

KEYWORD: Financial

DIGEST: Applicant, a 36-year-old man employed as an engineer for a defense contractor, has a history of financial difficulties (two delinquent medical bills and a credit card account totaling less than \$6,500 as alleged) that raises a security concern. The circumstances that caused the delinquencies are not recent, can fairly be viewed as isolated, and were largely beyond his control. Moreover, Applicant recently took steps to repay or otherwise resolve the delinquent debts. Clearance is granted.

CASE NO: 01-12966.h1

DATE: 12/04/2002

DATE: December 4, 2002

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ISCR Case No. 01-12966

**DECISION OF ADMINISTRATIVE JUDGE**

**MICHAEL H. LEONARD**

**APPEARANCES**

**FOR GOVERNMENT**

Henry Lazzaro, Esq., Department Counsel

## FOR APPLICANT

*Pro Se*

### SYNOPSIS

Applicant, a 36-year-old man employed as an engineer for a defense contractor, has a history of financial difficulties (two delinquent medical bills and a credit card account totaling less than \$6,500 as alleged) that raises a security concern. The circumstances that caused the delinquencies are not recent, can fairly be viewed as isolated, and were largely beyond his control. Moreover, Applicant recently took action to repay or otherwise resolve the delinquent debts. Clearance is granted.

### STATEMENT OF THE CASE

On May 7, 2002, the Defense Office of Hearings and Appeals (DOHA) issued a Statement of Reasons (SOR) to Applicant. The SOR advised Applicant that DOHA was unable to find, as required under Executive Order 10865 and DoD Directive 5220.6, dated January 2, 1992, that it is clearly consistent with the national interest to grant or continue a security clearance for Applicant. On June 7, 2002, Applicant answered the SOR and he requested a clearance decision based on a hearing record.

DOHA assigned the case to me on July 9, 2002. I held a pre-hearing conference July 11, 2002, to discuss scheduling and other matters. [\(1\)](#) Thereafter, on July 29<sup>th</sup> a notice of hearing was issued to the parties scheduling the hearing for August 14, 2002.

At the hearing, Department Counsel presented three documentary exhibits that were admitted without objections; no witnesses were called. Applicant also presented three documentary exhibits that were admitted without objections, and he testified on his own behalf. I received the hearing transcript on August 23, 2002. On or about August 26, 2002, Department Counsel, via a memorandum, forwarded additional documentary exhibits from Applicant for my consideration. Those documents are admitted into the hearing record as Exhibits D, E, F, G, H, I, and J, described below. [\(2\)](#)

## **PROCEDURAL MATTERS**

At the hearing, on my own motion, I took official notice that the relevant statute of limitations in Applicant's state of residence is five years for collection of a debt.<sup>(3)</sup>

## **FINDINGS OF FACT**

In his Answer, Applicant admitted the SOR allegations in subparagraphs 1.a., 1.b., 1.c., and 1.d. Accordingly, I incorporate his admissions into the findings of fact.

Applicant is a 36-year-old man who works as an engineer for a defense contractor with core business areas of systems integration, aeronautics, space, and technology services. He is seeking access to classified information in conjunction with his employment.

From August 1984 until his honorable discharge in March 1990, Applicant was a soldier on active duty with the U.S. Army. During his military service Applicant broke his back, twice, while participating in airborne parachute exercises. Although Applicant has recovered from those injuries, he does receive a Department of Veterans Affairs (VA) payment (\$103 monthly) for a service-connected disability.

Applicant married in April 1987 when he was in the Army. He divorced shortly thereafter in June 1989. The marriage produced no children. He has not remarried.

After his honorable discharge in 1990, Applicant enrolled in a junior college. He transferred to a four-year university in 1993 where he earned a degree in chemical engineering in 1999. Applicant explained it took him longer than normal to obtain his college degree due to a learning disability.<sup>(4)</sup> He started his current employment in June 1999 with an annual salary of about \$45,000; it is now about \$50,000.

