

KEYWORD: Financial

DIGEST: Applicant and his wife experienced reduced income for longer than expected after his discharge from the Army in 1997. Thereafter, Applicant and his wife separated for about 10 months and Applicant struggled to make required support payments. However, he and his wife have reconciled, he has been steadily employed since 1998, and his wife has found full time work as an attorney. They have paid or otherwise resolved the debts listed in the SOR and their financial status is generally sound. Applicant has mitigated the security concerns under Guideline F. Clearance is granted.

CASENO: 03-14973.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. 03-14973

**DECISION OF ADMINISTRATIVE JUDGE**

**MATTHEW E. MALONE**

**APPEARANCES**

**FOR GOVERNMENT**

Juan J. Rivera, Esquire, Department Counsel

**FOR APPLICANT**

Rosalind Williams, Esquire

**SYNOPSIS**

Applicant and his wife experienced reduced income for longer than expected after his discharge from the Army in 1997. Thereafter, Applicant and his wife separated for about 10 months and Applicant struggled to make required support payments. However, he and his wife have reconciled, he has been steadily employed since 1998, and his wife has found full time work as an attorney. They have paid or otherwise resolved the debts listed in the SOR and their financial status is generally sound. Applicant has mitigated the security concerns under Guideline F. Clearance is granted.

**STATEMENT OF THE CASE**

On February 23, 2004, the Defense Office of Hearings and Appeals (DOHA) issued a Statement of Reasons (SOR) alleging facts in Applicant's background which raise security concerns under Guideline F (Financial Considerations). The SOR informed Applicant that, based on information available to the Government, DOHA adjudicators could not make a preliminary affirmative finding that it is clearly consistent with the national interest to grant or continue Applicant's security clearance.<sup>(1)</sup>

On March 15, 2004, Applicant answered the SOR (Answer), admitted (with explanation) all of the SOR allegations, and requested a hearing. The case was assigned to me on September 1, 2004 and I convened a hearing in this matter on October 5, 2004. All parties appeared as scheduled and the government presented six exhibits (GE 1 through 6).<sup>(2)</sup> Applicant relied on one exhibit (AE A, a binder containing 20 pages of documents) and on his own testimony. Applicant also submitted an Amended Answer at hearing, which updated the representations he made about his corrective financial actions in his first Answer. I also left the record open after hearing to afford Applicant an opportunity to submit additional relevant information. He timely submitted an additional 14-page exhibit admitted without objection as

AE B. DOHA received the transcript (Tr) on October 18, 2004.

### FINDINGS OF FACT

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

Applicant is 31 years old and employed as a security guard for a defense contractor. He served as a military policeman in the U.S. Army from 1992 until receiving an honorable discharge in 1997. While in the Army he met his wife, also an Army enlisted member. She already had two children from a previous marriage and they another child while still in the Army. Applicant and his wife left the Army (she was discharged in 1995) because they realized their desire to raise a family was not compatible with the demands of military service. They have since had another child (the fourth in the household) and have had to support his wife's mother as well the past few years.

After his discharge in 1997, Applicant wanted to work in law enforcement and began training to be a correctional officer. Unfortunately, the training took longer and cost more than he had anticipated. He obtained a full-time position with the state correctional system, but not until October 1998. Combined with the fact his wife was enrolled full time in law school and not allowed to work her first year, Applicant had to work part-time jobs and began to fall behind in his bill payments. A debt consolidation loan Applicant took out in 1996 became delinquent with a balance due of \$426 after he left the service. (SOR ¶1.b) Applicant paid this bill in May 2004. A car he bought in 1995 was repossessed in 1998 resulting in a remaining debt of \$2,101; the car began to break down so often, Applicant could not afford to fix it and keep up with the monthly payments. (SOR ¶1.c) Applicant and his experienced similar problems when her car's engine failed and they could not afford to fix it and pay the note. The car was repossessed in June 2001 resulting in a remaining debt of \$8,581. (SOR ¶1.d) As of April 2004, Applicant had entered into agreements with both auto creditors whereby he was paying them about \$175 and \$600, respectively, each month. As of the hearing, Applicant and his wife had settled both debts completely. A delinquent utility bill from January 2001 for about \$184 (SOR ¶1.e) was paid in full in arch 2004, and a delinquent cell phone account from September 2000 for \$1,268 (SOR ¶1.a) was settled in September 2004. [\(3\)](#)

Applicant and his wife have been separated several times due to external factors - her pursuit of her undergraduate and law degrees, his deployments while in the military, her brief return to the Army in 2001, and so on. They also have separated twice - in 1998 and in 2001 - due to marital instability resulting from their circumstances. During their second separation, they filed for divorce and Applicant was ordered to pay child support that was taken directly from his pay checks. The couple reconciled in May 2001, but Applicant was still the primary source of income as his wife could not pass the bar exam. It was not until late 2003 that Applicant's wife passed the bar and could seek full-time employment as an attorney. Applicant had been working in his current position since October 2001 and, when his wife found full-time work in early 2004, they began to pay off their debts.

