

KEYWORD: Financial

DIGEST: Applicant is 36 years old and works as a computer specialist for a federal contractor. From 1998 until 2002, he accumulated a significant amount of debt. Although he resolved some of his financial obligations, he has a substantial amount of delinquent debt outstanding. He failed to mitigate the security concerns raised by his financial problems. Clearance is denied.

CASE NO: 05-06965.h1

DATE: 04/17/2006

DATE: April 17, 2006

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In re:

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SSN: -----

Applicant for Security Clearance

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ISCR Case No. 05-06965

**DECISION OF ADMINISTRATIVE JUDGE**

**SHARI DAM**

**APPEARANCES**

**FOR GOVERNMENT**

Francisco J. Mendez, Esq.

## FOR APPLICANT

*Pro Se*

### SYNOPSIS

Applicant is 36 years old and works as a computer specialist for a federal contractor. From 1998 until 2002, he accumulated a significant amount of debt. Although he resolved some of his financial obligations, he has a substantial amount of delinquent debt outstanding. He failed to mitigate the security concerns raised by his financial problems. Clearance is denied.

### STATEMENT OF THE CASE

On November 3, 2005, Defense Office of Hearings and Appeals (DOHA) under Executive Order 10865, *Safeguarding Classified Information Within Industry*, as amended and modified, and Department of Defense Directive 5220.6, *Defense Industrial Security Clearance Review Program* (Directive), dated January 2, 1992, as amended and modified, issued a Statement of Reasons (SOR) to Applicant. The SOR detailed reasons under Guideline F (Financial Considerations) why DOHA could not make a preliminary affirmative finding under the Directive that it is clearly consistent with the national interest to grant a security clearance to Applicant. DOHA recommended the case be referred to an administrative judge to determine whether a clearance should be granted.

On November 23, 2005, Applicant filed his Answer, admitting all of the allegations contained in the SOR, and requested a hearing. On January 12, 2006, the case was assigned to me. A Notice of Hearing was mailed on January 31, 2006, setting the case for hearing on March 2, 2006. At the hearing the Government entered Exhibits (GX) 1-5 into evidence. Applicant introduced exhibits (AX) A-F into evidence. He testified in his case-in-chief and called one witness. DOHA received the Transcript (Tr.) on March 10, 2006.

## **PROCEDURAL MATTERS**

On February 22, 2006, Department Counsel filed a Notice of Motion to Amend the Statement of Reasons to add ¶ 1.d., which referenced a credit card debt of \$9,124. At the hearing Applicant did not object to the Motion and the Motion was granted.

## **FINDINGS OF FACT**

Based on the entire record, including Applicant's admissions in his Answer to the SOR and at the hearing, I make the following findings of fact:

Applicant is 36 years old. For the last six years he has worked as a computer specialist for a federal contractor. He filed the pending security clearance application (SCA) in 2004. [\(1\)](#)

In 1997, Applicant married his wife. About a year later they bought a trailer home in which they lived in until 2000 when they decided to purchase a house closer to his wife's work. They then rented the trailer home to a military couple and gave them an option to purchase the property. [\(2\)](#) The couple was transferred and unable to purchase the property, leaving Applicant with two mortgage payments that he could not pay. He continued trying to rent or sell the property over a period of time, but was unsuccessful. In September 2005, the bank repossessed the property. [\(3\)](#) The outstanding mortgage at the time of the repossession was \$71,774 as alleged in SOR ¶ 1.a. Upon the repossession he forfeited his right to receive any profit after a foreclosure sale and payment of the underlying debt, and may be required to pay monies owed on the original mortgage if they are not recouped in the sale. [\(4\)](#) This matter remains unresolved.

In late 1998, Applicant was injured on the job and unable to work for a year. At that time his wife worked as an office manager and started an internet business. Their combined monthly income, including his worker's compensation, totaled \$2,500. [\(5\)](#) When he returned to work full-time in 1999, their annual income rose to approximately \$60,000. After his wife closed her internet business and took a teaching job in 2002, their joint salary increased to \$75,000 annually. She taught for the next two years. [\(6\)](#)

From 1998 to 2002, Applicant accumulated a significant amount of debt, as a consequence of his year on worker's compensation and the subsequent loss of income from his rental property. In order to cover his living expenses, the start up costs for his wife's new business, and repairs to his mobile home, he used his credit cards, resulting in the accumulation of debt that is noted in SOR ¶¶ 1.b. for \$7,762, 1.c. for \$6,156, and 1.d. for \$9,124, totaling \$23,038. (7)

In April 2003, Applicant engaged a legal service to assist him with the resolution of his delinquent debts. Pursuant to the lawyer's advice, he ceased communication with all of his creditors and turned over the resolution of his debts to the service. (8) Since engaging the service, he has paid three or four other creditors that were not alleged in the SOR, for approximately \$15,000. (9) He is currently resolving SOR ¶ 1.b.

