

KEYWORD: Financial; Personal Conduct

DIGEST: Applicant experienced family financial problems that began in 1997 and escalated thereafter. His delinquent debts currently exceed \$20,000.00, including two debts incurred in 2002 totaling more than \$9,000.00 resulting from Applicant's inappropriate use of a travel expense account of a past employer, and nearly \$8,000.00 for IRS tax deficiencies from 2001 and 2002. Applicant did not disclose his debts on his Security Clearance Application (SF 86) he signed on June 19, 2004, and he has not significantly reduced the balances of his major debts since 2002. Applicant failed to successfully mitigate the security concerns raised by his financial difficulties and personal conduct. Clearance is denied.

CASENO: 03-16219.h1

DATE: 12/12/2005

DATE: December 12, 2005

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In re:

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SSN: -----

Applicant for Security Clearance

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ISCR Case No. 03-16219

**DECISION OF ADMINISTRATIVE JUDGE**

**DAVID S BRUCE**

**APPEARANCES**

**FOR GOVERNMENT**

Richard A. Stevens, Esq., Department Counsel

## FOR APPLICANT

*Pro Se*

### SYNOPSIS

Applicant experienced family financial problems that began in 1997 and escalated thereafter. His delinquent debts currently exceed \$20,000.00, including two debts incurred in 2002 totaling more than \$9,000.00 resulting from Applicant's inappropriate use of a travel expense account of a past employer, and nearly \$8,000.00 for IRS tax deficiencies from 2001 and 2002. Applicant did not disclose his debts on his Security Clearance Application (SF 86) he signed on June 19, 2004, and he has not significantly reduced the balances of his major debts since 2002. Applicant failed to successfully mitigate the security concerns raised by his financial difficulties and personal conduct. Clearance is denied.

### STATEMENT OF THE CASE

On, December 9, 2004, the Defense Office of Hearings and Appeals (DOHA), pursuant to Executive Order 10865, *Safeguarding Classified Information Within Industry*, dated February 20, 1960, as amended and modified, and Department of Defense Directive 5220.6, *Defense Industrial Review Program*, dated January 2, 1992, as amended and modified (Directive), issued a Statement of Reasons (SOR) to Applicant alleging facts that raise security concerns addressed in the Directive under Guideline F - Financial Considerations, and Guideline E - Personal Conduct. The SOR detailed why DOHA could not preliminarily determine under the Directive that it is clearly consistent with the national interest to grant or continue Applicant's request for a security clearance. By his answer to the SOR executed January 3, 2005, and his further notarized response signed January 24, 2005, Applicant admitted with explanations the allegations of subparagraphs 1.a., 1.c., 1.d., 1.g., 1.h. and 1.j. of the SOR, and denied with explanations the allegations of subparagraphs 1.b. 1.e., 1.f., 1.i., 1.k., 1.l., 1.m., and 1.n., and subparagraphs 2.a. - 2.d., and requested a hearing before an administrative judge.

The case was assigned to me on October 3, 2005, and I conducted the hearing on October 25, 2005. The government submitted exhibits (GE) 1 through 11, which were admitted without objection. Applicant testified and offered no documentary evidence. At the conclusion of the hearing, by agreement of Department Counsel, the record of the case remained open until November 10, 2005, to allow Applicant an opportunity to submit certain specified documentation to support his position in the case. <sup>(1)</sup> In response, Applicant timely submitted six documents identified as Applicant's Exhibits (AE) A through F, which have been admitted as a part of Applicant's case without objections from Department Counsel. DOHA received the hearing transcript (Tr.) on November 9, 2005.