All of the debts listed in the SOR have been paid or otherwise resolved. Applicant's financial condition is now much improved, and he and his wife have been up-to-date in all of their current obligations. Their latest financial statement shows a net monthly remainder of more than \$2,000, a significant increase from the remainder declared in Applicant's October 2002 personal financial statement (PFS).<sup>(4)</sup>

## **POLICIES**

The Directive sets forth adjudicative guidelines<sup>(5)</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 Guideline F (financial considerations) is the relevant adjudicative guideline to be applied here.

## **BURDEN OF PROOF**

A security clearance decision is intended to resolve whether it is clearly consistent with the national interest<sup>(6)</sup> for an Applicant to either receive or continue to have access to classified information. 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.<sup>(7)</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>(8)</sup>

## **CONCLUSIONS**

**Guideline F (Financial Considerations).** A security concern arises when it is shown that a person is either unwilling or unable to manage his finances so that he avoids unreasonable delinquencies. A person who is overextended financially is at risk of engaging in illegal actions to obtain money.<sup>(9)</sup> Here, the Government has shown that Applicant accumulated approximately \$12,560.00 in bad debt between 1997 and 2001. The delinquencies at issue consist of two auto repossessions, a consolidation loan, a cell phone account, and a utility account. Because he was unable to pay those debts until recently, disqualifying condition (DC) 1<sup>(10)</sup> and DC 3<sup>(11)</sup> apply.

By contrast, Applicant's debt problems were in large measure the result of factors beyond his control. He did not know he would have to train as a correctional officer for more than a year after leaving the military and before he could work full time in that field, resulting in a sharper reduction in income than planned. This condition was exacerbated by the fact his wife was already committed to finishing her undergraduate degree and would then seek her law degree, which precluded her from contributing more than minimally to the household income. Further, Applicant and his wife experienced two marital separations, one of which caused Applicant further reduction in income due to court-ordered child support until they reconciled. Base on the foregoing, mitigating condition (MC) C 3<sup>(12)</sup> applies.

Additionally, as soon as Applicant's wife found full-time work as an attorney, the couple was able, by early 2004, to begin paying or otherwise resolving their past obligations. Applicant's financial condition is now greatly improved as evidenced by the absence of delinquent debts or any late payments on their current obligations and in light of their dramatic increase in income in the past year. MC 6<sup>(13)</sup> applies here and, on balance, I conclude that Applicant's actions to resolve his delinquencies and his much improved financial condition mitigates the government's doubts, based on his financial problems, about Applicant's suitability to hold a clearance.

I have carefully weighed all of the evidence in this case, and I have applied the aforementioned disqualifying and mitigating conditions as listed under each applicable adjudicative guideline. I have also considered the whole person concept as contemplated by the Directive in Section 6.3, and as called for by a fair and commonsense assessment of the record before me as required by Directive Section E2.2.3. The record evidence as a whole supports a conclusion that Applicant's financial problems are resolved and not likely to recur in the future. He has, therefore, overcome the government's case in this matter.

### **FORMAL FINDINGS**

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

Financial Considerations (Guideline F): FOR THE APPLICANT

Subparagraph 1.a: For the Applicant

Subparagraph 1.b: For the Applicant

Subparagraph 1.c: For the Applicant

Subparagraph 1.d: For the Applicant

Subparagraph 1.e: For the 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 the Applicant.

Matthew E. Malone

Administrative Judge

1. Required by Executive Order 10865, as amended, and by DoD Directive 5220.6 (Directive), as amended.
2. Exhibit 6 is an index which identifies the other five. As such, it is not a substantive exhibit that affects the outcome of this case.
3. Answer; Amended Answer; AE A; AE B.
4. Answer; Amended Answer; GE 2.
5. Directive, Enclosure 2.
6. *See Department of the Navy v. Egan*, 484 U.S. 518 (1988).
7. *See Egan*, 484 U.S. at 528, 531.
8. *See Egan*; Directive E2.2.2.
9. Directive, E2.A6.1.1.
10. Directive, E2.A6.1.2.1. A history of not meeting financial obligations;
11. Directive, E2.A6.1.2.3. Inability or unwillingness to satisfy debts;

12. Directive, 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);

13. Directive, E2.A6.1.3.6. The individual initiated a good-faith effort to repay overdue creditors or otherwise resolve debts.