

KEYWORD: Financial; Criminal Conduct; Personal Conduct

DIGEST: Applicant is 41 years old, married, and has one child. He is a merchant mariner whose duty station is helmsman. Applicant has nine delinquent debts from the 1990s, an assault arrest from 1996, and two falsifications on his security clearance application, along with six motor vehicle code violations going back to 1992, including failure to have automobile insurance as required by his home state. Applicant did not mitigate the financial considerations nor the personal conduct security concerns. He did mitigate the criminal conduct security concern. Clearance is denied.

CASENO: 01-26872.h1

DATE: 02/03/2005

DATE: February 3, 2005

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In re:

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SSN: -----

Applicant for Security Clearance

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ISCR Case No. 01-26872

**DECISION OF ADMINISTRATIVE JUDGE**

**PHILIP S. HOWE**

**APPEARANCES**

**FOR GOVERNMENT**

Marc E. Curry, Esq., Department Counsel

## **FOR APPLICANT**

Pro Se

### **SYNOPSIS**

Applicant is 41 years old, married, and has one child. He is a merchant mariner whose duty station is helmsman. Applicant has nine delinquent debts from the 1990s, an assault arrest from 1996, and two falsifications on his security clearance application, along with six motor vehicle code violations going back to 1992, including failure to have automobile insurance as required by his home state. Applicant did not mitigate the financial considerations nor the personal conduct security concerns. He did mitigate the criminal conduct security concern. Clearance is denied.

### **STATEMENT OF THE CASE**

The Defense Office of Hearings and Appeals (DOHA) declined to grant or continue a security clearance for Applicant. On March 8, 2004, DOHA issued a Statement of Reasons<sup>(1)</sup> (SOR) detailing the basis for its decision-security concerns raised under Guideline F (Financial Considerations), Guideline J (Criminal Conduct) and Guideline E (Personal Conduct) of the Directive. Applicant answered the SOR in writing on May 5, 2004 and elected to have a hearing before an administrative judge. The case was assigned to me on August 5, 2004. On December 13, 2004, I convened a hearing to consider whether it is clearly consistent with the national interest to grant or continue a security clearance for Applicant. The Government and the Applicant submitted exhibits that were admitted into evidence. DOHA received the hearing transcript (Tr.) on December 21, 2004.

### **FINDINGS OF FACT**

Applicant's admissions to the SOR allegations are incorporated here as findings of fact. After a complete and thorough review of the evidence in the record, and full consideration of that evidence, I make the following additional findings of fact:

Applicant is 41 years old, married with one daughter, and works as an able-bodied seaman in the merchant marine. His duty is helmsman. As such, he is at sea up to eight consecutive months per year. (Tr. 16 to 18; Exhibit 1)

In 1999 Applicant was without a job, and he decided to find steady employment. He attended a four month mariners school in another state, during which time he had no income, his wife was not working, and his monthly bills became delinquent. After he obtained his mariner's license, he shipped out and sent money to his wife by allotment or mail to pay the bills. She did not pay them regularly, or with sufficient monthly payments to pay off the debt. The debts became delinquent and some were charged off by the creditors. Applicant's spouse found a law firm in another state that is supposed to dispute Applicant's debts on his credit reports with the goal of having the debts removed from the credit reports without the debts being paid off. Applicant claims he pays them \$45 monthly to handle these disputes. Otherwise, Applicant has taken no steps to pay his delinquent debts. Applicant's gross income is about \$5,000 monthly when he works. His expenses are the same as shown on his personal financial statement in September 2002, including \$1,000 monthly on discretionary expenses and a net remainder of \$2,238 per month. At that time Applicant also promised to contact each creditor and arrange payment of the debts. Applicant has not done so. Applicant has not made payments even since the SOR was issued in March 2004, relying instead on the law firm he hired to dispute the debts to get them removed from his credit report. In November 2003, Applicant took a vacation in a Caribbean country because his wife, who owns a part-time travel agency, could get inexpensive plane tickets and hotels. (Tr 25 to 44, 70; Exhibits 2 to 4, A to D)

