

KEYWORD: Financial, Personal Conduct

DIGEST: Applicant fell behind on his debts after going through a lengthy and costly separation from his wife of 12 years. In addition to his separation, his mother became gravely ill requiring him to take leave without pay to care for her further exacerbating his financial situation. His mother ultimately passed away and three months later his older brother passed away. Despite these events, Applicant has paid, settled, or otherwise resolved all his debts. He has successfully mitigated security concerns pertaining to his financial situation. Clearance is granted.

CASENO: 02-19034.h1

DATE: 03/30/2005

DATE: March 30, 2005

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In Re:

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SSN: -----

Applicant for Security Clearance

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ISCR Case No. 02-19034

**DECISION OF ADMINISTRATIVE JUDGE**

**ROBERT J. TUIDER**

**APPEARANCES**

**FOR GOVERNMENT**

Marc E. Curry, Esq., Department Counsel

## FOR APPLICANT

*Pro Se*

### SYNOPSIS

Applicant fell behind on his debts after going through a lengthy and costly separation from his wife of 12 years. In addition to his separation, his mother became gravely ill requiring him to take leave without pay to care for her further exacerbating his financial situation. His mother ultimately passed away and three months later his older brother passed away. Despite these events, Applicant has paid, settled, or otherwise resolved all his debts. He has successfully mitigated security concerns pertaining to his financial situation. 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 September 30, 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), and Guideline E (Personal Conduct) of the Directive. Applicant answered the SOR in writing on December 5, 2003, and elected to have a hearing before an administrative judge.

The case was assigned to another administrative judge on February 25, 2004 and on March 16, 2004, he issued a notice of hearing scheduling a hearing for April 16, 2004. However, due to caseload considerations, the case was transferred to me on April 6, 2004. On April 12, 2004, I issued an amended notice of hearing scheduling the case for April 29, 2004. The hearing was conducted as scheduled to consider whether it is clearly consistent with the national interest to grant or continue a security clearance for Applicant.

During the hearing, the government withdrew all SOR allegations under Guideline E (Personal Conduct), ¶¶ 2., 2a. and 2.b. The government offered four documents, which were admitted without objection as Government Exhibits (GE) 1 through 4. The Applicant offered 14 documents, which were admitted without objection as Applicant Exhibits (AE) A through N. I left the record open after the hearing to afford Applicant the opportunity to submit additional documents. The Applicant submitted two additional documents, which were admitted without objection as AE O(1) through (6) and AE P(1) through (4). DOHA received the transcript on May 11, 2004.

## FINDINGS OF FACT

Applicant's 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 44-year-old separated man, and father of two daughters, ages 17 and 15. Since November 1985, he has been employed by a defense contractor as an electrical engineer. Applicant was awarded a bachelor of science degree, majoring in electrical engineering in June 1985. He has held a security clearance at the secret level since January 1984 until he was laid-off in May 2004.

The SOR alleges Applicant is in arrears on 16 debts. The table below presents details about the debts alleged in the SOR, their current status, and cites to relevant parts of the record.

<b>Debt</b>	<b>Nature &amp; Amount in SOR</b>	<b>Current Status</b>	<b>Record</b>
Debt 1	Credit card account in delinquent status \$1,187.00.	Payment arrangements made. Account current. (See Debt 15)	Tr. 43, 62, 79,-80, AE J, GE 4, AE K.
Debt 2	Medical bill in delinquent status \$50.00.	Paid-in-full.	Tr. 48, 63, 80-81, AE J, AE O(5).
Debt 3	Insurance company bill in delinquent status \$122.00.	Payment arrangements made. Account current.	Tr. 58, , 63, 81-86, AE J.
Debt 4	Electric bill in delinquent status \$304.00.	Paid-in-full.	Tr. 49-50, 63, 86, AE J, AE P(2).
Debt 5	Credit Union loan in delinquent status \$2,505.00.	Payment arrangements made. Account current. (See Debt 8.)	Tr. 43, 63, 86-87, AE J, AE L.
Debt 6	Electric bill in delinquent status \$172.00 (late mother's bill).	Paid-in-full.	Tr. 45, 51, 63, 87, AE O(6).
Debt 7	Cable bill in delinquent status \$62.00.	Paid-in-full.	Tr. 51, 64, 88-89, AE J, AE P(1), (2), (3).
Debt 8	Credit Union loan in delinquent status \$1,985.00.	Duplicate of Debt 5	Tr. 51-52, 64, 89-92, AE J.