## FINDINGS OF FACT

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

Applicant is 44 years old and has four children, three of whom reside with their mother to whom Applicant pays child support.<sup>(2)</sup> His youngest child, age 5, resides with Applicant and his present wife.<sup>(3)</sup>

Applicant served in the U.S. Navy for over ten years and was honorably discharged in August 1992, at paygrade E-5.<sup>(4)</sup> He also served in the Army National Guard for about a year in 1992-1993, and in the U.S. Army Reserves from 1993 until February 2001.<sup>(5)</sup> Applicant has taken college level technical computer courses through his workplace since 2003 to promote his career advancement.<sup>(6)</sup>

He does not use illegal drugs and he has no criminal record.<sup>(7)</sup> Applicant held a previous clearance in 2002.<sup>(8)</sup>

Applicant has been employed by a defense contractor as a computer network technician since November 2003.<sup>(9)</sup> He worked steadily for other contractors since February 1994 before obtaining his present position.<sup>(10)</sup> He was "let go" from one of those jobs without sufficient explanation to him in July 1997, but he was able to find a position with another company promptly.<sup>(11)</sup>

Applicant is considered by his present employer to be a valued and productive employee. In his most recent annual performance evaluation conducted by his employer for the period ending September 30, 2005, Applicant met or exceeded his employer's expectations in the performance of his duties in nearly all areas of his evaluation.<sup>(12)</sup>

Applicant began experiencing financial difficulties in January 1997 occasioned by escalating family expenses and his girlfriend not sufficiently contributing to the family income.<sup>(13)</sup> He filed for Chapter 13 bankruptcy relief in August 1997, which petition was dismissed in October 1997 for failure to begin making payments to the Trustee.<sup>(14)</sup> Applicant filed four subsequent requests for bankruptcy relief from 1997 to 2002, all of which were also dismissed without relief.<sup>(15)</sup> Applicant's bankruptcy filings were primarily motivated to avoid foreclosure of the mortgage on his family home.<sup>(16)</sup> The mortgage was finally foreclosed upon in September 2002.<sup>(17)</sup>

Applicant was indebted in the following amounts to the referenced creditors when the SOR was issued:

1. Debt to previous employer - \$4,200.00 (Subparagraph 1.a.)
2. Debt to child care provider - \$468.00 (Subparagraph 1.b.)
3. Credit card debt - \$5,174.00 (Subparagraph 1.c.)
4. Child support delinquencies - \$9,116.00 (Subparagraph 1.d.)
5. Credit card debt - \$756.00 (Subparagraph 1.e.)
6. Credit debt - \$112.00 (Subparagraph 1.f.)
7. Credit debt - \$161.00 (Subparagraph 1.g.)
8. Video store account - \$107.00 (Subparagraph 1.h.)
9. Pager account - \$491.00 (Subparagraph 1.i.)

Applicant's total delinquent debt set forth above is \$20,585.00.

The debts referred to as Nos. 1 and 3 above resulted from Applicant's improper use of his travel expense account associated with a prior employer. The employment lasted from July 1999 to April 2002. <sup>(18)</sup> In February 2002, his employer set up a payroll deduction for Applicant in the amount of \$225.00 per month to be applied to the \$4,200.00 portion of the company debt. <sup>(19)</sup> Applicant was also required to begin making payments against the No. 3 company credit card portion of the debt of \$5,174.00. The payroll deduction did not stay in place since Applicant left that employment about two months later. Applicant did not produce any documentation to verify the present status of either of these employment-related debts.

As of November 8, 2005, the video store account referenced as No. 8 above has been paid in full. <sup>(20)</sup> No payments have been made against the debts referenced in Nos. 2, 5, 6, 7, and 9.

Applicant's child support delinquency referenced in No. 4 has been reduced to \$6,597.09 as of November 2005. Through wage garnishments since May 2000, Applicant has consistently paid \$900.00 per month for on-going support for the three children not in his custody, plus an additional \$225.00 per month applied against the arrears. <sup>(21)</sup>

Applicant owes about \$7,000.00 for a loan from the U.S. Department of Education provided to Applicant to pursue further technical certifications related to his employment. Applicant has entered into an agreement with the Department of Education that commenced in May 2005 to repay the loan at the rate of \$100.00 per month through an electronic deduction from his checking account. <sup>(22)</sup> This loan was not listed as a part of the SOR allegations.

