

KEYWORD: Financial

DIGEST: Applicant has mitigated a history of financial indebtedness by paying off \$6,543.00 of \$11,213.00 delinquent indebtedness addressed by the SOR. He has begun making payments pursuant to a settlement agreement that will satisfy an additional \$2,566.00 debt of the remaining \$4,670.00 of indebtedness. Applicant has not been able to resolve the only remaining debt because he cannot locate the creditor, the finance company for a \$2,000.00 vacuum cleaner he purchased from a door-to-door salesman. Although he is paying child support payments of approximately \$1,171.00 per month to the mothers of his three children, Applicant's income is sufficient to meet his debts and expenses. Clearance is granted.

CASE NO: 02-26585.h1

DATE: 06/22/2004

DATE: June 22, 2004

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In Re:

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SSN: -----

Applicant for Security Clearance

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ISCR Case No. 02-26585

**DECISION OF ADMINISTRATIVE JUDGE**

**ROGER E. WILLMETH**

**APPEARANCES**

**FOR GOVERNMENT**

Eric H. Borgstrom, Department Counsel

**FOR APPLICANT**

Harold J. Tulley, Esq.

**SYNOPSIS**

Applicant has mitigated a history of financial indebtedness by paying off \$6,543.00 of \$11,213.00 delinquent indebtedness addressed by the SOR. He has begun making payments pursuant to a settlement agreement that will satisfy an additional \$2,566.00 debt of the remaining \$4,670.00 of indebtedness. Applicant has not been able to resolve the only remaining debt because he cannot locate the creditor, the finance company for a \$2,000.00 vacuum cleaner he purchased from a door-to-door salesman. Although he is paying child support payments of approximately \$1,171.00 per month to the mothers of his three children, Applicant's income is sufficient to meet his debts and expenses. Clearance is granted.

**STATEMENT OF THE CASE**

On August 18, 2003, the Defense Office of Hearings and Appeals (DOHA), pursuant to the applicable Executive Order [\(1\)](#) and Department of Defense Directive, [\(2\)](#) issued a Statement Reasons (SOR) to Applicant. The SOR details security concerns under Guideline F (Financial Considerations). The SOR states that DOHA was unable to find that it is clearly consistent with the national interest to grant him access to classified information and recommends that his case be submitted to an Administrative Judge.

On October 30, 2003, Applicant answered the SOR and requested a hearing. The case was assigned to me on January 8, 2004. A notice of hearing was issued on January 23, 2004 and the hearing was held on February 12, 2004. During the hearing, six Government exhibits (Govt Ex), six Applicant exhibits (Ap Ex) and the testimony of three Applicant witnesses, including Applicant, were received. The transcript (Tr) was received on February 24, 2004.

## PROCEDURAL ISSUE

Without objection by Department Counsel, I granted Applicant until February 26, 2004 to provide documentation of his satisfaction of delinquent indebtedness. Applicant provided a submission to which Department Counsel did not object. I have marked it as Ap Ex G and have considered it in reaching my decision.

## FINDINGS OF FACT

Having thoroughly considered the evidence in the record, I make the following findings of fact:

Applicant is a 32-year-old truck driver employed by a defense contractor. He is seeking a security clearance. Applicant is recognized by his employer as a dedicated and trustworthy employee. He is also a member of the U.S. Naval Reserve and is a volunteer fireman in his community.

Applicant was divorced from his first wife in 1994 and ordered to pay child support for his child. The current amount of that child support garnished from his pay is approximately \$576.00 per month.

In January 1994, applicant petitioned for Chapter 7 bankruptcy. Applicant's debts in the amount of \$15,826.00 were subsequently discharged. (SOR ¶ 1.a).

Applicant incurred state income tax liability of \$3,254.99 for tax year 1995, including penalty and interest. On February 20, 2004, the remaining balance was paid through a \$1,862.75 reduction from Applicant's 2003 federal income tax refund (SOR ¶ 1.i).

