

KEYWORD: Financial

DIGEST: Applicant is 47 years old, married, and works for a defense contractor. He has 16 delinquent debts, six of which he paid in 2004. The remaining debts are unpaid in full, without installment payment agreements, or are paid erratically. Applicant did not meet his burden of proof in this case. He has not mitigated the financial considerations security concern. Clearance is denied.

CASENO: 03-15223.h1

DATE: 02/08/2006

DATE: February 8, 2006

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In re:

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SSN: -----

Applicant for Security Clearance

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ISCR Case No. 03-15223

**DECISION OF ADMINISTRATIVE JUDGE**

**PHILIP S. HOWE**

**APPEARANCES**

**FOR GOVERNMENT**

**FOR APPLICANT**

*Pro Se*

**SYNOPSIS**

Applicant is 47 years old, married, and works for a defense contractor. He has 16 delinquent debts, six of which he paid in 2004. The remaining debts are unpaid in full, without installment payment agreements, or are paid erratically. Applicant did not meet his burden of proof in this case. He has not mitigated the financial considerations security concern. Clearance is denied.

**STATEMENT OF THE CASE**

The Defense Office of Hearings and Appeals (DOHA) declined to grant or continue a security clearance for Applicant. On May 25, 2004, DOHA issued a Statement of Reasons <sup>(1)</sup> (SOR) detailing the basis for its decision-security concerns raised under Guideline F (Financial Considerations) of the Directive. Applicant answered the SOR in writing on July 6, 2004. Applicant requested his case be decided on the written record in lieu of a hearing.

On September 7, 2005, Department Counsel submitted the Department's written case. A complete copy of the file of relevant material (FORM) was provided to the Applicant. He was given the opportunity to file objections and submit material in refutation, extenuation, or mitigation. Applicant did not file a response to the FORM within the 30 day time allowed that expired on October 17, 2005. The case was assigned to me on November 7, 2005.

**FINDINGS OF FACT**

Applicant's admissions to the SOR allegations are incorporated here as findings of fact. After a complete and thorough review of the evidence in the record, and full consideration of that evidence, I make the following additional findings of fact:

Applicant is 47 years old, married, and works for a defense contractor in a foreign country. He has six children from two marriages. He earns about \$3,333.33 monthly in U.S. dollars. (Items 4, 5, and 8)

Applicant's current status on his delinquent debts is:

<i>SOR Allegation/Creditor</i>	<i>Debt Amount</i>	<i>Current Status</i>	<i>Evidence/Finding</i>
1.a. Cell phone	\$411 from 2002	Unpaid	Items 3, 6, 7; Against
1.b. Physician	\$124 from 2001	Unpaid	Items 3, 6, 7; Against
1.c. Physician	\$258 from 2002	Paid 6/12/04	Items 3, 6, 7; For
1.d. Physician	\$348 from 2002	Paid 6/12/04	Items 3, 6, 7; For
1.e. City bill payment	\$30 from 2002	Paid 1/28/04	Items 3, 6, 8; For
1.f. Individual creditor	\$99 from 2002	Paid 1/28/04	Items 3, 6; For
1.g. Medical center	\$4,843 from 1999	Unpaid	Items 3, 6, 7; Against
1.h. Cable television	\$177 from 1999	Paid 3/29/04	Items 3, 6, 7; For
1.i. Physician	\$60 from 1998	Paid 6/12/04	Items 3, 8; For
1.j. Dentist	\$146 from 2000	Unpaid	Item 3, 7; Against
1.k. Computer purchase	\$2,020 from 2001	Unpaid	Items 3, 6-8; Against
1.l. Bank credit card	\$1,213 from 2001	Unpaid	Items 3, 6-8; Against
1.m. Bank credit card	\$1,119 from 2001	Unpaid	Items 3, 7, 8; Against
1.n. Child support	\$222,048 from 2001	Unpaid	Items 3, 8; Against
1.o. Credit card	\$2,090 from 1999	Unpaid	Items 3, 6-8; Against
1.p. Credit card	\$649 from 1998	Unpaid	Items 3, 6-8; Against

## POLICIES

"[N]o one has a 'right' to a security clearance." *Department of the Navy v. Egan*, 484 U.S. 518, 528 (1988). As Commander in Chief, the President has "the authority to . . . control access to information bearing on national security and to determine whether an individual is sufficiently trustworthy to occupy a position . . . that will give that person access to such information." *Id.* at 527. The President has authorized the Secretary of Defense or his designee to grant applicants eligibility for access to classified information "only upon a finding that it is clearly consistent the national interest to do so." Exec. Or. 10865, *Safeguarding Classified Information with Industry*

§ 2 (Feb. 20, 1960). Eligibility for a security clearance is predicated upon the applicant meeting the security guidelines contained in the Directive. An applicant "has the ultimate burden of demonstrating that it is clearly consistent with the national interest to grant or continue his security clearance." ISCR Case No. 01-20700 at 3.

The adjudication process is based on the whole person concept. All available, reliable information about the person, past and present, is to be taken into account in reaching a decision as to whether a person is an acceptable security risk. Enclosure 2 of the Directive sets forth personnel security guidelines, as well as the disqualifying conditions (DC) and mitigating conditions (MC) under each guideline that must be carefully considered in making the overall common sense determination required.

