

KEYWORD: Financial; Personal Conduct

DIGEST: Applicant experienced financial problems in the mid-1990's when he separated from his wife. He suffered intermittent employment interruptions from 1997 until 2001 when he acquired his present job. Most of the debts he incurred in the 1990's have never been paid, and Applicant failed to disclose them on his Security Clearance Application (SF 86) he submitted in 2001. Applicant also failed to disclose his use of illegal drugs over twenty years ago when he was in the Navy and his participation in alcohol counseling in 1979 on a National Agency Questionnaire he submitted in 1991. Applicant failed to mitigate the security concerns raised by his financial difficulties and personal conduct. Clearance is denied.

CASE NO: 03-11374.h1

DATE: 01/05/2006

DATE: January 5, 2006

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In re:

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SSN: -----

Applicant for Security Clearance

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ISCR Case No. 03-11374

**DECISION OF ADMINISTRATIVE JUDGE**

**DAVID S BRUCE**

**APPEARANCES**

**FOR GOVERNMENT**

**FOR APPLICANT**

*Pro Se*

**SYNOPSIS**

Applicant experienced financial problems in the mid-1990's when he separated from his wife. He suffered intermittent employment interruptions from 1997 until 2001 when he acquired his present job. Most of the debts he incurred in the 1990's have never been paid, and Applicant failed to disclose them on his Security Clearance Application (SF 86) he submitted in 2001. Applicant also failed to disclose his use of illegal drugs over twenty years ago when he was in the Navy and his participation in alcohol counseling in 1979 on a National Agency Questionnaire he submitted in 1991. Applicant failed to mitigate the security concerns raised by his financial difficulties and personal conduct. Clearance is denied.

**STATEMENT OF THE CASE**

On October 13, 2004, the Defense Office of Hearings and Appeals (DOHA), pursuant to 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 Review Program*, dated January 2, 1992, as amended and modified (Directive), issued a Statement of Reasons (SOR) to Applicant alleging facts that raise security concerns addressed in the Directive under Guideline F - Financial Considerations, and Guideline E - Personal Conduct. The SOR detailed why DOHA could not preliminarily determine under the Directive that it is clearly consistent with the national interest to grant or continue Applicant's request for a security clearance. By his answer to the SOR executed November 4, 2004, Applicant admitted the allegations of subparagraphs 1.a. - 1.k., and 2.d., 2.e. and 2.g. of the SOR, and denied the allegations of subparagraphs 2.a. - 2.c. and 2.f., and requested a hearing before an administrative judge.

The case was assigned to me on October 3, 2005, and I conducted the hearing on October 26, 2005. The government submitted exhibits (GE) 1 through 7, which were admitted without objection. Applicant testified and offered no documentary evidence. DOHA received the hearing transcript (Tr.) on November 9, 2005.

## FINDINGS OF FACT

Applicant's admissions to the allegations of the SOR are incorporated herein by reference. In addition, after a thorough review of the pleadings, transcript, and exhibits, I make the following findings of fact:

Applicant is 56 years old and has three adult children.<sup>(1)</sup> He has been married since 1973, however, he has not resided with his wife since 1994. He has provided his wife with financial support through a court order since they separated.<sup>(2)</sup>

Applicant served for over 20 years in the U.S. Navy, first serving in the Vietnam era from November 1969 to February 1972. He reenlisted in November 1973 and served until October 1991. Through his career he spent considerable time at sea on multiple deployments, serving on five different aircraft carriers.<sup>(3)</sup> He was honorably discharged at paygrade E-6.<sup>(4)</sup> Applicant held clearances while serving in the Navy and with a contractor in 1991.<sup>(5)</sup>

Applicant has been employed by a federal contractor as a technical assistant since May 2001. He worked for the same contractor in a similar capacity when he was discharged from the Navy until February 1997.<sup>(6)</sup> He voluntarily resigned from the position to try another career at driving a tractor-trailer until he was rehired by the contractor in 2001.<sup>(7)</sup> The work he performs at the present time does not require a clearance.<sup>(8)</sup>

Applicant began experiencing financial difficulties when he separated from his wife in the mid-1990s.<sup>(9)</sup> His problems intensified from 1997-2001, when his truck driving endeavor did not prove successful due to problems associated with his driver's license and related matters.<sup>(10)</sup> As a result, he endured intermittent periods of unemployment that contributed further to his financial difficulties.<sup>(11)</sup>

As of April 2003, Applicant had positive net income of \$1,221.00 per month. On a financial statement he prepared at the time, he listed nine debts with specific balances he admitted owing which remain unpaid.<sup>(12)</sup>

Applicant was indebted as follows when the SOR was issued:

1. Collection agency account reduced to judgment - \$375.00 (Subparagraph 1.a.). Applicant does not recall this debt. [\(13\)](#)
  
2. Debt to prior landlord - \$1,200.00 (Subparagraph 1.b.). Applicant acknowledges this debt and admits it has not been paid. [\(14\)](#)
  
3. Collection agency account for cable services - \$707.00 (Subparagraph 3.a.). Applicant acknowledges this debt and admits it has not been paid. [\(15\)](#)
  
4. Waste collection services - \$33.00 (Subparagraph 1.d.). Applicant believes he paid this debt because it had prevented him from obtaining sanitation services for his new home. [\(16\)](#) He provided no proof of payment.
  
