

KEYWORD: Personal Conduct; Financial

DIGEST: Applicant is 57 years old and has been married for nearly 31 years. His wife has been hospitalized 35 times due to mental illness in the past 20-25 years, and Applicant has incurred multiple debts for medical services provided to his wife not covered by his medical insurance. Applicant failed to disclose any delinquent debts on his Security Clearance Application (SF 86) in September 2002. In May 2005, he was granted Chapter 7 bankruptcy relief. Applicant successfully mitigated the security concerns raised by his financial difficulties and personal conduct. Clearance is granted.

CASENO: 03-16930.h1

DATE: 10/21/2005

DATE: October 21, 2005

In re:

SSN: -----

Applicant for Security Clearance

ISCR Case No. 03-16930

DECISION OF ADMINISTRATIVE JUDGE

DAVID S BRUCE

APPEARANCES

FOR GOVERNMENT

Richard A. Stevens, Esq., Department Counsel

FOR APPLICANT

Pro Se

SYNOPSIS

Applicant is 57 years old and has been married for nearly 31 years. His wife has been hospitalized 35 times due to mental illness in the past 20-25 years, and Applicant has incurred multiple debts for medical services provided to his wife not covered by his medical insurance. Applicant failed to disclose any delinquent debts on his Security Clearance Application (SF 86) in September 2002. In May 2005, he was granted Chapter 7 bankruptcy relief. Applicant successfully mitigated the security concerns raised by his financial difficulties and personal conduct. Clearance is granted.

STATEMENT OF THE CASE

On, January 19, 2005, 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 executed February 2, 2005, Applicant admitted with explanations the allegations of SOR subparagraphs 1.a - 1.h., 1.j., and 1.l. through 1.aa., and denied the allegations of subparagraphs 1.i., 1.k., and 2.a. - 2.b., and requested a hearing before an administrative judge.

The case was assigned to me on July 11, 2005, and I conducted the hearing on July 26, 2005. The government submitted exhibits (GE) 1 through 8, which were admitted without objection. Applicant testified at the hearing along with two other witnesses on his behalf, and offered exhibits (AE) A through C, and E through H, also admitted without objection. Applicant's exhibit AE D was offered, but not admitted. DOHA received the hearing transcript (Tr.) on August 5, 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 57 years old and has been married for almost 31 years.⁽¹⁾ While still married, he and his wife have been living separate and apart since 2003, and Applicant now plans to obtain a divorce.⁽²⁾ They have four adult children and six grandchildren. Their youngest son, age 27, resides with Applicant, but is otherwise self-sufficient.⁽³⁾

Applicant and his wife have experienced serious financial difficulties for the last 25 years. Applicant's wife has been hospitalized 35 times over this time period.⁽⁴⁾ Except for limited periods of time in 1980-81, and 1985, she has never been able to hold a steady job due to mental illness.⁽⁵⁾ In 2003, she resided for approximately six months in an assisted living group home, but now resides with their daughter.⁽⁶⁾ Applicant's wife applied for social security disability benefits in June 2004, which application was still pending as of the hearing in this case.⁽⁷⁾

Applicant and his wife received Chapter 7 bankruptcy relief in November 1985.⁽⁸⁾ They obtained Chapter 7 bankruptcy relief again in 1999,⁽⁹⁾ and most recently in ay 2005.⁽¹⁰⁾

Except for about a one year period in 2001-02, when he was unemployed for about six months and attempted to start his own computer business, Applicant has been working as a technical writer for various contractors since 1981.⁽¹¹⁾ He began working in his present position with a large defense contractor in June 2002, and presently earns about \$51,000.00 per year.⁽¹²⁾ He served four years in the U.S. Air Force from 1970-1974, and two years in the inactive Air Force Reserve.⁽¹³⁾ He has never held a security clearance.⁽¹⁴⁾ He does not use illegal drugs and has no criminal record, and he is in good health.⁽¹⁵⁾

Applicant owes the following amounts to the creditors referenced in the SOR:

1. Medical bill for his wife - \$149.00. (Subpara. 1.c.)
2. Medical bill for his wife - \$194.00. (Subpara. 1.d.)
3. Medical bill for his wife - \$600.00. (Subpara. 1.e.)
4. Medical bill for his wife - \$44.00. (Subpara. 1.f.)
5. Credit card debt - \$3,016.00. (Subpara. 1.g.)
6. Credit debt for daughter's pager - \$122.00. (Subpara. 1.h.)
7. Community Association debt - \$144.00, reduced to judgment. (Subpara. 1i.)
8. Start-up business seminar debt - \$2,960.00. (Subpara 1.j.)
9. Unknown creditor - \$1,372.00. (Subpara.1.k.)
10. Medical bill for his wife - \$8,434.13. (Subpara. 1.l.)
11. Medical bill for his wife - \$991.00. (Subpara. 1.m.)
12. Medical bill for his wife - \$728.00. (Subpara. 1.n.)
13. Medical bill for his wife - \$1,053.00. (Subpara. 1.o.)
14. Medical bill for his wife - \$350.00. (Subpara. 1.p.)
15. Medical bill for his wife - \$112.00. (Subpara 1.q.)
16. Medical bill for his wife - \$212.00. (Subpara. 1.r.)
17. Medical bill for his wife - \$280.00. (Subpara. 1.s.)
18. Medical bill for his wife - \$180.00. (Subpara. 1.t.)
19. Medical bill for his wife - \$530.00. (Subpara. 1.u.)
20. Medical bill for his wife - \$170.00. (Subpara. 1.v.)
21. Medical bill for his wife - \$211.00. (Subpara 1.w.)
22. Medical bill for his wife - \$270.00. (Subpara. 1.x.)
23. Medical bill for his wife - \$181.00. (Subpara. 1.y.)
24. Medical bill for his wife - \$72.00. (Subpara 1.z.)
25. Medical bill for his wife - \$59.00. (Subpara. 1.aa.)