Applicant is indebted to the IRS for delinquent taxes owed from 2001 and 2002. <sup>(23)</sup> The IRS applied Applicant's tax overpayment of \$1,644.00 in 2004 to the amounts due. Applicant also entered into a payment agreement with the IRS in June 2004 to repay the remaining delinquencies in monthly installment payments. <sup>(24)</sup> Applicant began paying monthly installments in May 2005, and is currently paying the IRS \$238.00 per month per the agreement. <sup>(25)</sup> As of October 12, 2005, the total balance due for both tax delinquencies was \$7,905.02. <sup>(26)</sup> This IRS obligation was not referenced in the SOR.

Applicant also owed over \$700.00 in September 2004 for a personal loan he received to help pay for technical education courses. The debt was not listed among the SOR allegations. By agreement with the creditor, Applicant made regular payments over the next year and paid the debt in full as of September 16, 2005. <sup>(27)</sup>

Applicant signed his Security Clearance Application (SF 86) on June 19, 2004. As to Question 33 concerning bankruptcy cases filed in the preceding seven year period, Applicant failed to disclose the bankruptcy petitions he filed on August 6, 1997, December 29, 1997, April 20, 1998, and September 11, 2001. He disclosed the last bankruptcy case he filed in 2002. As to Question 37 regarding unpaid judgments entered against him in the preceding seven year period, Applicant did not disclose the judgment entered against him in May 1997. Because the SF 86 was filed about one month after expiration of the applicable seven year period, Applicant was not obligated to disclose this judgment. As to Question 38 regarding existing debt delinquencies over 180 days, Applicant did not disclose any of the overdue debts referenced in the SOR, all of which were delinquent in excess of 180 days. <sup>(28)</sup>

## **POLICIES**

Enclosure 2 of the Directive, *Adjudicative Guidelines For Determining Eligibility For Access To Classified Information*, sets forth the criteria which must be evaluated when determining security clearance eligibility. The adjudicative guidelines specifically distinguish between those factors that are considered in denying or revoking an employee's request for access to classified information (Disqualifying Conditions), together with those factors that are considered in

granting an employee's request for access to classified information (Mitigating Conditions). By acknowledging that individual circumstances of each case are always different, the guidelines provide substantive standards to assist an administrative judge in reaching fair and impartial common sense decisions.

The adjudicative process requires thorough consideration and review of all available, reliable information about the applicant, past and present, favorable and unfavorable, to arrive at well-informed decisions. Section E2.2. of Enclosure 2 of the Directive describes the essence of scrutinizing all appropriate variables in a case as the "whole person concept." In evaluating the conduct of the applicant and the circumstances in any case, the factors an administrative judge should consider pursuant to the concept are: (1) the nature, extent, and seriousness of the conduct; (2) the circumstances surrounding the conduct, to include knowledgeable participation; (3) the frequency and recency of the conduct; (4) the individual's age and maturity at the time of the conduct; (5) the voluntariness of the 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.

Protecting national security is the paramount concern in reaching a decision in any case, and is dependent upon the primary standard that issuance of a clearance must be clearly consistent with the interests of national security. Granting an applicant's clearance for access to classified information is predicated on a high degree of trust and confidence in the individual. Accordingly,

decisions under the Directive must include consideration of not just the *actual* risk of disclosure of such information, but also consideration of any *possible* risk an applicant may deliberately or inadvertently compromise classified information in any aspect of his or her life. Any doubt about whether an applicant should be allowed access to classified information must be resolved in favor of protecting classified information.<sup>(29)</sup> The decision to deny a security clearance request to an individual is not necessarily a determination of the loyalty of the applicant.<sup>(30)</sup> It is merely an indication the applicant has not met the strict guidelines established by the Department of Defense for issuing a clearance.