5. Medical bill - \$61.00 (Subparagraph 1.e.). Applicant acknowledges this debt and believes it has been paid. [\(17\)](#) He provided no proof of payment.
  
6. Medical bill - \$167.00 (subparagraph 1.f.). Applicant acknowledges this debt and believes it has been paid through medical insurance. [\(18\)](#) He provided no proof of payment.
  
7. Collection for medical services - \$158.00 (Subparagraph 1.g.). Applicant acknowledges this debt and is not sure if it has been paid. [\(19\)](#)
  
8. Credit card account - \$899.00 (Subparagraph 1.h.). Applicant acknowledges this debt and admits it is not paid. [\(20\)](#)
  
9. Medical provider - \$125.00 (Subparagraph 1.i.). Applicant acknowledges this debt was incurred by his wife. He thinks it was paid but is not sure. [\(21\)](#)
  
10. Collection account - \$1,234.00 (Subparagraph 1.j.). Applicant has no present recollection of this debt. [\(22\)](#)

Applicant's total delinquent debt set forth above is \$4,959.00.

Applicant admits having tried cocaine in about 1973, and that he occasionally used marijuana from 1966 to 1983, at times during which he held clearances while in the Navy. On rare occasions his use of marijuana occurred while deployed at sea. [\(23\)](#) Primarily because of the zero tolerance drug policy implemented by the Navy, Applicant has not used drugs since 1983. [\(24\)](#)

Applicant admits he has consumed alcohol most of his adult life. Because of an incident that occurred in about 1978, he voluntarily attended an alcohol and drug rehabilitation program sponsored by the Navy as an alternative to facing Captain's Mast proceedings. [\(25\)](#)

Applicant signed his Security Clearance Application (SF 86) on July 18, 2001. As to question 37, he did not disclose three judgments entered against him in the preceding seven year period. As to Questions 38 and 39, Applicant did not disclose any debts he had incurred in the preceding seven years that were delinquent at the time in excess of 90 and 180 days. [\(26\)](#) In response to Question 28 regarding use of illegal drugs, Applicant denied ever using illegal drugs while possessing a security clearance or while in a position affecting public safety. [\(27\)](#)

Applicant executed a Department of Defense National Agency Questionnaire (NAQ) on December 5, 1991. [\(28\)](#) As to Question 20a, Applicant denied ever trying, using, or possessing cocaine or marijuana. As to Question 20d, he denied ever attending an alcohol-related treatment or counseling program. [\(29\)](#)

## **POLICIES**

Enclosure 2 of the Directive, *Adjudicative Guidelines For Determining Eligibility For Access To Classified Information*, sets forth the criteria which must be evaluated when determining security clearance eligibility. The adjudicative guidelines specifically distinguish between those factors that are considered in denying or revoking an employee's request for access to classified information (Disqualifying Conditions), together with those factors that are considered in granting an employee's request for access to classified information (Mitigating Conditions). By acknowledging that individual circumstances of each case are always different, the guidelines provide substantive standards to assist an administrative judge in reaching fair and impartial common sense decisions.

The adjudicative process requires thorough consideration and review of all available, reliable information about the applicant, past and present, favorable and unfavorable, to arrive at well-informed decisions. Section E2.2. of Enclosure 2 of the Directive describes the essence of scrutinizing all appropriate variables in a case as the "whole person concept." In evaluating the conduct of the applicant and the circumstances in any case, the factors an administrative judge should consider pursuant to the concept are: (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 the 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.

Protecting national security is the paramount concern in reaching a decision in any case, and is dependent upon the primary standard that issuance of a clearance must be clearly consistent with the interests of national security. Granting an applicant's clearance for access to classified information is predicated on a high degree of trust and confidence in the individual. Accordingly,

decisions under the Directive must include consideration of not just the *actual* risk of disclosure of such information, but also consideration of any *possible* risk an applicant may deliberately or inadvertently compromise classified information in any aspect of his or her life. Any doubt about whether an applicant should be allowed access to classified information must be resolved in favor of protecting classified information.<sup>(30)</sup> The decision to deny a security clearance request to an individual is not necessarily a determination of the loyalty of the applicant.<sup>(31)</sup> It is merely an indication the applicant has not met the strict guidelines established by the Department of Defense for issuing a clearance.

