

KEYWORD: Financial

DIGEST: Applicant is 48 years old and has worked for a federal contractor since 2000. Applicant was discharged from the military in 1996, due to a force reduction, and was unemployed for a short time. During this time some of Applicant's debts became delinquent. Applicant entered college in 1996 and graduated in 2000. Applicant accumulated other debts during this time and has approximately \$17,000 in delinquencies. Although Applicant believes one debt is a duplicate, he admits owing the debts and has stated because the debts are no longer listed on his credit report he does not intend to repay them. Applicant has failed to mitigate the security concerns regarding his financial considerations. Clearance is denied.

CASENO: 03-15214.h1

DATE: 07/28/2005

DATE: July 28, 2005

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In Re:

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SSN: -----

Applicant for Security Clearance

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ISCR Case No. 03-15214

**DECISION OF ADMINISTRATIVE JUDGE**

**CAROL G. RICCIARDELLO**

**APPEARANCES**

## **FOR GOVERNMENT**

Kathryn Trowbridge, Esq., Department Counsel

## **FOR APPLICANT**

*Pro Se*

### **SYNOPSIS**

Applicant is 48 years old and has worked for a federal contractor since 2000. Applicant was discharged from the military in 1996, due to a force reduction, and was unemployed for a short time. During this time some of Applicant's debts became delinquent. Applicant entered college in 1996 and graduated in 2000. Applicant accumulated other debts during this time and has approximately \$17,000 in delinquencies. Although Applicant believes one debt is a duplicate, he admits owing the debts and has stated because the debts are no longer listed on his credit report he does not intend to repay them. Applicant has failed to mitigate the security concerns regarding his financial considerations. Clearance is denied.

### **STATEMENT OF CASE**

On April 5, 2004, the Defense Office of Hearings and Appeals (DOHA) issued to Applicant a Statement of Reasons (SOR) stating they were unable to find that it is clearly consistent with the national interest to grant or continue a security clearance.<sup>(1)</sup> The SOR, which is in essence the administrative complaint, alleges security concerns under Guideline F, financial considerations.

In a statement, dated May 12, 2004, Applicant responded to the SOR allegations, admitting the allegations in Subparagraphs 1.a., 1.c., and 1.e., and denying the allegations in Subparagraph 1.b., and 1.d., and provided an explanation in extenuation and mitigation. Applicant elected to have his case decided on the written record. Department Counsel submitted the government's case on February 9, 2005. A file of relevant material (FORM) was received by Applicant on March 1, 2005. Applicant was afforded an opportunity to file objections and submit material in refutation, extenuation, or mitigation. Applicant submitted an additional statement with supporting documents, dated March 22, 2005. Department Counsel objected to the documents, but failed to provide any basis for her objection. After review of Applicant's documents I considered them as part of the record.

## **FINDINGS OF FACT**

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

Applicant is a 48-year-old programmer analyst and has worked for a federal contractor since 2000. Applicant served in the Army from 1983 to 1996, when he was involuntarily separated with an honorable discharge, due to a force reduction. Applicant received some type of separation pay, but it is unclear as to how much and how his veteran's disability benefits affected it. <sup>(2)</sup> After leaving the service, Applicant was unemployed for a period of time and got behind on his debts. Applicant then decided to go to college using Department of Veterans Affairs benefits from 1996-2000 and earned a bachelor's degree. As of November 3, 2003 Applicant receives \$1,095 in veterans disability pay. <sup>(3)</sup> Applicant lists a monthly net remainder of \$713 on his financial statement of November 3, 2003. <sup>(4)</sup> Applicant has been divorced twice and is remarried. He has three grown children.

Applicant admitted in his sworn answer of May 12, 2004, that he owed the debt in Subparagraph 1.a., and he was trying to reach a repayment agreement with the creditor. <sup>(5)</sup> However, in Applicant's statement of March 22, 2005 he states, "In agreeing that the debt to [Company A], was valid I did not understand that it meant that I was agreeing to make a repayment of the debt. The debt has since been charged off and I am not pursuing (sic) repayment. This debt no longer shows on my credit report." <sup>(6)</sup> Applicant has not repaid this debt.

Applicant does not dispute that he had an account with the creditor of Subparagraph 1.b., but believed it was the same as the debt in Subparagraph 1.a. <sup>(7)</sup> Although this debt was sold to a different creditor, Applicant has not provided any supporting documents to verify this is the same debt as in 1.a. Despite this dispute, Applicant minimally acknowledges he owes on one debt, yet he still has not paid, nor resolved either of the debts.

