KEYWORD: Financial

DIGEST: Applicant is a truck driver of specialized cargo who team-drives with his wife. After she became injured on the job and he had a recurring medical problem, they were unable to work, and incurred delinquent debts. They filed for and were discharged in bankruptcy in 2000. They were debt-free until 2001 when Applicant had a heart attack, incurring large medical bills from two hospitals and a doctor for his treatment. One of the hospitals forgave his debt, and he believed this action covered the other hospital. When he learned of the continuing hospital debt, he started a payment plan. He has been paying the doctor's bill since he returned to work after the heart attack. He is saving funds to pay the debts early. He has mitigated security concerns for financial considerations. Clearance is granted.

CASENO: 05-05464.h1

DATE: 04/10/2006

DATE: April 10, 2006

In Re:

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

Applicant for Security Clearance

ISCR Case No. 05-05464

DECISION OF ADMINISTRATIVE JUDGE

THOMAS M. CREAN

<u>APPEARANCES</u>

FOR GOVERNMENT

Francisco J. Mendez, Jr., Esq., Department Counsel

SYNOPSIS

Applicant is a truck driver of specialized cargo who team-drives with his wife. After she became injured on the job and he had a recurring medical problem, they were unable to work, and incurred delinquent debts. They filed for and were discharged in bankruptcy in 2000. They were debt-free until 2001 when Applicant had a heart attack, incurring large medical bills from two hospitals and a doctor for his treatment. One of the hospitals forgave his debt, and he believed this action covered the other hospital. When he learned of the continuing hospital debt, he started a payment plan. He has been paying the doctor's bill since he returned to work after the heart attack. He is saving funds to pay the debts early. He has mitigated security concerns for financial considerations. Clearance is granted.

STATEMENT OF THE CASE

On December 12, 2005, the Defense Office of Hearings and Appeals (DOHA) issued a Statement of Reasons (SOR) detailing the basis for its decision to deny a security clearance for Applicant. The action was taken under Executive Order 10865, *Safeguarding Classified Information within Industry* (February 20, 1990), as amended, and Department of Defense Directive 5220.6, *Defense Industrial Personnel Security Clearance Review Program* (January 2, 1992), as amended (Directive). Applicant acknowledged receipt of the SOR on January 11, 2006. The SOR alleges security concerns under Guideline F (Financial Considerations) of the Directive.

Applicant answered the SOR in writing on January 11, 2006, and admitted the allegations under Guideline F. He requested a hearing before an administrative judge, and the request was received by DOHA on January 13, 2006. Department Counsel was prepared to proceed with the case on January 24, 2006. The case was assigned to another administrative judge on January 30, 2006, and reassigned to me on February 17, 2006. A notice of hearing was issued on February 17, 2006, and the hearing convened on March 20, 2006. Seven government exhibits, twelve Applicant exhibits, and the testimony of one witness and the Applicant were received during the hearing. The transcript (Tr.) was received by DOHA on March 29, 2006.

FINDINGS OF FACT

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

Applicant is 51 years old and a truck driver of specialized cargo. He teamed with his wife to drive a truck in 1996.[(1)] They incurred debt because of poor money management and increased expenses caring for family members in their home. However, they were paying their bills as agreed. His wife was injured on the job in 1997, and Applicant had recurring bouts of polio. They were unable to work or team-drive in 1999, and their debts became delinquent. On the advice of counsel, they petitioned for Chapter 7 bankruptcy and their debts were discharged on October 4, 2000. Counsel also advised them how to keep their financial situation in control.[(2)] Applicant and his wife had no debts after this time, except for a student loan they are currently paying, and have cut in half from the original debt.[(3)]

In the summer of 2001, Applicant and his wife regained their health and started driving again, this time for a different company. Three days before his new health insurance was to become effective, Applicant suffered a heart attack and was hospitalized. He was taken first to one hospital for emergency treatment, and transported to another for extended care. He incurred medical expenses not covered by insurance from both hospitals and the doctor who cared for him. The debt from one hospital for $24,000 was written off under the hospital's program where a patient is selected to have expenses forgiven. When Applicant was notified by the hospital that the debt was forgiven, he believed all of his hospital medical expenses from his heart attack were forgiven. The debt forgiveness only covered one of the hospitals and not the other. The hospitals had similar names and the confusion is understandable. The other hospital debt was for $22,000. Applicant did not learn of the outstanding hospital bill until informed by security investigators. The hospital has advised Applicant they will consider his debt as paid in full for half the amount still outstanding. He and his wife are paying some on the debt on a monthly basis and are also saving to accumulate the $11,000 necessary to pay the debt in full.[(4)]

