

KEYWORD: Financial; Personal Conduct

DIGEST: Applicant owes over \$7,000 for eight delinquent debts dating back to 1996, which he has failed to address despite having had the resources to pay or otherwise resolve them. He has yet to take any tangible action to resolve his debts. Applicant also deliberately failed to disclose any of his financial difficulties as required by the security clearance questionnaire (SF 86) he submitted in July 2001. He has failed to mitigate the security concerns about his financial difficulties and his personal conduct. Clearance is denied.

CASENO: 03-14632.h1

DATE: 02/17/2005

DATE: February 17, 2005

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In Re:

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SSN: -----

Applicant for Security Clearance

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ISCR Case No. 03-14632

**DECISION OF ADMINISTRATIVE JUDGE**

**MATTHEW E. MALONE**

**APPEARANCES**

**FOR GOVERNMENT**

Rita C. O'Brien, Esquire, Department Counsel

## FOR APPLICANT

*Pro Se*

### SYNOPSIS

Applicant owes over \$7,000 for eight delinquent debts dating back to 1996, which he has failed to address despite having had the resources to pay or otherwise resolve them. He has yet to take any tangible action to resolve his debts. Applicant also deliberately failed to disclose any of his financial difficulties as required by the security clearance questionnaire (SF 86) he submitted in July 2001. He has failed to mitigate the security concerns about his financial difficulties and his personal conduct. Clearance is denied.

### STATEMENT OF THE CASE

On February 12, 2004, in accordance with DoD Directive 5220.6, as amended (Directive), the Defense Office of Hearings and Appeals (DOHA) issued Applicant a Statement of Reasons (SOR) alleging facts that raise security concerns addressed in the Directive under Guideline E (Personal Conduct) and Guideline F (Financial Considerations). The SOR further informed Applicant that, based on available information, DOHA adjudicators could not make a preliminary affirmative finding that it is clearly consistent with the national interest to continue Applicant's security clearance. [\(1\)](#)

On March 15, 2004, Applicant answered the SOR (Answer), wherein he admitted all the allegations except those in SOR subparagraphs 1.d, 1.h, and 2.a. He also waived hearing, electing to have his case decided on the written record. On September 21, 2004, DOHA Department Counsel submitted a file of relevant material (FORM) in support of the government's preliminary decision, a copy of which Applicant received on October 6, 2004. Applicant was allowed 30 days from receipt in which to respond to the FORM, but he failed to submit any further information. The case was assigned to me for decision on November 17, 2004.

## **FINDINGS OF FACT**

Applicant's admissions are incorporated herein as facts. After a thorough review of the pleadings and exhibits, I make the following additional findings of fact:

Applicant is 48 years old and has worked as a security guard for a defense contractor since December 1998. He is a high school graduate and attended college briefly before serving in the Army from 1976 until 1979. After leaving the service for seven months, he re-enlisted and served until his retirement at an E-5 paygrade in 1998. Applicant's marriage in 1981 ended in divorce in 1992.

Applicant has not paid any of the debts alleged in the SOR. In 2003, he told an agent of the Defense Security Service (DSS) he intended to obtain a debt consolidation loan to satisfy these debts, but he has not done so. Further, he blames his difficulties, in part, on his 1992 divorce, notwithstanding the fact all the debts listed in the SOR were incurred at least four years after his marriage ended. In his March 2004 Answer, he insists he will have these debts cleared up in the next 18 to 24 months, but he has provided no additional information to document any corrective actions he may have taken to date.

The SOR alleged debts totaling \$12,878; however the debts alleged in SOR ¶1.c and ¶1.d are the same debt - the remaining deficiency on a car that was repossessed sometime between 1996 and 2000. Therefore, Applicant owes \$7,461. Five of the listed debts are for amounts under \$200. Applicant's most recent personal financial statement shows he has about \$720 left over each month after paying his current expenses. His 2003 declaration showed he had about \$434 left each month.

Applicant submitted a security clearance application (SF 86) on July 13, 2001. In response to question 38, which asked whether he had, in the preceding seven years, been more than 180 days delinquent on any debt, he answered "no." However, it appears from the record he had been delinquent on at least two collection accounts since 1998. In response to question 35, which asked if he had experienced a property repossession anytime in the preceding seven years, he answered "no" despite knowing his car had been repossessed during that time.

