

KEYWORD: Financial; Personal Conduct

DIGEST: Applicant owed four creditors \$4,386.00 and provided false information regarding past financial delinquencies on his security clearance application. Applicant provided evidence he subsequently paid or resolved three of his debts totaling \$2,191.00, but provided no evidence of paying or resolving the remaining debt of \$2,195.00. His failure to satisfy his past debts and lack of truthfulness in providing required information on his security clearance application raises questions and doubts about his security eligibility and suitability. Clearance is denied.

CASENO: 02-21098.h1

DATE: 08/30/2004

DATE: August 30, 2004

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In Re:

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SSN: -----

Applicant for Security Clearance

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ISCR Case No. 02-21098

**DECISION OF ADMINISTRATIVE JUDGE**

**ROBERT J. TUIDER**

**APPEARANCES**

**FOR GOVERNMENT**

Juan J. Rivera, Department Counsel

## FOR APPLICANT

*Pro Se*

### SYNOPSIS

Applicant owed four creditors \$4,386.00 and provided false information regarding past financial delinquencies on his security clearance application. Applicant provided evidence he subsequently paid or resolved three of his debts totaling \$2,191.00, but provided no evidence of paying or resolving the remaining debt of \$2,195.00. His failure to satisfy his past debts and lack of truthfulness in providing required information on his security clearance application raises questions and doubts about his security eligibility and suitability. Clearance is denied.

### STATEMENT OF THE CASE

On April 30, 2003, the Defense Office of Hearings and Appeals (DOHA), under Executive Order 10865, *Safeguarding Classified Information Within Industry*, dated February 20, 1960, 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. The SOR detailed reasons under Guideline F (Financial Considerations), Guideline E (Personal Conduct), and Guideline J (Criminal Conduct) 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, and recommended referral to an Administrative Judge to conduct proceedings and determine whether clearance should be granted, continued, denied, or revoked.

In a signed and sworn statement, dated May 19, 2003, Applicant responded to the SOR allegations. He requested his case be decided on the written record in lieu of a hearing.

On December 19, 2003, Department Counsel submitted the government's case through a file of relevant material (FORM), <sup>(1)</sup> a copy of which was provided to the Applicant. He was given the opportunity to file objections and submit

material in refutation, extenuation, or mitigation. Nothing in the record indicates that Applicant filed a response to the FORM. The case was assigned to me on March 8, 2004.

### **FINDINGS OF FACT**

Applicant admitted subparagraphs 1.a and 1.c. He denied subparagraphs 1.b, 1.d., 2.a and 3.a. These admissions are incorporated herein as findings of fact. After a complete and thorough review of the evidence in the record, and upon due consideration of the same, I make the following additional findings of fact:

Applicant is a 41-year-old man employed by a defense contractor. He seeks a secret clearance, which is a requirement of his job. Applicant's security clearance application, dated December 7, 2000, indicates he has a 16-year-old daughter. (Item 3 at 5) A wage garnishment for child support was initiated in April 2000 at the rate of \$99.00 per week. (Item 3 at 8). No spouse is listed. (Item 3 at 4-5.)

Applicant served in the Air Force from May 1984 to March 1994 and was discharged as a Staff Sergeant, pay grade E-5. (Item 3 at 5.)

The SOR indicates as of April 8, 2002, Applicant was indebted to four creditors for \$4,386.00.

The first debt, subparagraph 1.a, is to a jeweler \$2,195.00 that was charged-off as a bad debt in June 1988. Although Applicant admits this debt was owed as alleged, he indicated it should not be listed on his credit report because the account was purchased by a different creditor. There is no evidence the debt has been paid or resolved.

The second debt, subparagraph 1.b, is to a bank for \$120.00 that was charged-off as a bad debt in June 1988. Applicant denied this debt. By letter dated April 12, 2002, the bank indicated the account was paid-in-full in May 2000 and was considered settled and closed. (Item 2 at 3.)

The third debt, subparagraph 1.c, is to a credit card company for \$1,196.00 that was charged-off as a bad debt in December 1998. Although Applicant admits this debt was owed as alleged, he indicated the account was paid-in-full in

December 2002. He provided an account number and phone number to verify payment. He did not, however, provide documentation the debt has been paid or resolved.

