

KEYWORD: Financial

DIGEST: Financially overextended due to an unexpected business loss in the mid-1990s, Applicant has made significant progress in repaying his old delinquencies since gaining full-time employment with the defense contractor. While one sizeable debt of about \$12,986 is still unresolved, his financial situation is sufficiently under control to overcome the financial considerations concerns. Clearance is granted.

CASENO: 03-17485.h1

DATE: 02/15/2005

DATE: February 15, 2005

---

In Re:

-----  
SSN: -----

Applicant for Security Clearance

---

ISCR Case No. 03-17485

**DECISION OF ADMINISTRATIVE JUDGE**

**ELIZABETH M. MATCHINSKI**

**APPEARANCES**

**FOR GOVERNMENT**

**FOR APPLICANT**

*Pro Se*

**SYNOPSIS**

Financially overextended due to an unexpected business loss in the mid-1990s, Applicant has made significant progress in repaying his old delinquencies since gaining full-time employment with the defense contractor. While one sizeable debt of about \$12,986 is still unresolved, his financial situation is sufficiently under control to overcome the financial considerations concerns. Clearance is granted.

**STATEMENT OF THE CASE**

On July 9, 2004, the Defense Office of Hearings and Appeals (DOHA) issued a Statement of Reasons (SOR) to the Applicant which detailed reasons why DOHA could not make the preliminary affirmative finding under the Directive that it is clearly consistent with the national interest to grant or continue a security clearance for the Applicant. [\(1\)](#) DOHA recommended referral to an Administrative Judge to conduct proceedings and determine whether clearance should be granted, continued, denied, or revoked. The SOR was based on financial considerations (Guideline F).

On August 5, 2004, Applicant filed his response to the SOR and requested a hearing before a DOHA Administrative Judge. The case was assigned to me on November 4, 2004. Pursuant to formal notice of November 8, 2004, a hearing was scheduled for December 2, 2004. At the hearing, five Government exhibits and six Applicant exhibits were admitted into evidence. Applicant and his employer's facility security officer (FSO) testified, as reflected in a transcript received December 13, 2004.

## FINDINGS OF FACT

DOHA alleges financial considerations concerns because of three delinquent accounts with an aggregate indebtedness of \$24,099. In his Answer, Applicant admitted a history of financial delinquency caused by the "simultaneous events of business downturn, lack of employment, and the circumstantial situation of [his] life partner suffering from medical and family conditions that required [his] personal attention." Applicant indicated that with the income from his present job, he had satisfied those debts alleged in SOR subparagraphs 1.b. and 1.c., and had placed \$2,125 in escrow with an attorney pending negotiations with the creditor owed a \$12,986 civil judgment (SOR subparagraph 1.a.). Applicant's admissions are accepted and incorporated as findings of fact. After a complete and thorough review of the evidence, I render the following additional findings:

Applicant is a 42-year-old technical writer/editor/content developer who has been employed by a defense contractor since October 2001. Applicant seeks a secret-level clearance for duties involving combat systems training by electronic format.

Previously employed in the entertainment industry as a drummer and concert promoter/producer, Applicant formed his own company, taking on bigger risks as the projects increased in size and scope. In about 1994, Applicant produced a very successful music festival under contract for another entity. The following year, he produced the festival on his own, but the income fell short of the financial obligations incurred by \$20,000 to \$30,000. Due to his good reputation in the business, Applicant managed to repay some of his creditors by providing services in lieu of money, but he had to borrow funds from a friend to satisfy the remainder. Also in 1995, the company for which he had been working as a contractor basis marketing director closed, leaving him without a steady income. Several personal financial accounts became delinquent as follows:

1. A revolving credit card account opened in January 1994 was charged off in January 1997 with an unpaid balance of \$8,968 (SOR subparagraph 1.a.). The creditor was awarded a civil judgment of about \$12,986 in December 1998.
2. A \$224.98 bad debt owed for wireless telephone services was charged off in March 1996.
3. Applicant stopped his monthly installment payments of \$228 for his van financed in September 1992, and he voluntarily surrendered the vehicle in 1996. The creditor demanded payment of a \$7,404.33 deficiency balance (SOR subparagraph 1.b.) after the repossession. In late September 1997, the agency assigned to collect on the debt offered to settle for \$3,713.29. Applicant did not have the funds to make the lump sum payment.
4. In September 1996, a \$389 judgment was awarded a former business customer.

