

KEYWORD: Financial

DIGEST: Financially overextended after they bought a home, Applicant and his wife were given a fresh start with a bankruptcy discharge in May 1992. In January 1997, Applicant's vehicle was voluntarily repossessed when he could not afford the payments, as he had to pay \$10,000 in legal fees to defend his spouse who had driven under the influence. With a marital separation in August 1999, Applicant incurred a child support obligation of \$221 per week. A strike at work from July 2000 to October 2000 and subsequent employment termination until April 2001 substantially reduced his income to where he could not afford to make payments on several accounts. He has satisfied a federal income tax debt of \$2,000, and brought his car loan and child support current, but has five unpaid delinquent accounts on which he owes a total of \$10,437. Financial considerations concerns raised by these delinquent debts are mitigated by the fact they were incurred largely due to factors beyond his control, he is currently living within his means, and plans to satisfy these debts once his automobile loan is paid off in February 2005. Clearance is granted.

CASENO: 03-17743.h1

DATE: 02/07/2005

DATE: February 7, 2005

---

In Re:

-----

SSN: -----

Applicant for Security Clearance

---

ISCR Case No. 03-17743

**DECISION OF ADMINISTRATIVE JUDGE**

**ELIZABETH M. MATCHINSKI**

**APPEARANCES**

**FOR GOVERNMENT**

James B. Norman, Esq., Department Counsel

**FOR APPLICANT**

*Pro Se*

**SYNOPSIS**

Financially overextended after they bought a home, Applicant and his wife were given a fresh start with a bankruptcy discharge in May 1992. In January 1997, Applicant's vehicle was voluntarily repossessed when he could not afford the payments, as he had to pay \$10,000 in legal fees to defend his spouse who had driven under the influence. With a marital separation in August 1999, Applicant incurred a child support obligation of \$221 per week. A strike at work from July 2000 to October 2000 and subsequent employment termination until April 2001 substantially reduced his income to where he could not afford to make payments on several accounts. He has satisfied a federal income tax debt of \$2,000, and brought his car loan and child support current, but has five unpaid delinquent accounts on which he owes a total of \$10,437. Financial considerations concerns raised by these delinquent debts are mitigated by the fact they were incurred largely due to factors beyond his control, he is currently living within his means, and plans to satisfy these debts once his automobile loan is paid off in February 2005. Clearance is granted.

**STATEMENT OF THE CASE**

On February 17, 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 February 27, 2004, Applicant filed his response to the SOR and requested a hearing before a DOHA Administrative Judge. The case was assigned to me on June 8, 2004, and pursuant to notice of June 10, 2004, a hearing was scheduled

for July 7, 2004. At the hearing held as scheduled, four Government exhibits and one Applicant exhibit were admitted into evidence. Applicant, his union's business manager, and two coworkers who had served as union officials in the past, testified as reflected in a transcript received July 20, 2004.

## FINDINGS OF FACT

DOHA alleges financial considerations concerns because of financial delinquencies (aggregate outstanding indebtedness of \$10,437 in collection or written off by creditors, a car loan delinquent thirty days as of December 2003, and a reported monthly net remainder of \$95 with no payments made on the accounts charged off or in collection) after a 1992 discharge in bankruptcy. Applicant admits the indebtedness, indicating he might owe one month of late charges on his auto loan having paid the other late charges. 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 46-year-old shipper/receiver for a defense contractor. Initially employed in June 1978, Applicant has been suspended from work three times, in 1990 following a year and a half of medical leave, for one day in 1998 for distributing union flyers at work, and from October 2000 to April 2001 for strike-related activities. He filed grievances on each occasion and was reinstated each time without loss of benefits. Applicant seeks to retain a confidential-level security clearance.