The fourth debt, subparagraph 1.d, is to an apartment complex for \$875.00 was referred for collection and as of April 2002, was unpaid. Applicant indicated that he brought this account to attention of the government during the course of his background investigation. He added he had disputed this account, however, the account was paid-in-full in April 2002. He did not provide documentation the debt has been paid or resolved.

The first three debts are documented in a credit report, dated October 17, 2001. (Item 7.) A subsequent credit report dated December 19, 2003, reflects a credit card debt charged off as a loss with no remarks indicating it has been paid or settled, another account as charged-off and two accounts as more than 120 days delinquent. (Item 8.)

Applicant indicated he incurred his debt as a result of "unemployment, lack of income, poor money management and overspending between 1995 and 1998." (Item 4 at 2) Applicant submitted a personal financial statement on April 8, 2002 showing a net remainder of \$858.50. (Item 4 at 4.)

Applicant answered "no" to Question 38 on his security clearance application asking if he had been over 180 days delinquent on any debts in the last seven years and "no" to Question 39 on the same application asking if he was currently over 90 days delinquent on any debts. Applicant signed his security clearance application On December 7, 2000. (Item 3.) When queried on these responses during the course of his background investigation, Applicant responded, "The reason why the delinquencies were not reported to EPSQ is I felt that this was a completely private and personal matter." (Item 4 at 3.) In his response to the SOR, Applicant denies generally this personal conduct allegation, subparagraph 2.a.

In spite of clear evidence as demonstrated by Applicant's credit report dated October 17, 2000 that the first three debts alleged were in arrears as of 1997, he chose to provide a false answer to Questions 38 and 39.

By Applicant's failure to provide a truthful response to Question 37, a case has been established that he violated Federal law, Title 18, United States Code, Section 1001, a felony. In his response to the SOR, Applicant denied generally this criminal conduct allegation, subparagraph 3.a.

### **POLICIES**

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. Enclosure (2) to the Directive sets forth adjudicative guidelines that must be carefully considered according to the pertinent Guideline in making the overall common sense determination required.

Each adjudicative decision must also include an assessment of: (1) the nature, extent, and seriousness of the conduct; (2) the circumstances surrounding the conduct, and the extent of knowledgeable participation; (3) how recent and frequent the behavior was; (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 pertinent 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 (See Directive, Section E2.2.1. of Enclosure 2). Because each security case presents its own unique facts and circumstances, it should not be assumed that the factors exhaust the realm of human experience or that the factors apply equally in every case. Moreover, although adverse information concerning a single condition may not be sufficient for an unfavorable determination, the individual may be disqualified if available information reflects a recent or recurring pattern of questionable judgment, irresponsibility, or other behavior specified in the Guidelines.

Based upon a consideration of the evidence as a whole, I find the following adjudicative guidelines most pertinent to an evaluation of the facts of this case:

**Guideline F - Financial Considerations:**

E2.A6.1.1. *The Concern:* An individual who is financially overextended is at risk of having to engage in illegal acts to generate funds. Unexplained affluence is often linked to proceeds from financially profitable criminal acts.

E2.A6.1.2. Conditions that could raise a security concern and may be disqualifying include:

E2.A6.1.2.1. A history of not meeting financial obligations.

E2.A6.1.2.3. Inability or unwillingness to satisfy debts.

E2.A6.1.3. Conditions that could mitigate security concerns include:

E2.A6.1.3.6. The individual initiated a good-faith effort to repay overdue creditors or otherwise resolve debts.

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

E2.A5.1.1. *The Concern:* Conduct involving questionable judgment, untrustworthiness, unreliability, *lack of candor, dishonesty*, or unwillingness to comply with rules and regulations could indicate that the person may not properly safeguard classified information. *The following will normally result in an unfavorable clearance action or administrative termination of further processing for clearance eligibility:*

E2.A5.1.2. Conditions that could raise a security concern and may be disqualifying also include:

E2.A5.1.2.2. The deliberate omission, concealment, falsification or misrepresentation of relevant and material facts from any personnel security questionnaire, personal history statement or similar form used to conduct investigations, determine employment qualifications, award benefits or status, determine security clearance eligibility or trustworthiness, or award fiduciary responsibilities;

E2.A5.1.3. Conditions that could mitigate security concerns include: None.

