

KEYWORD: Financial; Personal Conduct

DIGEST: After debts were discharged in a Chapter 7 bankruptcy in 1999, Applicant subsequently incurred approximately \$12,000.00 in delinquent debts as a result of job relocation and difficulties with his wife culminating in divorce where he was granted custody of their four children. He proved payment of all but one debt. Two petitions for protective orders by his former wife were filed against him. One was dismissed at her request and the other was dismissed by the court. Applicant has mitigated security concerns raised by his financial condition and personal conduct. Clearance is granted.

CASENO: 03-04856.h1

DATE: 07/20/2004

DATE: July 20, 2004

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In Re:

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SSN: -----

Applicant for Security Clearance

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ISCR Case No. 03-04856

**DECISION OF ADMINISTRATIVE JUDGE**

**CHARLES D. ABLARD**

**APPEARANCES**

**FOR GOVERNMENT**

Erin C. Hogan, Department Counsel

## FOR APPLICANT

*Pro Se*

### SYNOPSIS

After debts were discharged in a Chapter 7 bankruptcy in 1999, Applicant subsequently incurred approximately \$12,000.00 in delinquent debts as a result of job relocation and difficulties with his wife culminating in divorce where he was granted custody of their four children. He proved payment of all but one debt. Two petitions for protective orders by his former wife were filed against him. One was dismissed at her request and the other was dismissed by the court. Applicant has mitigated security concerns raised by his financial condition and personal conduct. Clearance is granted.

### STATEMENT OF CASE

On December 30, 2003, the Defense Office of Hearings and Appeals (DOHA), pursuant to Executive Order 10865, *Safeguarding Information Within Industry*, 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 which detailed reasons 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. DOHA recommended the case be referred to an administrative judge to determine whether a clearance should be granted, continued, denied, or revoked.

In a sworn written statement dated January 27, 2004, Applicant responded to the allegations set forth in the SOR, and elected to have his case decided on the written record in lieu of a hearing. Department Counsel submitted the Government's written case on March 28, 2004. A complete copy of the file of relevant material (FORM) was provided to the Applicant, and he was afforded an opportunity to file objections and submit material in refutation, extenuation, or mitigation. Applicant responded with additional information on April 27, 2004 and the case was assigned to me on May 10, 2004.

## **FINDINGS OF FACT**

After a complete and thorough review of the information in the record, and upon due consideration of same, I make the following additional findings of fact:

Applicant is a 43-year-old employee of a defense contractor who incurred approximately \$12,000.00 in delinquent debts at the time the SOR was prepared. He admitted all of the debts but offered evidence of payment of two and stated his intentions and ability to pay most of the others. In addition to his employment income, he is a military reservist and receives income from that activity.

Applicant filed for bankruptcy under Chapter 7 in 1998 and was discharged of his debts in 1999. He was going through marital difficulties at that time which occasioned some of his financial problems. The following year his job was transferred to a different state and he continued to have some problems with debts.

Applicant was in debt to the Internal Revenue Service for taxes for four tax years exceeding \$9,000.00. The FORM concluded that taxes for two had been resolved and that he owed over \$4,000.00 for the remaining two. The final submission from Applicant showed that the last two had been paid and that he had received a tax refund. In addition to the evidence offered in his answer relating to two of the smaller debts, he has offered further evidence showing that all other debts but one have been paid. The remaining debt is for \$1,600.00.

An abuse protection order issued against Applicant on petition of his wife in 1996 was vacated at the request of his wife who resumed living with him until 2001 when divorce proceedings and child custody litigation were initiated. During the course of the custody dispute his wife filed for a civil protection order. That petition was dismissed by the court without prejudice and he was given custody of his four children. He is receiving child support payments from his former wife.

## **POLICIES**

"[N]o one has a 'right' to a security clearance." *Department of the Navy v. Egan*, 484 U.S. 518, 528 (1988). 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.

An evaluation of whether the applicant meets the security guidelines includes consideration of the following factors: (1) the nature, extent, and seriousness of the conduct; (2) the circumstances surrounding the conduct; (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 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. Directive, ¶ E2.2.1. Security clearances are granted only when "it is clearly consistent with the national interest to do so." Executive Order No. 10865 § 2. *See* Executive Order No. 12968 § 3.1(b).

Initially, the Government must establish, by something less than a preponderance of the 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. The applicant then bears the burden of demonstrating that it is clearly consistent with the national interest to grant or continue the applicant's clearance. "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. "[S]ecurity clearance determinations should err, if they must, on the side of denials." *Egan*, 484 U.S. at 531. *See* Executive Order No. 12968 § 3.1(b)

## 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 all allegations set forth in the SOR.

Applicant's delinquent debts prompted the allegation in the SOR of violation of Guideline F in that an individual who is financially overextended is at risk of having to engage in illegal acts

to generate funds. (E2.A6.1.1.) Conditions that could raise a security concern and may be disqualifying include a history of not meeting financial obligations (E2.A6.1.2.1.) and evidence of

inability or unwillingness to satisfy debts. (E2.A6.1.2.3.) Mitigating Conditions (MC) include the

fact that the person has initiated a good faith effort to repay overdue creditors or otherwise resolve debts. (E2.A6.1.3.6.)

and that the conditions resulting in the problems were largely beyond the person's control such as divorce. (E2.A6.1.3.3.)

I conclude that mitigating factors are applicable in that the debts have largely been resolved, albeit later than they should have been, and that they arose during a period of domestic problems and job relocation. The remaining debt is not sufficiently large that it cannot be resolved with Applicant's current income and he expresses an intent to resolve it.

The allegation under Guideline E concerning rule violation (E2.A5.1.1.) is based on the abuse protection order issued against Applicant in 1996 and the petition for a civil protection order in 2001. In view of the age and the disposition of both matters, I find that the allegation is mitigated by the circumstances surrounding the conduct (E2.2.1.2.) and the lack of recency of the conduct. (E2.2.1.3.)

In all adjudications the protection of our national security is of paramount concern. Persons who have access to classified information have an overriding responsibility for the security concerns of the nation. The objective of the security clearance process is the fair-minded, commonsense assessment of a person's trustworthiness and fitness for access to classified information.

After considering all the evidence in its totality and as an integrated whole to focus on the whole person of Applicant, I conclude that it is clearly consistent with the national interest to grant clearance to Applicant.

### **FORMAL FINDINGS**

Formal findings as required by the Directive (Par. E3.1.25) are as follows:

Paragraph 1. Guideline F: AGAINST 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

Subparagraph 1.j.: For Applicant

Subparagraph 1.k.: For Applicant

Subparagraph 1.l.: For Applicant

Subparagraph 1.m.: For Applicant

Paragraph 2.Guideline E: FOR APPLICANT

Subparagraph 2.a.: For Applicant

Subparagraph 2.b.: For Applicant

### **DECISION**

After full consideration of all the facts and documents 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.

Charles D. Ablard

Administrative Judge

