

KEYWORD: Financial; Personal Conduct

DIGEST: Applicant owed six debts totaling approximately \$15,800. He has paid four of the debts and is making monthly payments on the remaining two debts. The record evidence is sufficient to mitigate or extenuate the negative security implications stemming from Applicant's financial considerations. Clearance is granted.

CASENO: 03-17766.h1

DATE: 02/23/2005

DATE: February 23, 2005

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In Re:

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SSN: -----

Applicant for Security Clearance

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ISCR Case No. 03-17766

**DECISION OF ADMINISTRATIVE JUDGE**

**CLAUDE R. HEINY**

**APPEARANCES**

**FOR GOVERNMENT**

Edward W. Loughran, Department Counsel

## **FOR APPLICANT**

*Pro Se*

### **SYNOPSIS**

Applicant owed six debts totaling approximately \$15,800. He has paid four of the debts and is making monthly payments on the remaining two debts. The record evidence is sufficient to mitigate or extenuate the negative security implications stemming from Applicant's financial considerations. Clearance is granted.

### **STATEMENT OF THE CASE**

On June 9, 2004, the Defense Office of Hearings and Appeals (DOHA) issued a Statement of Reasons (SOR) to Applicant, stating that DOHA could not make the preliminary affirmative finding [\(1\)](#) it is clearly consistent with the national interest to grant or continue a security clearance for Applicant. On July 5, 2004, Applicant answered the SOR and requested a hearing. On September 1, 2004, I was assigned the case. On September 23, 2004, I convened a hearing in this matter. On October 4, 2004, the transcript (tr.) of the hearing was received. The record was kept open to allow Applicant to submit additional documents, which were received on October 4, 2004. Department Counsel (DC) having no objection, the documents were admitted into evidence.

### **FINDINGS OF FACT**

The SOR alleges Financial Considerations and Personal Conduct. After thorough review of the whole record, I make the following findings of fact:

The Applicant is 54 years old, has worked for a defense contractor since January 1998, and is seeking to obtain security clearance.

The Applicant is regarded by those who know him as dedicated, professional, dedicated, and diligent. He has received numerous certificates of appreciation.

The SOR lists six debts totaling just under \$16,000. Four of the debts have been paid. He has arranged payment on two others. A summary of the Applicant's debts follows:

	Creditor	Amount	Current Status
1.a	Dentist bill	\$490	Paid (App Ex A)
1.b	Telephone bill	\$567	Paid. (App Ex A)
1.c	Home Security debt	\$177	Payment arrangement has been reached. (App Ex A)
1.d	Bank credit cards	\$2,035	Paid. (App Ex A)
1.e	Cosigned on son's auto loan. The vehicle was repossessed in 2003.	\$12,099	Payment arrangement has been reached.
1.f	Auto debt	\$459	Paid. (App Ex A) Vehicle was totaled in an October 2000 accident.
	Total debt alleged in SOR	\$15,827	

In April 1993, Applicant retired as an E-7 from the U.S. Army after 22 years of service. His monthly income decreased drastically upon retirement. His wife was not working and he was only able to obtain minimum wage jobs. Even with a second job, he fell behind on his house and car payments. On September 14, 1994, Applicant filed for bankruptcy protection under the Wage Earner's Plan, Chapter 13. The plan required \$210 monthly payments. Applicant fulfilled all requirements under the plan and the plan was concluded on August 14, 1997, Applicant having paid \$8,200. In September 2000, Appellant completed a Security Clearance Application, Standard Form (SF) 86. In response to Question 33 Appellant failed to indicate he had filed for bankruptcy in 1994. He states his failure to list his bankruptcy was an oversight. He thought his bankruptcy had occurred more than seven years prior to his completion of the form.