In accordance with the Directive, the government bears the burden of proof in the adjudicative process to first establish conditions by substantial evidence which indicate it is not clearly consistent with the national interest to grant or continue an applicant's access to classified information.<sup>(31)</sup> The legal standard for the burden of proof is something less than a preponderance of the evidence.<sup>(32)</sup> When the government meets this burden, the corresponding heavy burden of rebuttal then falls on the applicant to present evidence in refutation, explanation, extenuation or mitigation sufficient to overcome the position of the government, and to ultimately demonstrate it is clearly consistent with the national interest to grant or continue the applicant's clearance.<sup>(33)</sup>

## CONCLUSIONS

Under Guideline F, 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.

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.A6.1.2.2 (*Deceptive or illegal financial practices such as embezzlement, employee theft, check fraud, income tax evasion, expense account fraud, filing deceptive loan statements, and other intentional breaches of trust*), and E2.A6.1.2.3 (*Inability or unwillingness to satisfy debts*), apply in this case. I have considered all the Financial Considerations Mitigating Conditions (FC MC), and, especially FC MC E2.A6.1.3.1 (*The behavior was not recent*), FC MC E2.A6.1.3.2 (*It was an isolated incident*), 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)*), and FC MC E2.A6.1.3.6 (*The individual initiated a good faith effort to repay overdue creditors or otherwise resolve debts*). I conclude none apply to this case.

The total delinquent debt referenced in the SOR allegations exceeds \$20,000.00. In addition, Applicant is further indebted to the U.S. Department of Education and Internal Revenue Service in amounts originally exceeding \$7,000.00 and \$10,000.00 respectively. Applicant's IRS obligation accrued in 2001 and 2002, and his education loan payment was in existence in 1997.<sup>(34)</sup> His efforts to repay these obligations through payment plans were only initiated recently, and both debts have only been marginally reduced. Applicant's debts are substantial and accumulated over time, heightened by the fact that over \$9,300.00 of the SOR allegations involve Applicant's deceptive manipulation and use of a prior employer's expense account. While Applicant has made credible efforts recently to repay some of his smaller debts, it is particularly troublesome that the debts related to his prior employer have been ostensibly ignored since Applicant discontinued working for the company in April 2002. Applicant endured some legitimate financial hardship in the late 1990's, but he has been consistently employed thereafter. It is reasonable to conclude that he either lived beyond his means or seriously neglected his credit budget for a lengthy period, preventing him from taking positive action to get his financial affairs in proper order. The debt associated with his prior employer in 2002 only compounded his already serious financial difficulties, illustrated by him seeking bankruptcy relief five times during the preceding five year period. Such circumstances likely provided the motivation for Applicant's very risky and serious conduct in effectively stealing from his employer. Because only modest amounts have been paid against the totality of Applicant's debts, I consider the debts to be recent, in the sense that a great portion of his old debts remain outstanding. Likewise, I cannot consider accrual of the debts to be an isolated event because the debts were multiple and were progressively incurred.

Applicant acknowledged to the DSS investigator in March 2002 he was responsible for payment of the major debts referenced in the SOR. A logical inference from such acknowledgment is he intended to begin paying the accounts when is was able to do so. He left his job about a month later, but immediately found another position with a federal contractor, and he has worked uninterruptedly since. Nevertheless, Applicant's primary repayment success has occurred through wage garnishments.<sup>(35)</sup> Applicant has been unable to exercise the necessary judgment and self discipline to meaningfully repay his creditors consistently on his own. The voluntary repayment plans now in effect have only been implemented recently, and have not yet resulted in material reductions of significant portions of his total debt. A different conclusion might be appropriate had Applicant adjusted his budget and made good-faith efforts to repay his debts since he provided his explanations to the DSS investigator in March 2002. Applicant has not attempted to benefit from meaningful credit counseling, and it is interesting to note he chose to ignore certain debts and keep others current, in spite of having had a modest ability to accomplish some partial repayment over a considerable time period. Applicant has failed to show failure to pay his debts was due primarily to conditions beyond his control, and he has not made a

genuine good-faith effort to repay his creditors or otherwise conscientiously resolve his financial problems. His deliberate and irresponsible inattention to his debts causes great concern, particularly considering he has ignored the serious debt resulting from abuse of his prior employer's expense account, during a time when he has had, at least, a modest ability in recent years to begin making significant payments.