Applicant was aware of the doctor's debt incurred for treatment of his heart attack. About four months after the heart attack, Applicant and his wife started driving again. They were paying monthly on the doctor's bill. After two years following his normal practice, the doctor turned the debt over to a collection agency, even though payments were being made. Applicant continues to pay the debt and recently received an offer from the collection agency to forgive the debt for a payment of $3,000. He is saving to make the payment and anticipates paying it in a few months.[(5)]

Applicant and his wife are again driving as a team. They have continued to pay on the student loan.[(6)] They have increased their compensation for driving specialized cargo.[(7)] They are able to save funds, purchased outright the home they were renting when it was foreclosed from the previous owner, their family members no longer live at home, and they have cut their living expenses drastically. They have no credit card or other debt and are living well within their means and continue to save money.[(8)] Applicant is highly recommended and regarded as a truck driver by his employer.[(9)]
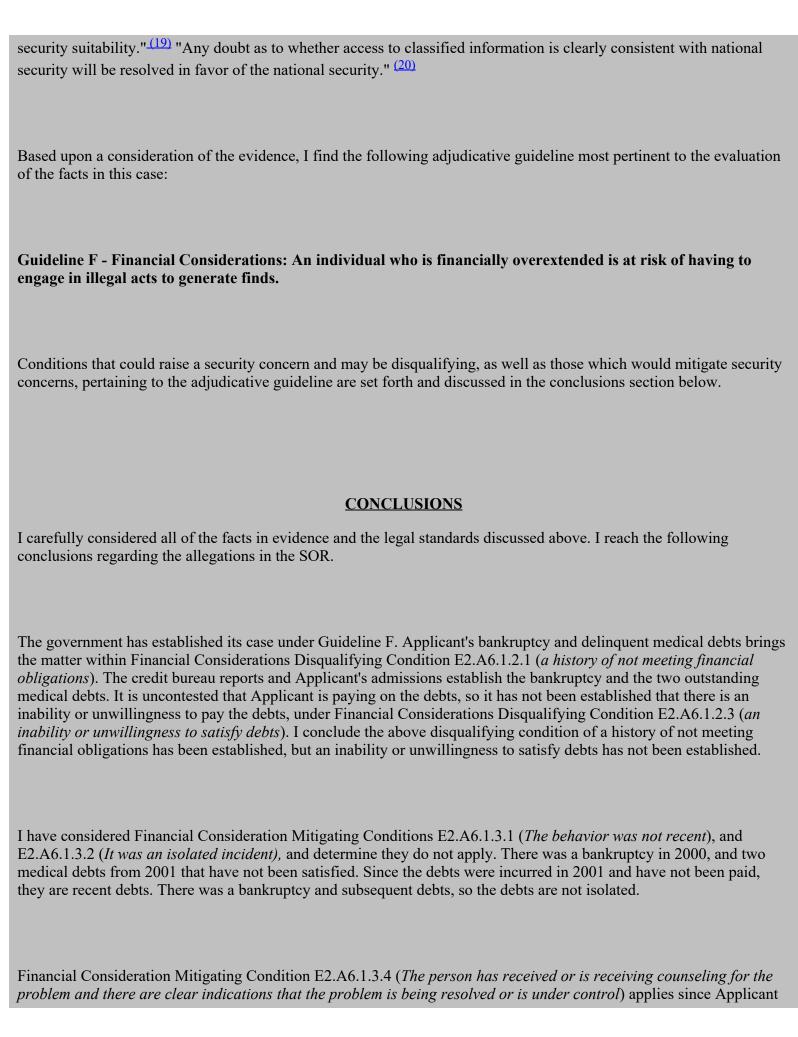
POLICIES

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."[10] Eligibility for a security clearance is predicated upon the applicant meeting the security guidelines contained in the Directive.[11]

The Directive sets out the adjudicative guidelines for making decisions on security clearances. Enclosure 2 of the Directive sets forth adjudicative guidelines for determining eligibility for access to classified information, and it lists the disqualifying conditions and mitigating conditions for each guideline. Each clearance decision must be fair, impartial, and a commonsense decision based on the relevant and material facts and circumstances, the whole person concept, and the factors listed in the Directive ¶ 6.3.1 through ¶ 6.3.6.

