

KEYWORD: Financial

DIGEST: Applicant incurred over \$44,000 in late or delinquent debts between 1996 and 2001. Two periods of unemployment and an unsuccessful foray into self-employment may have contributed to his financial problems, but he has presented insufficient information about any efforts he has taken to resolve his financial obligations. He has failed to mitigate the security concerns as expressed in Guideline F (financial considerations). Clearance is denied.

CASE NO: 02-27147.h1

DATE: 07/13/2004

DATE: July 13, 2004

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In Re:

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SSN: -----

Applicant for Security Clearance

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ISCR Case No. 02-27147

**DECISION OF ADMINISTRATIVE JUDGE**

**MATTHEW E. MALONE**

**APPEARANCES**

**FOR GOVERNMENT**

Nichole L. Noel, Esquire, Department Counsel

**FOR APPLICANT**

*Pro Se*

**SYNOPSIS**

Applicant incurred over \$44,000 in late or delinquent debts between 1996 and 2001. Two periods of unemployment and an unsuccessful foray into self-employment may have contributed to his financial problems, but he has presented insufficient information about any efforts he has taken to resolve his financial obligations. He has failed to mitigate the security concerns as expressed in Guideline F (financial considerations). Clearance is denied.

**STATEMENT OF THE CASE**

On August 4, 2003, in accordance with DoD Directive 5220.6, as amended (Directive), the Defense Office of Hearings and Appeals (DOHA) issued Applicant a Statement of Reasons (SOR) alleging facts that raise security concerns about his adverse financial history. The SOR further informed him that, based on information available to the government, DOHA adjudicators could not make the preliminary affirmative finding it is clearly consistent with the national interest to grant or continue Applicant's security clearance. [\(1\)](#)

On October 27, 2003, Applicant responded to the SOR (Answer) and admitted to all of the allegations except for subparagraphs 1.f, 1.g, and 1.j. He also requested a determination without a hearing. On April 8, 2004, DOHA Department Counsel submitted a file of relevant materials (FORM) with six exhibits (Items 1 - 6) attached in support of the government's preliminary decision. A copy was sent to Applicant on April 15, 2004. Applicant received the FORM on May 6, 2004 and was afforded 30-days to submit additional information in his own behalf. However, he did not respond to the FORM and the case was assigned to me on June 18, 2004.

## FINDINGS OF FACT

Applicant's aforementioned admissions are incorporated herein as facts. After a thorough review of the pleadings and exhibits, I make the following additional findings of fact:

Applicant is a 42-year-old electronics and test technician employed by a defense contractor since October 1999. He also served in the U.S. Air Force from May 1985 until January 1995 achieving the rank of senior airman (E-4). Applicant has been unemployed twice. The first period was between November 1996 and April 1997, after his company moved jobs to Taiwan and Mexico. He was also out of work from May 1998 until March 1999. After Applicant left the Air Force in 1995, he opened his own on-line catalog business and a real estate investing venture. He supported himself through credit while he tried to get his businesses off the ground, but he was never able to turn a profit from either business and some of his credit card accounts went unpaid. Thereafter, he pursued jobs in electronics.<sup>(2)</sup>

Since 1992, Applicant has generated over \$44,400 in delinquent debts. As of January 2002, his debt consisted of 10 credit accounts (mostly credit cards) dating as far back as 1992 that were either delinquent or greater than 120 days past due. He also had one account referred for collection and two judgments entered against him.<sup>(3)</sup> Applicant has been steadily employed, sometimes holding two part-time jobs simultaneously, since March 1999. He claims to have paid or settled the debts listed at SOR subparagraphs 1.f, 1.g, and 1.j, but has provided no corroborating evidence of this. In his subject interview with an agent of the Defense Security Service (DSS) on July 3, 2002, Applicant claimed he was trying to work out settlement agreements with some of his creditors, yet there is nothing in evidence to show his efforts have yielded any results. A Personal Financial Statement (PFS) given to DSS at the time showed Applicant had about \$110 net cash each month, but did not list payments to any of the creditors listed in the SOR.<sup>(4)</sup>

## POLICIES

The Directive sets forth adjudicative guidelines<sup>(5)</sup> to be considered in evaluating an Applicant's suitability for access to classified information. The Administrative Judge must take into account both disqualifying and mitigating conditions under each adjudicative issue applicable to the facts and circumstances of each case. Each decision must also reflect a fair and impartial common sense consideration of the factors listed in Section 6.3 of the Directive. The presence or absence of a disqualifying or mitigating condition is not determinative of a conclusion for or against an Applicant. However, specific applicable guidelines should be followed whenever a case can be measured against them as they represent policy guidance governing the grant or denial of access to classified information. Having considered the SOR allegations and having reviewed the record evidence as a whole, I conclude the relevant adjudicative guidelines to be applied here are those conditions listed under Guideline F (financial considerations).

