

KEYWORD: Financial

DIGEST: Applicant accrued over \$21,000 in delinquent personal debt through credit cards, retail store accounts, late mortgage payments, and car repossessions. While his financial troubles resulted in part from unexpected reduction in household income, he was also remiss in his personal financial management. Despite realizing a \$30,000 net profit from the sale of his house in 2004, he has made little voluntary progress in paying or otherwise resolving his obligations. Clearance is denied.

CASENO: 03-18778.h1

DATE: 12/05/2005

DATE: December 5, 2005

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In Re:

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SSN: -----

Applicant for Security Clearance

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ISCR Case No. 03-18778

**DECISION OF ADMINISTRATIVE JUDGE**

**MATTHEW E. MALONE**

**APPEARANCES**

**FOR GOVERNMENT**

**FOR APPLICANT**

*Pro Se*

**SYNOPSIS**

Applicant accrued over \$21,000 in delinquent personal debt through credit cards, retail store accounts, late mortgage payments, and car repossessions. While his financial troubles resulted in part from unexpected reduction in household income, he was also remiss in his personal financial management. Despite realizing a \$30,000 net profit from the sale of his house in 2004, he has made little voluntary progress in paying or otherwise resolving his obligations. 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 September 8, 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 all but three<sup>(2)</sup> of the allegations therein, and requested a hearing.

The case was assigned to me on July 21, 2005, and I convened a hearing on September 20, 2005.<sup>(3)</sup> At hearing, the government presented seven exhibits (GE 1 through 7), which were admitted without objection. Applicant testified in his own behalf and submitted one exhibit (AE A), which was admitted without objection. I left the record open after hearing to allow Applicant an opportunity to submit additional relevant evidence. Thereafter, he timely submitted a single exhibit (AE B), which was also admitted without objection. DOHA received the transcript (Tr) on September 29,

### FINDINGS OF FACT

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

Applicant is 47 years old and employed by a large defense contractor as an administrative coordinator. He was first hired in 1996 by a smaller defense contractor, which was bought by his current employer in 2000. Applicant has been married twice. The first marriage lasted from 1984 until a divorce in 1989. He has been married to his current wife since 1991. Until last year, Applicant was required to pay child support for his daughter, now 19 years old, from his first marriage.

Between 1996 and 2000, Applicant was able to work significant amounts of overtime to supplement his income. However, when his company was sold to his current employer, his overtime opportunities ceased and he realized about \$400 - \$800 in lost monthly income. Around this same time, Applicant's wife stopped working due to work-related stress. This equated to a loss of about \$1,600 in monthly income. Thereafter, his wife's income was irregular as she occasionally worked as a substitute teacher. In August 2005, Applicant's wife began a full-time teaching job, but there is no information available about her current income.

In 1996, Applicant retired from the U.S. Air Force after 20 years of honorable service. His monthly retirement pay is about \$890 after taxes. He held a security clearance in the military and has held at least a confidential clearance as a civilian since 1996. On January 10, 2001, 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 his wages were garnished to satisfy a \$2,000 tax debt, and that he had a car repossessed in August 2000, for which he owed about \$3,600. Applicant also disclosed he was more than 90 days late in paying another car loan. The ensuing investigation by the Defense Security Service (DSS) produced information to the effect Applicant owed more than \$21,000 in unpaid debt.

As alleged in SOR 1.a, 1.c, and 1.d, Applicant is or has been delinquent on three credit cards, two of which are being paid or have been satisfied through involuntary garnishment of his wages. As alleged in SOR 1.b and 1.g, Applicant owes deficiencies after re-sale of two cars repossessed for non-payment of the financing loans. Both are being or have been satisfied through wage garnishment. Applicant is paying \$100 each month for a third, voluntary car repossession (SOR 1.j) totaling about \$4,600.

