

KEYWORD: Financial

DIGEST: Applicant owes nearly \$70,000 in delinquent debt consisting of four unpaid credit card accounts. After receiving the SOR, Applicant acted to pay, settle, or otherwise resolve the debts. However, because the accounts have gone unpaid since 1996, his inaction has resulted in a 45% increase in the original amounts owed due to accrual of interest. His inaction until confronted with the security clearance ramifications of his financial problems also undermines the government's confidence he will avoid similar problems in the future. Clearance is denied.

CASENO: 03-18172.h1

DATE: 06/29/2005

DATE: June 29, 2005

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In Re:

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SSN: -----

Applicant for Security Clearance

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ISCR Case No. 03-18172

**DECISION OF ADMINISTRATIVE JUDGE**

**MATTHEW E. MALONE**

**APPEARANCES**

**FOR GOVERNMENT**

Juan J. Rivera, Esquire, Department Counsel

**FOR APPLICANT**

*Pro Se*

**SYNOPSIS**

Applicant owes nearly \$70,000 in delinquent debt consisting of four unpaid credit card accounts. After receiving the SOR, Applicant acted to pay, settle, or otherwise resolve the debts. However, because the accounts have gone unpaid since 1996, his inaction has resulted in a 45% increase in the original amounts owed due to accrual of interest. His inaction until confronted with the security clearance ramifications of his financial problems also undermines the government's confidence he will avoid similar problems in the future. Clearance is denied.

**STATEMENT OF THE CASE**

After reviewing the results of Applicant's background investigation, adjudicators for the Defense Office of Hearings and Appeals (DOHA) were unable to make a preliminary affirmative finding<sup>(1)</sup> it is clearly consistent with the national interest to give Applicant a security clearance. On June 15, 2004, DOHA issued to Applicant a Statement of Reasons (SOR) alleging facts that raise security concerns addressed in the Directive under Guideline F (financial considerations). Applicant timely answered the SOR (Answer), admitted the allegations, and requested a hearing.

I convened a hearing on December 15, 2004. The parties appeared as scheduled and the government presented five exhibits (GE 1 through 5), which were admitted without objection. Applicant testified, presented the testimony of three other witnesses, and proffered five exhibits (AE A through E), which were admitted without objection. DOHA received the transcript (Tr) on December 30, 2004. Issuance of this decision was delayed due to an unusually heavy caseload.

**FINDINGS OF FACT**

After a thorough review of the pleadings, transcript, and exhibits, I make the following essential findings of fact:

Applicant is 33 years old and employed by a defense contractor as an electronic technician, a position for which he needs a security clearance. On April 25, 2002, he submitted a security clearance application (SF 86) to initiate the background investigation needed to assess his suitability for access to classified information. In the SF 86, Applicant disclosed he has had debts greater than 180 days past due, one of which had been reduced to a judgment. The subsequent investigation by the Defense Security Service (DSS) showed Applicant incurred four delinquent credit card accounts totaling nearly \$39,000. As of the date of the hearing, these accounts had been unaddressed since the 1995/1996 time frame. Applicant has acknowledged his debts are the result of his own abuse of available credit.

The debt listed at SOR ¶1.a was reported in Applicant's credit history as about \$7,700. However, after receiving the SOR, Applicant contacted the bank that issued the credit card and learned that the interest accrued since it became delinquent has increased the debt to about \$37,000. Applicant has arranged for a settlement payment of about \$22,000.

The debt listed at SOR ¶1.b was reported in Applicant's credit history as about \$8,600. After receiving the SOR, Applicant contacted the creditor and learned this account, too, had increased due to interest accrual to about \$9,800. Applicant has arranged for a settlement payment of about \$4,000. Applicant still owes debts for about \$14,800 and \$7,400 as listed at SOR ¶¶1.c and 1.d, respectively.

The aforementioned credit cards were all cancelled by 1997. Applicant has not held a credit card since then, but, until just before the hearing, had taken no action to pay or otherwise settle the delinquent accounts. Applicant recently refinanced his home mortgage, resulting in approximately \$47,000 in funds available to pay the aforementioned debts. Given the settlement amounts for the debts at SOR ¶¶ 1.a and 1.b, Applicant will be able to pay most, if not all of the listed delinquencies. As of the hearing in this matter, Applicant had not yet closed on the refinanced mortgage, but was scheduled to do so the next day.

Applicant's financial problems began in 1991 when, acting on advice he received at a real estate investment seminar, he obtained the maximum available cash advances from each of his credit cards to finance his investment activities. He also followed advice from the seminar showing how he could use one credit card to pay another and, in paying only the minimum monthly payments, maintain his available cash for real estate purchases. Applicant also acknowledges some of the balances on these cards resulted from his overspending using available credit.

In 1996, after his balances had grown for five years through interest accrual and no more than minimum payments made, he was laid off (subject to periodic recall) from his job and took a lesser paying job selling alarm systems. Between 1996 and 1997, Applicant alternated between selling alarms and returning to his previous employer for

temporary stints in his old position. Since about November 1997, Applicant has been steadily employed by defense contractors as an electronics technician.

Applicant was interviewed by a Defense Security Service (DSS) agent in April 2003, after which he submitted a sworn, written statement regarding his finances. The statement included a personal financial statement (PFS) showing his income, expenses, debts, and other assets and liabilities. His overall financial status is roughly the same now as it was then, but the terms of his planned refinancing will lower his monthly mortgage payment by almost \$100 resulting in slightly more than \$100 left over each month. The 2003 PFS did not reflect that Applicant was making any payments to the delinquencies alleged in the SOR.

