

KEYWORD: Financial

DIGEST: Applicant is a business development manager for a defense contractor. He had his own business that experienced a downturn and he lost the business. At the same time, he experienced marital problems and he and his wife divorced. His son was experiencing medical problems and he incurred substantial medical expenses. As a result of the three events, Applicant incurred substantial debt he was not able to satisfy. He has remarried and is employed by the defense contractor. He has paid most of his debts and has made arrangements with creditors for payment plans for the remaining debts. Applicant made good-faith efforts to satisfy his debts and has mitigated the security concerns of his financial situation. Clearance is granted.

CASENO: 02-29838.h1

DATE: 02/16/2005

DATE: February 16, 2005

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In Re:

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SSN: -----

Applicant for Security Clearance

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ISCR Case No. 02-29838

**DECISION OF ADMINISTRATIVE JUDGE**

**THOMAS M. CREAN**

**APPEARANCES**

**FOR GOVERNMENT**

Braden M. Murphy, Esq., Department Counsel

## **FOR APPLICANT**

Pro Se

### **SYNOPSIS**

Applicant is a business development manager for a defense contractor. He had his own business that experienced a downturn and he lost the business. At the same time, he experienced marital problems and he and his wife divorced. His son was experiencing medical problems and he incurred substantial medical expenses. As a result of the three events, Applicant incurred substantial debt he was not able to satisfy. He has remarried and is employed by the defense contractor. He has paid most of his debts and has made arrangements with creditors for payment plans for the remaining debts. Applicant made good-faith efforts to satisfy his debts and has mitigated the security concerns of his financial situation. Clearance is granted.

### **STATEMENT OF THE CASE**

On January 15, 2004, the Defense Office of Hearing and Appeals (DOHA) issued a Statement of Reasons (SOR) detailing the basis for its decision to not grant a security clearance to Applicant. The action was taken under Executive Order 10865, *Safeguarding Classified Information within Industry* (February 20, 1990), as amended and modified, and Department of Defense Directive 5220.6, *Defense Industrial Personnel Security Clearance Review Program* (January 2, 1992), as amended and modified (Directive). Applicant acknowledged receipt of the SOR on January 22, 2004. The SOR alleges security concerns under Guideline F (Financial Considerations) of the Directive.

Applicant answered the SOR in writing on January 15, 2004. Applicant admitted he owed three of the debts but not to the creditors listed in the SOR. He was unaware of the fourth allegation and could neither admit nor deny the allegation. He requested a hearing before an administrative judge. The request for a hearing was received by DOHA on February 10, 2004. Department Counsel was prepared to proceed with the case on September 8, 2004. The case was assigned to another administrative judge and transferred to me on November 23, 2004. A notice of hearing was issued on December 3, 2004 and the hearing was held on January 4, 2005. Five government exhibits, four Applicant exhibits, and the testimony of the Applicant were received during the hearing. The record was held open for Applicant to submit additional documentary information and two additional documents were received on January 15, 2005. The transcript was received on January 11, 2005.

## FINDINGS OF FACT

Applicant is a 58-year-old business development manager for a defense contractor. He was married for 28 years but was divorced in 1999. There were three sons from the marriage; two in their twenties are not in the household, and the third lives with Applicant's former wife. He provides her alimony and pays child support for the son. Applicant remarried in 2002 and his present wife has two children not dependent on Applicant or his wife for support. He held a security clearance for approximately 30 years, mostly under the auspices of another government agency. [\(1\)](#)

Applicant had a business for many years selling products to government agencies. In 1999, the business hit a downturn and Applicant had to borrow funding to keep the business going. The business environment became worse and Applicant had to give up the business in 2001. During this time, his youngest son required medical treatment to include institutional and special education for emotional disability. [\(2\)](#) Applicant's marital problems cumulated in a 1999 divorce. Applicant experienced serious financial problems stemming from the business failure, divorce, and son's medical needs incurring approximately \$40,000 to \$50,000 in delinquent debts. [\(3\)](#) Applicant was able to pay some of the delinquent debts. The allegations of delinquent debt in the SOR are the result of the delinquent debts he was unable to satisfy. A delinquent debt not listed in the SOR has not been satisfied but Applicant is making arrangements to pay that debt. [\(4\)](#)