## **POLICIES**

A security clearance decision is intended to resolve whether it is clearly consistent with the national interest<sup>(2)</sup> for an

Applicant to either receive or continue to have access to classified information. The Directive sets forth adjudicative guidelines<sup>(3)</sup> to be considered in evaluating an Applicant's suitability for access to classified information. The Administrative Judge must take into account both disqualifying and mitigating conditions under each adjudicative issue applicable to the facts and circumstances of each case. Each decision must also reflect a fair and impartial common sense consideration of the factors listed in Section 6.3 of the Directive. The presence or absence of a disqualifying or mitigating condition is not determinative of a conclusion for or against an Applicant. However, specific applicable guidelines should be followed whenever a case can be measured against them as they represent policy guidance governing the grant or denial of access to classified information. Having considered the record evidence as a whole, I conclude the relevant adjudicative guidelines to be applied here are Guideline E (personal conduct) and Guideline F (financial considerations).

### **BURDEN OF PROOF**

The government bears the initial burden of proving, by something less than a preponderance of the evidence, controverted facts alleged in the SOR. If the government meets its burden, it establishes a *prima facie* case that it is not clearly consistent with the national interest for the Applicant to have access to classified information. The burden then shifts to the Applicant to refute, extenuate or mitigate the government's case. Because no one has a "right" to a security clearance, the Applicant bears a heavy burden of persuasion in the face of established security concerns.<sup>(4)</sup>

A person who has access to classified information enters into a fiduciary relationship with the government based on trust and confidence. The government, therefore, has a compelling interest in ensuring each Applicant possesses the requisite judgement, reliability and trustworthiness of one who will protect the national interests as his or her own. The "clearly consistent with the national interest" standard compels resolution of any reasonable doubt about an Applicant's suitability for access in favor of the government.<sup>(5)</sup>

### **CONCLUSIONS**

Under Guideline F (financial considerations), a security concern exists where it is shown an individual is financially overextended and unable or unwilling to pay or resolve his financial obligations. Such circumstances may place an applicant at risk of having to engage in illegal acts to generate funds. An inability or unwillingness to pay one's debts and to manage one's finances in a reasonably sound manner may also indicate poor judgment and reliability.<sup>(6)</sup> Department Counsel has presented sufficient evidence in the FORM to establish a *prima facie* case for disqualification under this guideline. Applicant has accrued delinquent debts since 1996, yet, despite having the resources to pay at least some of the debts listed in the SOR, he has done nothing to help himself in this regard. Based on the record as a whole, Guideline F DC 1<sup>(7)</sup> and DC 3<sup>(8)</sup> apply here.

Applicant's lack of initiative in addressing his debts, and his baseless excuse that his delinquencies, all of which

occurred in 1996 or later, were somehow connected with his 1992 divorce greatly undermine the government's confidence he will ever become financially responsible, thus demonstrating the judgment expected of one who has access to classified information. None of the listed mitigating conditions apply. Accordingly, with the exception of SOR ¶1.d, I conclude Guideline F against the Applicant.

The security concern under Guideline E (personal conduct) is that 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.<sup>(9)</sup> The government's concern is that Applicant may have deliberately lied on his SF 86 when he failed to disclose some of his delinquencies. Department Counsel has presented sufficient evidence to establish a *prima facie* case for disqualification under this guideline based on his apparently deliberate falsification of his SF 86. While his omissions were not addressed during his DSS interview, I conclude the totality of the evidence (including his omission of his car repossession) supports a conclusion his omissions were deliberate. Applicant has denied the allegation in SOR ¶2.a, but provides no explanation or other information in mitigation or extenuation.

In light of the record evidence as a whole on the issue of falsification, I conclude Guideline E DC 2<sup>(10)</sup> applies here. Further, a review of the listed mitigating conditions under Guideline E pertaining to falsification leads me to conclude that none apply here. Accordingly, I conclude this guideline against Applicant.

A fair and commonsense assessment<sup>(11)</sup> of Applicant's financial standing and his apparently deliberate falsification raises reasonable doubts about Applicant's ability to safeguard classified information. Overall, this record portrays Applicant as lacking the requisite good judgment and discretion expected of one in whom the government entrusts its interests. Absent substantial information, which Applicant failed to provide, to resolve these doubts, Applicant has failed to overcome the information supporting the government's decision to deny Applicant access to classified information.

### **FORMAL FINDINGS**

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

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: For 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

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

Subparagraph 2.a: 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 the Applicant. Clearance is denied.

Matthew E. Malone

Administrative Judge

1. Required by Executive Order 10865, as amended, and by DoD Directive 5220.6, as amended.
2. *See Department of the Navy v. Egan*, 484 U.S. 518 (1988).
3. Directive, Enclosure 2.
4. *See Egan*, 484 U.S. at 528, 531.

5. *See Egan*; Directive E2.2.2.

6. Directive, E2.A6.1.1.

7. Directive, E2.A6.1.2.1. A history of not meeting financial obligations;

8. Directive, E2.A6.1.2.3. Inability or unwillingness to satisfy debts;

9. Directive, E2.A5.1.1.

10. Directive, 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;

11. Directive, E2.2.3.