After he was interviewed by DSS about his finances, Applicant took no action to address any of the debts he and the agent discussed. Applicant thought he could rely on being able to refinance his mortgage at that time, but had recently fallen behind on his mortgage payments and was not able to strike a satisfactory refinancing deal with the lender.

Applicant has been married to the same woman for over 22 years. He and his wife are now "empty nesters" and have lived in the same house since 1987. Applicant served in the Navy between 1979 and 1985, and was assigned to the submarine service until receiving an honorable discharge as a petty officer second class (paygrade E-5). His work as an electronic technician for his current employer has been very successful and he is well regarded by his co-workers and supervisors alike.

## POLICIES

A security clearance decision is intended to resolve whether it is clearly consistent with the national interest<sup>(2)</sup> for an Applicant to either receive or continue to have access to classified information. The government bears the initial burden of producing admissible information on which it based the preliminary decision to deny or revoke a security clearance for the Applicant. Additionally, the government must be able to prove controverted facts alleged in the SOR. If the government meets its burden, it establishes that it is not clearly consistent with the national interest for the Applicant to have access to classified information. The burden then shifts to the Applicant to refute, extenuate or mitigate the government's case. Because no one has a "right" to a security clearance, the Applicant bears a heavy burden of persuasion.<sup>(3)</sup> A person who has access to classified information enters into a fiduciary relationship with the government based on trust and confidence. The government, therefore, has a compelling interest in ensuring each Applicant possesses the requisite judgement, reliability and trustworthiness of one who will protect the national interests as his or her own. The "clearly consistent with the national interest" standard compels resolution of any reasonable doubt about an Applicant's suitability for access in favor of the government.<sup>(4)</sup>

To that end, the Directive sets forth adjudicative guidelines<sup>(5)</sup> for consideration when evaluating an Applicant's suitability for access to classified information. Security clearance decisions must reflect consideration of disqualifying

and mitigating conditions under each adjudicative issue applicable to the facts and circumstances of each case. Each decision must also reflect a fair and impartial common sense consideration of the factors listed in Section 6.3 of the Directive. The presence or absence of a disqualifying or mitigating condition is not determinative of a conclusion for or against an Applicant. However, specific applicable guidelines should be followed whenever a case can be measured against them as they represent policy guidance governing the grant or denial of access to classified information. Having considered the record evidence as a whole, I conclude the relevant adjudicative guideline to be applied here is Guideline F (financial considerations).

## CONCLUSIONS

The security concern under Guideline F is that someone who is financially overextended through delinquent debt and poor personal financial management may be at risk of engaging in illegal acts to generate funds to resolve their fiscal difficulties. Here, the government's concerns about Applicant's suitability to hold a clearance are based on his record of delinquent debts totaling approximately \$70,000 that have gone unaddressed since about 1997. The government has produced sufficient admissible information through its exhibits and Applicant's admissions to support the preliminary decision as expressed in the SOR that Applicant should be denied a security clearance. Available information shows Applicant incurred his debts through abuse of personal credit over a five or six year period beginning in 1991. As of the date of the hearing, those debts had not been addressed in any constructive fashion. Guideline F disqualifying condition (DC) 1<sup>(6)</sup> and DC 3<sup>(7)</sup> apply here.

By way of mitigation or extenuation, Applicant was hampered in his ability to repay or otherwise resolve the listed debts by a periods of unemployment and underemployment in 1996 and 1997. However, this was not the cause of his financial problems nor has it been a factor since about November 1997, after which he has been steadily employed. I recognize Applicant has not had a surplus of money available to him, but he has presented nothing to suggest that he even tried to resolve his problems until presented with the SOR. Applicant avers he has arranged a refinanced mortgage and will use the equity in his house to pay the listed debts. In fact, as of this writing he may have paid them off; however, absent proof of payment and in light of nearly nine years of inaction before hearing, I am unwilling to conclude Applicant has satisfactorily addressed the government's security-related concerns about his financial condition. At this time, and given this record, I find no basis for application of any of the Guideline F mitigating conditions and conclude this guideline for the government.

I have carefully weighed all of the available evidence, and I have applied the appropriate disqualifying and mitigating conditions. Further, I have tried to make a fair and commonsense assessment of the record before me as required by Directive Section E2.2.3. Reasonable doubts persist about Applicant's ability to protect classified information and to exercise the requisite good judgment and discretion expected of one in whom the government entrusts its interests. Absent substantial information to mitigate these doubts, which Applicant has failed to provide, I cannot conclude he has overcome the government's case.

## **FORMAL FINDINGS**

Formal findings regarding each SOR allegation are as follows:

Paragraph 1, Guideline F (Financial): AGAINST THE APPLICANT

Subparagraph 1.a: Against the Applicant

Subparagraph 1.b: Against the Applicant

Subparagraph 1.c: Against the Applicant

Subparagraph 1.d: Against the Applicant

## **DECISION**

In light of all the circumstances presented by the record in this case, it is not clearly consistent with the national interest to grant or continue a security clearance for the Applicant. Clearance is denied.

Matthew E. Malone

Administrative Judge

1. Required by Executive Order 10865, as amended, and by DoD Directive 5220.6 (Directive), as amended.
2. *See Department of the Navy v. Egan*, 484 U.S. 518 (1988).
3. *See Egan*, 484 U.S. at 528, 531.
4. *See Egan*; Directive E2.2.2.

5. Directive, Enclosure 2.

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

7. Directive, E2.A6.1.2.3. Inability or unwillingness to satisfy debts;