The adjudicative process is an examination of a sufficient period of a person's life to make an affirmative determination that the person is eligible for a security clearance. An administrative judge must apply the "whole person concept," and consider and carefully weigh the available, reliable information about the person.[12] An administrative judge should consider: (1) the nature, extent, and seriousness of the conduct; (2) the circumstances surrounding the conduct, to include knowledgeable participation; (3) the frequency and recency of the conduct; (4) the applicant's age and maturity at the time of the conduct; (5) the voluntariness of participation; (6) the presence or absence of rehabilitation and other pertinent behavioral changes; (7) the motivation for the conduct; (8) the potential for pressure, coercion, exploitation, or duress; and (9) the likelihood of continuation of recurrence.[13]

A person granted access to classified information enters into a special relationship with the government. The government must be able to repose a high degree of trust and confidence in those individuals to whom it grants access to classified information. The decision to deny an individual a security clearance is not necessarily a determination as to the loyalty of the applicant.[14] 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.

Initially, the Government must present evidence to establish controverted facts in the SOR that disqualify or may disqualify the Applicant from being eligible for access to classified information.[15] Thereafter, Applicant is responsible for presenting evidence to rebut, explain, extenuate, or mitigate the facts.[16] An applicant "has the ultimate burden of demonstrating that it is clearly consistent with the national interest to grant or continue his security clearance."[17] The government is under no duty to present evidence to disprove any Adjudicative Guideline mitigating condition, and an Administrative Judge cannot assume or infer that any particular mitigating condition is applicable merely because the government does not present evidence to disprove that particular mitigating condition.[18] "[T]he Directive presumes there is a nexus or rational connection between proven conduct under any of the criteria listed therein and an applicant's

security suitability."[19] "Any doubt as to whether access to classified information is clearly consistent with national security will be resolved in favor of the national security." [20]

Based upon a consideration of the evidence, I find the following adjudicative guideline most pertinent to the evaluation of the facts in this case:

Guideline F - Financial Considerations: An individual who is financially overextended is at risk of having to engage in illegal acts to generate finds.

Conditions that could raise a security concern and may be disqualifying, as well as those which would mitigate security concerns, pertaining to the adjudicative guideline are set forth and discussed in the conclusions section below.

CONCLUSIONS

I carefully considered all of the facts in evidence and the legal standards discussed above. I reach the following conclusions regarding the allegations in the SOR.

The government has established its case under Guideline F. Applicant's bankruptcy and delinquent medical debts brings the matter within Financial Considerations Disqualifying Condition E2.A6.1.2.1 (*a history of not meeting financial obligations*). The credit bureau reports and Applicant's admissions establish the bankruptcy and the two outstanding medical debts. It is uncontested that Applicant is paying on the debts, so it has not been established that there is an inability or unwillingness to pay the debts, under Financial Considerations Disqualifying Condition E2.A6.1.2.3 (*an inability or unwillingness to satisfy debts*). I conclude the above disqualifying condition of a history of not meeting financial obligations has been established, but an inability or unwillingness to satisfy debts has not been established.

I have considered Financial Consideration Mitigating Conditions E2.A6.1.3.1 (*The behavior was not recent*), and E2.A6.1.3.2 (*It was an isolated incident),* and determine they do not apply. There was a bankruptcy in 2000, and two medical debts from 2001 that have not been satisfied. Since the debts were incurred in 2001 and have not been paid, they are recent debts. There was a bankruptcy and subsequent debts, so the debts are not isolated.

