

KEYWORD: Financial; Personal Conduct

DIGEST: Applicant has six unpaid debts totaling approximately \$14,000. He has entered into an agreement with a debt settlement service to pay these debts. Applicant mitigated security concerns arising from his failure to resolve delinquent debts. He has a good-faith method of resolving the remaining unpaid debts. The record evidence is sufficient to mitigate or extenuate the negative security implications stemming from his debts. Clearance is granted.

CASENO: 03-15104.h1

DATE: 08/29/2005

DATE: August 29, 2005

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In Re:

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SSN: -----

Applicant for Security Clearance

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ISCR Case No. 03-15104

**DECISION OF ADMINISTRATIVE JUDGE**

**CLAUDE R. HEINY**

**APPEARANCES**

**FOR GOVERNMENT**

**FOR APPLICANT**

*Pro Se*

**SYNOPSIS**

Applicant has six unpaid debts totaling approximately \$14,000. He has entered into an agreement with a debt settlement service to pay these debts. Applicant mitigated security concerns arising from his failure to resolve delinquent debts. He has a good-faith method of resolving the remaining unpaid debts. The record evidence is sufficient to mitigate or extenuate the negative security implications stemming from his debts. Clearance is granted.

**STATEMENT OF THE CASE**

On June 3, 2004, the Defense Office of Hearings and Appeals (DOHA) issued a Statement of Reasons (SOR) to Applicant, stating that DOHA could not make the preliminary affirmative finding<sup>(1)</sup> it is clearly consistent with the national interest to grant or continue a security clearance for Applicant under financial considerations and personal conduct security concern. In an undated response, Applicant answered the SOR and requested a hearing. On December 8, 2004, I was assigned the case. On March 8, 2005, a Notice of Hearing was issued scheduling the hearing which was held on March 22, 2005. The record was kept open to allow Applicant to submit additional documents. Several documents were received and admitted into the record. On March 31, 2005, DOHA received a copy of the transcript (Tr.).

**FINDINGS OF FACT**

In his response to the SOR, Applicant admits owing six of the alleged debts. These admissions are incorporated herein as findings of fact. After a thorough review of the entire record, I make the following additional findings of fact:

Applicant is 51 year olds, has worked as a customer engineer for a defense contractor since March 1994, and is seeking to obtain a security clearance. Applicant previously worked for the same company from October 1980 through June 1990.

Applicant was divorced in March 1996 and remarried in August 1996. After his remarriage, his new wife did not work. Applicant used credit cards to pay his living expenses. In September 2000, he purchased a home with a variable interest rate averaging between 10% and 16% and a monthly mortgage of \$950 to \$1,000. In July 2002, Applicant applied to refinance his mortgage. Until that time, he did not realize his true financial situation. (Gov Ex 3) He was not current on some of his credit card debt. Although Applicant was able to refinance his home at a lower interest rate, he was unable to take out any equity from the refinance. His current interest rate is 8.43%, which reduced his monthly mortgage payments by more than \$100. Applicant's mortgage is \$75,000 and the fair market value of his home is \$95,000.

Applicant's father-in-law died in September 2003. Prior his death, Applicant spent time and money supporting his wife's parents. Applicant's wife now works for the school district. In March 2004, Applicant's wife had a hysterectomy and was out of work for seven weeks. As of March 2004, Applicant's monthly take home income was \$2,491 and his wife's was \$1,129.

In August 2004, Applicant entered into an agreement with a debt settlement company (App Ex A). Exhibit 1 of the agreement (App Ex C) lists four of the debts listed in the SOR. No debts have yet been paid by the company. (Tr. 34) Applicant has a monthly automatic \$350 withdrawal which goes into an account from which the company takes their monthly \$231.54 fee. The company is to receive their fee, which represents 12% of the entire debt, for 10 months, thereafter the entire \$350 will be applied to Applicant's debts. As Applicant builds up funds in his account, the company will contact a creditor and discuss a settlement offer. If the offer is accepted, and enough money is in the account, payment is made. As of the time of hearing, Applicant has made seven monthly payments of \$350 for a total payment of \$2,450. (Tr. 54) As of February 2005, the balance in Applicant's debt settlement company account was \$684.84 (App Ex B). Applicant recently added the fifth unpaid debt listed in the SOR (SOR 1.d, \$1,901) to the agreement. (Tr. 36)

The SOR lists nine charged off accounts or accounts placed for collection. A summary of those debt follows:

		Creditor	Amount	Current Status
1	a	Bank credit card, same creditor as item 2 and 8.	\$ 4,626	Unpaid, but part of the debt settlement agreement.
2	b	Bank credit card, same creditor as item 1 and 8.	\$ 3,417	Unpaid, but part of the debt settlement agreement.
3	c	Credit card	\$ 2,731	Unpaid, but part of the debt settlement agreement.
4	d	Collection agency for a department store	\$ 1,901	Unpaid, but part of the debt settlement agreement.
5	e	Gasoline credit card	\$ 944	Unpaid, but part of the debt settlement agreement.