Applicant also was delinquent on a furniture store account (SOR 1.h) for about \$1,800. This debt was satisfied through wage garnishment in 2004, as was a June 2004 judgment against Applicant for \$351 (SOR 1.i). A \$201 debt to an insurance company (SOR 1.f) has gone unpaid since September 2003.

Applicant discussed in detail his financial problems with a Defense Security Service (DSS) agent in a June 2003 subject interview. As part of that interview, Applicant submitted a signed, sworn statement that included a personal financial statement (PFS). The PFS showed Applicant had a negative net cash flow each month of \$600. Since then, Applicant has an additional \$252 available as he no longer pays child support. His wife's income is also higher, but it is unclear how much she now makes. Against these gains, Applicant pays about \$300 more in rent than he did in monthly mortgage payments. Based on available information, Applicant may have a positive, albeit minimal, cash flow at this time.

Applicant also fell two months behind on his mortgage in 2000. He paid off the \$3,000 (with compounded interest) arrearage (SOR 1.e) in May 2003. Applicant and his wife sold their house in September 2004, realizing \$30,000 in net profit. Of this money, Applicant and his wife used about \$4,000 to pay debts, and invested about \$10,000 in mutual funds now worth between \$500 and \$1,000. The remainder was spent in support of their children's college tuition and other educational needs. Applicant and his wife disagreed over what to do with the proceeds of their home sale, with his wife wanting to use the remaining \$15,000 or so to start a small jewelry-making business with her daughter.

### **POLICIES AND BURDEN OF PROOF**

A security clearance decision is intended to resolve whether it is clearly consistent with the national interest<sup>(4)</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>(5)</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>(6)</sup>

To that end, the Directive sets forth adjudicative guidelines<sup>(7)</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 government has presented sufficient admissible evidence to support the SOR allegations discussed above. These facts raise security concerns addressed in the Directive under Guideline F. Specifically, an applicant 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.<sup>(8)</sup> Additionally, failure to reasonably attend to personal finances may also indicate poor judgment and reliability in other facets of one's conduct. The available information here supports application of Guideline F disqualifying condition (DC) 1<sup>(9)</sup> and DC 3.<sup>(10)</sup>

Having reviewed the Guideline F mitigating conditions (MC), I conclude Applicant is entitled to some benefit from MC 3.<sup>(11)</sup> In 2000, he lost a significant portion of the pay to which he had become accustomed as well as his wife's income altogether. However, Applicant was never unemployed, and his wife was able to bring in some money from time to time. The totality of the information before me shows Applicant's financial woes, although brought on by unforeseen developments, were exacerbated and prolonged by poor financial management that could easily have been avoided or at least minimized. Any progress Applicant has made in resolving his debts is laudable; however, much of the repayment has been accomplished, not from any good-faith actions by Applicant, but through enforcement of judgments and garnished wages. Indeed, Applicant's financial difficulties could easily have been resolved with the proceeds of the sale of his home three months after he met with DSS to discuss these very issues. Available information about his current monthly finances shows he is only slightly better off now than in 2003. On balance, I conclude Guideline F against the Applicant.

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, based on information about Applicant's financial problems, about his ability to protect classified information and 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

Subparagraph 1.e: Against the Applicant

Subparagraph 1.f: Against the Applicant

Subparagraph 1.g: Against the Applicant

Subparagraph 1.h: Against the Applicant

Subparagraph 1.i: Against the Applicant

Subparagraph 1.j: 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. Applicant denied the allegations in SOR ¶¶ 1.a, 1.e, and 1.h.
3. This matter was originally set for hearing on August 17, 2005, but was continued.

4. *See Department of the Navy v. Egan*, 484 U.S. 518 (1988).
5. *See Egan*, 484 U.S. at 528, 531.
6. *See Egan*; Directive E2.2.2.
7. Directive, Enclosure 2.
8. Directive, E2.A6.1.1.
9. Directive, E2.A6.1.2.1. A history of not meeting financial obligations;
10. Directive, E2.A6.1.2.3. Inability or unwillingness to satisfy debts;
11. Directive, 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);