

KEYWORD: Financial; Personal Conduct

DIGEST: Applicant fell behind on 16 debts totaling \$43,256.49. These debts were incurred in large part by his ex-wife during his last deployment before retiring from the Army. Upon his return from this deployment, she sued him for divorce. An additional security concern arose by his failure to list his delinquent debts on his security clearance application. Applicant demonstrated this omission was not intentional. Applicant has initiated a good-faith effort to repay overdue creditors or otherwise resolve all 16 debts. Applicant has successfully mitigated his financial considerations and personal conduct concerns. Clearance is granted.

CASENO: 02-16872.h1

DATE: 01/21/2005

DATE: January 21, 2005

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In Re:

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SSN: -----

Applicant for Security Clearance

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ISCR Case No. 02-16872

**DECISION OF ADMINISTRATIVE JUDGE**

**ROBERT J. TUIDER**

**APPEARANCES**

**FOR GOVERNMENT**

Marc E. Curry, Esq., Department Counsel

## **FOR APPLICANT**

John D. Kinsella, Esq.

### **SYNOPSIS**

Applicant fell behind on 16 debts totaling \$43,256.49. These debts were incurred in large part by his ex-wife during his last deployment before retiring from the Army. Upon his return from this deployment, she sued him for divorce. An additional security concern arose by his failure to list his delinquent debts on his security clearance application. Applicant demonstrated this omission was not intentional. Applicant has initiated a good-faith effort to repay overdue creditors or otherwise resolve all 16 debts. Applicant has successfully mitigated his financial considerations and personal conduct concerns. Clearance is granted.

### **STATEMENT OF THE CASE**

The Defense Office of Hearings and Appeals (DOHA) declined to grant or continue a security clearance for Applicant. On August 8, 2003, DOHA issued a Statement of Reasons (SOR) [\(1\)](#) detailing the basis for its decision-security concerns raised under Guideline F (Financial Considerations), and Guideline E (Personal Conduct) of the Directive. Applicant answered the SOR in writing on September 14, 2003, and elected to have a hearing before an administrative judge. The case was assigned to me April 14, 2004. On June 3, 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 13 documents, which were admitted without objection as Government Exhibits (GE) 1 through 13. The Applicant offered 15 documents, which were admitted without objection as Applicant Exhibits (AE) A through O. I left the record open after the hearing to afford Applicant the opportunity to submit additional documents. The Applicant timely submitted 13 additional documents, which were admitted without objection as AE P through BB. DOHA received the transcript on July 6, 2004.

### **FINDINGS OF FACT**

Applicant's partial admissions to the SOR allegations are incorporated herein. In addition, after a thorough review of the pleadings, exhibits, and testimony, I make the following findings of fact:

Applicant is a 48-year-old divorced man, who has primary physical custody of his 16-year-old daughter. Applicant served in the U. S. Army from December 1978 to January 2001, and retired as a Master Sergeant, pay grade E-8, with an honorable discharge.

Applicant began work for his current employer approximately one month after he retired from the Army. He is of the belief the security clearance he held while in the Army is still in place. Tr. 66. Applicant requires a security clearance in connection with his employment as a customer trainer for a defense contractor.

Applicant incurred 16 debts totaling \$43,256.49 surrounding the breakup of his marriage. The debts in question were in large part incurred by Applicant's former wife while he was on active duty and deployed overseas. Applicant's former wife incurred most of these debts on credit cards that were in Applicant's name. Applicant did not become fully aware of the extent of these debts until he returned to the United States and his wife sued him for divorce. To exacerbate things even more, after Applicant and his ex-wife separated, his bills were being forwarded to his ex-wife and were "thrown in the trash."

Of the 16 debts alleged in the SOR, Applicant provided documentation that he has settled and satisfied eight of the debts for a lesser amount and has paid the lesser amounts agreed to in full, (¶¶ 1.a., 1.b., 1.c., 1.f., 1.h., 1.i., 1.m., and 1.n.). Applicant provided documentation that he has paid four of the debts in full, (¶¶ 1.d., 1.j., 1.o., and 1.p.), and that one debt was reported in error and not owed by Applicant (¶ 1.e.). Furthermore, two debts are listed twice under different names and Applicant is making payment arrangements on the one debt, (¶ 1.g., 1.l.), and Applicant is making payments on the remaining debt and is current, (¶ 1.k.).

At the conclusion of Applicant's case-in-chief, Department Counsel stated Applicant had mitigated debts listed in ¶¶ 1.b., 1.c., 1.e., 1.h., 1.i., 1.k., and 1.o. Tr. 49. Furthermore, Department Counsel stated in his Praecipe dated July 29, 2004, after receiving Applicant's additional documents, AE P through AE BB, that Applicant had mitigated debts listed in ¶¶ 1.a., 1.d., 1.f., 1.l., 1.j., and 1.m.

Although eligible to file bankruptcy, Applicant elected to pay his debts down because he felt he had a moral obligation to do so.