There are four delinquent debts alleged in the SOR. Debt 1.a of the SOR is a credit card debt of \$9,280. Applicant paid off this debt. [\(5\)](#) Debt 1.b of the SOR is a credit card debt of \$6,137. Applicant made arrangements with the credit card company and is paying this debt off at \$100 per month. He is current on his payments. [\(6\)](#) Debt 1.c of the SOR is a credit card delinquent debt for \$4,878 that has been settled and paid. [\(7\)](#) Debt 1.d of the SOR is for a loan Applicant thought had been paid. Applicant settled the account and paid the debt. [\(8\)](#)

Applicant desired to make financial arrangements with his creditors to pay monthly on his delinquent debt. However, the creditors wanted a lump sum payment and not monthly payments. Applicant was unable to obtain resources for a lump sum payment without borrowing from his family. [\(9\)](#) Applicant received funds from his present wife to pay most of these debts. He intends to repay his wife for her help in resolving the debts. [\(10\)](#)

Applicant has one delinquent debt not listed on the SOR and he is contesting the amount of the debt. He intends to make arrangements to pay the debt once he and the creditor agree on the exact amount of the debt. [\(11\)](#)

Applicant's personal financial situation indicates he and his present wife have sufficient monthly income to resolve delinquent debts. [\(12\)](#) The combined monthly net income of Applicant and his present wife is approximately \$9,900 with expenses of approximately \$7,100 for a monthly net discretionary income of approximately \$2,800. Applicant did not seek financial counseling when the dire financial situation arose. He sought financial counseling when he went to work for the defense contractor but the counseling was unable to provide him assistance with his delinquent debts. [\(13\)](#)

A senior program manager for the defense contractor, who is a retired federal law enforcement official, provided character information concerning Applicant. He has know Applicant for approximately two years and works closely with him. He worked on security matters as a federal law enforcement official and is aware of security requirements. He is aware of Applicant's financial situation. In his opinion, Applicant is a trustworthy person and not a security concern for the United States.<sup>(14)</sup>

## **POLICIES**

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."<sup>(15)</sup> 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 judgement, 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."<sup>(16)</sup> Eligibility for a security clearance is predicated upon the applicant meeting the security guidelines contained in the Directive.

The Directive sets out the adjudicative guidelines for making decisions on security clearances. Enclosure 2 of the Directive sets forth adjudicative guidelines for determining eligibility for access to classified information, and it lists the disqualifying conditions (DC) and mitigating conditions (MC) for each guideline. Each clearance decision must be fair, impartial, and a commonsense decision based on the relevant and material facts and circumstances, the whole person concept, and the factors listed in the Directive ¶ 6.3.1 through ¶ 6.3.6

"The adjudicative process is an examination of a sufficient period of a person's life to make an affirmative determination that the person is eligible for a security clearance."<sup>(17)</sup> An administrative judge must apply the "whole person concept," and consider and carefully weigh the available, reliable information about the person.<sup>(18)</sup> An administrative judge should consider: (1) the nature, extent, and seriousness of the conduct; (2) the circumstances surrounding the conduct, to include knowledgeable participation; (3) the frequency and recency of the conduct; (4) the applicant'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 of recurrence.<sup>(19)</sup>

A person granted access to classified information enters into a special relationship with the government. The government must be able to repose a high degree of trust and confidence in those individuals to whom it grants access to classified information. The decision to deny an individual a security clearance is not necessarily a determination as to the loyalty of the applicant.<sup>(20)</sup> 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 present evidence to establish controverted facts in the SOR that disqualify or may

disqualify the Applicant from being eligible for access to classified information.<sup>(21)</sup> Thereafter, Applicant is responsible for presenting evidence to rebut, explain, extenuate, or mitigate facts.<sup>(22)</sup> An applicant "has the ultimate burden of demonstrating that it is clearly consistent with the national interest to grant or continue his security clearance."<sup>(23)</sup> "[T]he Directive presumes there is a nexus or rational connection between proven conduct under any of the Criteria listed therein and an applicant's security suitability."<sup>(24)</sup> "Any doubt as to whether access to classified information is clearly consistent with national security will be resolved in favor of the national security."<sup>(25)</sup>