Under Guideline E, personal conduct is a security concern because conduct involving questionable judgment, trustworthiness, unreliability, lack of candor, dishonesty, or unwillingness to comply with rules and regulations could indicate that a person may not properly safeguard classified information.

Considering all the evidence, Personal Conduct Disqualifying Condition (PC DC) E2.A5.1.2.2 (*The deliberate omission, concealment, or falsification of relevant and material facts from any personnel security questionnaire, personal history statement, or similar form used to conduct investigations, determine employment qualifications, award benefits or status, determine security clearance eligibility or trustworthiness, or award fiduciary responsibilities*) applies in this case. Applicant was aware he had a number of overdue accounts and debts when he signed his SF 86 on June 19, 2004. His financial difficulties began in 1997 and endured five years thereafter, during which time he was motivated primarily to save his home from foreclosure. When Applicant completed his personal financial statement in March 2002 for a DSS investigator, he showed four debts in addition to his mortgage for which he indicated he was making substantial monthly payments. <sup>(36)</sup> All the debts would have been nearly paid in full at present had the payments continued as Applicant implied he was doing. Yet with respect to the two unpaid debts associated with his prior expense account, Applicant presented no verification of the present status of either of the debts or whether or not any payments at all have been made against the accounts since Applicant discontinued working for the company well over three years ago. Applicant had in excess of a year to reconsider his responses on his SF 86 application and properly disclose the correct information. Several of the accounts listed on the SOR had been referred for collection when he completed the SF 86. His omission with regard to the debt owed to his previous employer and the basis for the debt is especially troublesome considering he left that employment knowing he owed his employer a considerable sum of money based upon his own improper conduct. One objective of the security clearance process is to determine all relevant and material information concerning an applicant. Based upon truth and honesty, the process requires full and open disclosure by the applicant of all requested information. Any intentional misrepresentation or omission by an applicant raises serious concerns about the character and overall integrity of the individual. The evidence presented and Applicant's admissions constitute substantial evidence of PC DC E2.A5.1.2.2 under Guideline E.

I have considered all the Personal Conduct Mitigating Conditions (PC MC), and especially PC MC E2.A5.1.3.3 (*The individual made prompt, good-faith efforts to correct the falsification before being confronted with the facts*), and conclude it does not apply. Applicant had an affirmative obligation to determine the true status of all information requested in the SF 86, and to fully provide and disclose complete and accurate answers to each item of the questionnaire. The omissions on his SF 86 were apparent to Applicant when he prepared his answers and were made intentionally. The omissions were a deliberate and self-serving attempt by Applicant to mislead and inappropriately influence the outcome of his security clearance application. Applicant met previously with a Defense Security Service (DSS) investigator on March 19, 2002. Inexplicably, Applicant did not disclose the facts about his prior employment and the significant debt associated with it on his SF 86, even though he had been confronted with the information during the interview over two years before. Considering all the circumstances, Applicant's candor and credibility are questionable given the seriousness and chronology of the events. Accordingly, Applicant has failed to successfully mitigate the personal conduct security concerns raised in this case.



I have further reviewed all the record evidence under the "whole person" concept required by the Directive in evaluating Applicant's vulnerability in protecting our national security. An applicant with a good or even exemplary work history may engage in conduct that has negative security implications. Although Applicant's loyalty to the United States is also not in question, I am persuaded by the totality of the evidence that it is not clearly consistent with the national interest to grant Applicant a security clearance. For the reasons stated, Applicant has not met the strict guidelines established by the Department of Defense for issuance of a clearance, and he has failed

to mitigate the security concerns raised by his financial matters and personal conduct. Accordingly, Guidelines F and E are decided against Applicant.