As in the case of many soldiers and sailors in a deployment status, Applicant's former wife had assumed responsibility for paying the household bills. Throughout their married life, regardless of difficulties, she had fulfilled that task. Up until the time of their separation, Applicant had no reason to believe his wife was not paying their marital debt. She had a general power of attorney to act on his behalf and "controlled" their checking account.

Applicant completed his security clearance application (SCA) on September 23, 2000. Question 38 asked if, in the previous seven years, Applicant had been over 180 days delinquent on any debts. Question 39 asked if he was then over 90 days delinquent on any debts. Applicant answered "no" to both questions.

Applicant's explanation for providing these answers was, "During the time frame that I was asked to come down and update an application for my security clearance, that was during the time that I was going through my divorce. My ex-wife at that time was handling all of my debts. I never had any current knowledge of the status of any of my debts. We had bought a house in 1998 and to my knowledge my credit was fine at that time. In 2000 I still had no control over my debts because my ex-wife was still paying them at the time. . . . No I didn't intentionally go out and lie to that question. That was only the second time I believe I've ever updated my clearance from my 22 years in the military. My first eight years I held a Top Secret clearance. Once the SALT II treaty was signed, my clearance was downgraded and that was probably the very first time I did an upgrade to my clearance." Tr. 44-45.

Applicant further stated, "My wife controlled my checking account. That was pretty standard for the military because we deploy a lot and the spouse needs to handle all financial matters while you're away. . . . So she was actually me at any time I was deployed away from home." Tr. 46.

## 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. through 1.p) totaling \$43,256.49. 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 Applicant's admissions and evidence submitted each of the allegations contained in the SOR, except the one contained in ¶ 1.e. Allegations contained in ¶¶ 1.g. and 1.l. are the same debt. As reflected above and stipulated by the Government, allegations contained in ¶¶ 1.a., 1.b., 1.c., 1.d., 1.e., 1.f., 1.h., 1.i., 1.j., 1.k., 1.l. 1.m., and 1.o. have been mitigated. I concur with this and further find that ¶¶ 1.g. and 1.l. are the same debt. The debt alleged in ¶ 1.n. has been settled for a lesser amount and the debt alleged in ¶ 1.p has been paid in full. Accordingly, all debts alleged by the Government have been mitigated. Applicant has made extraordinary efforts to satisfy or otherwise resolve the \$43,256.49 worth of debt alleged in the SOR.

Disqualifying Conditions applicable under the Directive are contained in ¶ E2.A6.1.2.1, *A history of not meeting*

*financial obligations; and, ¶ E2.A6.1.2.3, Inability or unwillingness to satisfy debts.*

Applicant's financial difficulties were in large part due to his misplaced reliance on his ex-wife to pay bills while he was deployed. Further exacerbating Applicant's situation was his ex-wife's conduct of incurring substantial debt in his name before filing for divorce. Remarkably, Applicant has recovered from his financial tailspin. Applicant has made a good-faith effort to resolve this concern by contacting his creditors and making payment arrangements, settling past due accounts and remaining current on his debts. Applicant could have filed bankruptcy, but chose to resolve these debts because he believed this was the more honorable course of action.

The Mitigating Conditions applicable under the Directive are contained in ¶ E2.A6.1.3.3, *The conditions that resulted in the behavior were largely beyond the person's control (e.g., . . . , divorce or separation); and, ¶ E2.A6.1.3.6, The individual initiated a good-faith effort to repay overdue creditors or otherwise resolve debts.* I find for Applicant on SOR ¶ 1.

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

In the SOR, DOHA alleged Applicant falsified his SCA by deliberately failing to disclose that he had delinquent debts. Conduct involving questionable judgment, untrustworthiness, unreliability, lack of candor, dishonesty, or unwillingness to comply with the rules and regulations could indicate that the applicant may not properly safeguard classified information. Directive ¶ E2.A5.1.1.

Applicant testified during the period of time these debts were incurred, he was deployed overseas and had turned over the family finances to his ex-wife as he had done during his Army career. Unfortunately, during his last deployment before retiring from the Army his ex-wife incurred substantial debt in Applicant's name and failed to pay these bills. Furthermore, at the time Applicant completed his SCA, he was deployed and based on his past experience had no reason to believe his ex-wife had engaged in the apparent path of destructive behavior in which Applicant would pay the price.

I found Applicant's testimony credible in this regard. His omissions are attributable to an honest mistake. While Applicant could reasonably have been expected to be more diligent about checking on the status of his financial situation, his judgment lapses are not enough to impute knowing and wilful falsification under Guideline E.

Applicant's explanation of his omission are persuasive enough to avert inferences of knowing and wilful omission. There being no misconduct substantiated, no need to show extenuation and mitigation arises. *Cf.* ISCR Case No. 02-13568 (App. Bd. Feb. 13, 2004).

## **FORMAL FINDINGS**

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

Paragraph 1. Guideline F: FOR APPLICANT

Subparagraph 1.a.-1.p: For Applicant

Paragraph 2. Guideline E: FOR APPLICANT

Subparagraph 2.a.-2-b: 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.

**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.