Applicant admitted the debt in Subparagraph 1.c., but claims he did not know it existed and claimed in his statement of April 3, 2003, that he was going to check into the matter and make sure the case is closed and the judgment removed from his credit report. <sup>(8)</sup> Applicant acknowledged the debt again in his May 12, 2004 statement and claimed he had requested the originator of the action to release the small claims action and re-file so that he would have an opportunity to be represented in court. <sup>(9)</sup> In his latest statement of March 22, 2005, Applicant claimed he was still attempting to resolve the debt. <sup>(10)</sup> This debt has not been resolved.

Applicant's debt in Subparagraph 1.d. was to a military store. He denied the debt and claimed he had no knowledge of the debt being charged off. [\(11\)](#) Applicant later acknowledged the debt and proves it had been satisfied through a Federal Tax Return reduction. [\(12\)](#)

Applicant admitted the debt in Subparagraph 1.e. in his statement of May 12, 2004. In his statement of March 22, 2005, Applicant states with regard to this debt for \$1,888, "I did not understand that saying this was a valid debt constituted agreement for repayment of the debt. This debt has since been charged off and I am not attempting repayment. This debt no longer appears on my credit report. Applicant has not paid this debt.

## **POLICIES**

Enclosure 2 of the Directive sets forth adjudicative guidelines to be considered in evaluating a person's eligibility to hold a security clearance. Included in the guidelines are disqualifying conditions (DC) and mitigating conditions (MC) applicable to each specific guideline. Considering the evidence as a whole, Guideline F, pertaining to financial considerations, with its respective DC and MC, apply in this case. Additionally, each security clearance decision must be a fair and impartial commonsense decision based on the relevant and material facts and circumstances, the whole-person concept, along with the factors listed in the Directive. Specifically these are: (1) the nature and seriousness of the conduct and surrounding circumstances; (2) the frequency and recency of the conduct; (3) the age of the applicant; (4) the motivation of the applicant, and the extent to which the conduct was negligent, willful, voluntary, or undertaken with knowledge of the consequences; (5) the absence or presence of rehabilitation; and (6) the probability that the circumstances or conduct will continue or recur in the future. Although the presence or absence of a particular condition or factor for or against clearance is not outcome determinative, the adjudicative guidelines should be followed whenever a case can be measured against this policy guidance.

The sole purpose of a security clearance determination is to decide if it is clearly consistent with the national interest to grant or continue a security clearance for an applicant. [\(13\)](#) The government has the burden of proving controverted facts. [\(14\)](#) The burden of proof is something less than a preponderance of evidence. [\(15\)](#) Once the government has met its burden, the burden shifts to an applicant to present evidence of refutation, extenuation, or mitigation to overcome the case against

him. [\(16\)](#) Additionally, an applicant has the ultimate burden of persuasion to obtain a favorable clearance decision. [\(17\)](#)

No one has a right to a security clearance [\(18\)](#) and "the clearly consistent standard indicates that security clearance determinations should err, if they must, on the side of denials." [\(19\)](#) Any reasonable doubt about whether an applicant

should be allowed access to sensitive information must be resolved in favor of protecting such sensitive information. <sup>(20)</sup> The decision to deny an individual a security clearance is not necessarily a determination as to the loyalty of an applicant. <sup>(21)</sup> It is merely an indication that the applicant has not met the strict guidelines the President and the Secretary of Defense have established for issuing a clearance.

Based upon consideration of all the evidence, I find the following adjudicative guideline most pertinent to the evaluation of the facts in this case:

Guideline F- Financial Considerations-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.

Conditions that could raise a security concern and may be disqualifying, as well as those which would mitigate security concerns, pertaining to the adjudicative guideline are set forth and discussed in the conclusions below.

## CONCLUSIONS

I have carefully considered all the facts in evidence and the legal standards. The government has established a prima facie case for disqualification under Guideline F.

Based on all the evidence, Financial Considerations Disqualifying Condition (FC DC) E2.A6.1.2.1 (*A history of not meeting financial obligations*), FC DC E2.A6.1.2.3 (*Inability or unwillingness to satisfy debts*), apply in this case. Applicant has approximately \$17,520 in delinquent debt that he has failed to pay or resolve. Some of the debt dates back as far as 1998.

