

KEYWORD: Financial; Personal Conduct

DIGEST: Applicant has over \$25,000.00 worth of unpaid debts. He did not provide a plausible explanation nor did he submit any documentation supporting the notion he had taken the necessary steps to resolve his financial difficulties. He also was convicted of second degree forgery for attempting to transfer his "sister's" mobile home to himself. Financial considerations and personal conduct concerns remain unmitigated. Clearance is denied.

CASENO: 03-21309.h1

DATE: 05/25/2006

DATE: May 25, 2006

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In re:

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SSN: -----

Applicant for Security Clearance

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ISCR Case No. 03-21309

**DECISION OF ADMINISTRATIVE JUDGE**

**ROBERT J. TUIDER**

**APPEARANCES**

**FOR GOVERNMENT**

Edward W. Loughran, Esq., Department Counsel

## FOR APPLICANT

*Pro se*

### SYNOPSIS

Applicant has over \$25,000.00 worth of unpaid debts. He did not provide a plausible explanation nor did he submit any documentation supporting the notion he had taken the necessary steps to resolve his financial difficulties. He also was convicted of second degree forgery for attempting to transfer his "sister's" mobile home to himself. Financial considerations and personal conduct concerns remain unmitigated. Clearance is denied.

### STATEMENT OF THE CASE

The Defense Office of Hearings and Appeals (DOHA) declined to grant or continue a security clearance for Applicant. On May 6, 2005, 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 June 11, 2005, and elected to have a hearing before an administrative judge.

The case was assigned to me on July 7, 2005. On July 20, 2005, DOHA issued a notice of hearing scheduling a hearing on September 14, 2005. On September 10, 2005, Applicant submitted a continuance request with supporting documentation requesting his hearing be continued. For good cause shown, I granted Applicant's request. On October 11, 2005, DOHA issued an amended notice of hearing rescheduling the hearing on October 27, 2005. 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.

Department Counsel identified the following discrepancies in the SOR: ¶ 1.p. was a duplicate of ¶ 1.n., the word "Hospital" needed to be deleted from ¶ 1.s., the words "Pro Page, Inc., needed to be substituted in lieu of "St. Joseph's Hospital in ¶ 1.v., ¶ 1.gg. was a duplicate of ¶ 1.bb., and ¶ 1.ii. was a duplicate of ¶ 1.hh. Tr. 12-13. Accordingly, ¶¶ 1.p., 1.gg., and 1.ii. were withdrawn. The government offered seven documents, which were admitted without objection as Government Exhibits (GE) 1 through 7. The Applicant had previously offered one set of documents, which contained his continuance request and supporting documentation, which was admitted without objection as Applicant Exhibit (AE)

A. DOHA received the transcript on November 9, 2005.

### **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 52-year-old married man, who has been married to his first and only wife since September 1993. They have no children. He attended college from January 1972 to June 1972 and estimates he earned about 15 credit hours. Applicant served in the Air Force from February 1973 to July 1974, and was discharged as "unsuitable for military duty." Tr. 71. Applicant served in the Navy from September 1977 to July 1985, and was discharged as a Seaman, pay grade E-3, with an honorable discharge.

Since March 2001, Applicant has been working for his defense contractor employer. He is on a three-year extended work assignment from his base location working as a shipfitter journeyman. He seeks a security clearance as job requirement.

SOR ¶¶ 1.a. through 1.jj. alleged 36 separate debts. Having withdrawn ¶¶ 1.p., 1.gg., 1.ii., left remaining 33 separate debts totaling \$25,534.00. Applicant produced no evidence in his Response to his SOR or at his hearing that he had made any recent effort to contact his creditors or otherwise resolve his debts. In his Response to Interrogatories from April 2004, Applicant did attach copies of letters dated June 2004 to many of his creditors making inquiries about debts. GE 5. Applicant provided no evidence of follow-up. He testified, "When I first got the notice of hearings and everything, I contacted - sent them a letter, the [credit reporting agency], asking them to explain these questioned debts. And I never received anything back, . . . , and I just got busy and forgot all about keeping track of it." Tr. 23.