The SOR alleges Applicant is delinquent on three debts and he had no intention to pay the debts despite having adequate financial resources to pay. The first debt is a medical bill for \$199 delinquent since about February 1994. The second is a credit card account for about \$5,000 delinquent since

about February 1994. The third is another medical bill for about \$1,117 delinquent since about April 1994.

When completing his security-clearance application<sup>(5)</sup> in October 1999, Applicant disclosed these three debts and provided a detailed explanation for each. In general terms, Applicant explained that he was reluctant to take steps now (in 1999) to pay these old debts since doing so could negatively impact his credit rating. When interviewed by the Defense Security Service in May 2000, Applicant again acknowledged the three debts and explained the surrounding circumstances.<sup>(6)</sup>

Concerning the two medical bills, Applicant incurred the debts stemming from a car accident in 1992 where he suffered a closed-head injury. Applicant was not at fault and retained legal counsel. Eventually, a lawsuit was settled for about \$10,000, however, these two medical bills, along with others, were not paid by his counsel as Applicant believed would be the case. Thereafter, Applicant paid all the additional medical bills he could afford. Concerning the medical bill for \$199, he contacted the hospital, explained his circumstances, and was told the debt would be referred to a collection agency. Concerning the medical bill for more than \$1,000, he contacted the physician, explained his circumstances, and was told the debt would be written off.

The credit card debt stemmed from debt Applicant incurred while attending college. Shortly after transferring to the university in 1993, Applicant experienced medical problems stemming from his broken back forcing him to withdraw from school. His medical withdrawal resulted in unforeseen complications negatively affecting his ability to pay his credit card account best explained by Applicant:

At the time, I was a full time student and had to withdraw from school due to a medical condition for one semester. During this period I was receiving my financial aid from the VA under the VIP program. Because the VA was supplying my financial aid and I did not complete the semester I was responsible to repay all the aid that I had been given for that semester. It was my first semester at the [university] and I had just moved into my new apartment and used my [credit card] to get established, i.e., buying food, school supplies, books, furnishings for my apartment, moving expenses, etc. I was counting on my VA benefits, scholarships and other financial aid to cover my credit card bills. As it turned out, I did not receive any aid other than my VA benefits my first semester and then the VA demanded all the money they had given me back. When my aid was cut off, I was told that I had to come up with money I did not have to pay the VA back. I eventually worked it out where I could continue the next semester but that I would not receive any VA money until the point in the semester where I dropped in the previous semester. This left me without an income for about 4 months. I borrowed money from my family and friends to pay my rent and buy food. I stopped using my [credit card] and notified [them] well before my bills was due and explained my situation. Because I had great credit with [them] since August 1990 and wanted to keep it, I asked to turn in my card and agree to pay them back when I graduated. I [k]new that there was no way I could make payments over the next 4 to 5 years because I was planning to get my education with financial aid and scholarships. [The credit card company] did not understand that I was on a fixed income with no extra money to send them and that this would be the case until I graduated in 4 or 5 years. Dropping out and working for a semester was not an option because at that time my lower back was in bad shape and was causing me a great amount of pain. The only way for me to get an income was to be in school. [The company] told me to keep the card and continue not use it. I was told they would work with me. [The company] let me keep the card and continued to add interest but ask me not to use it. This arrangement was no different than the arrangement I already had except I was told not to use the card. I made several phone calls to [the company] trying to work something out where I would sign a promissory note or something and repay them when I graduated. I also looked into getting a loan to pay them off. When I could no longer pay my bill, [the company] promptly revoked my card and reported my delinquent account. Next, they started using illegal billing collecting techniques, (one of which was calling me, my friends and family at 3:00 a.m.). After a few months of harassing phone calls, I contacted credit counselors and attorneys to find out what my options were. I was told that because my total debt was less than \$6,000, it was not a good idea to file bankruptcy. Furthermore, the university financial aid office informed me if I filed for bankruptcy, I would no longer qualify for financial aid and therefore could not go to college. In addition, the university financial aid office told me legally I could not repay a debt even if it was somehow school related outside the semester the aid was given for. The unanimous opinion from all parties was to cut all communication with the creditor. This would at least freeze the "last activity" date and would put a time limit on how long my credit would be ruined for. I cut all communication with [the company] and any other agency trying to collect money for [the account]. The illegal collection techniques continued for several years. They finally stopped a year or so ago. When I graduated and had saved up some money, I contacted [the company] to find out how to repay my debt. [The company] had no record of my debt. I was told that it has been too long and that they sold my debt most likely the first year after my account was delinquent. Looking at my credit report it looks like it has been sold many times. Each time it is sold the new account is put on my credit