In response to SF 86 question 38 Appellant failed to indicate he had ever been more than 180 days delinquent on any debt. In response to Question 39, he failed to indicate he was currently more than 90 days delinquent on any debt. He did not list any delinquency because he was not behind on his debts when he completed his SF 86. (tr. 27)

Applicant activated a home security service at his new home. He was unsatisfied with the service and had the service disconnected. He was unaware he was under a two-year service contract. He has made the following payments on this debt: \$161.21 in July 2004 and \$100 in August 2004. He has agreed to make \$100 per month payments until the \$500 balance has been paid.

In March 2000, Applicant cosigned on his then 20 year old son purchased of a 2000 automobile. In April 2003, the vehicle was repossessed. Applicant found out about the repossession three or four months after it occurred. In July 2004, Applicant's son agreed to repay the \$11,622.54 debt at a rate of \$50 per month. (App Ex Item 7) In September 2004 and October 2004, Applicant's wife made two payments of \$50.00 each on this debt and is continuing to make payments on this debt. (App Ex A)

Applicant's has \$9,771.24 in mutual funds and \$678.12 in another retirement account. Applicant has a mortgage payment, which is paid directly out of his retirement pay and two car payments, on which he has never missed a payment. He has no credit cards. His household income for last year was approximately \$58,000.

## **POLICIES**

The Adjudicative Guidelines in the Directive are not a set of inflexible rules of procedure. Instead they are to be applied by Administrative Judges on a case-by-case basis with an eye toward making determinations that are clearly consistent with the interests of national security. In making overall common sense determinations, Administrative Judges must consider, assess, and analyze the evidence of record, both favorable and unfavorable, not only with respect to the relevant Adjudicative Guidelines, but in the context of factors set forth in section E 2.2.1. of the Directive. The government has the burden of proving any controverted fact(s) alleged in the SOR, and the facts must have a nexus to an Applicant's lack of security worthiness.

The adjudication process is based on the whole person concept. All available, reliable information about the person, past and present, is to be taken into account in reaching a decision as to whether a person is an acceptable security risk. Although the presence or absence of a particular condition for or against clearance is not determinative, the specific adjudicative guidelines should be followed whenever a case can be measured against this policy guidance.

## **BURDEN OF PROOF**

As noted by the United States Supreme Court in *Department of Navy v. Egan*, 484 U.S. 518, 528 (1988), "no one has a 'right' to a security clearance." 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 restricted eligibility for access to classified information to "United States citizens . . . whose personal and professional history affirmatively indicates loyalty to the United States, strength of character, trustworthiness, honesty, reliability, discretion, and sound judgment, as well as freedom from conflicting allegiances and potential for coercion, and willingness and ability to abide by regulations governing the use, handling, and protection of classified information." Executive Order 12968, *Access to Classified Information* § 3.1(b) (Aug. 4, 1995). Eligibility for a security clearance is predicated upon the applicant meeting the security guidelines contained in the Directive.

Initially, the Government must establish, by substantial evidence, that conditions exist in the personal or professional history of the applicant which disqualify, or may disqualify, the applicant from being eligible for access to classified information. *See Egan*, 484 U.S. at 531. All that is required is proof of facts and circumstances which indicate an applicant is at risk for mishandling classified information, or that an applicant does not demonstrate the high degree of judgment, reliability, or trustworthiness required of persons handling classified information. Where the facts proven by the Government raise doubts about an applicant's judgment, reliability or trustworthiness, then the applicant has the ultimate burden of establishing his security suitability with substantial evidence in explanation, mitigation, extenuation, or refutation, sufficient to demonstrate that despite the existence of guideline conduct, it is clearly consistent with the national interest to grant or continue his security clearance.

Security clearances are granted only when "it is clearly consistent with the national interest to do so." *See* Executive Orders 10865 § 2 and 12968 § 3.1(b). "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 "The clearly consistent standard indicates that security clearance determinations should err, if they must, on the side of denials." *See Egan*, 484 U.S. at 531. Doubts are to be resolved against the applicant.