In accordance with the Directive, the government bears the burden of proof in the adjudicative process to first establish conditions by substantial evidence which indicate it is not clearly consistent with the national interest to grant or continue an applicant's access to classified information.<sup>(32)</sup> The legal standard for the burden of proof is something less than a preponderance of the evidence.<sup>(33)</sup> When the government meets this burden, the corresponding heavy burden of rebuttal then falls on the applicant to present evidence in refutation, explanation, extenuation or mitigation sufficient to overcome the position of the government, and to ultimately demonstrate it is clearly consistent with the national interest to grant or continue the applicant's clearance.<sup>(34)</sup>

## CONCLUSIONS

Under Guideline F, a security concern exists when a person has significant delinquent 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.

Based on all the evidence, Financial Considerations Disqualifying Condition (FC DC) E2.A6.1.2.1 (*A history of not meeting financial obligations*) and E2.A6.1.2.3 (*Inability or unwillingness to satisfy debts*), apply in this case. I have considered all the Financial Considerations Mitigating Conditions (FC MC), and especially FC MC E2.A6.1.3.1 (*The behavior was not recent*), FC MC E2.A6.1.3.2 (*It was an isolated incident*), FC MC E2.A6.1.3.3 (*The conditions that resulted in the behavior were largely beyond the person's control (e.g., loss of employment, a business downturn, unexpected medical emergency, or a death, divorce or separation)*), and FC MC E2.A6.1.3.6 (*The individual initiated a good faith effort to repay overdue creditors or otherwise resolve debts*). I conclude none apply to this case.

The total debt raised under the SOR allegations is relatively modest. The number of debts, however, is substantial and took time to accumulate, heightened by the fact Applicant simply permitted them to accrue primarily through inattention, and has chosen to ignore them carelessly over a lengthy period. The clear inference is he knowingly neglected his credit responsibilities for a long time, and he failed to recognize the significance of his escalating debt. His periods of unemployment were relatively short, yet he took no affirmative steps then to tighten his budget to get his financial affairs in order, and particularly after he gainfully reentered the workforce in 2001. The debts accrued over several years, and because very little has been paid against them, I consider the debts recent, in the sense they remain presently unpaid. Likewise, I cannot consider accrual of the debts to be an isolated event because the debts were multiple and were progressively incurred.

Applicant implied to a Defense Security Service (DSS) investigator in April 2003 he would begin paying the accounts. (35) The financial statement he completed at the time showed he had positive income of \$1,221,00 per month. At the hearing over two years later, no significant payments had been made and no repayment plans or schedules had been implemented by Applicant with any of the creditors listed in the SOR. A different conclusion might be appropriate had Applicant made good-faith efforts to repay any substantial portion of the total debt since he filed his SF 86 over three years ago. Applicant never initiated efforts to benefit from credit counseling, and it is interesting he keeps his more desirable obligations current - \$85.00 per month for a cell phone, for instance. (36) It appears he has chosen to ignore his old debts, and only pay his present ones, in spite of having had an ability to accomplish repayment. Given the chronology and significance of the events, Applicant has not shown failure to pay his debts was due principally to conditions beyond his control, and he has not made a good-faith effort to repay his creditors or otherwise conscientiously resolve his debts. Applicant's deliberate and irresponsible inattention to his debts causes great concern, particularly considering he has ignored the debts when he has had the ability in recent years to begin making payments on them.

Under Guideline E, personal conduct is a security concern because conduct involving questionable judgment, trustworthiness, unreliability, lack of candor, dishonesty, or unwillingness to comply with rules and regulations could indicate that a person may not properly safeguard classified information.

Considering all the evidence, Personal Conduct Disqualifying Condition (PC DC) E2.A5.1.2.2. (*The deliberate*

*omission, concealment, or falsification 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*) applies in this case. Applicant was aware he had a number of delinquent debts when he signed his SF 86 on July 18, 2001. His financial difficulties developed when he separated from his wife over ten years ago, and then lingered for five years or so thereafter due to not having steady employment. No payments were made, however, after he resumed working and filed his application. Several of the accounts listed on the SOR had been either reduced to judgment or referred for collection when he completed his SF 86. The omission concerning his drug use is especially troublesome, even though he has not used drugs recently. As sometimes happens, the intentional omission of critical information by applicants can be more detrimental than the actual activity. One objective of the security clearance process is to determine all relevant and material information concerning an applicant. Based upon truth and honesty, the process requires full and open disclosure by the applicant of all requested information. Any intentional misrepresentation or omission by an applicant raises serious concerns about the character and overall integrity of the individual. The evidence presented and Applicant's admissions constitute substantial evidence of PC DC E2.A5.1.2.2. under Guideline E.