as if it were a new delinquent account. My credit looks very bad at this time. I am in a "Catch 22" situation at this time. I have recently talked with attorneys and credit advising people have unanimously told me, that in about a year this whole situation will be wiped off my credit report if I do nothing. If I try to pay back the debt now it will show as a paid outstanding debt of 5 years delinquency and remain on my credit report for the next 7 years.<sup>(7)</sup>

At the hearing, Applicant produced evidence of his recent efforts to resolve the debts alleged in the SOR. Concerning the \$199 medical bill alleged in SOR ¶ 1.a., Applicant contacted the hospital and expressed a desire to repay the debt. In July 2002, the hospital researched their records but were unable to find any evidence that they currently hold an outstanding or past due account for Applicant.<sup>(8)</sup> Concerning the \$5,000 credit card account alleged in SOR ¶ 1.b., Applicant located the firm currently holding the debt and settled it for about \$1,800 in July 2002, which he paid in one payment.<sup>(9)</sup> Finally, concerning the \$1,117 medical bill alleged in SOR ¶ 1.c., Applicant also reached a settlement agreement on this account. The delinquent debt was settled in August 2002 for \$500.<sup>(10)</sup>

Applicant's current personal financial situation appears to be excellent as evidenced by, among other things, recent home ownership, making the maximum contribution to his employer's 401(k) retirement savings account (with a balance of more than \$50,000), more than \$70,000 in a bank/brokerage account, and a recent credit report with zero derogatory information.<sup>(11)</sup> In addition, as revealed by his personal financial statement in Exhibit 2, Applicant is servicing little debt compared to his monthly gross salary.<sup>(12)</sup> And in response to my question during closing arguments, Department Counsel conceded there is no evidence Applicant is currently financially overextended.<sup>(13)</sup>

## POLICIES

The Directive sets forth adjudicative guidelines to consider when evaluating a person's security-clearance eligibility. Chief among them is the disqualifying and mitigating conditions for each guideline that applies. In addition, each clearance decision must be a fair and impartial commonsense decision based on the relevant and material facts and circumstances, the whole-person concept, and the factors listed in ¶ 6.3.1. through ¶ 6.3.6. of the Directive. Although the presence or absence of a particular condition or factor for or against clearance is not outcome determinative, the adjudicative guidelines should be followed whenever a case can be measured against this policy guidance.

Considering the evidence as a whole, the following adjudication policy factors are most relevant here:

### Guideline F-Financial Considerations

The Concern: An individual who is financially overextended is at risk of having to engage in illegal acts to generate funds. Unexplained affluence is often linked to proceeds from financially profitable criminal acts.

Conditions that could raise a security concern and may be disqualifying include:

(1) A history of not meeting financial obligations; and

(3) Inability or unwillingness to satisfy debts.

Conditions that could mitigate security concerns include:

(1) The behavior was not recent;

(2) It was an isolated incident;

(3) The conditions that resulted in the behavior were largely beyond the person's control (e.g., loss of employment, a business downturn, unexpected medical emergency, or a death, divorce, or separation); and

(6) The individual initiated a good-faith effort to repay overdue creditors or otherwise resolve debts.