## **BURDEN OF PROOF**

A security clearance decision is intended to resolve whether it is clearly consistent with the national interest<sup>(6)</sup> for an Applicant to either receive or continue to have access to classified information. The government bears the initial burden of proving, by something less than a preponderance of the evidence, controverted facts alleged in the SOR. If the government meets its burden, it establishes a *prima facie* case that it is not clearly consistent with the national interest for the Applicant to have access to classified information. The burden then shifts to the Applicant to refute, extenuate or mitigate the government's case. Because no one has a "right" to a security clearance, the Applicant bears a heavy burden of persuasion.<sup>(7)</sup>

A person who has access to classified information enters into a fiduciary relationship with the government based on trust and confidence. The government, therefore, has a compelling interest in ensuring each Applicant possesses the requisite judgement, reliability and trustworthiness of one who will protect the national interests as his or her own. The "clearly consistent with the national interest" standard compels resolution of any reasonable doubt about an Applicant's suitability for access in favor of the government.<sup>(8)</sup>

## **CONCLUSIONS**

Under Guideline F, a security concern exists where it is shown an individual is financially overextended, thus being at risk of having to engage in illegal acts to generate funds.<sup>(9)</sup> Also, an inability to properly manage one's finances may indicate that person may not have the judgment or reliability necessary to protect classified information. Department Counsel has presented sufficient evidence in the FORM to establish a *prima facie* case for disqualification under this guideline and I conclude that Guideline F disqualifying condition (DC) 1<sup>(10)</sup> and DC 3<sup>(11)</sup> apply here. Applicant has delinquent accounts that have not been paid dating back to 1992. Applicant's first delinquent account dates back to 1992, and he has not made any tangible effort to pay or otherwise resolve his debts. His PFS suggests he is current on some recent accounts such as his car payment and newer credit cards; however, his \$110 net monthly cash flow is wholly inadequate to address the debts listed in the SOR.

Applicant's debts can be attributed in some measure to his failed personal business ventures and to his two periods of unemployment. Mitigating condition (MC) 3<sup>(12)</sup> applies. Yet the only reasonable interpretation of this record shows Applicant has taken little or no action to either control his use of debt in the face of reduced income, or to try and resolve his debt since regaining steady employment five years ago.

None of the other mitigating conditions apply to the facts of this case. Even though his last known delinquency was in 1999, Applicant's debt is recent in that it is still delinquent five years later. His financial difficulties are not isolated as there are multiple delinquent accounts over a seven-year period. Further, while Applicant does not want to declare bankruptcy and states he is trying to settle his delinquencies, he has not sought help from any credit counseling service and there is no evidence of a systematic good-faith effort to pay or otherwise resolve his debts. I conclude Guideline F against the Applicant.

I have carefully weighed all of the evidence, and I have applied the disqualifying and mitigating conditions as listed under each applicable adjudicative guideline. I have also tried to make a fair and commonsense assessment of the record before me as required by Directive Section E2.2.3. This record raises reasonable doubts about Applicant's ability to protect classified information and to exercise the requisite good judgment and discretion expected of one in whom the government entrusts its interests. Applicant disclosed his debts in his security clearance application and appears to be candid about his financial problems.<sup>(13)</sup> However, absent substantial information about how he intends to resolve his problems and the government's doubts about his suitability for a clearance, which Applicant failed to provide, I cannot conclude he has failed to overcome the government's case.

### **FORMAL FINDINGS**

Formal findings regarding each SOR allegation as required by Directive Section E3.1.25 are as follows:

Paragraph 1, Financial Considerations (Guideline F): AGAINST THE APPLICANT

Subparagraph 1.a: Against the Applicant

Subparagraph 1.b: Against the Applicant

Subparagraph 1.c: Against the Applicant

Subparagraph 1.d: Against the Applicant

Subparagraph 1.e: Against the Applicant

Subparagraph 1.f: Against the Applicant

Subparagraph 1.g: Against the Applicant

Subparagraph 1.h: Against the Applicant

Subparagraph 1.i: Against the Applicant

Subparagraph 1.j: Against the Applicant

Subparagraph 1.k: Against the Applicant

Subparagraph 1.l: 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. Clearance is denied.

Matthew E. Malone

Administrative Judge

1. Required by Executive Order 10865, as amended, and by DoD Directive 5220.6 (Directive), as amended.
2. Items 4 and 5.
3. Item 6.
4. Items 5 and 6.
5. Directive, Enclosure 2.
6. *See Department of the Navy v. Egan*, 484 U.S. 518 (1988).
7. *See Egan*, 484 U.S. at 528, 531.
8. *See Egan*; Directive E2.2.2.
9. Directive, E2.A6.1.1.
10. Directive, E2.A6.1.2.1. A history of not meeting financial obligations;
11. Directive, E2.A6.1.2.3. Inability or unwillingness to satisfy debts;
12. Directive, E2.A6.1.3.3. 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*); (emphasis added)

13. In the FORM, Department Counsel raised a concern about Applicant's "lack of candor about his financial irresponsibility." This was based on the premise Applicant claimed his financial troubles did not begin until he had been laid off from a "high paying job in 1998." First, the record is clear that Applicant had left a "higher paying job" (Item 5), suggesting only a relative reduction in income, not a fall from affluence. Further, Applicant had two earlier periods of little or no income from January 1995 to May 1996 and again from November 1996 to April 1997. With these facts in mind, it appears Department Counsel's concerns about Applicant's candor is misplaced.