information twenty-four hours a day. The Government is therefore appropriately concerned where available information indicates that an Applicant for clearance may be involved in acts of financial irresponsibility that demonstrates poor judgement, untrustworthiness or unreliability on the Applicant's part.

The DoD Directive states, "Each adjudication is to be an overall common sense determination based upon consideration and assessment of all available information, both favorable and unfavorable, with particular emphasis placed on the seriousness, recency, frequency, and motivation for the individual's conduct; the extent to which conduct was negligent, willful, voluntary, or undertaken with the knowledge of the circumstances or consequences involved; and, to the extent that it can be estimated, the probability that conduct will or will not continue in the future." The Administrative Judge can only draw those inferences or conclusions that have a reasonable and logical basis in the evidence of record. The Judge cannot draw inferences or conclusions based on evidence which is speculative or conjectural in nature. Finally, as emphasized by President Eisenhower in Executive Order 10865, "Any determination under this order...shall be a determination in terms of the national interest and shall in no sense be a determination as to the loyalty of the applicant concerned."

CONCLUSIONS

It is the Government's responsibility to present substantial evidence to support the finding of a nexus, or rational connection, between the Applicant's conduct and the granting of a security clearance. If such a case has been established, the burden then shifts to the Applicant to go forward with evidence in rebuttal, explanation or mitigation which is sufficient to overcome or outweigh the Government's case. The Applicant bears the ultimate burden of persuasion in proving that it is clearly consistent with the national interest to grant him or her a security clearance.

In this case the Government has met its initial burden of proving by substantial evidence that the Applicant has a history of being unable, or unwilling, to pay his debts in a timely fashion. Such evidence shows unreliability, untrustworthiness and poor judgment on the part of the Applicant.

The Applicant, on the other hand, has not introduced persuasive evidence in rebuttal, explanation or mitigation which is sufficient to overcome the Government's case against him, except in part. Under Paragraph 1 (Guideline F), as set forth above, subparagraph 1.d. is found for the Applicant.

The Applicant's financial difficulties are of a long-standing nature. Even though they may have originally been caused by the Applicant being out of work and making a poor business choice, he has presented insufficient evidence that he will be able to resolve his debts any time in the foreseeable future. Rather, the Applicant asks the Government to trust him when he states that he will pay his debts eventually.

Under Guideline F, the following Disqualifying Conditions are applicable: 19(a) “*Inability or unwillingness to satisfy debts;*” and 19(c) “*A history of not meeting financial obligations.*” None of the Mitigating Conditions apply. The behavior is recent, he is not receiving counseling for the problem and he has not initiated a good faith effort to repay the creditors or resolve the debts. I have considered the fact that the Applicant did have a period of unemployment during which many of the debts were incurred. However, the evidence does not show that the Applicant acted responsibly under the circumstances during that period.

On balance, it is concluded that the Applicant has failed to overcome the Government's information opposing his request for a security clearance. Accordingly, the evidence supports a finding against the Applicant as to the conclusionary allegations expressed in Paragraph 1 of the Government's Statement of Reasons.

FORMAL FINDINGS

Formal findings For or Against the Applicant on the allegations in the SOR, as required by Paragraph 25 of Enclosure 3 of the Directive, are:

- Paragraph 1: Against the Applicant.
- Subparagraph 1.a.: Against the Applicant.
- Subparagraph 1.b.: Against the Applicant.
- Subparagraph 1.c.: Against the Applicant.
- Subparagraph 1.d.: For the Applicant.
- Subparagraph 1.e.: Against the 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 the Applicant.

Wilford H. Ross
Administrative Judge