6	f	Jewelry store account	\$ 468	Settled and paid. See App Ex A.
7	g	Emergency room bill	\$ 153	Applicant denies this debt which appears on his February 2003 credit report (Gov Ex 4)
8	h	Bank credit card, same creditor as item 1 and 2.	\$ 8,043	This debt does not appear on either of Applicant's credit reports (Gov Ex 4 and 5). This is the exact amount if Item 1 and 2 are added together.
9	i	Credit card	\$1,432	Settled and paid. See App Ex A.
		Total debt alleged in SOR	\$23,715	

Applicant believes the \$153 emergency room debt was paid in August 2000 at settlement of Applicant's previous home (See Settlement Statement accompanying Applicant's SOR response). The debt appears on Applicant's February 2003 credit report (Gov Ex 4), but not on his May 2004 credit report (Gov Ex 5). After checking with the hospital, Applicant was told no debt was owed. (Tr. 39)

In January 31, 2003, Applicant completed a Security Clearance Application, Standard Form (SF) 86. In response to Question 38 Applicant failed to indicate he had ever been more than 180 days delinquent on any debt. Applicant does not remember why he answered as he did. (Tr. 41) He says he was not trying to keep the information from the government. Government presented no evidence that Applicant's answer was other than a mistake. (Tr. 61)

Applicant maintains three credit cards, on which payments are current.

### **POLICIES**

The Directive sets forth adjudicative guidelines to be considered when evaluating a person's eligibility to hold a security clearance. Disqualifying Conditions (DC) and Mitigating Conditions (MC) are set forth for each applicable guideline. Additionally, each 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 Section 6.3 of the Directive. The adjudicative guidelines are to be applied by administrative judges on a case-by-case basis with an eye toward making determinations that are clearly consistent with the interests of national security. The presence or absence of a particular condition or factor for or against clearance is not determinative of a conclusion for or against an applicant. However, the adjudicative guidelines should be followed whenever a case can be measured against this policy guidance. Considering the evidence as a whole, I conclude the relevant guidelines to be applied here are Guideline F (financial considerations) and Guideline E (personal conduct).

### **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. Initially, the Government must establish, by substantial evidence, that conditions exist in the personal or professional history of the applicant which disqualify, or may disqualify, an applicant from being eligible for access to classified information. The burden of proof in a security clearance case is something less than a preponderance of evidence, although the government is required to present substantial evidence to meet its burden of proof. Substantial evidence is more than a scintilla, but less than a preponderance of the evidence. All that is required is proof of facts and circumstances which indicate an applicant is at risk for mishandling classified information, or that an applicant does not demonstrate the high degree of judgment, reliability, or trustworthiness required of persons handling classified information. Additionally, the government must prove controverted facts alleged in the SOR. Once the government has met its burden, the burden shifts to an applicant to present evidence to refute, extenuate or mitigate government's case. Additionally, an applicant has the ultimate burden of persuasion to obtain a favorable clearance decision. (2)

As noted by the United States Supreme Court in *Department of Navy v. Egan*, 484 U.S. 518, 528 (1988), "no one has a 'right' to a security clearance." 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. The "clearly consistent with the national interest" standard compels resolution of any reasonable doubt about an applicant's suitability for access to classified information to be resolved in favor of protecting national security. Security clearance determinations should err, if they must, on the side of denials.

## CONCLUSIONS

The Government has satisfied its initial burden of proof under Guideline F, financial considerations. A person's relationship with his creditors is a private matter until evidence is uncovered demonstrating an inability or unwillingness to repay debts under agreed upon terms. Absent evidence of strong extenuating or mitigating circumstances, an applicant with a history of serious or recurring financial difficulties is in a position of risk that is inconsistent with the holding of a security clearance. An applicant is not required to be debt free, but is required to manage his finances so as to meet his financial obligations. An applicant who is financially overextended is at risk of having to engage in illegal acts to generate funds. Directive E.2.A.6.1.1.

The Applicant owes five debts totaling \$13,772. Disqualifying Conditions (DC) 1 (E2.A6.1.2.1. *A history of not meeting financial obligations*) and 3 (E2.A6.1.2.3. *Inability or unwillingness to satisfy debts*) apply.