Of Applicant's total debt, as set forth above, of \$22,434.13, \$14,820.13 is directly related to medical bills incurred on behalf of his wife, but not covered by the medical insurance he provides for her through his employment. [\(16\)](#)

When Applicant submitted his personal financial statement to a Defense Security Service (DSS) investigator on May 13, 2003, he and his wife owned no significant personal assets. He further showed positive income of \$636.00 per month. (17) This monthly net calculation accounted for \$397.00 each month he was paying at the time against a few selected smaller debts, but did not include the payment he could not make for over \$1000.00 per month he owed for the monthly mortgage payment on the family home that was then in default. The home was later sold through foreclosure at a deficiency. (18) Applicant's remaining debts were subject to the bankruptcy case he subsequently initiated in January 2005, leading to a Chapter 7 discharge entered in the case in May 2005. (19)

Applicant signed his SF 86 on September 3, 2002. As to Questions 38 and 39 regarding existing debt delinquencies over 90 and 180 days, Applicant failed to list any delinquent secured or unsecured debts. He maintains he did not list any debts in response to the questions because he did not fully comprehend the questions and he was unclear as to the status of all of his debts at the time. (20) He was also planning to file for Chapter 13 bankruptcy relief at the time, further complicating specific assessment of his numerous debts that might become subject to his proposed payment plan with the bankruptcy trustee. When Applicant later met with the DSS investigator on May 13, 2003, he did not dispute the credit information presented to him and acknowledged some 25 debts on his financial statement. He openly and candidly discussed with the investigator the nature of the debts and the facts and circumstances over many years that contributed to the financial distress of the family. (21)

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.⁽²²⁾ The decision to deny a security clearance request to an individual is not necessarily a determination of the loyalty of the applicant.⁽²³⁾ 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.⁽²⁴⁾ The legal standard for the burden of proof is something less than a preponderance of the evidence.⁽²⁵⁾ 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.⁽²⁶⁾

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*), 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 specifically considered 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 both apply to this case.

Applicant has endured significant personal hardship and adversity during the course of his 31-year marriage. The circumstances surrounding his wife's mental illness have persisted for at least the last 25 years, exemplified by the fact she has been hospitalized 35 times. Applicant successfully held the family together during these stressful events, and ostensibly raised the parties' four children with marginal contribution from his wife. In addition to her medical bills, his wife's lifestyle and poor judgment also, at times, contributed to the family's very difficult financial situation. [\(27\)](#)

While Applicant's resources over the years have been inadequate to maintain his family's financial security, he has endeavored to the best of his ability to maintain his personal dignity and self respect by often working two jobs and regularly paying back personal debts to people who provided limited financial assistance to him from time to time. [\(28\)](#) Applicant is admired by people closest to him for having stayed with his wife for many years under extremely difficult circumstances, "for better or for worse." [\(29\)](#)

Applicant has continually attempted to address his oppressive debts over the course of the marriage. While it is clear most of the debt has never been satisfied through payment, he has resorted to proper legal means to resolve his debts on three occasions by initiating bankruptcy court proceedings. The most recent discharge of debt granted to him by the court in May 2005, should have long range positive consequences. Applicant's wife has now applied for social security disability benefits which appears forthcoming, and will likely provide significant medical and other resources to her not otherwise available in the past. She no longer resides with Applicant, and with divorce of the parties now imminent, Applicant is postured to avoid the same pattern of events which followed the relief granted in his previous two bankruptcies.

Personal Conduct under Guideline E is a security concern because it questions whether or not a person's past conduct justifies confidence the person can be trusted to properly safeguard classified information in the future. Personal Conduct involving questionable judgment, untrustworthiness, unreliability, lack of candor, dishonesty, or unwillingness to comply with rules and regulations could indicate that the person may not properly safeguard classified information.

Based on all the evidence, I have considered all the Personal Conduct Disqualifying Conditions (PC DC), and, specifically, 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*). I conclude none apply in this case.