I have considered all the Financial Considerations Mitigating Conditions (FC MC), and especially considered FC MC E2.A6.1.3.1 (*The behavior was not recent*), 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)*), FC MC E2.A6.1.3.6 (*The individual initiated a good-faith effort to repay overdue creditors or otherwise resolve debts*), and FC MC E2.A6.1.3.4 (*The person has received or is receiving counseling for*

*the problem and there are clear indications that the problem is being resolved or is under control).*

Applicant had financial difficulties when he left the military in 1996 and let some of his debts become past due. Applicant has been steadily employed since 2000. Therefore, FC MC E2.A6.1.3.1 does not apply. Applicant's separation from the service and unemployment contributed to his financial problems, but again it has been almost nine years since his discharge and almost five years since he has been gainfully employed. FC MC E2.A6.1.3.3 does not apply. No information was provided about whether Applicant was receiving any financial counseling. Despite the fact that Applicant admits that he owes certain debts he has stated he does not intend to pursue payment. The fact that these debts may no longer be listed on Applicant's credit report does not mean he is absolved from paying them. Applicant is not making a good faith effort to pay them, to the contrary he has stated since the debts have been charged off he is not pursuing repayment. The one debt that has been paid in Subparagraph 1.d. was not a voluntary payment by Applicant, but rather the payment was taken from his income tax return through an involuntary withdrawal. Despite Applicant's earlier statements that he would resolve the issues with this past debts and pay them, he has not. Applicant has allowed some of his debts to become so old that they no longer are listed on his credit report. Applicant has sufficient expendable income at the end of the month to begin to resolve his delinquencies. Applicant however, chooses not to do so. FC MC E2.A6.1.3.4 and FC MC E2.A6.1.3.6 do not apply.

In all adjudications, the protection of our national security is the paramount concern. The objective of the security-clearance process is the fair-minded, commonsense assessment of a person's life to make an affirmative determination that the person is eligible for a security clearance. Indeed, the adjudicative process is a careful weighing of a number of variables in considering the "whole person" concept. It recognizes that we should view a person by the totality of their acts, omissions, motivations and other variables. Each case must be adjudged on its own merits, taking into consideration all relevant circumstances, and applying sound judgment, mature thinking, and careful analysis.

I considered all the evidence provided and also considered the "whole person" concept in evaluating Applicant's risk and vulnerability in protecting our national interests. I find Applicant has failed to mitigate the security concerns raised by the financial consideration concerns. Therefore, I am persuaded by the totality of the evidence in this case, that it is not clearly consistent with the national interest to grant Applicant a security clearance. Accordingly, Guideline F is decided against Applicant.

### **FORMAL FINDINGS**

Formal Findings for or against Applicant on the allegations set forth in the SOR, as required by Section E3.1.25 of Enclosure 3 of the Directive, are:

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

**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.

Carol. G. Ricciardello

Administrative Judge

1. This action was taken under Executive Order 10865, dated February 20, 1960, as amended, and DoD Directive 5220.6, dated January 2, 1992, as amended and modified (Directive).
2. Statement of March 22, 2005, with supporting documents.
3. Item 6 at 4.
4. *Id.*
5. Item 2. Applicant stated he was trying to reach an agreement with the "debtor." I have assumed he meant the creditor. The amount owed is \$9,087.
6. Statement of March 22, 2005.
7. The amount of this debt is \$5,530.
8. Statement of April 3, 2003.
9. Item 2.
10. This judgment was entered against Applicant on June 1999 for \$1,015.
11. *Id.*
12. Statement of March 22, 2005, with supporting documents.
13. ISCR Case No. 96-0277 (July 11, 1997) at p. 2.
14. ISCR Case No. 97-0016 (December 31, 1997) at p. 3; Directive, Enclosure 3, ¶ E3.1.14.
15. *Department of the Navy v. Egan*, 484 U.S. 518, 531 (1988).
16. ISCR Case No. 94-1075 (August 10, 1995) at pp.3-4; Directive, Enclosure 3, ¶ E3.1.15.
17. ISCR Case No. 93-1390 (January 27, 1995) at pp. 7-8; Directive, Enclosure 3, ¶ E3.1.15
18. *Egan*, 484 U.S. at 531.
19. *Id.*
20. *Id.*; Directive, Enclosure 2, ¶ E2.2.2.
21. Executive Order 10865 § 7.