

KEYWORD: Financial; Personal Conduct

DIGEST: Applicant mitigated concern over debts incurred over several years after his separation and divorce, and from private school expenses for a step-daughter. Two erroneous judgments were entered against him and one tax lien was alleged but its existence was denied by IRS. Other debts for which he was responsible have been paid. While he omitted information in his 2001 SF 86 regarding his delinquent debts, he did not realize the extent of the delinquencies. Clearance is granted.

CASENO: 02-29607.h1

DATE: 04/26/2005

DATE: April 26, 2005

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In Re:

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SSN: -----

Applicant for Security Clearance

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ISCR Case No. 02-29607

**DECISION OF ADMINISTRATIVE JUDGE**

**CHARLES D. ABLARD**

**APPEARANCES**

**FOR GOVERNMENT**

Jason R. Perry, Esq., Department Counsel

## **FOR APPLICANT**

*Pro Se*

### **SYNOPSIS**

Applicant mitigated concern over debts incurred over several years after his separation and divorce, and from private school expenses for a step-daughter. Two erroneous judgments were entered against him and one tax lien was alleged but its existence was denied by IRS. Other debts for which he was responsible have been paid. While he omitted information in his 2001 SF 86 regarding his delinquent debts, he did not realize the extent of the delinquencies. Clearance is granted.

### **STATEMENT OF CASE**

On August 10, 2004, the Defense Office of Hearings and Appeals (DOHA) pursuant to Executive Order 10865, *Safeguarding Classified Information Within Industry*, as amended and modified, and Department of Defense Directive 5220.6, *Defense Industrial Personnel Security Clearance Review Program* (Directive), dated January 2, 1992, as amended and modified, issued a Statement of Reasons (SOR) to 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 Applicant. DOHA recommended the case be referred to an administrative judge to determine whether a clearance should be granted, continued, denied, or revoked.

On December 19, 2004, Applicant, in a sworn written statement, responded to the allegations set forth in the SOR, and requested a hearing. The matter was assigned to me on January 5, 2005. A notice of hearing was issued on February 3, 2005, for a hearing held on February 24, 2005, at which time the Applicant testified. The Government introduced seven exhibits and the Applicant introduced nine. All were admitted into evidence. The transcript was received on March 8, 2005.

## FINDINGS OF FACT

Applicant is a 48-year-old employee of a defense contractor working as an aircraft mechanic. He denied all of the allegations relating to delinquent debts with explanations and admitted the allegations relating to falsification. The admissions are incorporated herein as findings of fact. After a complete review of the evidence in the record and upon due consideration of the record, the following additional findings of fact are made:

Applicant was separated from his wife in 1993 and divorced in 1997. He incurred a number of debts during the separation and after the divorce when he was maintaining two residences. He retired from the Navy in 1998 with over 20 years of service as a Petty Officer First Class. His occupation was as a jet mechanic, the same job that he has done the past four years for his employer working on the fleet of presidential aircraft. He received an outstanding achievement award for his work in 2004.

After his divorce, he re-married but his wife died in 2002. He has four children from his first wife and two step-children from his second wife for whom he has been financially responsible. He is now paying for college education of one daughter and until 2004 paid for private schooling for a step-daughter with learning problems attributed to attention deficit hyperactivity. She is now in public school. He paid child support from 1997 until 2004 when all children reached maturity.

Applicant was alleged to have delinquent debts for eight debts totaling \$9,800.00. The following is an analysis of each debt keyed to the paragraphs in the SOR:

- a. \$382.14-removed from credit reports as charged off but included in the debt in d. below.
- b. \$1,287.77-Refinanced vehicle and final monthly payment made August, 2004, (Exh. E).
- c. \$1,164.00-Debt of former wife, judgement entered, but debt assumed by and paid by wife (Attachment to Exh. 3).
- d. 3,711.00-Settled for \$3,000.00 for rents after dispute and settlement negotiation (Exh. G).

e. \$655.00-IRS debt; tax lien allegedly filed in 1997 but an IRS letter stated that no debts indicated for past years and no lien (Exh.B).

f. \$2,311.31-Credit union debt and judgement was mistakenly alleged against Applicant since the debt was for another person (Exh. C).

g. \$286.00-Medical bill that should have been paid by insurance since work related but paid by Applicant (TR 56).

h. \$76.96-Store debt paid in full in 2002 (Exh. D).

Applicant currently holds three credit cards with total debts of \$1,300.00 and owes \$34,000.00 on two vehicles but is current with payments for all of his debts (Exhs. H and I). His current annual income from his present employment and military retirement is \$62,000.00 per annum. He has almost \$1,500.00 per month available after expenses are paid much of which he applies to the college education expenses of his daughter.

Applicant is alleged to have failed to disclose the delinquent debts, lien, and judgments in response to the applicable questions 36, 37, 38, and 39 on his application for a security clearance (SF 86) filed March 28, 2001. Applicant had completed security applications before giving the same answers and had held security clearances both in the military and while working for his employer. He denied having knowledge of the delinquent status of the accounts, the tax lien, and the judgments.