In September 1986, Applicant married a woman who worked as a solderer for the defense contractor. In about 1989, they purchased a home, obtaining a primary mortgage from a financial institution that unbeknownst to them had engaged in fraudulent business practices involving their mortgage and about 40 others in the area. <sup>(2)</sup> Two or three years later, Applicant was notified of a federal criminal investigation against the bank and others involved. Applicant and several other buyers hired an attorney to represent their interests, including against the builder who initially held the second mortgages. During the pendency of litigation, Applicant continued to pay \$1,200 per month while others stopped making their mortgage payments. Financially overextended due to car loans and their house payment, but not wanting the mortgage lenders to proceed against his elderly parents who had initially cosigned on his mortgage loans, Applicant and his spouse filed for Chapter 7 bankruptcy in December 1991, listing a \$4,600 joint debt secured by a chattel lien of \$200, a primary mortgage of \$112,000, a second mortgage of \$27,275 (disputed), a \$5,597.68 car loan, and \$7,080.48 in unsecured debt. They were granted a discharge in May 1992, but reaffirmed the debt on their home. With the government takeover of the bank holding the primary mortgage, the primary mortgages were sold in a block, and Applicant was offered his home at \$69,000. He continued to pay on this mortgage but there was a lien on the property because of this second mortgage. For a couple of years, the family was financially stable, and Applicant purchased a Camaro.

Sometime in the mid-1990s, Applicant's spouse was arrested for driving under the influence of alcohol. Applicant incurred about \$10,000 in legal fees and other costs for her defense and she lost her license. She had to rely on family and friends to get her to her job with the defense contractor located in a neighboring state. After about a year, she took a

buyout from the defense contractor and began working as an electronics tester nearer to her home with a consequent reduction in the family's annual income of almost \$40,000. In about January 1997, Applicant's Camaro was repossessed as he could not afford the payments (not alleged in SOR).

In August 1999, Applicant and his spouse separated.<sup>(3)</sup> Applicant and his spouse arranged through the state for him to pay \$221 per week in child support for their three children born in 1987, 1989, and 1993. Applicant moved in with his mother, who has since allowed him to live with her rent free. His spouse, who remained in the marital home, was unable to refinance the mortgage because of the outstanding second mortgage and she stopped making payments. The house was eventually foreclosed on in about 2003.

In August 2000, Applicant went on strike from his defense job. Without an income for the first few weeks, he and other strikers were then allowed to collect unemployment compensation, which for Applicant was less than what he had been making as a shipper. A third of his compensation was taken by the state and applied to his child support. The strike ended six weeks later in early October 2000, with the company promising the union that no disciplinary action would be taken against any of the employees who took part in strike activities. One week later Applicant, a union steward especially committed to his local unit, was terminated from his employment for allegedly making threatening remarks to a coworker who crossed their picket line. Pending resolution of his grievance against the company, which went to a step 5 grievance, Applicant collected unemployment compensation and performed part-time (no more than 15 hours per week) janitorial duties for the union, although his income was "far short" of what he had made on a regular basis. With the assistance of the international union, Applicant was reinstated in April 2001 to his job and position of union steward with full benefits but no back pay.

On his return to work, Applicant had to repay the arrearage on his child support that had accumulated when he was out of work. He also arranged with the Internal Revenue Service to repay a \$2,000 federal income tax obligation for 2000 at \$100 per month. Applicant owed the IRS because he had to file separately from his spouse and she claimed the deductions for their three children. Applicant paid on the tax debt for about a year until 2003 when his income tax refund for the previous tax year was intercepted in satisfaction of the debt. On a security clearance application completed on April 11, 2001, two days after his reinstatement, Applicant disclosed that his wages had been garnisheed in February 2000 to collect child support, his vehicle had been repossessed in 1997, and he was delinquent on a credit card (SOR 1.e.).

Due to his child support and tax payments, Applicant subsequently fell behind on other financial obligations, as follows:

<b>Debt</b>	<b>Delinquency history</b>	<b>Payment Status</b>
\$4,698 collection debt <sup>(4)</sup> (SOR 1.a.)	\$3,965 balance placed for collection Dec 02 with last activity Nov 01; Updated balance \$4,698.	Unpaid with no attempt to contact creditor or collection agency.
\$106 collection debt for beeper he had as union rep	\$106 balance placed for collection Jan 03 with last activity Dec 02.	As of Jun 03 intended to pay it. Unpaid with no effort to contact creditor or collection agency.