1. In August 1997, an unpaid telephone services debt of \$648 was charged off when the collection agency was unable to locate Applicant.
2. In May 1998, a collection agency for an unpaid hospital debt of \$2,611 (SOR subparagraph 1.c.) demanded payment in full.
3. An \$840.84 utility bill for a property he sublet, due since December 1999, was placed for collection in late June 2001.
4. A revolving charge opened in November 1993 was past due 60 days as of November 2001, and a \$613 balance was charged off as of November 2002.
5. A business machine repair debt of \$86 was placed for collection in January 1998. As of June 2000, the debt balance with interest had reached \$218.
6. In or before mid-November 2001, a \$306.22 telephone services debt was placed for collection.

Applicant marketed other entertainers during the late 1990s while studying web technologies and interactive media. With some experience as a web consultant, he moved to his present locale in 2001 where he got a job as a sales executive for a telemarketing company only to be terminated two months later because of differences with supervisory personnel. Applicant did some freelance work in web design for some of his prior customers from May 2001 to October 2001 when he commenced work full-time for his present employer.

On November 15, 2001, Applicant executed a security clearance application (SF 86) listing the repossession of his van, unpaid judgments of \$9,000 (debt #1, above) and \$389 (debt #4), a \$300 telephone debt delinquent more than 180 days (debt #5), and a \$900 unpaid utility debt (debt #7) more than 90 days past due. A November 20, 2001, check of Applicant's credit revealed additional debts that had not been previously disclosed but were not disputed by Applicant. Several consumer credit accounts were reported as paid as agreed.

On August 21, 2002, Applicant was interviewed by a special agent of the Defense Security Service (DSS) about his financial matters. Able to live within his means until about 1995 when he lost about \$30,000 in his production of the music festival and had no steady income, Applicant acknowledged those debts listed on his credit report, with the exception of one \$389 debt that he claimed was the responsibility of a former tenant. He disputed the balances owed on debts #5 and debt #9, claiming obligations of \$300 and \$86, respectively. Applicant volunteered that he was paying the Internal Revenue Service \$100 per month toward a federal tax debt of \$2,900, and provided a financial statement showing that his monthly income exceeded monthly expenses by \$21 after payments of \$100 to the IRS and \$200 to old bills.

Sometime before November 6, 2002, Applicant retained an attorney to negotiate on his behalf with the creditor owed debt #1. On November 8, 2002, the creditor rejected a settlement offer of \$2,500 and countered with an offer to settle for a lump sum payment of \$8,500. In December 2002, Applicant satisfied in full debt #2, and settled three others; the \$613 balance owed on debt #8 with a payment of \$368, the \$647.69 on debt #5 with a payment of \$284.98, and the \$840.84 on debt #7 with a payment of \$425.92. In January 2003, Applicant satisfied debt #10 in full. Before the end of the year, he had also paid in full his income tax obligation and paid judgment debt #4.

After the creditor owed debt #1 refused to settle for \$5,000, Applicant decided to focus on his other two large debts (*see* SOR subparagraphs 1.b. and 1.c.). In January 2003 he asked his attorney to negotiate with the creditors on his behalf, and proposed settlement offers of \$1,500 for the hospital (debt #6 above) and \$1,800 for the repossession deficiency (debt #3 above).

In response to financial interrogatories from DOHA, Applicant provided in January 2004 documentation showing that he had paid in full or settled all but one of his smaller debts as well as his tax debt. He had been unsuccessful in attempts to reach the creditor reportedly owed \$218 (debt #9). Through the assistance of counsel, he hoped to settle his largest debts (#1, #3, and #6). Applicant provided a recent credit report showing he was continuing to pay his financial obligations on time, although his financial statement reflected he had nothing left over each month after expenses and debt payments totaling \$400.

On July 9, 2004, DOHA issued an SOR to Applicant, alleging the three unresolved large debts. Between late December 2003 and mid-July 2004, Applicant deposited \$6,500 in a trust account held by his attorney for disbursement to his creditors. On July 21, 2004, the attorney managed to settle the \$8,534.39 owed on debt #3 for \$2,500. The following day, the \$2,513 owed on debt #6 was settled for \$1,875.

As of October 2004, the attorney was continuing to represent Applicant in negotiations with the creditor owed debt #1. Applicant had \$2,105 left on deposit in the trust account that could be paid to this creditor. Applicant intends to pay the entire balance off over time if the creditor refuses to accept a lesser amount in settlement.

As of early December 2004, Applicant had only two active credit card accounts, one of which had a credit balance of \$1,500 that would soon double due to holiday gifts. He created a music compact disc for Christmas presents at duplication and shipment costs to him of \$1,500 hoping to recoup the costs. He plans to distribute the CD through his business account that he maintains to track income from side jobs building websites.

Applicant lives with his life partner, who shares the household expenses. She is a nurse employed by a local veterans hospital. They have a son born to them in August 2003.