I have considered all the Personal Conduct Mitigating Conditions (PC MC), and especially PC MC E2.A5.1.3.3. (*The individual made prompt, good-faith efforts to correct the falsification before being confronted with the facts*), and conclude it does not apply. Applicant had an affirmative obligation to determine the true status of all information requested in his SF 86 and NAQ questionnaires, and to fully provide and disclose complete and accurate answers to each item. The omissions on his SF 86 exacerbated the omissions on the NAQ he submitted nearly ten years earlier. They were apparent to Applicant when he prepared his answers and were made intentionally. The omissions were a deliberate and self serving attempt by Applicant to mislead and inappropriately influence the outcome of his security clearance application. Applicant did not openly disclose the facts related to his prior drug use, alcohol counseling and delinquent debts until he was confronted with the information during a subsequent interview with a DSS investigator in 2003. Applicant had more than 18 months to reconsider his responses on his application and properly disclose the correct information. Considering all the circumstances, Applicant's candor and credibility are questionable given the seriousness and chronology of the events. Accordingly, Applicant has failed to successfully mitigate the personal conduct security concerns raised in this case.

I have further reviewed all the record evidence under the "whole person" concept required by the Directive in evaluating Applicant's vulnerability in protecting our national security. An applicant with a good or even exemplary work history may engage in conduct that has negative security implications. Although Applicant's loyalty to the United States is not in question, I am persuaded by the totality of the evidence that it is not clearly consistent with the national interest to grant Applicant a security clearance. For the reasons stated, Applicant has not met the strict guidelines established by the Department of Defense for issuance of a clearance, and he has failed to mitigate the security concerns regarding his financial difficulties and personal conduct. Accordingly, Guidelines F and E are decided against Applicant.

## **FORMAL FINDINGS**



In accordance with Section E3.1.25 of Enclosure 3 of the Directive, the following are the formal findings as to each allegation in the SOR:

Paragraph 1. Financial Considerations (Guideline F) AGAINST THE APPLICANT

Subparagraph 1.a. Against the Applicant

Subparagraph 1.b. Against the Applicant

Subparagraph 1.c. Against the Applicant

Subparagraph 1.d. Against the Applicant

Subparagraph 1.e. Against the Applicant

Subparagraph 1.f. Against the Applicant

Subparagraph 1.g. Against the Applicant

Subparagraph 1.h. Against the Applicant

Subparagraph 1.i. Against the Applicant

Subparagraph 1.j. Against the Applicant

Subparagraph 1.k. Against the Applicant

Paragraph 2. Personal Conduct (Guideline E) AGAINST THE APPLICANT

Subparagraph 2.a. Against the Applicant

Subparagraph 2.b. Against the Applicant

Subparagraph 2.c. Against the Applicant

Subparagraph 2.d. Against the Applicant

Subparagraph 2.e. Against the Applicant

Subparagraph 2.f. Against the Applicant

**DECISION**

In light of all 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.

David S. Bruce

Administrative Judge

1. GE 1 (Applicant's Security Clearance Application dated July 18, 2001), at 1 and 5.
2. Tr. at 20 and 54.
3. *Id.* at 47-48 and 65.
4. *Id.* at 21-22.
5. GE 1, *supra* note 1, at 8.
6. *Id.* at 2-3.
7. Tr. at 22-23.
8. *Id.* at 14.
9. GE 4 (Applicant's sworn statement dated April 8, 2003), at 1.
10. Tr. at 56-58. See also GE 4, *supra* note 9, at 3.
11. GE 1, *supra* note 1, at 2-3.

12. GE 4, *supra* note 9, at 5.
13. Tr. at 25.
14. *Id.* at 25-27.
15. *Id.* at 27.
16. *Id.* at 27-28.
17. *Id.* at 28-29.
18. *Id.* 29-30.
19. *Id.* 30-31.
20. *Id.* at 31.
21. *Id.* at 31-32.
22. *Id.* at 32-33.
23. GE 5 (Applicants's sworn statement dated February 4, 1993), at 1-4.
24. Tr. at 36.
25. *Id.* at 39-40.
26. GE 1, *supra* note 1, at 9.
27. *Id.* at 8.
28. GE 2 (National Agency Questionnaire (NAQ) signed by Applicant on December 15, 1991).
29. *Id.* at 4.
30. Directive, Enclosure 2, Para. E2.2.2.
31. Executive Order 10865 § 7.
32. ISCR Case No. 96-0277 (July 11, 1007) at p. 2.
33. *Department of the Navy v. Egan*, 484 U.S. 518, 531 (1988).
34. ISCR Case No. 94-1075 (August 10, 1995) at pp. 3-4; Directive, Enclosure 3, Para. E3.1.15.
35. GE 4, *supra* note 9, at 4.
36. *Id.*