## CONCLUSIONS

I carefully considered all of the facts in evidence and the legal standards discussed above. I reach the following conclusions regarding the allegations in the SOR:

Under Guideline F (Financial Conditions), a security concern exists for an individual who is financially irresponsible. An individual who is financial irresponsibility may also be irresponsible, unconcerned, or careless in their obligations to protect classified information. Behaving responsibly or irresponsibly in one aspect of life provides an indication of how a person may behave in other aspects of life.<sup>(26)</sup> Applicant's delinquent debts brings the matter within Financial Consideration Disqualifying Conditions Directive ¶ E2.A6.1.2.1 (*a history of not meeting financial obligations*); and Directive ¶ E2.A6.1.2.3 (*inability or unwillingness to satisfy debts*). Applicant has delinquent debt since 1999. He has attempted, but was unable, to satisfied all of his long term delinquent debts. I conclude the Financial Considerations disqualifying conditions have been established.

The Financial Considerations Mitigating Conditions that apply to Applicant are: Directive ¶ E2.A6.1.3.1 (*the behavior was not recent*); 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)*); and Directive ¶ E2.A6.1.3.6 (*the individual initiated a good-faith effort to repay overdue creditors or otherwise resolve debts*). The behavior that led to the delinquent debts is not recent. The debts were incurred between 1999 and 2001, have been paid or are being resolved, and there are no new additional delinquent debts. The delinquent debts all arose from conditions beyond Applicant's control, his divorce, loss of business, and his son's medical condition. Applicant made a good-faith effort to resolve his debts. He paid off part of his debts before he remarried and went to work for the defense contractor. He paid three of the four debts in the SOR, albeit after receiving the funds from his wife. He arranged to settle the fourth delinquent debt and is current with his payments. He has only one debt outstanding not listed in the SOR but which he is making arrangements for payment. He and his wife have sufficient financial resources to pay the debts. I conclude Applicant has mitigated the Financial Considerations disqualifying conditions.

I carefully considered all of the circumstances in light of the "whole person" concept. I conclude Applicant is eligible for access to classified information.

## **FORMAL FINDINGS**

Formal findings for or against Applicant on the allegations in the SOR, as required by Section E3.1.25 of Enclosure 3 of the Directive, are:

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

## **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 continue a security clearance for Applicant. Clearance is granted.

Thomas M. Crean

Administrative Judge

1. Tr. 31, 40-44.

2. Tr. 41-42.
3. Tr. 45.
4. Tr. 44-45.
5. Exhibit A (Letter from collection agency attorneys, dated February 26, 2004); Additional Documents Exhibit E (Statement of Account from collection agency attorneys, dated January 4, 2005); Tr. 22, 35-36.
6. Exhibit B (Letter from credit agency, dated November 22, 2004); Tr. 23.
7. Exhibit C (Letter of Release, dated April 23, 2004); Tr. 24-25.
8. Exhibit D (Letter from creditor, dated January 23, 2002); Exhibit F (Letter from creditor, dated January 4, 2005); Tr. 26.
9. Tr. 29.
10. Tr. 49-51.
11. Tr. 45-46.
12. Exhibit 4 (Interrogatories, dated July 21, 2003), at 5-6; Tr. 50-54.
13. Tr. 47.
14. Tr. 61-68.
15. *Department of the Navy v. Egan*, 484 U.S. 518 (1988).
16. Exec. Or. 12968, *Access to Classified Information* § 3.1 (b) (Aug. 4, 1995).
17. Directive ¶ E2.2.1.
18. *Id.*
19. Directive ¶¶ E2.2.1.1 through E2.2.1.9.
20. *See* Exec. Or. 10865 § 7.
21. Directive ¶ E3.1.14.
22. ISCR Case No. 01-20700 at 3 (App. Bd. Dec. 19, 2002); *see* Directive ¶ E3.1.15.
23. ISCR Case No. 01-20700 at 3 (App. Bd. Dec. 19, 2002).
24. ISCR Case No. 95-0611 at 2 (App. Bd. May 2, 1996) (quoting DISCR Case No. 92-1106 (App. Bd. Oct. 7, 1993))
25. *Egan*, 484 U.S. at 531; *see* Directive ¶ E2.2.2.
26. Directive ¶ E2.A6.1.1.