Applicant was certainly aware he had delinquent debts and failed to list any of them when he completed his SF 86 in September 2002. The omissions regarding his significant debts were misleading. Upon first observation, it is reasonable to suspect Applicant considered such omissions to be relevant and material to a security investigation that could result in an unfavorable decision, demonstrating possible dishonesty.

Nevertheless, Applicant credibly testified he did not fully understand the time element (90 and 180 days) when considering Questions 38 and 39, to be able to conclude just when overdue debts are actually determined to be delinquent for credit purposes. He candidly admits he did not know the complete status of all his debts, having been granted debt discharge relief in two prior bankruptcy matters. It does not logically follow Applicant would attempt to hide his very significant financial problems of the past which spanned 20 years or more and two U.S. Bankruptcy cases. He disclosed his 1999 bankruptcy case on his SF 86 as required. (30) Without question, he did not diligently determine the status of his debts or consider the questions more carefully, but his failure to do so was not intentional. When requested, he openly discussed all his debts with the investigator. Under the circumstances of this case, I find Applicant's testimony reasonable and credible, and his omissions were not made deliberately. Accordingly, PC DC E2.A5.1.2.2. does not apply in this case.

I have considered all the evidence in this case including Applicant's credibility and demeanor. I have also considered the "whole person" concept in evaluating Applicant's risk and vulnerability in protecting national interests. Applicant's loyalty to the United States is not in question. The government's primary concern in this case is whether or not Applicant may resort to illegal or unethical activities to generate funds. To the contrary, Applicant has led an exemplary life over the last 25 years he has faced substantial financial adversity. I am persuaded by the totality of the evidence that it is clearly consistent with the national interest to grant Applicant a security clearance. For the reasons stated, Applicant has fully mitigated the security concerns regarding the financial and personal conduct issues raised in this case. Accordingly, Guideline F and Guideline E raised by the government are decided for 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) FOR THE APPLICANT

Subparagraph 1.a. For the Applicant

Subparagraph 1.b. For the Applicant

Subparagraph 1.c. For the Applicant

Subparagraph 1.d. For the Applicant

Subparagraph 1.e. For the Applicant

Subparagraph 1.f. For the Applicant

Subparagraph 1.g. For the Applicant

Subparagraph 1.h. For the Applicant

Subparagraph 1.i. For the Applicant

Subparagraph 1.j. For the Applicant

Subparagraph 1.k. For the Applicant

Subparagraph 1.l. For the Applicant

Subparagraph 1.m. For the Applicant

Subparagraph 1.n. For the Applicant

Subparagraph 1.o. For the Applicant

Subparagraph 1.p. For the Applicant

Subparagraph 1.q. For the Applicant

Subparagraph 1.r. For the Applicant

Subparagraph 1.s. For the Applicant

Subparagraph 1.t. For the Applicant

Subparagraph 1.u. For the Applicant

Subparagraph 1.v. For the Applicant

Subparagraph 1.w. For the Applicant

Subparagraph 1.x. For the Applicant

Subparagraph 1 y. For the Applicant

Subparagraph 1.z. For the Applicant

Subparagraph 1aa. For the Applicant

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

Subparagraph 2.a. For the Applicant

Subparagraph 2.b. For the Applicant

DECISION

In light of all 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.

David S. Bruce

Administrative Judge

1. GE 1 (Applicant's Security Clearance Application (SF 86) dated September 3, 2002), at 1 and 3.
2. Tr. at 23.
3. *Id.*, at 39.
4. Tr. at 23. See also AE B (Wife's hospitalization and financial records).
5. Tr. at 23. See also AE F (Wife's Social Security records - earnings).
6. Tr., at 30.
7. *Id.*, at 36.
8. AE C (U.S. Bankruptcy Court case records - discharge dated August 29, 1985).
9. GE 4 (U.S. Bankruptcy Court case records - discharge dated June 12, 1999).
10. AE E (U.S. Bankruptcy Court case records - discharge dated May 23, 2005).
11. GE 1, *supra* note 1, at 2.
12. Tr., at 40.
13. GE 1, *supra* note 1, at 6.

14. *Id.*, at 8.
15. *Id.*, at 7-8.
16. GE 5 (Applicant's statement to Defense Security Service Special Agent dated May 13, 2003), at 1-2.
17. *Id.*, at 4-5.
18. Tr., at 29-30.
19. AE E, *supra* note 10.
20. Tr., at 61-63.
21. GE 5, *supra* note 16.
22. Directive, Enclosure 2, Para. E2.2.2.
23. Executive Order 10865 § 7.
24. ISCR Case No. 96-0277 (July 11, 1007) at p. 2.
25. *Department of the Navy v. Egan*, 484 U.S. 518, 531 (1988).
26. ISCR Case No. 94-1075 (August 10, 1995) at pp. 3-4; Directive, Enclosure 3, Para. E3.1.15.
27. Tr., 76-78.
28. *Id.*, at 82-83.
29. *Id.*, at 76.
30. GE 1, *supra* note 1, at 9.