

KEYWORD: Financial; Personal Conduct

DIGEST: Applicant's marital separation and divorce, coupled with several periods of unemployment, resulted in numerous delinquent debts. Applicant began paying his delinquent debts before the initiation of this action, has paid or resolved many of the outstanding obligations, and is repaying the remaining accounts. In about 2000, Applicant violated company policy by failing to pay his corporate credit card account when due, but that was an isolated event several years ago. Applicant mitigated the security concerns arising from his financial difficulties and personal conduct. Clearance is granted.

CASENO: 03-16613.h1

DATE: 06/12/2006

DATE: June 12, 2006

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In re:

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SSN: -----

Applicant for Security Clearance

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ISCR Case No. 03-16613

**DECISION OF ADMINISTRATIVE JUDGE**

**MICHAEL J. BRESLIN**

**APPEARANCES**

**FOR GOVERNMENT**

Richard Stevens, Esq., Department Counsel

**FOR APPLICANT**

*Pro Se*

**SYNOPSIS**

Applicant's marital separation and divorce, coupled with several periods of unemployment, resulted in numerous delinquent debts. Applicant began paying his delinquent debts before the initiation of this action, has paid or resolved many of the outstanding obligations, and is repaying the remaining accounts. In about 2000, Applicant violated company policy by failing to pay his corporate credit card account when due, but that was an isolated event several years ago. Applicant mitigated the security concerns arising from his financial difficulties and personal conduct. Clearance is granted.

**STATEMENT OF THE CASE**

On June 12, 2001, Applicant submitted an application for a security clearance. The Defense Office of Hearings and Appeals (DOHA) declined to grant or continue a security clearance for Applicant under Department of Defense Directive 5220.6, *Defense Industrial Personnel Security Clearance Review Program* (Jan. 2, 1992), as amended (the "Directive"). On November 16, 2005, DOHA issued a Statement of Reasons (SOR) dated February 16, 2005, detailing the basis for its decision. The SOR alleges security concerns raised under the Directive, Guideline F, Financial Considerations and Guideline E, Personal Conduct.

Applicant answered the SOR in writing on December 15, 2005. He elected to have a hearing before an administrative judge.

I received the case assignment on March 29, 2006. With the concurrence of Applicant and Department Counsel, I convened the hearing on April 20, 2006. The government introduced Exhibits 1 through 5. Applicant presented Exhibits A through Z and testified on his own behalf. At Applicant's request, I kept the record open until May 22, 2006, to allow Applicant time to submit additional matters. On May 19, 2006, Applicant provided documents admitted as Exhibits AA,

BB, and CC, without objection. DOHA received the transcript of the hearing (Tr.) on May 3, 2006.

### **FINDINGS OF FACT**

Applicant denied the allegations in ¶¶ 1.g, 1.q, 1.r, and 1.s of the SOR, but admitted the remaining allegations. (Applicant's Answer to SOR, dated December 15, 2005.) Those admissions are incorporated herein as findings of fact. After a complete and thorough review of the evidence in the record, I make the following additional findings of fact.

Applicant was born in December 1970. (Ex. 1 at 1.) After high school he attended a technical college. (Tr. at 18.)

Applicant began working as an electronics technician for a defense contractor in July 1991. His duties involved installing electronic systems aboard ships. (Ex. 1 at 3; Tr. at 18.)

He was married in March 1995. (Ex. 1 at 3.) One child was born of the marriage. (Tr. At 46.) During the marriage, Applicant and his wife accumulated substantial consumer debt. (Ex. 2 at 2.) In December 1996, Applicant and his wife filed jointly for bankruptcy under Chapter 13 of the bankruptcy code. (Ex. 3 at 2; Ex. 2 at 2.) They arranged for the regular bankruptcy payment to be paid from his wife's funds. (Tr. at 59.) Applicant separated from his wife in January 1997. (Ex. 1 at 3.) While living separately, they did not make the necessary payments under the Chapter 13 repayment plan, and the bankruptcy was dismissed. (Tr. at 59; Ex. 2 at 2; Ex. 3 at 4.) According to Applicant, his wife was supposed to make the required payment to the bankruptcy trustee, but did not do so. (Tr. at 59.)

After Applicant separated from his wife, he made regular child support payments. Later, a dispute developed over the appropriate amount and she brought suit. The court ordered Applicant to pay \$580.00 each month. The court also ordered Applicant to pay \$125.00 per month to make up for previous months. (Tr. at 47.)

Applicant worked for his first employer until May 1997, when the company lost the contract. (Ex. 1 at 3; Tr. at 49.) He then worked as an assembler for another federal contractor from about June 1997 until May 1998. (Ex. 1 at 2.)