Financial Consideration Mitigating Condition E2.A6.1.3.4 (*The person has received or is receiving counseling for the problem and there are clear indications that the problem is being resolved or is under control*) applies since Applicant

received counseling from his attorney before and after his bankruptcy. Bankruptcy is a legal and permissible way to resolve indebtedness. However, it does not precluded the examination of the circumstances leading to the bankruptcy action. Applicant was handling his finances until his wife was injured and he had a recurring medical problem resulting in their inability to work. The inability to work caused them not to meet their obligations and to file bankruptcy. After his bankruptcy, his attorney advised on financial matters. Applicant's debts are in order except for the two medical debts that can be explained, and there is a clear indication the financial problems are being resolved and are under control.

The two medical debts were incurred because Applicant had a heart attack three days before his medical insurance took effect, and incurred hospital and doctor bills. These were conditions beyond his control, and Financial Considerations Mitigating Condition 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)* applies.

I have considered Financial Consideration Mitigating Condition E2.A6.1.3.6 (*the individual initiated a good- faith effort to repay overdue creditors or otherwise resolve debts),* and find it applies. Applicant has been paying both the hospital and the doctor debts. He is saving funds to take advantage of offers to pay a reduced amount of the bills to consider them paid in full. Applicant and his wife are working hard to keep their finances under control and have succeeded. They are working extra hours, purchased their home, cut their expenses, and have a saving plan. Applicant has presented sufficient information to mitigate security concerns for financial considerations.

I carefully considered all of the circumstances in light of the "whole person" concept. Applicant is paying his debts, managing his finances, and working long hours to keep his debts in check. He has changed his life style to cut back drastically on his expenses. Under the "whole person" concept, taking all factors into consideration in reaching a common sense decision, I conclude Applicant is eligible for access to classified information.

FORMAL FINDINGS

Formal findings for or against Applicant on the allegations in the SOR, as required by Section E3.1.25 of Enclosure 3 of the Directive, are:

Paragraph 1, Guideline F: FOR APPLICANT

Subparagraph 1.a.: For Applicant

Subparagraph 1.b.: For Applicant

Subparagraph 1.c.: For Applicant

<u>DECISION</u>

In light of all of the circumstances presented by the record in this case, it is clearly consistent with the national security to grant or continue a security clearance for Applicant. Clearance is granted.

_____

Thomas M. Crean

Administrative Judge

1. Tr. 32-35; Government Exhibit 1 (Security clearance application, dated Jun. 30, 2003).

2. Tr. 32-37. Applicant Exhibit B (Applicant's statement, undated); Applicant Exhibit C2 (Applicant's statement, dated Mar. 18, 2006).

3. Tr. 45-46.

4. Tr. 36-38; Applicant Exhibit B (Applicant's statement, undated).

5. Tr. 54-56; Applicant Exhibit H (Notice of Payments, dated Mar. 3, 2006).

6. Applicant Exhibit G (Summary of Account, dated Feb. 28, 2006).

7. Tr. 48-49; Applicant Exhibit J (Applicant's pay stubs, dated Mar. 10, 2006); Applicant's wife's pay stubs, dated Feb 24, 2006)..

8. Tr. 39-43; Applicant Exhibit C1 (Income and asset statement, undated).

9. Applicant Exhibit L (Letter of Recommendation, dated Feb. 17, 2006).

10. *Department of the Navy v. Egan,* 484 U.S. 518 (1988).

11. Directive ¶ E2.2.1.

12. *Id.*

13. Directive ¶¶ E2.2.1.1 through E2.2.1.9.

14. *See* Exec. Or. 10865 § 7.

15. Directive ¶ E3.1.14.

16. ISCR Case No. 01-20700 at 3 (App. Bd. Dec. 19, 2002); *see* Directive ¶ E3.1.15.

17. ISCR Case No. 01-20700 at 3 (App. Bd. Dec. 19, 2002).

18. ISCR Case No. 99-0597 (App. Bd. Dec 13, 2000).

19. ISCR Case No. 95-0611 at 2 (App. Bd. May 2, 1996) (quoting DISCR Case No. 92-1106 (App. Bd. Oct. 7, 1993))

20. *Egan,* 484 U.S. at 531; *see* Directive ¶ E2.2.2.