In July 2003, Applicant provided a sworn statement to the Defense Security Service (DSS) in which he stated, "I was unaware of the delinquent debts identified on my Credit Bureau Report (CBR) prior to reviewing my CBR as part of my DSS interview/investigation. It is my intent to contact these creditors and completely satisfy these debts if legally required to do so whenever I am able to do so. Otherwise, I will take whatever steps necessary to include contacting a consumer credit counseling service or possibly filing bankruptcy if necessary." GE 4. At hearing, Applicant submitted no evidence of taking the necessary steps to resolve his financial difficulties in the last three years.

Applicant has not sought any professional assistance in resolving his credit problems. Tr. 45. Testifying on the subject of seeking assistance from a credit counselor, "I'm open to it, but I just haven't done it." Tr. 45.

Applicant's wife has been ill for many years suffering from diabetes. She has also had approximately 15 strokes since approximately 1998. At age 51, her mobility is limited and she requires the use of a walker. Tr. 43-44.

Pursuant to his plea of no contest in September 2003, Applicant was convicted of second degree forgery for attempting to convey his "sister's" mobile home to himself. He explained the sordid affair arose from a misunderstanding. He court sentenced him to a diversion program in which his conviction would be removed upon three years of good behavior.

Applicant did not offer any character evidence or employee evaluations.

### **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**

*The Concern:* An individual who is financially overextended is at risk of having to engage in illegal acts to generate funds.

In the SOR, DOHA alleged Applicant had 36 debts. Having withdrawn three of the debts, a remaining 33 debts remain totaling \$25,534 (¶¶ 1.a. through 1.jj.). *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. 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*).

Applicant's failure to provide one piece of evidence in Response to SOR or at his hearing, did little to demonstrate that he has or will attain financial solvency. In fact, his lack of engagement in the process suggests he has little or no motive to resolve past debt. His promise in 2003 to DSS to take the necessary steps to gain control of his finances rings hollow in light of his past action or more correctly, lack of past action.

His wife's sustained illness could potentially raise Financial Considerations Mitigating Condition (FC MC) FC MC E2.A6.1.3.3. (*The conditions that resulted in the behavior were largely beyond the person's control (e.g., . . . , unexpected medical emergency, . . . )*). However, there is little or no evidence to support the notion that Applicant's wife sustained an unexpected medical emergency, but rather has sustained an ongoing medical condition since at least 1998. Applicant from his actions and demeanor appears to be taking an indifferent approach to paying his wife's medical bills not covered by insurance. In short, no mitigating conditions apply. I find against Applicant on this concern.

## **Guideline E - Personal Conduct**

*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. E2.A5.1.1.

In the SOR, DOHA alleged Applicant was charged with 2<sup>nd</sup> degree forgery in May 2003. The evidence at hearing confirmed Applicant plead "no contest" and was sentenced to a diversion program.

Applicant's conviction of 2<sup>nd</sup> degree forgery pursuant to his plea speaks for itself and gives rise to Personal Conduct

Disqualifying Condition (PC DC) E.2.A5.1.2.5. *(A pattern of dishonesty or rule violations, including violation of any written or recorded agreement made between the individual and the agency).* Nothing Applicant offered as an explanation could be construed as mitigating and therefore no mitigating conditions apply. I find against Applicant on this concern.

Applicant's response and demeanor to this process can at best be described as disinterested and unengaged. Since the time he was put on notice in 2003 that security concerns were identified placing his clearance at risk, he has done little if anything to exert the necessary effort to take mitigating action.

Based on the totality of the circumstances , I find against Applicant on SOR ¶¶ 1.and 2.

### **FORMAL FINDINGS**

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

Paragraph 1. Guideline F.: AGAINST APPLICANT

Subparagraph 1.a. - 1.o.: Against Applicant

Subparagraph 1.p.: Withdrawn

Subparagraph 1.q. - 1.ff.: Against Applicant

Subparagraph 1.gg.: Withdrawn

Subparagraph 1.hh.: Against Applicant

Subparagraph 1.ii.: Withdrawn

Subparagraph 1.jj.: Against Applicant

Paragraph 2. Guideline E.: AGAINST APPLICANT

**DECISION**

In light of all of the circumstances 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. 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.