

KEYWORD: Financial

DIGEST: Applicant has a history of financial difficulties. In 2002, he owed 12 creditors approximately \$13,000. Two years later, he had made little progress in resolving his debts despite his assurances and apparent ability to do so. Applicant has failed to mitigate security concerns raised by these debts due to his inability or unwillingness to resolve them. Clearance is denied.

CASENO: 02-11154.h1

DATE: 01/03/2005

DATE: January 3, 2005

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In Re:

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SSN: -----

Applicant for Security Clearance

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ISCR Case No. 02-11154

**DECISION OF ADMINISTRATIVE JUDGE**

**ROBERT J. TUIDER**

**APPEARANCES**

**FOR GOVERNMENT**

Edward W. Loughran, Esq., Department Counsel

**FOR APPLICANT**

*Pro Se*

**SYNOPSIS**

Applicant has a history of financial difficulties. In 2002, he owed 12 creditors approximately \$13,000. Two years later, he had made little progress in resolving his debts despite his assurances and apparent ability to do so. Applicant has failed to mitigate security concerns raised by these debts due to his inability or unwillingness to resolve them. 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 September 29, 2003, DOHA issued a Statement of Reasons (SOR) <sup>(1)</sup> detailing the basis for its decision-security concerns raised under Guideline F (Financial Considerations). Applicant answered the SOR in writing on October 28, 2003, and elected to have a hearing before an Administrative Judge. The case was assigned to me on January 7, 2004. On January 23, 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 offered five documents, which were admitted without objection as Government Exhibits (GE) 1 through 5. The Applicant offered one document, which was admitted without objection as Applicant Exhibit (AE) A. I left the record open to afford Applicant the opportunity to submit additional documents. The Applicant timely submitted eight additional documents, which were admitted without objection as AE B through I. DOHA received the transcript on February 3, 2004.

## FINDINGS OF FACT

Applicant is a 36-year-old employee for a defense contractor. He is married with four children living at home. He has been with his current employer since September 2001. Applicant's wife is employed as a beautician.

Applicant served in the U. S. Navy from October 1988 to March 1998, and was honorably discharged as a Storekeeper Second Class Petty Officer, pay grade E-5.

The SOR alleged Applicant owed 12 creditors a total of \$13,501.00, as of January 10, 2002. Applicant admitted 10 of the 12 debts were valid. Those 10 admitted debts total \$12,705.00. Applicant denied one of debts totaling \$568.00 (¶ 1.h) indicating it was a duplicate debt (¶ 1.b) already alleged, and denied a second debt totaling \$228.00 (¶ 1.I), which had been deleted from Applicant's credit report. Answer to SOR.

Applicant submitted a signed, sworn statement on January 28, 2002. GE 2. In that statement, he said, "I intend to pay off one debt at a time. I intend to start with my lowest debt and make payments to that financial company until that debt is paid off and then go to the next debt and so on. I hope to have all delinquent debts paid off within the next two years." GE 2, p. 2. At the time, Applicant submitted this statement, his accompanying financial statement reflected a net monthly remainder of \$236.00. Applicant stated, "I intend to use \$236.00 monthly remainder to begin to pay off my delinquent debts." GE, p. 4.

In the two years that have elapsed between Applicant's statement and the date of his hearing, he has settled one account of \$532.00 (¶ 1.k) for a lesser amount of \$361.33, and settled a second account of \$376.00 (¶ 1.1) for a lesser amount of \$250.00. AE A, AE B. These settlements occurred in January 2004, the same month as his hearing. Of the remaining debts, Applicant has paid \$25.00 to \$50.00 on each account in the two year period from the time of his signed, sworn statement to his hearing. He estimates he owes approximately \$12,000.00 to \$15,000.00 to his creditors, reflecting an increased debt amount as a result of accruing interest. Tr. 33, 37, 38.

Applicant attributes his financial difficulties to his decreased salary when he was discharged from the U. S. Navy, reduction of his wife's income due to loss of clients as a beautician, and several brief periods of unemployment. GE 3, pgs. 3-4.

His plan to recover from his financial dilemma is to sell his townhouse, which he estimates has over \$100,000.00 in equity, and use that money to pay off his debts. Once sold, he plans to rent, then purchase a home when financially solvent. Tr. 17, 38, 44. No documentation was offered verifying this plan. Applicant has not sought the assistance of a

financial counselor, but has sought the advice of his realtor/lender, who attends his church. It was the lender's suggestion to sell his townhouse. Tr. 43.

## 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.

Enclosure (2) of the Directive sets forth personal security guidelines, as well as the disqualifying conditions (DC) and mitigating conditions (MC) under each guideline. 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. 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).

Once the Government establishes a disqualifying condition by substantial evidence, the burden shifts to the applicant to rebut, explain, extenuate, or mitigate the facts. ISCR Case No. 01-20700 at 3 (App. Bd. Dec. 19, 2002); *see* Directive ¶ E3.1.15. An applicant "has the ultimate burden of demonstrating that it is clearly consistent with the national interest to grant or continue his security clearance." ISCR Case No. 01-20700 at 3.

## CONCLUSIONS

### **Guideline F- Financial Considerations**

In the SOR, DOHA alleged Applicant had delinquent debts (¶¶ 1.a.-1.l.) totaling more than \$13,000.00. An applicant who is financially overextended is at risk of having to engage in illegal acts to generate funds. Directive ¶ E2.A6.1.1.

The Government established by substantial evidence and Applicant's admissions SOR allegations ¶¶ 1.a.-1.g., 1.j.-1.l. The debts alleged in ¶¶ 1.k. and 1.l. have been settled for a lesser amount. Applicant denied the debt alleged in ¶ 1.h. , which is a duplicate of the debt alleged in ¶ 1.b. Applicant also denied the debt alleged in ¶ 1.i., which has been deleted from his credit report. Applicant still owes his creditors approximately \$12,000.00 to \$15,000.00, and his financial situation has worsened in the two year period from the time he submitted his signed, sworn statement until his hearing.

His recent attempts to pay off his creditors have fallen far short of what would be expected of someone who was put on notice by the Government in January 2002 of the security ramifications of his debts. His assurances to pay off these debts has been disappointing as well as his bare minimum effort to rectify his financial situation.

DCs applicable: DC 1: A history of not meeting financial obligations. E2.A6.1.2.1.; DC 3: Inability or unwillingness to satisfy debts. E2.A6.1.2.3. MCs applicable: None. I conclude Guideline F against Applicant, however, I conclude for him on ¶¶ 1.h., 1.i., 1.k. and 1.l.

In short, at the time of Applicant's hearing, he had not demonstrated he had taken the necessary steps to resolve or attempt to resolve his financial difficulties.

### **FORMAL FINDINGS**

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

Paragraph 1. Guideline F: AGAINST APPLICANT

Subparagraph 1.a.-1.g: Against Applicant

Subparagraph 1.h.-1.i. For Applicant

Subparagraph 1.j.: Against Applicant

Subparagraph 1.k-1.l.: For Applicant

Subparagraph 1.m. 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 continue a security clearance for Applicant. Clearance is denied.

**Robert J. Tuider**

**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.