In evaluating the security worthiness of an applicant, the administrative judge must also assess the adjudicative process factors listed in ¶ 6.3 of the Directive. Those assessments include: (1) the nature, extent, and seriousness of the conduct; (2) the circumstances surrounding the conduct, and the extent of knowledgeable participation; (3) how recent and frequent the behavior was; (4) the individual's age and maturity at the time of the conduct; (5) the voluntariness of 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 (See Directive, Section E2.2.1. of Enclosure 2). Because each security case presents its own unique facts and circumstances, it should not be assumed that the factors exhaust the realm of human experience or that the factors apply equally in every case. Moreover, although adverse information concerning a single condition may not be sufficient for an unfavorable determination, the individual may be disqualified if available information reflects a recent or recurring pattern of questionable judgment, irresponsibility, or other behavior specified in the Guidelines.

The decision to deny an individual a security clearance is not necessarily a determination as to the loyalty of the applicant. *See* Exec. Or. 10865 § 7. 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.

Initially, the Government must establish, by substantial evidence, conditions in the personal or professional history of the applicant that disqualify, or may disqualify, the applicant from being eligible for access to classified information. The Directive presumes a nexus or rational connection between proven conduct under any of the disqualifying conditions listed in the guidelines and an applicant's security suitability. *See* ISCR Case No. 95-0611 at 2 (App. Bd. ay 2, 1996). All that is required is proof of facts and circumstances that 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. ISCR Case No. 00-0277, 2001 DOHA LEXIS 335 at \*\*6-8 (App. Bd. 2001). Once the Government has established a *prima facie* case by substantial evidence, the burden shifts to the applicant to rebut, explain, extenuate, or mitigate the facts. *See* Directive ¶ E3.1.15. An applicant "has the ultimate burden of demonstrating that is clearly consistent with the national interest to grant or continue his security clearance. ISCR Case No. 01-20700 at 3 (App. Bd. 2002). "Any doubt as to whether access to classified information is clearly consistent with national security will be resolved in favor of the national security." Directive ¶ E2.2.2. "[S]ecurity clearance determinations should err, if they must, on the side of denials." *Egan*, 484 U.S. at 531. *See* Exec. Or. 12968 § 3.1(b).

Based upon a consideration of the evidence as a whole, I find the following adjudicative guidelines most pertinent to an evaluation of the facts of this case:

Guideline F: Financial Considerations: *The Concern*: An individual who is financially overextended is at risk of having to engage in illegal acts to generate funds. E2.A6.1.1

### **CONCLUSIONS**

The Government established by substantial evidence and Applicant's admissions each of the allegations in the SOR. Applicant has delinquent debts, some of which were first incurred in 1998. He has made little effort in six years to pay these debts. Of the 16 delinquent debts alleged in the SOR, he only paid 6 debts to date. The ten remaining debts include the largest amounts, including over \$200,000 in child support payments, a \$2,000 computer purchase, three credit card debts, and a large medical expense debt. Disqualifying Conditions (DC) 1 (A history of not meeting financial obligations E2.A6.1.2.1) and DC 3 (Inability or unwillingness to satisfy debts E2.A6.1.2.3) apply.

Applicant has not paid the remaining delinquent debts. While the burden of proof is on him, he has not met it because he failed to show any plan to pay the other debts, and particularly his child support arrearages. He claimed to pay his debts regularly, but the only documents in the file on that delinquency were from 2003 and showed varying amounts paid in July and August of that year. His statement expressed his plan to be debt free by January 2004, but the credit bureau report of May 2004 shows the delinquent debts remain on his report. No Mitigating Conditions (MC) apply in this case. Therefore, I conclude this guideline against Applicant, but find for him on the debts he paid.

### **FORMAL FINDINGS**

The following are my conclusions as to each allegation in the SOR:

Paragraph 1. Guideline F: AGAINST APPLICANT

Subparagraph 1.a: Against Applicant

Subparagraph 1.b: Against Applicant

Subparagraph 1.c: For Applicant

Subparagraph 1.d: For Applicant

Subparagraph 1.e: For Applicant

Subparagraph 1.f: For Applicant

Subparagraph 1.g: Against Applicant

Subparagraph 1.h: For Applicant

Subparagraph 1.i: For Applicant

Subparagraph 1.j: Against Applicant

Subparagraph 1.k: Against Applicant

Subparagraph 1.l: Against Applicant

Subparagraph 1.m: Against Applicant

Subparagraph 1.n: Against Applicant

Subparagraph 1.o: Against Applicant

Subparagraph 1.p: Against Applicant

### **DECISION**

In light of all of 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.

Philip S. Howe

Administrative Judge

1. Pursuant to Exec. Or. 10865, *Safeguarding Classified Information within Industry* (Feb. 20, 1960), as amended and modified, and Department of Defense Directive 5220.6, *Defense Industrial Personnel Security Clearance Review Program* (Jan. 2, 1992), as amended and modified (Directive).