## **Burden of Proof**

The only purpose of a clearance decision is to decide if it is clearly consistent with the national interest to grant or continue a security clearance for an applicant.<sup>(14)</sup> The Government only has the burden of proving controverted facts.<sup>(15)</sup> The Supreme Court has said the burden of proof in security clearance cases is less than the preponderance of the evidence.<sup>(16)</sup> The DOHA Appeal Board has followed the Supreme Court's reasoning on this issue,<sup>(17)</sup> establishing a substantial-evidence standard. Once the Government meets its burden, Applicant has the burden of presenting evidence of refutation, extenuation, or mitigation sufficient to overcome the case against him.<sup>(18)</sup> In addition, Applicant has the ultimate burden of persuasion to obtain a favorable clearance decision.<sup>(19)</sup>

As noted by the Supreme Court in *Egan*, "the clearly consistent standard indicates that security clearance determinations should err, if they must, on the side of denials."<sup>(20)</sup> As I understand that case, any reasonable doubt about whether an applicant should be allowed access to classified information will be resolved in favor of protecting national security.

## **CONCLUSIONS**

Under Guideline F, a security concern typically may exist for two different types of situations--significant unpaid debts and unexplained affluence; this case involves the former. An individual who is financially overextended is at risk of having to engage in illegal or unethical acts to generate funds to meet financial obligations. Similarly, an individual who is financially irresponsible may also be irresponsible, unconcerned, or careless in their obligation to protect classified information.

Here, based on the record as a whole, I conclude the Government has established its case under Guideline F. Applicant has a history of not meeting his financial obligations as well as inability or unwillingness to satisfy his just debts. The delinquent medical bills and the credit card account support these conclusions. In addition, of some concern is Applicant's decision to not make any payments on the three debts after finishing college and starting work in 1999. With that said, consistent with the Government's concession, there is no evidence showing Applicant is currently financially overextended. And there is no evidence showing Applicant has engaged in financially irresponsible behavior since completing college in early 1999, if not before.

Turning to mitigating conditions (MC), several apply in Applicant's favor. First, the three debts were incurred a number of years ago (1992-1994). Indeed, the debts are old enough that a lawsuit to collect on any of the debts would likely be barred by the statute of limitations. Viewed in this light, the behavior and circumstances that resulted in the delinquent debts are not recent.

Second, MC 2 applies because the totality of facts and circumstances show the delinquent debts were isolated incidents. The two medical bills arose from medical treatment that perhaps should have been covered by the settlement agreement. The credit card debt arose from Applicant's withdrawal from college for medical reasons and the subsequent financial difficulties. In neither case was Applicant engaged in a pattern of irresponsible financial behavior. Accordingly, his past-due indebtedness can fairly be viewed as isolated.

Third, MC 3 applies because the surrounding circumstances show Applicant's delinquencies were largely beyond his control. The delinquent medical bills stemmed from his treatment for the head injury he sustained in the car accident. The delinquent credit card debt was connected to his medical withdrawal from college, the resulting financial problems, and his lack of success in working out an acceptable solution with the creditor. There's simply no evidence to suggest Applicant's delinquencies resulted from high living, buying big-ticket items he could not afford, or other financially irresponsible behavior.

Fourth, MC 6 applies because Applicant recently settled two of the delinquent debts. The third debt, the medical bill for \$199, remains unresolved. His efforts to address it revealed the hospital no longer has any record of an account or delinquent debt for Applicant. In any event, an unresolved medical bill for \$199 is so small or petty as to render any security significance meaningless in my view. Although Applicant did not take immediate action to repay or otherwise resolve the three debts after starting work in June 1999, his actions are not completely unreasonable in light of the age of the debts coupled with the previous advice he received to, in essence, ignore the creditors and wait for the debts to disappear from his credit record. Indeed, some people would view his actions as a sage business decision. Given these circumstances, Applicant's efforts in 2002 to resolve the debts were good-faith efforts.