## CONCLUSIONS

The Government has satisfied its initial burden of proof under Guideline F, (Financial Considerations). A person's relationship with his creditors is a private matter until evidence is uncovered demonstrating an inability or unwillingness to repay debts under agreed upon terms. Under Guideline F, an Applicant is not required to be debt free, but is required to manage his finances so as to meet his financial obligations. For an applicant who is financially overextended is at risk of having to engage in illegal acts to generate funds. Directive E.2.A.6.1.1. Absent evidence of strong extenuating or mitigating circumstances, an applicant with a history of serious or recurring financial difficulties is in a position of risk that is inconsistent with the holding of a security clearance. The Applicant owed six debts totaling approximately \$15,800. Disqualifying Conditions (DC) 1. (E2.A6.1.2.1. *A history of not meeting financial obligations.*) and 3. (E2.A6.1.2.3. *Inability or unwillingness to satisfy debts.*) apply.

Applicant has paid four of the debts (SOR paragraphs 2b, 2.c, and 2.d), is making \$100 monthly payments on one debt

of \$500, and his wife is paying \$50 monthly payments on their son's auto repossession debt of \$11,622.54. Mitigating Conditions (MC) 6. (E2.A6.1.3.6. *The individual initiated a good-faith effort to repay overdue creditors or otherwise resolve debts.*) applies. Additionally, Applicant has more than \$10,000 in mutual funds and retirement account. I find for Applicant as to financial considerations.

Under Guideline E, the security eligibility of an applicant is placed into question when that applicant is shown to have been involved in personal conduct which creates doubt about the person's judgment, reliability, and trustworthiness. Complete honesty and candor on the part of applicants for access to classified information is essential to make an accurate and meaningful security clearance determination. Without all the relevant and material facts, a clearance decision is susceptible to error, thus jeopardizing the nation's security.

The allegations under Guideline E, (Personal Conduct) are unfounded. The Government has shown Applicant's answer to questions 33, 38, and 39 were incorrect, but this does not prove the Applicant deliberately failed to disclose information about his finances. In September 2000, when Applicant completed his SF 86 he failed to list his Chapter 13 bankruptcy filed in September 1994 and did not list any debts as being delinquent. Question 33 asks about bankruptcy petition was filed within the previous seven years. Applicant had actually filed six years previously, but thought he had filed more than seven years ago and was, therefore, outside the scope of the question.

The Applicant has denied intentional falsification. Deliberate omission, concealment, or falsification of a material fact in any written document or oral statement to the Government when applying for a security clearance is a security concern. But every inaccurate statement is not a falsification. A falsification must be deliberate and material. It is deliberate if it is done knowingly and willfully. An omission concerning bankruptcy filing is not deliberate if the person thought the filing was more than seven years when it was only six and therefore did not put it on his form.

At the time he completed his SF 86, he was not delinquent on any debt. He did not believe he was currently more than 90 days delinquent nor had ever been more than 180 days delinquent on any debt. His answers to questions 38 and 39 were not deliberate omissions, concealment or falsifications. I find for Applicant as to Personal Conduct, SOR subparagraph 2.

In reaching my conclusions I have also considered: the nature, extent, and seriousness of the conduct; the Applicant's age and maturity at the time of the conduct; the circumstances surrounding the conduct; the Applicant's voluntary and knowledgeable participation; the motivation for the conduct; the frequency and recency of the conduct; presence or absence of rehabilitation; potential for pressure, coercion, exploitation, or duress; and the probability that the circumstance or conduct will continue or recur in the future.

I have weighed the record evidence as a whole, and concluded the favorable evidence has mitigated the security concerns. Under the totality of the facts and circumstances, I conclude Applicant has met his burden.

## **FORMAL FINDINGS**

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

Paragraph 1 Financial Considerations: 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

Paragraph 2 Personal Conduct: FOR THE APPLICANT

Subparagraph 2.a.: For the Applicant

Subparagraph 2.b.: For the Applicant

Subparagraph 2.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 the Applicant. Clearance is granted.

**Claude R. Heiny**

**Administrative Judge**

1. Required by Executive Order 10865, as amended, and Department of Defense Directive 5220.6 (Directive), dated January 2, 1992, as amended.