### **Guideline J: Criminal Conduct**

E2.A.10.1.1. *The Concern:* A history or pattern of criminal activity creates doubt about a person's judgment, reliability and trustworthiness.

E2.A.10.1.2 Conditions that could raise a security concern and may be disqualifying include:

E2.A10.1.2.1 *Allegations or admission of criminal conduct*, regardless of whether the person was formally charged.;

E2.A10.1.2.2 A single serious crime or multiple lesser offenses.

E2.A10.1.3 Conditions that could mitigate security concerns include: None.

Under the Executive Order 10865, as amended, and the Directive, a decision to grant or continue an applicant's clearance may be made only upon an affirmative finding that to do so is clearly consistent with the national interest. In reaching the fair and impartial overall common sense determination required, I can only draw those inferences and conclusions which have a reasonable and logical basis in the evidence in the record. Likewise, I have attempted to avoid drawing any inferences that are based on mere speculation or conjecture.

### **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 each allegation set forth in the SOR:

Concerning Guideline F, the Government established its case. Applicant was clearly delinquent on four accounts in the amount of \$4,386.00 as of April 2002. Applicant claimed the first debt had been purchased by another creditor, but provided no evidence it had been paid or resolved. He claimed the second debt was paid and provided documentation. He also claimed the third and fourth debts were paid, but provided no documentation they were paid or resolved. Even if I accept Applicant's assertion he paid three of the four debts, he still has the lingering and unexplained first debt of \$2,195.00. Applicant could have enhanced his position had he provided documentation for all debts. Applicant's more recent behavior documented in his credit report dated December 9, 2003 is of concern. Applicant's overall conduct pertaining to his financial obligations clearly falls within Financial Considerations Disqualifying Condition (DC) E2.A6.1.2.1., and DC E2.A6.1.2.3.

Applicant provided evidence that he subsequently paid one of the debts and represented he paid two of the debts. Viewing the evidence in the light most favorable to the Applicant, I find he had resolved three of the four debts alleged. Mitigating Condition E2.A6.1.3.6 is applicable as to subparagraphs 1.b through 1.d.

Concerning Guideline E, the Government has established its case. Applicant deliberately did not include the information requested on his security clearance application concerning his financial delinquencies in reply to Questions 38 and 39. It is easy to count back the seven year or 90 day period for which he had the duty to disclose. Applicant's response that the reason he did not disclose past delinquencies is that he "felt that this was a completely private and personal matter" is hardly indicative of what would be expected from someone seeking a security clearance. Nor does this explanation satisfy Applicant's requirement to fully and accurately provide the information requested. These matters are of such magnitude and importance in a person's life that it is not credible to believe they could be overlooked and not listed on an application which is directly related to whether Applicant can renew his security clearance and retain his employment which is dependent upon the security clearance. Therefore, DC E2.A5.1.2.2. is applicable. Inasmuch as Applicant provided no evidence in mitigation, none of the Mitigating Conditions apply.

Concerning Guideline J, the Government established its case. By Applicant's misrepresentation regarding his financial situation, he has violated Federal law, Title 18, United States Code, Section 1001, a felony. Therefore DC E2.A10.1.2.1 and DC E2.A10.1.2.2 are applicable. Inasmuch as Applicant provided no evidence in mitigation, none of the Mitigating Conditions apply.

### **FORMAL FINDINGS**

Formal Findings as required by Section E3.1.25 of Enclosure 3 of the Directive are hereby rendered as follows:

Paragraph 1 Guideline F: Against the Applicant

Subparagraph 1.a.: Against the Applicant



Subparagraph 1.b.: For the Applicant

Subparagraph 1.c.: For the Applicant

Subparagraph 1.d.: For the Applicant

Paragraph 2 Guideline E: Against the Applicant

Subparagraph 2.a.: Against the Applicant

Paragraph 3 Guideline J: Against the Applicant

Subparagraph 3.a.: Against the Applicant

### **DECISION**

In light of all the circumstances and facts presented by the record in this case, it is not clearly consistent with the national interest to grant or continue a security clearance for Applicant. Clearance is denied.

Robert J. Tuider

Administrative Judge

1. The Government submitted 14 items or exhibits in support of its contention.