		(SOR ¶¶ 2.e. and 2.h.)	
Debt 9	Balance owed to bank after car repossessed \$11,500.00.	Settled for lesser amount. Account resolved and paid-in-full.	Tr. 44, 52-53, 64, 93-94, GE 4, AE N.
Debt 10	Credit card debt in delinquent status \$116.00.	Payments arrangements made. Account current. Duplicate of Debt 14.	Tr. 53, 64.
Debt 11	Finance company account in delinquent status \$5,769.00.	Payment arrangements made. Account current. Duplicate of Debt 13.	Tr. 54, 65, AE J, AE O(2), AE P(2), AE P(1), (4).
Debt 12	State Housing Finance Agency in delinquent status \$13,700.00.	Payment arrangements made. Account current.	Tr. 65, AE J, AE M.
Debt 13	Finance company account past due \$562.00.	Duplicate of Debt 11 (SOR ¶¶ 1.k. and 1.m.)	Tr. 53-57, 65-66.
Debt 14	Credit card debt in delinquent status \$667.00.	Duplicate of Debt 10. (SOR ¶¶ 1.j. and 1.n.)	Tr. 57-58, 64, 66, AE J, AE O(4).
Debt 15	Credit card debt in delinquent status \$902.00.	Duplicate of Debt 1 (SOR ¶¶ 1.a. and 1.o.)	Tr. 58-59, 66.
Debt 16	Home loan in foreclosure status \$7,787.00.	Amount satisfied through foreclosure sale. Paid-in-full.	Tr. 45-46, 59-62, 66, AE J, AE O(3).

Applicant's financial problems began when he and his wife of 12 years separated in 1999. At the time of their separation, Applicant was the sole provider for the family and his wife was a stay-at-home mother for their two children. At the time of separation, Applicant was current on all his bills and the family enjoyed a middle class lifestyle. After separating, Applicant's wife was awarded interim monthly child support of \$1,976.20 in September 1999. Arrears of \$2,457.40 were also awarded and due immediately. AE 1(a). Applicant's child support was set at that level to allow his two daughters, ages 9 and 11 at the time, to continue attending private school. Applicant's net monthly income at the time was only \$2,924.58.

With this amount being deducted from Applicant's monthly pay check, he was unable to pay his monthly bills to include his mortgage payment, car payment, utilities, clothing costs and incidentals. Applicant's house was foreclosed and his car was repossessed. Applicant borrowed money from a family member to get his car back after it was repossessed. Applicant moved out of his house in January 2003 and his house was sold at auction in May 2003.

To pay his bills, Applicant took a night job as a clerk at a convenience store in addition to his day job as an electrical engineer. He ultimately had to quit his night job after falling asleep at the wheel due to lack of sleep.

In September 2001, Applicant successfully petitioned to have his child support reduced from \$1,976.20 per month to \$1,142.78 per month. AE A. In October 2003, Applicant successfully petitioned to have his child support reduced from \$1,142.78 per month to \$1,000.00 per month. It was not until this reduction occurred that Applicant was able to begin recovering from financial chaos. His situation had deteriorated to the point that he was homeless from January 2003 to October 2003 and lived with relatives or stayed in hotels.

In February 2004, Applicant's child support was further reduced to \$150.00 per month. His oldest daughter had moved in with him and the youngest daughter was living with her mother. However, the daughters go back and forth between parents and the situation appears to be flexible.

In addition to Applicant's separation-related problems, his mother became ill and required considerable help performing day-to-day tasks. For approximately one year each weekend, Applicant drove several hundred miles each way to visit her and tend to her needs. She died in July 2001. In October 2001, Applicant's older brother, who was living with his mother, died. Applicant took three months of leave without pay to assist his mother and brother, assist in their funeral arrangements, and close out their estates. During the three months Applicant was on leave without pay, his debts continued to mount.

In December 2003, Applicant's wife filed a *pro se* petition for divorce. AE F. Their divorce is still pending.

Applicant submitted a current employee performance evaluation indicating he is meeting all his employer's expectations. He has completed 20 years of service while holding a clearance without incident. AE G and AE H.

## **POLICIES**

The Adjudicative Guidelines in the Directive are not a set of inflexible rules of procedure. Instead they are to be applied by administrative judges on a case-by-case basis with an eye toward making determinations that are clearly consistent with the interests of national security. In making overall common sense determinations, administrative judges must consider, assess, and analyze the evidence of record, both favorable and unfavorable, not only with respect to the relevant Adjudicative Guidelines, but in the context of factors set forth in section E 2.2.1. of the Directive. The government has the burden of proving any controverted fact(s) alleged in the SOR, and the facts must have a nexus to an Applicant's lack of security worthiness.

