

KEYWORD: Financial

DIGEST: After a successful 15-year career as a chemical engineer for a beauty products manufacturer, Applicant decided to venture out as a small businessman and opened two fast food restaurants. Both restaurants failed prompting him to file bankruptcy. During the four years since filing bankruptcy, Applicant has pursued a successful career as a software engineer for a defense contractor and has fully mitigated past financial considerations concerns. Clearance is granted.

CASENO: 03-15868.h1

DATE: 05/11/2005

DATE: May 11, 2005

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In Re:

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SSN: -----

Applicant for Security Clearance

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ISCR Case No. 03-15868

**DECISION OF ADMINISTRATIVE JUDGE**

**ROBERT J. TUIDER**

**APPEARANCES**

**FOR GOVERNMENT**

Marc E. Curry, Esq., Department Counsel

**FOR APPLICANT**

## **SYNOPSIS**

After a successful 15-year career as a chemical engineer for a beauty products manufacturer, Applicant decided to venture out as a small businessman and opened two fast food restaurants. Both restaurants failed prompting him to file bankruptcy. During the four years since filing bankruptcy, Applicant has pursued a successful career as a software engineer for a defense contractor and has fully mitigated past financial considerations concerns. Clearance is granted.

## **STATEMENT OF THE CASE**

The Defense Office of Hearings and Appeals (DOHA) declined to grant or continue a security clearance for Applicant. On December 1, 2003, DOHA issued a Statement of Reasons (SOR) [\(1\)](#) detailing the basis for its decision-security concerns raised under Guideline F (Financial Considerations) of the Directive. Applicant answered the SOR in writing on December 22, 2003, and elected to have a hearing before an administrative judge.

The case was assigned to me on April 1, 2004. On June 1, 2004, DOHA issued a notice of hearing scheduling a hearing on June 17, 2004. The hearing was conducted as scheduled to consider whether it is clearly consistent with the national interest to grant or continue a security clearance for Applicant.

The government offered three documents, which were admitted without objection as Government Exhibits (GE) 1 through 3. The Applicant offered one exhibit, which was admitted without objection as Applicant Exhibit (AE) A. I left the record open after the hearing to afford Applicant the opportunity to submit additional documents. The Applicant submitted six additional documents, which were admitted without objection as AE B through AE G. DOHA received the transcript on July 7, 2004.

## FINDINGS OF FACT

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

Applicant is a 43-year-old married man. He and his wife of 21 years have two children, an 18-year-old son born of their marriage and a six-year-old adopted daughter from China. Since October 2001, he has been employed by a defense contractor as a software engineer. Applicant has bachelor of science degrees in chemistry and in computer information systems, and a master of science degree in business management. Tr. 76. He seeks a security clearance to enhance his employment opportunities with his company. Tr. 41.

From June 1982 to June 1997, Applicant was employed as a chemical engineer for a company that manufactured beauty products. Tr. 18, GE 1. Desiring to fulfill a long held ambition to be self-employed, Applicant purchased two small businesses. From June 1997 to March 1999, he owned a nationally known fast food restaurant. From March 1999 to May 2000, he owned a local delicatessen. GE 1, Tr. 22-26. Describing his venture into the small business community, Applicant stated, "It was fine initially for the first maybe year and a half or so for the slow times. It was fine initially. Fine meaning, you know, I had a descent customer base, but still there wasn't enough capital there to keep it going." Tr. 24.

Applicant's attempts to successfully to own and manage his two small businesses failed and after reviewing his options with a local bankruptcy attorney, he filed for chapter 13 bankruptcy protection on August 28, 2000. He listed total assets of \$83,924.50, and total liabilities of \$80,109.63. Unable to comply with his proposed chapter 13 plan, Applicant requested his petition be converted to chapter 7 on January 24, 2001. On January 29, 2001, Applicant's chapter 13 case was dismissed and he was allowed to convert it to chapter 7. On June 7, 2001, Applicant was granted a discharge of his debts under chapter 7, SOR ¶ 1.d. GE 3, Tr. 29-35.

The SOR alleged Applicant had a delinquent account as a result of a vehicle repossession in the amount of \$5,515.00, SOR ¶ 1.a. This debt was for a lease of an automobile Applicant used in conjunction with his businesses. This debt was discharged under chapter 7 on June 7, 2001. GE 3, Tr. 35-36.

The SOR alleged Applicant was indebted to a bank for credit card debt in the amount of \$1,800.00, SOR ¶ 1.b. This debt was paid in full on January 14, 2000. AE G.

The SOR alleged Applicant was indebted to a property management company as a result of a civil judgment entered

against him on May 23, 2002, in the amount of \$8,441.00, SOR ¶ 1.c. This debt was for prospective lease payments that Applicant was unable to pay when his delicatessen business failed. Tr. 56. These debts were apparently discharged under chapter 7 on June 7, 2001, Applicant submitted evidence no current judgments exist against him. AE B through F.

All debts alleged in the SOR were business debts. Tr. 27. Applicant's wife was employed as a claims specialist for two different insurance companies during their marriage. She generated enough income to keep the family's personal finances afloat during the difficult financial times Applicant encountered while trying to make a living as a small businessman. Tr. 27.