Applicant has proven to be an exceptional worker since his hire by the defense firm in October 2001, and he is held in high regard by his employer. The vice president of the government services division considers Applicant's tenure to have been remarkable, with his accomplishments having had a "far-reaching effect throughout the United States Navy submarine community." Out of 100+ employees, Applicant is the one whose services are sought because of his devotion, accuracy, and leadership.

## **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 with the national interest to do so." Exec. Or. 10865, *Safeguarding Classified Information within 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.

Enclosure 2 of the Directive sets forth personnel security guidelines, as well as the disqualifying conditions (DC) and mitigating conditions (MC) under each guideline. 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. 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.

## **CONCLUSIONS**

Having considered the evidence of record in light of the appropriate legal precepts and adjudicative guidelines, and having assessed the credibility of those who testified, I conclude the government established its case under guideline F, but Applicant has mitigated the concerns by his efforts to satisfy his debts since gaining full-time employment with the defense contractor in October 2001.

Under the financial considerations guideline, the security eligibility of an applicant is placed into question when the applicant is shown to have a history of excessive indebtedness, recurring financial difficulties, or a history of not meeting his financial obligations. The government must consider whether individuals granted access to classified information are because of financial irresponsibility in a position where they may be more susceptible to mishandling or compromising classified information. Applicant fell behind in his financial obligations in the mid to late 1990s. While he continued to make payments on some accounts, he could not afford to continue his car payments, and he voluntarily surrendered his van, leaving him with a deficiency balance of more than \$7,000. Another creditor secured a judgment of about \$12,986 in December 1998. A hospital placed two debts in collection totaling about \$2,600. In addition, Applicant owed back federal income taxes of about \$2,900, and several delinquent smaller debts totaling about \$2,800. Disqualifying conditions (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*, must be considered in evaluating Applicant's current security suitability.

In mitigation, Applicant's financial delinquencies were not due to deliberate disregard of his creditors, but instead to an unanticipated business loss of between \$20,000 and \$30,000 and lack of steady income after 1995. Having successfully produced a music festival under contract for a company the year before, Applicant could not have foreseen the extent of the loss the next year. While some of his creditors accepted services in lieu of cash, he had to borrow to pay others. The closure of the family-owned holding company for which he did marketing work was not within his control. Mitigating condition (MC) E2.A6.1.3.3., *The conditions that resulted in the behavior were largely beyond the person's control*, applies.

Although there are extenuating circumstances with regard to incurring the debt, Applicant was unquestionably seriously overextended as of October 2001 when he commenced his employment with the defense contractor, and therefore at risk of having to engage in illegal acts to generate funds. As of his DSS interview in August 2002, he had taken little action to address his old debts, although to his credit he was making \$100 monthly payments to the IRS. However, since late 2002 he has sufficiently demonstrated his resolve to repay his obligations to credit him under MC E2.A6.1.3.6., *The individual initiated a good-faith effort to repay overdue creditors or otherwise resolve debts*. Applicant paid in full or satisfied debts #2, #5, #7, and #8 in December 2002 and he had hired an attorney to negotiate with the creditor owed debt #1. In 2003, he paid off his federal tax debt, and satisfied judgment debt #4 and debt #10. He attempted to reach the creditor owed debt #9 but was unsuccessful. In July 2004, his attorney settled on his behalf debts #2 and #6. Although his largest debt (debt #1) remains unpaid, it is because he cannot afford to make the lump sum payment. He has \$2,105 left on deposit in the trust account held by his lawyer to be devoted to this old debt and credibly testified to an intent to make payments to the creditor if the latter is unwilling to settle for less than the full balance.

The Directive does not require that an applicant be free of debt before he or she can be granted access. Under the "whole person" concept to be applied in security clearance adjudications, a person is to be viewed by the totality of their acts and omissions. Applicant showed that he takes his financial obligations seriously. He could have walked away from his business debts by filing for bankruptcy in the late 1990s, but instead chose to repay his obligations, borrowing funds to repay those who demanded payment in kind. As reflected in his credit reports, several consumer credit accounts are

rated "pays as agreed." While he has clearly benefitted from some creditors accepting less than the full balances owed, his financial situation is under control to where he presents little risk, if any, of engaging in illegal or improper acts because of financial pressures. With his life partner sharing household expenses, Applicant has been able to repay enough of his debt to find for him with respect to subparagraphs 1.a., 1.b., and 1.c., despite debt #1 remains unresolved.

## **FORMAL FINDINGS**

Formal Findings as required by Section 3., Paragraph 7 of Enclosure 1 to the Directive are hereby rendered as follows:

Paragraph 1. Guideline F: FOR THE APPLICANT

Subparagraph 1.a.: For the Applicant

Subparagraph 1.b.: For the Applicant

Subparagraph 1.c.: 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.

**Elizabeth M. Matchinski**

**Administrative Judge**



1.