(SOR 1.b.)		
\$175 dental debt for son not covered by insurance (SOR 1.c.)	\$175 balance placed for collection Oct 01 with last activity Mar 01.	As of Jun 03 no intent to pay it as spouse had ignored his request to put off care to maximize insurance benefit. Unpaid with no attempt to contact creditor.
\$6,394 automobile loan (SOR 1.d.)	\$24,000 loan taken out in Jan 01 to be repaid at \$399 per month; late 30 days one time, with a loan balance \$6,394 as of Dec 03, rated as current as of Feb 04.	Making monthly payments, with final payment to satisfy the loan to be made in Feb 05.
\$1,493 credit card debt (SOR 1.e.)	Revolving charge opened Aug 97, high credit \$125. \$1,493 balance charged off as no activity since Nov 1997.	As of Jun 03 intended to pay half of joint debt. Unpaid with no attempt to contact creditor.
\$3,965 credit card debt (SOR 1.f.)	VISA card account opened Aug 00, high credit \$3,101. \$3,965 balance charged off and account closed by credit grantor as no activity since Oct 01.	As of June 03 acknowledged debt of almost \$4,000. Unpaid as of Jul 04, trying to set up repayment plan.

On June 17, 2003, Applicant was interviewed by a special agent of the Defense Security Service (DSS). Concerning his financial delinquencies, Applicant attributed them to his marital separation and child support payments. He indicated that the lender for his Camaro demanded approximately \$4,000 after the repossession that he does not intend to pay. (S) He also indicated he would not pay the \$175 dentist bill (SOR 1.c.) as his spouse had ignored his request to spread his son's orthodontic work out over two years to maximize the insurance benefit. He acknowledged his responsibility for half of the joint credit card debt (SOR 1.e.) and for the balance of his charged off VISA card debt (SOR 1.f.) and the \$106 in collection for the beeper, but maintained he was unable at the time to satisfy the accounts. Applicant provided a personal financial statement listing a monthly net remainder of \$95 after payment of expenses (\$0 for rent as he was living with his mother) and his car loan (SOR 1.d.). He reported \$1,200 in savings, but no payments on any of his delinquent accounts.

Applicant's spouse is currently unemployed and making no payments on their joint debt. They remain separated and Applicant plans to file for divorce. As of July 2004, Applicant's take-home pay after deductions for taxes, insurance, medical (including for his children), and child support was \$325 per week. Out of the \$1,300, he was making his car payment of \$399 per month (SOR 1.d.). The automobile loan of \$24,000, opened in January 2000 for the purchase of a Cavalier, is scheduled to be paid off in February 2005. He also gives his brother \$120 every three months to pay for his mother's new furnace. He has \$300 on deposit in his checking account and little or no savings, as he had used his savings to pay off several small bills. As soon as his car is paid off, he intends to contact a consumer credit counseling service for assistance in resolving the financial issues.

The union's business manager is aware of the circumstances that led to Applicant's strike activities, subsequent termination from work, and reinstatement. He is of the opinion that the company is likely to "come down hard" on Applicant if there are any problems at work because of Applicant's commitment to the union. This union official has no concerns about Applicant's personal integrity even knowing that Applicant has some unpaid credit card debt. An assembly worker for the defense contractor, who worked alongside Applicant at one point and also served as a local union official, has found Applicant to be "straightforward, very honest, passionate, perhaps to a fault even, about the things that he believes in." Applicant has expressed to him a desire to pay his outstanding debts without resorting to bankruptcy. Another coworker familiar with Applicant's personal situation attributes Applicant's difficulties to his

marital separation and lack of income when he was out of work. He has found Applicant to be a concerned father to his children.

## 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.

Considering the evidence as a whole, the following adjudicative guidelines are the most pertinent to this case:

### Guideline F

#### Financial Considerations

E2.A6.1.1. The Concern: An individual who is financially overextended is at risk of having to engage in illegal acts to generate funds. Unexplained affluence is often linked to proceeds from financially profitable acts.

E2.A6.1.2. Conditions that could raise a security concern and may be disqualifying include:

E2.A6.1.2.1. A history of not meeting financial obligations;

E2.A6.1.2.3. Inability or unwillingness to satisfy debts.

E2.A6.1.3. Conditions that could mitigate security concerns include:

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).