Applicant has remained current on his debts since he was granted a chapter 7 discharge in June 2001, and securing permanent employment in October 2001. GE 2, Tr. 44-46. Applicant and his wife's joint income is approximately \$110,000.00 per year. Tr. 71.

Applicant is a valued and trusted employee, who has a reputation for honesty and integrity and is considered a valued asset to his employer. AE. A.

## **POLICIES**

The Adjudicative Guidelines in the Directive are not a set of inflexible rules of procedure. Instead they 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. In making overall common sense determinations, administrative judges must consider, assess, and analyze the evidence of record, both favorable and unfavorable, not only with respect to the relevant Adjudicative Guidelines, but in the context of factors set forth in section E 2.2.1. of the Directive. The government has the burden of proving any controverted fact(s) alleged in the SOR, and the facts must have a nexus to an Applicant's lack of security worthiness.

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. Although the presence or absence of a particular condition for or against clearance is not determinative, the specific adjudicative guidelines should be followed whenever a case can be measured against this policy guidance.

## **BURDEN OF PROOF**

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." 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 restricted eligibility for access to classified information to "United States citizens . . . whose personal and professional history affirmatively indicates loyalty to the United States, strength of character, trustworthiness, honesty, reliability, discretion, and sound judgment, as well as freedom from conflicting allegiances and potential for coercion, and willingness and ability to abide by regulations governing the use, handling, and protection of classified information." Executive Order 12968, *Access to Classified Information* § 3.1(b) (Aug. 4, 1995). Eligibility for a security clearance is predicated upon the applicant meeting the security guidelines contained in the Directive.

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, the applicant from being eligible for access to classified information. *See Egan*, 484 U.S. at 531. 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. Where the facts proven by the government raise doubts about an applicant's judgment, reliability or trustworthiness, then the applicant has the ultimate burden of establishing his security suitability with substantial evidence in explanation, mitigation, extenuation, or refutation, sufficient to demonstrate that despite the existence of guideline conduct, it is clearly consistent with the national interest to grant or continue his security clearance.

Security clearances are granted only when "it is clearly consistent with the national interest to do so." *See* Executive Orders 10865 § 2 and 12968 § 3.1(b). "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 "The clearly consistent standard indicates that security clearance determinations should err, if they must, on the side of denials." *See Egan*, 484 U.S. at 531. Doubts are to be resolved against the applicant.

## CONCLUSIONS

## Guideline F - Financial Considerations

In the SOR, DOHA alleged Applicant had three debts totaling \$15,756.00 and a chapter 13 bankruptcy, which was converted to a chapter 7 bankruptcy in 2001 (¶¶ 1.a. through 1.d). *The Concern:* An individual who is financially overextended is at risk of having to engage in illegal acts to generate funds. Directive ¶ E2.A6.1.1.

The government established its case under Guideline F by Applicant's admissions and evidence submitted. His inability to satisfy his outstanding financial obligations gives rise to Financial Considerations Disqualifying Conditions (FC DC) E2.A6.1.2.1. (*A history of not meeting financial obligations*); and FC DC E2.A6.1.2.3. (*Inability or unwillingness to satisfy debts*).

Applicant worked as a chemical engineer from June 1982 to June 1997. During this time, he managed his financial affairs responsibly and remained current on his debts. In 1997, he decided to fulfill his long standing desire to be an independent small businessman. Having evaluated his options, he decided to open two fast food restaurants, one a nationally known fast food restaurant and the other a local delicatessen. Both restaurants failed.

Applicant then sought counsel from a local bankruptcy attorney. Initially, he opted to file chapter 13 in August 2000, however, he later converted that filing to chapter 7 in June 2001. Of the three debts listed in the SOR, two of them were discharged by chapter 7 in June 2001, and the remaining debt was paid in full by Applicant in January 2000.

With the income generated by his spouse, Applicant was able to remain current on his personal finances and the debts at issue were those incurred by his two failed businesses. For the last four years since his bankruptcy discharge, Applicant has remained current on his debts. Furthermore, he has resumed and enhanced the financial status he enjoyed before going into business for himself with the joint income his wife and he earn.

The financial catastrophe Applicant experienced as a result of his business ventures from June 1997 to May 2000 are behind him. The collective facts discussed above support Financial Considerations Mitigating Conditions (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 . . . )*); and FC MC E2.A6.1.3.6. (*The individual initiated a good faith-effort to repay overdue creditors or otherwise resolve debts*).

I consider Applicant's short term financial difficulties to be aberrational and not indicative of the personal responsibility he showed prior to his failed business ventures nor is it indicative of the behavior he has shown since filing bankruptcy.

Based on the totality of the circumstances , I find for Applicant on SOR ¶¶ 1., 1.a. through 1.d.

### **FORMAL FINDINGS**

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

Paragraph 1. Guideline F: FOR APPLICANT

Subparagraph 1.a.-d: For Applicant

### **DECISION**

In light of all of 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.

**Robert J. Tuider**

**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.