Applicant was unemployed from May through October 1998. (Ex. 1 at 2.) Because of the debts incurred during his



¶	Account	Status	Evidence
1.a	Credit Card \$3,464.00 (Business Account)	Payment Plan	Ex. A (owes \$3,320.00); Ex. B (payment plan).
1.b	Child support arrears 4,024.00	Paying	Exs. P, Z.
1.c	Judgment 786.00 (former landlord)	Inquiring	Ex. L; Tr. at 52.
1.d	Judgment 680.00 (former landlord)	Paid	Ex. 4.
1.e	Judgment 148.00 (former landlord)	Inquiring	Ex. L; Tr. at 52.
1.f	Collection agency 618.00 (dishonored check)	Paying	Ex. A (owes \$229.00); Ex. E (receipt); (Tr. at 23.).
1.g	Collection agency 76.00 (utility bill)	Paid	Ex. H (receipt).
1.h	Collection agency 280.00 (television service)	Paid	Ex. G (receipt).
1.i	Collection agency 395.00 (mobile telephone service)	Paid	Exs. T, U (payments).
1.j	Collection agency 303.00 (medical bill)	Paid	Same as ¶ 1.n, below.
1.k	Collection agency 319.00 (telephone services)	Paid	Ex. O (receipt).
1.l	Collection agency 1,080.00	Paying	Ex. I (payments).
1.m	Bank debt 19,007.00 (automobile repossession)	Closed	Ex. AA (no account remains).
1.n	Collection agency 303.00 (medical bill)	Paid	Ex. R (settlement agreement); Ex. K (receipt).
1.o	Medical bill 155.00	Paid	Ex. J (receipt).
1.p	Collection agency 549.71 (bank)	Paying	Ex. Q (settlement agreement); Ex. N (payment).
1.q	Communications svc. 166.00	Paid	Ex. C (receipt).
1.r	Collection agency 83.00 (insurance)	Paid	Exs. D, F.
1.s	Car dealership 1,150.00 (dishonored checks)	Payment plan	Exs. BB, CC.

Applicant has remarried. (Tr. at 18.) Other than the debts that arose during his unemployment, he is current on his financial obligations. (Ex. W.) He operates a side business installing satellite television systems and communications equipment. (Tr. at 70.) He has been making his court-ordered child support payments of \$580.00 per month, along with additional monthly payments of \$245.00 or more against the arrearage. (Ex. Y.) His landlord wrote that Applicant is a responsible tenant who pays his rent on time. (Ex. V at 3.) In addition to his efforts at resolving the debts listed in the SOR, Applicant has established a solid financial record with other creditors, including suppliers for his side business. (Ex. V at 4.)

## POLICIES

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." (*Department of the Navy v. Egan*, 484 U.S. 518, 527 (1988).) In Executive Order 10865, *Safeguarding Classified Information Within Industry* (Feb. 20, 1960), the President set out guidelines and procedures for safeguarding classified information within the executive branch.

To be eligible for a security clearance, an applicant must meet the security guidelines contained in the Directive. Enclosure 2 of the Directive sets forth personnel security guidelines, as well as potentially disqualifying and mitigating conditions under each guideline.

"The adjudicative process is an examination of a sufficient period of a person's life to make an affirmative determination that the person is eligible for a security clearance." (Directive, ¶ E2.2.1.) An administrative judge must apply the "whole person concept," and consider and carefully weigh the available, reliable information about the person. (*Id.*) An administrative judge should consider the following factors: (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 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. (*Id.*)

Initially, the government must present evidence to establish controverted facts in the SOR that disqualify or may disqualify the applicant from being eligible for access to classified information. (Directive, ¶ E3.1.14.) Thereafter, the applicant is responsible for presenting evidence to rebut, explain, extenuate, or mitigate the facts. (Directive, ¶ E3.1.15.) 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 (App. Bd. Dec. 19, 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.)

A person granted access to classified information enters into a special relationship with the government. The government must be able to repose a high degree of trust and confidence in those individuals to whom it grants access to classified information. The decision to deny an individual a security clearance is not a determination as to the loyalty of the applicant. (Exec. Ord. 10865, § 7.) It is merely an indication that the applicant has not met the strict guidelines the President has established for issuing a clearance.

## CONCLUSIONS

### **Guideline F, Financial Considerations**

The security concern under Guideline F, Financial Considerations, is that "An individual who is financially overextended is at risk of having to engage in illegal acts to generate funds." (Directive ¶ E2.A6.1.1.) Conditions that could raise a security concern and may be disqualifying, as well as those which could mitigate security concerns under this adjudicative guideline, are set forth and discussed below.

Paragraph E2.A6.1.2.1 of the Directive provides that it may be disqualifying if the evidence reveals "[a] history of not meeting financial obligations." Similarly, under ¶ E2.A6.1.2.3, an "[i]nability or unwillingness to satisfy debts" may be disqualifying. Applicant failed to meet some significant financial obligations between about 1999 and 2005. He is unable to pay all his delinquent debts in full at this time, although he is making payments. I conclude the available evidence raises these potentially disqualifying conditions.