## **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.

An evaluation of whether the applicant meets the security guidelines includes consideration of the following factors: (1) the nature, extent, and seriousness of the conduct; (2) the circumstances surrounding the conduct; (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 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. Directive, ¶ E2.2.1. Security clearances are granted only when "it is clearly consistent with the national interest to do so." Executive Order No. 10865 § 2. *See* Executive Order No. 12968 § 3.1(b).

Initially, the Government must establish, by something less than a preponderance of the evidence, that conditions exist in the personal or professional history of the applicant which disqualify, or may disqualify, the applicant from being eligible for access to classified information *See Egan*, 484 U.S. at 531. The applicant then bears the burden of demonstrating that it is clearly consistent with the national interest to grant or continue the applicant's clearance. "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* Executive Order No. 12968 § 3.1(b)

## CONCLUSIONS

Upon consideration of all the facts in evidence, and after application of all appropriate legal precepts, factors, and conditions above, I conclude the following with respect to all allegations set forth in the SOR.

Applicant's delinquent debts prompted the allegation of violation of Guideline F in that an individual who is financially overextended is at risk of having to engage in illegal acts to generate funds. (E2.A6.1.1.) Conditions that could raise a security concern and may be disqualifying include a history of not meeting financial obligations (E2.A6.1.2.1.) and evidence of inability or unwillingness to satisfy debts. (E2.A6.1.2.3.) Mitigating Conditions (MC) include the fact that the conditions that resulted in the behavior were largely beyond the person's control including divorce (E2.A6.1.3.3.) and the person has initiated a good faith effort to repay overdue creditors or otherwise resolve debts. (E2.A6.1.3.6.) Both mitigating factors are applicable since the causes for the debts were largely beyond his control. The debts have been paid or resolved over the past several years.

Also alleged is Applicant's failure to report the delinquent debts on his SF 86 thereby raising issues under Guideline E that might indicate questionable judgment, unreliability, and unwillingness to comply with rules and regulations and could indicate that the person may not properly safeguard classified information (E2.A5.1.1.). Specifically, the deliberate omission, concealment, or falsification of relevant and material facts from a personnel security application could raise a security concern and be disqualifying. (E2.A5.1.2.2.)

Applicant denied knowledge of the lien, the judgments, and the extent of delinquency of the debts as he had not obtained a credit report until this matter arose. Applicant stated that he was unaware of the extent of delinquency of some of the debts at issue and did not know of their delinquency until the SOR was issued and that was why he did not report them on his SF 86. He did admit the existence of some of the debts and has accounted for payment of all for which he is responsible. The IRS letter denies the existence of any debts in past years and says there was no lien. One judgment was shown to be against someone else and the second judgment was against his former wife for a debt for which she took responsibility. Her wages were garnished to pay it. He denied knowledge of the lien and the judgments although he had admitted them in his answer. The evidence introduced indicates that those admissions were improvidently made.

Applicant is a trusted and valuable employee of his company who retired from the Navy with a good military record. While the debts have been extant for several years, he presented a credible case as to his financial situation and the fact that he was unaware of some of the debts and their delinquency particularly those his former wife had undertaken to pay. The fact that some of the debts alleged did not exist or were not his according to the proof offered bolsters his argument.

In all adjudications the protection of our national security is of paramount concern. Persons who have access to classified information have an overriding responsibility for the security concerns of the nation.

The objective of the security clearance process is the fair-minded, commonsense assessment of a person's trustworthiness and fitness for access to classified information. The "whole person" concept recognizes that we should view a person by the totality of their acts and omissions. Each case must be judged on its own merits taking into consideration all relevant circumstances, and applying sound judgment, mature thinking, and careful analysis. Applicant is neither well-educated nor sophisticated in management of money. However, he was able to achieve a senior enlisted rank and serve honorably in the Navy. He has been a responsible parent to both children and step-children and a single parent the past three years. He presented a persuasive case that his oversight on the SF 86 was understandable and that he had not intended to mislead. Applying the whole person tests, I find that the circumstances surrounding the conduct and likelihood of recurrence justify a finding in his favor.

After considering all the evidence in its totality and as an integrated whole to focus on the whole person of Applicant, I conclude that he is eligible for access to classified information.

## **FORMAL FINDINGS**

Formal findings as required by the Directive (Par. E3.1.25) are as follows:

Paragraph 1. Guideline F: FOR APPLICANT

Subparagraph 1.a.: For Applicant

Subparagraph 1.b.: For Applicant

Subparagraph 1.c.: For Applicant

Subparagraph 1.d.: For Applicant

Subparagraph 1.e.: For Applicant

Subparagraph 1.f.: For Applicant

Subparagraph 1.g.: For Applicant

Subparagraph 1.h.: For Applicant

Subparagraph 1.i.: For Applicant

Paragraph 2. Guideline E: FOR APPLICANT

Subparagraph 2.a.: For Applicant

Subparagraph 2.b.: For Applicant

Subparagraph 2.c.: For Applicant

## **DECISION**

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

Charles D. Ablard  
Administrative Judge