

KEYWORD: Financial; Personal Conduct

DIGEST: Applicant has satisfied almost all of his past-due creditors and provided a reasonable explanation for not disclosing delinquent debts in a security clearance application he submitted in December 2001. He has mitigated the security concerns alleged in this case. Clearance is granted.

CASENO: 03-23263.h1

DATE: 02/21/2006

DATE: February 21, 2006

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In re:

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SSN: -----

Applicant for Security Clearance

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ISCR Case No. 03-23263

**DECISION OF ADMINISTRATIVE JUDGE**

**HENRY LAZZARO**

**APPEARANCES**

**FOR GOVERNMENT**

Jennifer I. Campbell, Esq., Department Counsel

## **FOR APPLICANT**

Francis G. Fanning, Esq.

### **SYNOPSIS**

Applicant has satisfied almost all of his past-due creditors and provided a reasonable explanation for not disclosing delinquent debts in a security clearance application he submitted in December 2001. He has mitigated the security concerns alleged in this case. Clearance is granted.

### **STATEMENT OF THE CASE**

The Defense Office of Hearings and Appeals (DOHA) issued a Statement of Reasons (SOR) to Applicant stating they were unable to find it is clearly consistent with the national interest to grant or continue a security clearance for Applicant. [\(1\)](#) [\(2\)](#) The SOR, which is in essence the administrative complaint, alleges security concerns under Guideline F for financial considerations and Guideline E for personal conduct. Applicant submitted a sworn answer to the SOR that was received by DOHA on January 10, 2005, denied all SOR allegations, and requested a hearing.

This case was assigned to me on September 6, 2005. A notice of hearing was issued on September 15, 2005, scheduling the hearing for October 19, 2005. The hearing was conducted as scheduled. The government submitted seven documentary exhibits that were marked as Government Exhibits (GE) 1-7, and admitted into the record without objection. Applicant testified, called his wife to testify on his behalf, and submitted one documentary group exhibit that was marked as Applicant's Exhibit (AE) 1, and admitted into the record without objection. The transcript was received on November 23, 2005.

### **FINDINGS OF FACT**

After a thorough review of the pleadings, exhibits, and testimony, I make the following findings of fact:

Applicant is 42 years old and has been employed by a defense contractor as an experimental flight line technician since January 1986. He served on active duty in the U.S. Air Force from March 1976 until March 1980, attained the rank of senior airman (paygrade E-4), and was awarded an honorable discharge. Applicant has possessed a secret security clearance since 1992. He previously possessed a secret security clearance while in the Air Force. No complaints have ever been made alleging he mishandled or risked the compromise of classified information and no previous action has ever been taken to revoke his security clearance.

Applicant was married in May 1984, and that marriage ended in divorce in December 1989. He has been remarried since November 1996. Applicant's second wife brought her previously accumulated debt into the marriage. She also assumed responsibility for dealing with the family finances following their marriage. Applicant attempted to supplement his income by operating a cigar kiosk in a shopping mall between February and June 1999. Employee theft rendered the business a quick failure and caused Applicant and his wife to lose money.

The SOR alleges 18 delinquent accounts totaling almost \$138,000.00. The largest of those debts is the alleged balance owed after a home foreclosure in February 1999 (SOR subparagraph 1.d). Applicant submitted proof there was no foreclosure, that he sold the house in June 2000, and the loan secured by a mortgage on the house was paid in full in July 2000.

Applicant also submitted documentary proof, or provided credible testimony, that the remaining debts listed in the SOR, with the exception of the accounts listed in subparagraphs 1.b and 1.o, have been satisfied. The account listed in subparagraph 1.q was paid in 1998. The account listed in subparagraph 1.i was paid in 2002. The account listed in subparagraph 1.n was paid in 2003. The accounts listed in subparagraphs 1.f, 1.g, 1.k, 1.l, 1.m, and 1.r were all satisfied in 2004. The remaining paid accounts were satisfied between January and April 2005.

Applicant testified as to his unsuccessful efforts to locate the creditor listed in subparagraph 1.b. However, because the account has apparently been sold on more than one occasion, he has not been able to discover the entity which presently holds the account to make payment arrangements. Applicant successfully challenged his continuing liability for the account listed in subparagraph 1.o. Although he did not provide conclusive documentary evidence that the account listed in subparagraph 1.j has been paid, his testimony to that effect is credible.

Applicant was living in a house under a rent-to-own agreement for about four years until he purchased the house in June 2005. The purchase price for the house was \$322,000.00. However, because of the increase in local home prices since he entered into the rent-to-own agreement, the appraised value of the house is now \$490,000.00. Applicant's 2004 income, including overtime pay, was \$108,000.00. His wife is retired and receives about \$570.00 per month from social security. He obtained the money to pay off the delinquent debt from increased overtime income and withdrawals from his 401K retirement account.

Applicant credibly testified his wife was handling their finances at the time he submitted a security clearance application (SF 86) in December 2001, and, while he was aware they had more debt than they could comfortably handle, he did not know they had debt that was then more than 90 days past due, or debt that had been more than 180 days past due in the preceding seven years.

Applicant submitted a personal financial statement in July 2003 (GE 4) that indicated his monthly expenses exceeded his net monthly pay by \$186.00 without any payments being made on his delinquent debt. However, that financial statement is skewed by the fact that it includes a mortgage payment on a condominium that Applicant was in the process of selling.

Applicant sought the assistance of a consumer credit counseling service in June 2003, and prepared a budget with the service's assistance. That budget disclosed he had monthly surplus income in the amount of \$927.00. With the service's assistance, Applicant entered into an agreement to make monthly payments of \$313.00 toward elimination of his debt beginning in June 2003.<sup>(3)</sup> He made those payments until he decided to accelerate repayment of his delinquent debt through the use of his overtime pay and 401K assets.