## 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 following with respect to guideline F:

Under Guideline F, 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. The Government has established its case under guideline F. Although both Applicant and his spouse were employed by the defense contractor, they became financially overextended after they bought a home in 1989. In an effort to save their home, they obtained a Chapter 7 discharge in bankruptcy in 1992. While disputing the validity of a second mortgage on the property due to fraudulent lending practices, Applicant continued to make his house payment as he feared adverse action would be taken against his elderly parents, who had cosigned on the loans. However, with some \$10,000 in legal fees and costs incurred after his spouse was involved in drunk driving, Applicant could no longer afford his car payments. In about January 1997, his Camaro was repossessed with the lender claiming an unpaid \$4,000 deficiency balance on the loan. That November, a joint credit card debt of \$1,493 was charged off.

After Applicant and his spouse separated in August 1999, he opened a VISA card account in August 2000 on which he ran up an unpaid balance of \$3,965. Another delinquent credit card debt of \$4,698 was placed for collection in

December 2002. Two minor debts of \$175 for his son's orthodontic work and \$106 for a beeper were placed for collection due to nonpayment. Disqualifying conditions 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.

The existence of any financial delinquency, especially following a bankruptcy discharge, warrants close scrutiny, as it could indicate poor judgment and disregard of legitimate obligations. In this case, Applicant's financial solvency since the bankruptcy has been negatively affected by circumstances beyond his control (*see* mitigating condition E2.A6.1.3.3.). His spouse's driving under the influence had consequences beyond the \$10,000 in legal fees for her defense. Subsequent transportation difficulties led her to take a job near their home, which meant a substantial reduction (about \$40,000 less annually) in the household income. On their marital separation, Applicant incurred a child support obligation of \$221 per week. The next year, his spouse refused to file taxes jointly, and claimed their three children as her dependents on her return. This left Applicant with an underpayment of his individual income taxes by some \$2000. At the same time, Applicant's income was significantly reduced by the strike and his termination without pay pending his grievance action. Applicant's passion about the strike apparently got the better of his judgment on the picket line, but he was never arrested, and the decision to strike was not his alone.

On his return to work in April 2001, the child support arrearage and income tax debt understandably took priority. To his credit, Applicant brought his child support current, and he made payments totaling \$1,200 to the IRS until his refund was intercepted in full satisfaction. He has been 30 days late once on his automobile loan opened in January 2000 before he went on strike at work, but has otherwise been current in his payments. He reported \$1,200 in savings as of June 2003, which was what remained of his income tax refund after interception in satisfaction of his federal tax debt, but the funds went to repay debts other than the delinquencies listed in the SOR. As of July 2004, he did not have the funds available to satisfy all of the debts listed in the SOR.

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 after his 1992 bankruptcy that he could handle his financial matters responsibly until his spouse lost her license and had to take a position at significantly less wages. He continued to make his house payments even though others similarly victimized had stopped making their payments. There is no evidence Applicant continues to incur credit card debt, and he does not live a lavish lifestyle. While he does not pay his mother rent, he contributes to food costs and pays \$120 every three months for her furnace. His gross income has increased by \$220 monthly from what he reported in June 2003. While this suggests he should have the funds available to pay off the \$106 collection debt for the beeper without jeopardizing his finances, he testified he has only \$300 in checking at present and no savings to speak of. With the payoff of his car loan in February 2005, Applicant will have \$399 more available each month to satisfy his creditors, none of whom have contacted Applicant in the past year. The salient issue is whether he can be counted on to follow through on his stated intent to seek the assistance of a debt counselor. Coworkers and union members who know him attest to his personal integrity. Applicant is not likely to jeopardize the job he has held for some 25 years (and the financial means to support his children) by failing to take action to address his old debts once he has the means to do so.



## **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

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

## **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. '

2. Applicant testified the bank had covered the second mortgage to make it appear that the buyers had made down payments on the properties. (Tr. 41)

3. A witness for Applicant testified that excessive consumption of alcohol by Applicant's spouse was a factor in Applicant's marital separation. (Tr. 110)

4. Applicant assumes it is a credit card debt. (Tr. 29) He has made no attempt to contact the creditor or collection agency.

5. Applicant's February 2004 credit report does not include the car loan for the Camaro or any deficiency balance following repossession. The automobile loan of \$24,000 opened in January 2000 with a balance of \$6,394 is for his present vehicle. Applicant's credit report also includes a November 1994 auto loan for \$15,000 with a zero balance, which was for a 1994 Topaz that was paid off when he traded in that car for his present vehicle. (Tr. 71-73)