### **FORMAL FINDINGS**

In accordance with Section E3.1.25 of Enclosure 3 of the Directive, the following are the formal findings as to each allegation in the SOR:

#### **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. Against the Applicant

Subparagraph 1.e. Against the Applicant

Subparagraph 1.f. Against the Applicant

Subparagraph 1.g. Against the Applicant

Subparagraph 1.h. Against the Applicant

Subparagraph 1.i. Against the Applicant

Subparagraph 1.j. Against the Applicant

Subparagraph 1.k. Against the Applicant

Subparagraph 1.l. Against the Applicant

Subparagraph 1.m. Against the Applicant

Subparagraph 1.n. Against the Applicant

Paragraph 2. Personal Conduct (Guideline E) AGAINST THE APPLICANT

Subparagraph 2.a. Against the Applicant

Subparagraph 2.b. For the Applicant

Subparagraph 2.c. Against the Applicant

Subparagraph 2.d. 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.

David S. Bruce

Administrative Judge

1. Tr. at 105-114.

2. GE 2 (Applicant's statement to Defense Security Service (DSS) investigator dated March 19, 2002), at 2. Note: This statement pre-dates the Applicant's Security Clearance Application (SF 86) relevant to this case. While it is not clear from the record, Applicant's statement of March 19, 2002, was likely obtained as a part of a SF 86 filed previously by Applicant while employed by a different contractor.

3. GE 1 (Applicant's Security Clearance Application dated June 22, 2004), at 1, 4 and 11. See also Tr. at 19-20.

4. *Id.* at 6.
5. *Id.* at 5.
6. *Id.* at 2.
7. *Id.* at 7-8.
8. *Id.* at 8.
9. *Id.* at 2. See also Tr. 41.
10. *Id.* at 2-4.
11. *Id.* at 7.
12. AE E (Employee Performance Review dated October 14, 2005), at 12.
13. Tr. at 31-32.
14. GE 5 (Bankruptcy Court records dated October 3, 1997), at 3.
15. GE 6 (Bankruptcy Court records dated February 11, 1998), at 3, GE 7 (Bankruptcy Court records dated June 5, 2000), at 1, GE 8 (Bankruptcy Court records dated October 10, 2001 at 3, and GE 9 (Bankruptcy Court records dated July 18, 2002), at 3.
16. GE 2, *supra* note 2, at 1-3.
17. Tr. at 56.
18. GE 1, *supra* note 3, at 3.
19. GE 4, (Company email dated February 19, 2002).
20. AE A (Letter from creditor dated November 8, 2005).
21. AE B (Child support payment records), at 3-5, and 8-10.
22. AE C (U.S. Department of Education loan records), at 2.
23. AE D (IRS Tax information), at 5.
24. *Id.* at 2.
25. *Id.* at 5-9.
26. *Id.* at 9.
27. AE F (Tech School loan repayment information), at 1-16.
28. It is noted in response to Question 34, Applicant acknowledged his wages were garnished when he signed his SF 86 as a result of his accumulated child support arrears. It is also noted in response to Question 35, Applicant disclosed that the mortgage on his home had been foreclosed in 2002. The defaulted mortgage loan is not listed among the debt allegations of the SOR.
29. Directive, Enclosure 2, Para. E2.2.2.

30. Executive Order 10865 § 7.

31. ISCR Case No. 96-0277 (July 11, 1007) at p. 2.

32. *Department of the Navy v. Egan*, 484 U.S. 518, 531 (1988).

33. ISCR Case No. 94-1075 (August 10, 1995) at pp. 3-4; Directive, Enclosure 3, Para. E3.1.15.

34. GE 2, *supra* note 2, at 1-2.

35. Particular credit is noted regarding Applicant's consistent child support payments he has made since the child support garnishment was put in place in 2000.

36. GE 2, *supra* note 2, at 4.