Applicant has settled two of the debts, i.e., SOR 1.f (\$468) and SOR 1.i (\$1,432). Additionally, the record fails to establish the credit card debt listed in SOR 1.h (\$8,043) is separate and distinct from the two credit card debts with the same creditor listed in SOR 1.a and SOR 1.b. When the two credit card debts are added together, it does equal the amount claimed in SOR 1.h. None of Applicant's credit reports lists a separate debt to this same creditor in this amount. I find there is no evidence establishing this as a separate debt. The emergency room debt was paid when Applicant sold his house. A check with the hospital revealed no debt was owed and the settlement papers indicate the debt would be paid from funds at settlement. I find for Applicant as to these four debts.

As to the other five debts, only one of the Mitigating Conditions (MC) apply in the Applicant's favor. MC 1 (E2.A6.1.2.1. *The behavior was not recent*) does not apply because the conduct is recent since the debts remain unpaid. MC 2 (E2.A6.1.2.2. *It was an isolated incident.*) does not apply because there are five unpaid debts. There was no showing the debts were caused by factors beyond Applicant's control. Applicant was divorced in 1996, his father-in-law died in 2003, and his wife was out of work for seven weeks in 2004. Sufficient time has passed since his divorce to assume the financial impact of the divorce has been minimized. Applicant did not establish how the two more recent events adversely impacted on his finances. There has been no showing Applicant has received financial counseling nor is there any indication his financial difficulties are under control.

For MC 6 (E2.A6.1.2.6. *The individual initiated a good-faith effort to repay overdue creditors or otherwise resolve debts.*) to apply there must be an "ability" to repay the debts, the "desire" to repay, and evidence of a good faith effort to repay. A systematic, concrete method of handling his debts is needed. Applicant has entered into an agreement with a debt settlement company. Currently, the only party who has benefitted from his \$350 monthly payments has been the debt settlement company. After seven months, Applicant has paid the company \$2,450, however not one of the five creditors has received payment. After three more payments, the company's fee will have been completely paid and the entire \$350 will be available to pay his creditors. Once the account is of sufficient size, the company will attempt to negotiate settlements of Applicant's debts. Applicant was able to employ a similar arrangement when he settled two of his debts.

Even though the creditors have yet to receive payment, I consider Applicant's agreement with the debt settlement company to be a good-faith effort. Applicant has an automatic monthly deduction setting aside \$350 to pay his creditors and has made seven monthly payments. Once the company's fee is paid, there will be sufficient money in the account to allow negotiated settlements on the approximately \$14,000 he owes the five creditors. This might not be the best way to address his debts or the most cost effective way, but based on Applicant's financial situation, it does show a good-faith effort to repay his overdue creditors. I find for Applicant as to financial considerations.

The allegations under Guideline E, (Personal Conduct) are unfounded. The Government has shown Applicant's answer to question 38 was incorrect, but this does not prove the Applicant deliberately failed to disclose information about her finances. Deliberate omission, concealment, or falsification of a material fact in any written document or oral statement to the Government when applying for a security clearance is a security concern. But every inaccurate statement is not a falsification. A falsification must be deliberate and material and is deliberate if it is done knowingly and willfully. The Applicant has denied intentional falsification. Department Counsel concedes Applicant's action was simply a mistake and there has been no showing Applicant attempted to falsify the questionnaire. I find for Applicant as to personal

conduct.

In reaching my conclusions I have also considered: the nature, extent, and seriousness of the conduct; Applicant's age and maturity at the time of the conduct; the circumstances surrounding the conduct; Applicant's voluntary and knowledgeable participation; the motivation for the conduct; the frequency and recency of the conduct; presence or absence of rehabilitation; potential for pressure, coercion, exploitation, or duress; and the probability that the circumstance or conduct will continue or recur in the future.

### **FORMAL FINDINGS**

Formal Findings as required by Section 3., Paragraph 7., of Enclosure 1 of the Directive are hereby rendered as follows:

Paragraph 1 Financial Considerations: 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

Subparagraph 1.f.: For the Applicant

Subparagraph 1.g.: For the Applicant

Subparagraph 1.h.: For the Applicant

Subparagraph 1.i.: For the Applicant

Paragraph 2 Personal Conduct: FOR THE APPLICANT

Subparagraph 2.a.: 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 Applicant. Clearance is granted.

**Claude R. Heiny**

**Administrative Judge**

1. Required by Executive Order 10865, as amended, and Department of Defense Directive 5220.6 (Directive), dated January 2, 1992, as amended.
2. ISCR Case No. 93-1390 (January 27, 1995) at pp. 7-8; Directive, Enclosure 3, Item E3.1.15