### **POLICIES**

The Directive sets forth adjudicative guidelines to consider when evaluating a person's eligibility to hold a security clearance. Chief among them are the Disqualifying Conditions (DC) and Mitigating Conditions (MC) for each applicable guideline. Additionally, each clearance decision must be a fair and impartial commonsense decision based upon the relevant and material facts and circumstances, the whole person concept, and the factors listed in ¶ 6.3.1 through ¶ 6.3.6 of the Directive. Although the presence or absence of a particular condition or factor for or against clearance is not outcome determinative, the adjudicative guidelines should be followed whenever a case can be measured against this policy guidance. Considering the evidence as a whole, Guideline F, pertaining to financial considerations and Guideline E, pertaining to personal conduct, with their respective DC and MC, are most relevant in this case.

### **BURDEN OF PROOF**

The sole purpose of a security clearance decision is to decide if it is clearly consistent with the national interest to grant or continue a security clearance for an applicant.<sup>(4)</sup> The government has the burden of proving controverted facts.<sup>(5)</sup> The burden of proof in a security clearance case is something less than a preponderance of evidence<sup>(6)</sup>, although the government is required to present substantial evidence to meet its burden of proof.<sup>(7)</sup> "Substantial evidence is more than a scintilla, but less than a preponderance of the evidence."<sup>(8)</sup> Once the government has met its burden, the burden shifts to an applicant to present evidence of refutation, extenuation, or mitigation to overcome the case against him.<sup>(9)</sup> Additionally, an applicant has the ultimate burden of persuasion to obtain a favorable clearance decision.<sup>(10)</sup>

No one has a right to a security clearance<sup>(11)</sup> and "the clearly consistent standard indicates that security clearance determinations should err, if they must, on the side of denials."<sup>(12)</sup> Any reasonable doubt about whether an applicant should be allowed access to classified information must be resolved in favor of protecting national security.<sup>(13)</sup>

## CONCLUSIONS

Under Guideline F, a security concern exists when a person has significant unpaid debts. An individual who is financially overextended is at risk of having to engage in illegal or unethical acts to generate funds to meet financial obligations. Similarly, an individual who is financially irresponsible may also be irresponsible, unconcerned, or careless in their obligation to protect classified information. Behaving responsibly or irresponsibly in one aspect of life provides an indication of how a person may behave in other aspects of life.

Applicant acquired substantial delinquent debt, much of which was brought into their marriage by his second wife. His debt situation was aggravated in 1999 by a failed attempt to operate a business in an effort to supplement his income. Disqualifying Conditions (DC) 1: *A history of not meeting financial obligations*; and DC 3: *Inability or unwillingness to satisfy debt* apply in this case.

The largest debt alleged in the SOR is in error, and several other of the alleged debts have been satisfied for years. Applicant contracted with a consumer credit counseling service to begin repaying his past due debts as soon as he became aware of the extent of his financial problems in June 2003. He more aggressively undertook satisfaction of that debt beginning in 2004. Applicant has now paid every delinquent account for which he was liable with the exception of one debt for which he has been unable to locate the current account holder. He has the income and assets to immediately satisfy that debt when the account holder is identified.

Mitigating Conditions (MC) 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*; and MC 6: *The individual initiated a good-faith effort to repay overdue creditors or otherwise resolve debts* apply. Applicant has mitigated the security concern under Guideline F.

Personal conduct under Guideline E is always a security concern because it asks the central question if a person's past conduct justifies confidence the person can be trusted to properly safeguard classified information. 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.

Applicant's explanation for not disclosing he had accounts more than 90 days past due at the time he submitted the SF 86 in December 2001, or had accounts that had been more than 180 days past due within the seven years preceding submission of the SF 86 is credible. He did not deliberately provide false information or fail to disclose accurate information when he submitted the SF 86. No disqualifying condition applies under Guideline E.

Considering all relevant and material facts and circumstances present in this case, including the testimony and evidence provided by Applicant, the whole person concept, the factors listed in ¶ 6.3.1 through ¶ 6.3.6 of the Directive, and the applicable disqualifying and mitigating conditions, I find Applicant has mitigated the security concerns in this case. He has overcome the case against him and satisfied his ultimate burden of persuasion. Guideline F and Guideline E are decided for Applicant.

### **FORMAL FINDINGS**

SOR ¶ 1-Guideline F: For Applicant

Subparagraphs a-s For Applicant

SOR ¶ 2-Guideline E: For Applicant

Subparagraph a: For Applicant

### **DECISION**

In light of all 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.

Henry Lazzaro

Administrative Judge

1. This action was taken under Executive Order 10865 and DoD Directive 5220.6, dated January 2, 1992, as amended and modified (Directive).
2. The SOR is undated.

3. The initial payment was in the amount of \$352.00.
4. ISCR Case No. 96-0277 (July 11, 1997) at p. 2.
5. ISCR Case No. 97-0016 (December 31, 1997) at p. 3; Directive, Enclosure 3, Item E3.1.14.
6. *Department of the Navy v. Egan* 484 U.S. 518, 531 (1988).
7. ISCR Case No. 01-20700 (December 19, 2002) at p. 3 (citations omitted).
8. ISCR Case No. 98-0761 (December 27, 1999) at p. 2.
9. ISCR Case No. 94-1075 (August 10, 1995) at pp. 3-4; Directive, Enclosure 3, Item E3.1.15.
10. ISCR Case No. 93-1390 (January 27, 1995) at pp. 7-8; Directive, Enclosure 3, Item E3.1.15
11. *Egan*, 484 U.S. at 528, 531.
12. *Id* at 531.
13. *Egan*, Executive Order 10865, and the Directive.