Security concerns arising from an applicant's financial difficulties can be mitigated. Under the Directive, ¶ E2.A6.1.3.1, it may be mitigating where "the behavior was not recent." The behavior in question is his failure to pay or otherwise resolve the delinquent debts. While Applicant paid several of the debts before the initiation of this action, some remain unpaid. I find this potentially mitigating condition applies in part.

Paragraph E2.A6.1.3.2 of the Directive provides that it may be mitigating where the financial difficulty "was an isolated incident." Applicant had several delinquent debts that arose at different times; therefore, this was not an isolated incident. I conclude this mitigating condition is not a factor here.

Under ¶ E2.A6.1.3.3, it may be mitigating where, "[t]he 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)." Applicant's financial problems arose as a result of conditions largely beyond his control. First, the marital separation that eventually led to divorce resulted in financial strain and, ultimately to the dismissal of his bankruptcy plan. Secondly, his extended periods of unemployment caused the greatest bulk of his financial problems. I conclude this mitigating condition must be considered in this case.

Proof that "[t]he 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," may be mitigating under ¶ E2.A6.1.3.4 of the Directive. Applicant did not present evidence that he sought or received financial counseling, therefore this mitigating condition is not raised.

Paragraph E2.A6.1.3.6 of the Directive states it may be mitigating where, "[t]he individual initiated a good-faith effort to repay overdue creditors or otherwise resolve debts." Applicant began paying his bills before the initiation of this action. He provided documentary evidence that he paid 10 of the 19 debts listed in the SOR. He is making payments against six other delinquent accounts. The creditor for the largest outstanding debt (SOR, ¶ 1.m) affirmatively indicated they have no open account for him. Finally, he is investigating the status of the remaining open accounts to determine their status to resolve them. I recognize that Applicant must work within his financial means to resolve his delinquent debts, and I find Applicant has acted reasonably under all the circumstances. I conclude this potentially mitigating condition applies.

### **Guideline E, Personal Conduct**

The security concern under Guideline E, Personal Conduct, is that "Conduct involving questionable judgment, untrustworthiness, unreliability, lack of candor, dishonesty, or unwillingness to comply with rules and regulations could indicate that the applicant may not properly safeguard classified information." (Directive, ¶ E2.A5.1.1.)

Under the Directive, ¶ E2.A5.1.2.1, "[r]eliable, unfavorable information provided by associates, employers, coworkers, neighbors, and other acquaintances" that involves questionable judgment, or unwillingness to comply with rules or regulations, could be disqualifying. The SOR alleges Applicant violated an employer's company policy by using a company credit card to pay personal expenses. The evidence revealed slightly different facts; Applicant used the credit card properly, but did not pay the bill in a timely manner. This evidence is some indication Applicant did not comply with company rules.

Similarly, ¶ E2.A5.1.2.5 provides that "[a] pattern of dishonesty or rule violations," may be disqualifying. The evidence indicates only one instance where Applicant did not properly handle his corporate credit card account; thus, there is no indication of a pattern of conduct. The evidence does not raise this potentially disqualifying condition.



The Directive sets out several potentially mitigating conditions; however, most are directed toward conduct involving falsification, which is not present here. The available evidence does not raise any of the mitigating conditions under Guideline E.

### **The "Whole Person" Concept**

I considered the potentially disqualifying and mitigating circumstances in light of the "whole person" concept. I note Applicant is a mature individual with many years of service to this country as an employee of a defense contractor. Many of the financial problems arose when he was much younger. (Directive, ¶ E2.1.1.4.) The financial problems arose primarily due to circumstances beyond his control, including his separation and divorce, and several substantial periods of unemployment. (Directive, ¶ E2.1.1.2.) The financial delinquencies arose because Applicant was unable to pay his bills, not because he was unwilling to do so. (Directive, ¶ E2.1.1.7.) His failure to comply with company policy concerning payment of corporate credit card debts was an isolated incident that occurred several years ago. Applicant has acted reasonably to repay his debts; significantly, he began repaying overdue accounts well before the initiation of this action. His financial situation is stable and he has made real progress toward eliminating delinquencies. I am persuaded there is little likelihood of continuation or reoccurrence of financial problems. (Directive, ¶ E2.1.1.4.) I conclude Applicant mitigated the security concerns arising from his history of failing to meet his financial obligations and his personal conduct.

### **FORMAL FINDINGS**

My conclusions as to each allegation in the SOR are:

Paragraph 1, Guideline F: FOR APPLICANT

Subparagraph 1.a-1.t: For Applicant

Paragraph 2, Guideline E: FOR APPLICANT

Subparagraph 2.a: 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.

Michael J. Breslin  
Administrative Judge