Along with his "good-faith effort," Applicant receives credit under the "whole person" concept for the wise decision to take full advantage of the 401(k) retirement savings plan and make additional investments. Together this shows he has some skill with money and he is clearly planning for the future, which shows maturity. In addition, Applicant's August 2002 credit report, as contrasted with the Government's credit report obtained in April 2000, reveals no negative information. And Applicant has a very low debt-to-income ratio. All these matters are evidence of financial responsibility and Applicant is credited accordingly.

For people with financial problems, their patterns of the past may define their course in the future. Accordingly, in Guideline F cases, it's important to assess the likelihood of continuation or recurrence of the behavior. Here, I assess the likelihood as low, if not remote. Although Applicant experienced financial difficulties while in college, the circumstances that resulted in his problems are a thing of the past. Applicant is now employed earning a good salary, and he is on firm financial footing. To sum up under Guideline F, I have weighed the disqualifying and mitigating information--including information showing Applicant is otherwise trustworthy--and conclude he has successfully mitigated and extenuated the negative implications stemming from his history of financial difficulties.

### **FORMAL FINDINGS**

Paragraph 1-Guideline F: For the Applicant

Subparagraph a: For the Applicant

Subparagraph b: For the Applicant

Subparagraph c: For the Applicant

Subparagraph d: For the Applicant

### **DECISION**

In light of all the circumstances presented by the record in this case, it is clearly consistent with the national interest to grant or continue a security clearance for Applicant.

Michael H. Leonard

Administrative Judge

1. Transcript at pp. 15-27.
2. Exhibit D is Applicant's 40(k) retirement account statement, dated August 19, 2002; Exhibit E is Applicant's brokerage/bank account statement, dated August 20, 2002; Exhibit F is a credit report, dated August 20, 2002; Exhibit G is a character reference, dated August 21, 2002; Exhibit H is a character reference, dated March 25, 1999; Exhibit I is a character reference, dated August 22, 2002; and Exhibit J is a character reference, dated August 20, 2002.
3. Transcript at pp. 98-102.
4. Transcript at pp. 89-90.
5. Exhibit 1.
6. Exhibit 2.
7. Exhibit 1 at pp. 10-12.
8. Exhibit B; transcript at pp. 41-45.

9. Exhibit A; transcript at pp. 45-47, 84-86.
10. Exhibit C; transcript at p. 47.
11. Exhibits D, E, and F.
12. Using the figures from Applicant's May 2000 sworn statement, I calculate his debt-to-income ratio at 6%, which by any measure shows he is doing a great job at keeping his debt load low. Debt-to-income ratio (excluding mortgage or rent payments) is calculated as follows: monthly debt payments (\$228) ÷ monthly gross income (\$3800) = .06 or 6%.
13. Transcript at pp. 106-07.
14. ISCR Case No. 96-0277 (July 11, 1997) at p. 2.
15. ISCR Case No. 97-0016 (December 31, 1997) at p. 3; Directive, Enclosure 3, Item E3.1.14.
16. *Department of Navy v. Egan*, 484 U.S. 518, 531 (1988).
17. *See, e.g.*, DOHA Case No. 94-0966 (July 21, 1995) at p. 4 n.4. *See also* ISCR Case No. 95-0818 (January 31, 1997) at p. 6 (Department Counsel not required to prove its case by "conclusive evidence"); DISCR Case No. 93-0386 (April 21, 1994) at p. 4 ("All that is required in DISCR proceedings is proof based on substantial evidence.").
18. ISCR Case No. 94-1075 (August 10, 1995) at pp. 3-4.
19. ISCR Case No. 93-1390 (January 27, 1995) at pp. 7-8; Directive, Enclosure 3, Item E3.1.15.
20. *Egan*, 484 U.S. at 531.