Applicant did not disclose any of his delinquent debts on his security clearance application (SCA) signed on November 16, 2000. He answered Question 38 concerning delinquent debts over 180 days in duration in the past seven years with "No" when in fact all his debts at that time were more than 180 days delinquent. Applicant claims his absences from home due to his sailing work schedule deprived him of the current knowledge regarding his debts. The current status of Applicant's delinquent debts is as follows:

<b>SOR ALLEGATION</b>	<b>CURRENT STATUS</b>	<b>RECORD EVIDENCE</b>
1.a. Hospital debt, \$284	Unpaid, disputes because insurance should have paid. Debt does not appear on credit reports.	Tr. 25 to 29; Exhibits C, 2, and 4.
1.b. Individual creditor, \$147	Unpaid, Applicant does not know who this creditor is.	Tr. 30; Exhibits C, 2, and 4.
1.c. Bank credit card, \$889	Unpaid, but started to pay \$100 monthly in July 2002, but his wife did not keep paying the creditor. Charged off by creditor in May 2001.	Tr. 31 to 34; Exhibits C, 2, and 4.
1.d. Bank credit card, \$1,597	Unpaid, charged off.	Tr. 34; Exhibits C, 2, and 4.
1.e. Bank credit card, \$1,968	Unpaid and charged off	Tr. 35 to 37; Exhibits C, 2, and 4.
1.f. Bank credit card, \$1,581	Unpaid and charged off.	Tr. 38; Exhibits C, 2, and 4.
1.g. Bank credit card, \$1,076	Unpaid and charged off.	Tr. 38; Exhibits C, 2, and 4.
1.h. Hospital bill, \$1,444	Unpaid, Applicant contends insurance should have paid.	Tr. 39, 40; Exhibits C, 2, and 4.

Applicant did not disclose on his SCA his arrest in May 1996 for assault, as requested by Question 26 seeking arrest information in the previous seven years. The assault charge was filed by his wife when she was pregnant with their child and Applicant went to a bar instead of home from work, so she locked him out and he knocked on the window, causing her to call the police. Charges were never filed against Applicant. Applicant claims his employer gave him no instructions on how to complete the SCA and told him only to disclose felonies. In addition to this incident, Applicant has other motor vehicle insurance, registration, and equipment violations for which he was arrested or cited causing warrants to be issued. Applicant had a 2002 warrant for expired license plates and no liability insurance that he paid in 2004 in the amount of \$300. He also paid \$160 in 2004 on a headlight violation and failure to appear. Both these offenses occurred in 1998 and 1999. Applicant was also arrested in 1999 for failure to show automobile liability and failure to register his vehicle. He was wanted in 2001 by the local police for failure to appear, register his vehicle, and not having financial responsibility insurance on his car. He was arrested in 1998 for bouncing a check he wrote for license plates and charged with fugitive fraud. In June 1992 Applicant was arrested for following too closely to another automobile and being a fugitive. (Tr. 51 to 70)

### 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. The President has restricted eligibility for access to classified information to United States citizens "whose personal and professional history affirmatively indicates loyalty to the United States, strength of character, trustworthiness, honesty, reliability, discretion, and sound judgment, as well as freedom from conflicting allegiances and potential for coercion, and willingness and ability to abide by regulations governing the use, handling, and protection of classified information." Exec. Or. 12968, *Access to Classified Information* § 3.1(b) (Aug. 4, 1995). Eligibility for a security clearance is predicated upon the applicant meeting the security guidelines contained in the Directive.

The adjudication process is based on the whole person concept. All available, reliable information about the person, past and present, is to be taken into account in reaching a decision as to whether a person is an acceptable security risk. Enclosure 2 of the Directive sets forth personnel security guidelines, as well as the disqualifying conditions (DC) and mitigating conditions (MC) under each guideline that must be carefully considered in making the overall common sense determination required.