In 1996, Applicant purchased a pre-owned automobile from a automobile dealer. It was repossessed for nonpayment and resold. The balance Applicant owed on the account was \$2,903.00. On February 22, 2004, Applicant paid the automobile dealer \$1,742.00 in full settlement of the debt (SOR ¶ 1.c).

Applicant incurred a \$186.00 debt for cable service that he did not pay and was turned over for collection in February 1997. On February 22, 2004, Applicant paid the debt to the current debt collector (SOR ¶ 1.g).

In May 1997, Applicant incurred a debt to medical provider in the amount of \$319.00. The debt is duplicated in his credit reports as debts of \$317.00 and \$143.00 (SOR ¶ 1.d and 1.e). On February 22, 2004, Applicant paid \$215.00 to the current debt collector in full settlement of the debt.

In October 1997, Applicant incurred a debt to a loan company. The debt became delinquent and he has not paid the \$2,154.00 he owes on the account (SOR ¶ 1.b). Applicant has been unable to contact the creditor or any successor.

In 1998, Applicant financed the purchase a pickup truck. At the end of 1999 or beginning of 2000, it was repossessed for nonpayment and resold. The balance Applicant owed on the account was \$2,566.00. Applicant reached an agreement with the finance company to pay back the debt at the rate of \$25.00 per month. Applicant made \$25.00 payments in January and February 2004 (SOR ¶ 1.f).

Applicant was divorced from his second wife in 2000 and ordered to pay child support. Approximately \$292.00 per month in support payments are garnished from his pay.

Applicant incurred a \$565.00 debt on a credit card that he did not pay. The debt was turned over for collection in May 2001. On February 23, 2004, Applicant paid the debt collector \$452.62 in full settlement of the debt. [\(3\)](#)

Applicant incurred a \$68.00 debt for cellular service that he did not pay. The debt was referred for collection in September 2001. On September 5, 2003, Applicant paid the debt (SOR ¶ 1.h).

After receiving the SOR, Applicant obtained the assistance of a credit counselor. She assisted him with resolving his delinquent indebtedness and is available to advise him on managing his financial affairs.

Applicant is currently paying approximately \$303.00 per month in child support to the mother of a third child, although his paternity has not yet been confirmed.

After deductions, Applicant receives current monthly pay of approximately \$1,419.00 from a defense contractor is sufficient to pay his monthly debts and expenses of approximately \$1,330.00. [\(4\)](#) He also earns additional income of approximately \$100.00 per month from the U.S. Naval Reserve.

## POLICIES

Department Counsel is responsible for presenting witnesses and other evidence to establish facts alleged in the SOR that have been controverted. Directive E3.1.14. The applicant is responsible for presenting witnesses and other evidence to rebut, explain, extenuate, or mitigate facts

admitted by the applicant or proven by Department Counsel, and has the ultimate burden of persuasion as to obtaining a favorable clearance decision. Directive E3.1.15.

Eligibility for access to classified information is predicated upon an individual meeting adjudicative guidelines discussed in Enclosure 2 of the Directive. An evaluation of whether an applicant meets these guidelines includes the consideration of a number of variables known as the "whole person concept." Available, reliable information about the person, past and present, favorable and unfavorable, should be considered in reaching a decision. This assessment should include the following factors: (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 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. Any doubt as to whether

access to classified information is clearly consistent with national security will be resolved in favor of national security. Directive E2.2.2.

Enclosure 2 provides conditions for each guideline that could raise a concern and may be disqualifying, as well as further conditions that could mitigate a concern and support granting a clearance. The following guidelines are applicable to this case.

#### Guideline F: Financial Considerations

The concern is that an individual who is financially overextended is at risk of having to engage in illegal acts to generate funds. Conditions that could raise a security concern and may be disqualifying include E2.A6.1.2.1, a history of not meeting financial obligations (Disqualifying Condition 1). They also include E2.A6.1.2.3, inability or unwillingness to satisfy debts (Disqualifying Condition 3).