The adjudication process is based on the whole person concept. All available, reliable information about the person, past and present, is to be taken into account in reaching a decision as to whether a person is an acceptable security risk. Although the presence or absence of a particular condition for or against clearance is not determinative, the specific adjudicative guidelines should be followed whenever a case can be measured against this policy guidance.

## **BURDEN OF PROOF**

As noted by the United States Supreme Court in *Department of Navy v. Egan*, 484 U.S. 518, 528 (1988), "no one has a 'right' to a security clearance." 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." Executive Order 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.

Initially, the Government must establish, by substantial 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. All that is required is proof of facts and circumstances which indicate an applicant is at risk for mishandling classified information, or that an applicant does not demonstrate the high degree of judgment, reliability, or trustworthiness required of persons handling classified information. Where the facts proven by the Government raise doubts about an applicant's judgment, reliability or trustworthiness, then the applicant has the ultimate burden of establishing his security suitability with substantial evidence in explanation, mitigation, extenuation, or refutation, sufficient to demonstrate that despite the existence of guideline conduct, it is clearly consistent with the national interest to grant or continue his security clearance.

Security clearances are granted only when "it is clearly consistent with the national interest to do so." *See* Executive Orders 10865 § 2 and 12968 § 3.1(b). "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 "The clearly consistent standard indicates that security clearance determinations should err, if they must, on the side of denials." *See Egan*, 484 U.S. at 531. Doubts are to be resolved against the applicant.

## **CONCLUSIONS**

## Guideline F - Financial Considerations

In the SOR, DOHA alleged Applicant had 16 delinquent debts (§§ 1.a. through 1.p) totaling \$47,390.00. *The Concern:* An individual 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 its case under Guideline F by Applicant's admissions and evidence submitted. However, Debt 1 (§ 1.a.) Is a duplicate of Debt 15 (§ 1.o.), Debt 5 (§ 1.e.) is a duplicate of Debt 8 (§ 1.h.), Debt 10 (§ 1.j.) is a duplicate of Debt 14 (§ 1.n.), and Debt 11 (§ 1.k) is a duplicate of Debt 13 (§ 1.m.) thus reducing the number of debts owed by Applicant from 16 to 12. His inability to satisfy his outstanding financial obligations gives rise to Financial Considerations Disqualifying Conditions (FC DC) E2.A6.1.2.1. (*A history of not meeting financial obligations*); and FC DC E2.A6.1.2.3. (*inability or unwillingness to satisfy debts*).

As reflected above, Applicant submitted evidence at his hearing and after his hearing that he has paid or resolved all debts alleged. Applicant experienced several events that severely impacted his financial standing and ability to remain current on his debts. Before Applicant's separation, he was current on his debts. After Applicant and his wife separated, his estranged wife was awarded child support in such an amount, which included tuition for private school, that made it impossible for him to remain financially solvent. His situation became so desperate that he took a night job at a convenience store in addition to his day job as an electrical engineer and had to quit the night job after he fell asleep while driving home. His situation continued to deteriorate to the point where he was homeless for several months.

While separated, Applicant's mother became gravely ill. He took leave without pay for several months to care for her in a location several hundred miles from home. His mother passed away and three months later, his older brother passed away, who lived with his mother. The responsibility for making funeral arrangements fell on his shoulders. These two deaths of immediate family members took their toll on Applicant.

Ultimately, Applicant was able to get his child support payments reduced and contacted each creditor and either paid them off or made payment arrangements. When he appeared at his hearing, he was able to demonstrate that of the 16 debts alleged, 4 were duplicates or had merged with another debt, reducing his debts to 12. Of those 12 debts, he had paid off or completely satisfied 6 of the 12 debts, and of the remaining 6 debts, he was current in the payment plans he had arranged with his creditors. These facts trigger Financial Considerations Mitigating Conditions (FC MC) 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 FC MC E2.A6.1.3.6 (*the individual initiated a good-faith effort to repay overdue creditors or otherwise resolve debts*). Applicant was able to recover from a series of rather unfortunate events that would have been difficult for most individuals to overcome.

Based on the totality of the circumstances to include his documented actions coupled with his credible testimony, I find for Applicant on SOR ¶¶ 1., 1.a. through 1.p.

### **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

### **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.