In evaluating the security worthiness of an applicant, the administrative judge must also assess the adjudicative process factors listed in ¶ 6.3 of the Directive. Those assessments include: (1) the nature, extent, and seriousness of the conduct;

(2) the circumstances surrounding the conduct, and the extent of knowledgeable participation; (3) how recent and frequent the behavior was; (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 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 (See Directive, Section E2.2.1. of Enclosure 2). Because each security case presents its own unique facts and circumstances, it should not be assumed that the factors exhaust the realm of human experience or that the factors apply equally in every case. Moreover, although adverse information concerning a single condition may not be sufficient for an unfavorable determination, the individual may be disqualified if available information reflects a recent or recurring pattern of questionable judgment, irresponsibility, or other behavior specified in the Guidelines.

The decision to deny an individual a security clearance is not necessarily a determination as to the loyalty of the applicant. *See* Exec. Or. 10865 § 7. It is merely an indication that the applicant has not met the strict guidelines the President and the Secretary of Defense have established for issuing a clearance.

Initially, the Government must establish, by substantial evidence, conditions in the personal or professional history of the applicant that disqualify, or may disqualify, the applicant from being eligible for access to classified information. *See Egan*, 484 U.S. at 531. The Directive presumes a nexus or rational connection between proven conduct under any of the disqualifying conditions listed in the guidelines and an applicant's security suitability. *See* ISCR Case No. 95-0611 at 2 (App. Bd. May 2, 1996). All that is required is proof of facts and circumstances that indicate an applicant is at risk for mishandling classified information, or that an applicant does not demonstrate the high degree of judgment, reliability, or trustworthiness required of persons handling classified information. ISCR Case No. 00-0277, 2001 DOHA LEXIS 335 at \*\*6-8 (App. Bd. 2001). Once the Government has established a *prima facie* case by substantial evidence, the burden shifts to the applicant to rebut, explain, extenuate, or mitigate the facts. *See* Directive ¶ E3.1.15. An applicant "has the ultimate burden of demonstrating that is clearly consistent with the national interest to grant or continue his security clearance. ISCR Case No. 01-20700 at 3 (App. Bd. 2002). "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* Exec. Or. 12968 § 3.1(b).

Based upon a consideration of the evidence as a whole, I find the following adjudicative guidelines most pertinent to an evaluation of the facts of this case:

### **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. E2.A6.1.2.1
- (3) Inability or unwillingness to satisfy debts. E2.A6.1.2.3

Conditions that could mitigate security concerns include:

None

### **Guideline J: Criminal Conduct**

The Concern: A history or pattern of criminal activity creates doubt about a person's judgment, reliability and trustworthiness.

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

- (1) Allegations or admissions of criminal conduct, regardless of whether the person was formally charged; E2.A10.1.2.1
- (2) A single serious crime or multiple lesser offenses. E2.A10.1.2.2

Conditions that could mitigate security concerns include:

- (1) The criminal behavior was not recent. E2.A10.1.3.1

### **Guideline E - Personal Conduct:**

The Concern: Conduct involving questionable judgment, untrustworthiness, unreliability, lack of candor, dishonesty, or unwillingness to comply with rules and regulations could indicate that the person may not properly safeguard classified information. The following will normally result in an unfavorable clearance action or administrative termination of further processing for clearance eligibility:

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

- (2) The deliberate omission, concealment, falsification or misrepresentation of relevant and material facts from any personnel security questionnaire, personal history statement or similar form used to conduct investigations, determine employment qualifications, award benefits or status, determine security clearance eligibility or trustworthiness, or award fiduciary responsibilities; E2.A5.1.2.2
- (4) Personal conduct that increases an individual's vulnerability to coercion, exploitation, or duress; E2.A5.1.2.4
- (5) A pattern of dishonesty or rule violations. E2.A5.1.2.5

Conditions that could mitigate security concerns include:

- (5) The individual has taken positive steps to significantly reduce or eliminate vulnerability to coercion, exploitation, or duress. E2.A5.1.3.5

## **CONCLUSIONS**

In the SOR, under the Financial Considerations guideline, DOHA alleged Applicant had not paid nine delinquent debts. The Government proved those allegations by substantial evidence, including Applicant's admissions. Applicant incurred these debts in the 1990s and has undertaken only token efforts to repay them, contrary even to his assertions in 2002 to the Government investigator that he would pay his debts. Disqualifying Conditions (DC) 1 and DC 3 apply.