Conditions that could mitigate security concerns include E2.A6.1.3.4, the person has received or is receiving counseling for the problem and there are clear indications that the problem is being resolved or is under control (Mitigating Condition 4). They also include E2.A6.1.3.6, the individual initiated a good-faith effort to repay overdue creditors or otherwise resolve debts (Mitigating Condition 6).

## CONCLUSIONS

The evidence in the record of Applicant's delinquent indebtedness substantiates SOR ¶ 1.a through SOR ¶ 1.i. It demonstrates Applicant's history of not meeting financial obligations, as well as his inability or unwillingness to satisfy debts (Disqualifying Condition 1 and Disqualifying Condition 3).

The record indicates that Applicant has had financial problems for more than a decade. In conjunction with his divorce from his first wife, he obtained a Chapter 7 discharge in bankruptcy in 1994 that relieved him from approximately \$15,826.00 of indebtedness. With each of his divorces, Applicant incurred child support obligations and is now paying child support to the mother of a third child as well. His current child support obligations of approximately \$1,171.00 per month are undoubtedly a strain on meeting his financial obligations. The record reflects that for the most part, Applicant ignored the delinquent debts addressed by the SOR until confronted with this case.

However, after receiving the SOR, Applicant obtained the assistance of a credit counselor and has repaid nearly all of his delinquent indebtedness. Of the \$11,213.00 of unsatisfied indebtedness addressed by SOR, Applicant has completely resolved \$6,543.00. Moreover, he has reached an agreement and has begun making payments to satisfy an additional \$2,566.00 following the repossession of his truck (SOR ¶ 1.f). Applicant has paid six of those eight debts and has reached an agreement and begun paying off a seventh.<sup>(5)</sup> There is only one debt he has not resolved that amounts to \$2,154.00 (SOR ¶ 1.b). The debt results from an expensive vacuum cleaner that his second wife insisted he purchase from a door-to-door salesman. Based on the information supplied in his credit reports, Applicant has not been able to contact the finance company for the vacuum cleaner company. Under these circumstances, Applicant should not be denied a security clearance for the failure to resolve this debt.

Applicant's state tax liability was satisfied from his latest federal income tax refund (SOR ¶ 1.i). He paid off his debt for wireless phone service (SOR ¶ 1.h). Applicant reached a settlement agreement and paid off his debt resulting from the repossession of his car (SOR ¶ 1.c). He also reached a settlement agreement on the medical bill and paid it off (SOR ¶ 1.d and e). Applicant paid his cable service bill in full (SOR ¶ 1.g). In addition, Applicant paid \$452.62 in settlement of a delinquent credit card account that is not addressed by the SOR.

Applicant has paid or is paying his delinquent indebtedness. He has sufficient income to pay his debts and expenses. Moreover, he is obtaining assistance from a credit counselor at a credit union to better manage his financial affairs. Therefore, I find in favor of Applicant.

## FORMAL FINDINGS

Formal findings, as required by section E3.1.25 of Enclosure 3 of the Directive, 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

## **DECISION**

In light of the evidence of record in this case, it is clearly consistent with the national interest to grant or continue a security clearance for Applicant.

*Signed*

**Roger E. Willmeth**

**Administrative Judge**

1. Executive Order 10865, *Safeguarding Classified Information Within Industry*, dated February 20, 1960, as amended.
2. Department of Defense Directive 5220.6, *Defense Industrial Personnel Security Clearance Review Program* (Directive), dated January 2, 1992, as amended and modified.



3. This debt is not addressed in the SOR.

4. Approximately \$868.00 in child support is deducted from his pay through garnishment. The remaining \$303.00 in child support he pays as part of his \$1,330.00 in debts and expenses.

5. Based on the record, two of the debts addressed by the SOR are actually a duplication of a single debt (SOR ¶ 1.d and e).