Applicant is gainfully employed as a merchant mariner and has been since 2000. In those five years Applicant has had

sufficient income and time to pay off some or all of the delinquent debts, or arrange installment payment agreements. His personal financial statement shows he spends \$1,000 monthly on miscellaneous expenses, and still has \$2,238 as a net remainder. Instead of paying his delinquent debts, Applicant blames his wife for failing to make the payments and hired an out-of-state law firm to remove these debts from his credit report without paying them. That effort is not a good-faith effort to repay or otherwise resolve his debts. Regardless where Applicant is while sailing, he has a duty to pay his just debts, including using modern banking techniques, such as direct deposit and automatic bill paying, to resolve these debts. He has done nothing and has no viable plan to repay these debts. There are no Mitigating Conditions (MC) that apply here. I conclude this guideline against Applicant.

The next guideline alleged is Criminal Conduct. Applicant's arrest on assault charges occurred in 1996. DC 1 and DC 2 apply.

This offense occurred eight years ago and has not been repeated. It has been mitigated by the passage of time. The Government conceded this allegation (TR. 13) and I agree. MC 1 applies. I conclude this guideline for Applicant.

Finally, Personal Conduct security concerns are alleged, falsification and actions taken by Applicant in the 1990s. The Government alleged two falsifications on the SCA, and then six law enforcement involvements for vehicle code violations. Applicant seemed to have a difficult time in the 1990s complying with the auto insurance requirements of his state, registering his vehicle, paying for current license plates, and appearing for court dates involving these offenses. DC 2, DC 4, and DC 5 apply. While Applicant contends he did not know his delinquent debt situation when he completed his SCA, I do not believe him. He knew he had debts and should have disclosed the fact he has not paid his bills for some years in the late 1990s. Regarding the second falsification, he tried to blame his mariner training school or company officials for not telling him how to complete the SCA, but that explanation is not credible either. Question 26 is easily understandable and Applicant knew he had been arrested. The remaining six allegations in Paragraph 3 of the SOR show a pattern of law violations from 1992 onward regarding Applicant's compliance with his state's vehicle code.

Considering the two falsification allegations, there are no MC that apply. Regarding the six motor vehicle related allegations, they have not been repeated since 2001, in large part because Applicant sails for a living and is away from home for six to eight months a year. Furthermore, he paid the fines on the subparagraphs 3.c. and 3.d. offenses, resolving them. The remaining four offenses are old and mitigated by time. MC 5 applies. I conclude this guideline against Applicant.

### **FORMAL FINDINGS**

The following are my conclusions as to each allegation in the SOR:



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

Paragraph 2. Guideline J: FOR APPLICANT

Subparagraph 2.a: For Applicant

Paragraph 3. Guideline F: AGAINST APPLICANT

Subparagraph 3.a: Against Applicant

Subparagraph 3.b: Against Applicant

Subparagraph 3.c: For Applicant

Subparagraph 3.d: For Applicant

Subparagraph 3.e: For Applicant

Subparagraph 3.f: For Applicant

Subparagraph 3.g: For Applicant

Subparagraph 3.h: 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 continue a security clearance for Applicant. Clearance is denied.

Philip S. Howe

Administrative Judge

1. Pursuant to Exec. Or. 10865, *Safeguarding Classified Information within Industry* (Feb. 20, 1960), as amended and modified, and Department of Defense Directive 5220.6, *Defense Industrial Personnel Security Clearance Review Program* (Jan. 2, 1992), as amended and modified (Directive).