Presently, Applicant earns \$49,260 annually. His monthly net income is \$3,812. After paying his monthly expenses, including a mortgage, a large car payment (that he assumed in 2004) (10) and other debts, he allocates any remaining monies to the payment of his outstanding debts. (11) He admitted that at this time his current income is not sufficient to pay the debts listed on the SOR. (12) He anticipates his income situation will change as his wife earns money from her new fitness business. In addition to receiving credit counseling from his legal services, he obtained credit counseling from his church in 2003. As a result of the counseling and these financial problems, he "cut up all of our credit cards." (13) He and his wife have operated under a tight budget for the past several months. (14) Because Applicant feels obligated to pay all of his debts, he decided not to file for bankruptcy. (15) He was contrite and candid during his testimony.

Applicant's supervisor for the past year testified. He considers Applicant to be security trustworthy and capable of making sound decisions.

## POLICIES

Enclosure 2 of the Directive, *Adjudicative Guidelines for Determining Eligibility for Access to Classified Information*, sets forth criteria which must be evaluated when determining security clearance eligibility. Within those adjudicative guidelines are factors to consider in denying or revoking an individual's request for access to classified information (Disqualifying Conditions), and factors to consider in granting an individual's request for access to classified information (Mitigating Conditions). By recognizing that individual circumstances of each case are different, the guidelines provide substantive standards to assist an administrative judge in weighing the evidence in order to reach a fair, impartial and common sense decision.

The adjudicative process requires thorough consideration and review of all available, reliable information about the applicant, past and present, favorable and unfavorable, to arrive at a balanced decision. Section E2.2. of Enclosure 2 of the Directive describes the essence of scrutinizing all appropriate variables in a case as the "whole person concept." In evaluating the disqualifying and mitigating conduct an administrative judge should consider: (1) the nature, extent, and seriousness of the conduct; (2) the circumstances surrounding the conduct; (3) the frequency and recency of the conduct; (4) the individual's age and maturity at the time of the conduct; (5) the voluntariness of participation; (6) the presence or absence of rehabilitation and other behavioral changes; (7) the motivation for the conduct; (8) the potential for pressure, coercion, exploitation, or duress; and (9) the likelihood of continuation or recurrence.

Granting an applicant's clearance for access to classified information is based on a high degree of trust and confidence in the individual. Accordingly, decisions under the Directive must include consideration of not only the *actual* risk of disclosure of classified information, but also consideration of any *possible* risk an applicant may deliberately or inadvertently compromise classified information. Any doubt about whether an applicant should be allowed access to classified information must be resolved in favor of protecting classified information. Directive, Enclosure 2, ¶ E2.2.2. The decision to deny an individual a security clearance is not necessarily a judgment about an applicant's loyalty. Executive Order 10865, § 7. Instead, it is a determination that an applicant has not met the strict guidelines established by the Department of Defense for issuing a clearance.

Initially, the Government must establish, by substantial evidence, conditions in the personal or professional history of the applicant that disqualify, or may disqualify, the applicant from being eligible for access to classified information. *Department of the Navy v. Egan*, 484 U.S. 518, 531 (1988). The Directive presumes a rational connection between past proven conduct under any of the disqualifying conditions listed in the guidelines and an applicant's security suitability. ISCR Case No. 95-0611 at 2 (App. Bd. May 2, 1996).

Once the Government establishes a disqualifying condition by substantial evidence, the corresponding burden of rebuttal shifts to the applicant to present evidence in refutation, extenuation, or mitigation sufficient to overcome the position of the government. ISCR Case No. 01-20700 at 3 (App. Bd. Dec. 19, 2002); Directive, Enclosure 3, ¶ E3.1.15. An applicant "has the ultimate burden of demonstrating that it is clearly consistent with the national interest to grant or continue his clearance." *Id.*

Based upon the allegations contained in the SOR and a consideration of the evidence as a whole, the following adjudicative guideline is pertinent to an evaluation of the facts of this case:

**Guideline F - Financial Considerations:** A security concern may exist when 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 criminal acts.

The disqualifying and mitigating conditions, either raising security concerns or mitigating security concerns applicable to this case, are discussed in the Conclusions section below.

## CONCLUSIONS

I have considered all of the facts in evidence, legal standards, including the "whole person" concept and Applicant's credibility. The Government has established a *prima facie* case for disqualification under Guideline F.

Based on the evidence, two disqualifying conditions under this guideline apply: (1) Financial Consideration Disqualifying Condition (FC DC) E2.A6.1.2.1 (*A history of not meeting financial obligations*), and (2) FC DC E2.A6.1.2.3 (*Inability or unwillingness to satisfy debts*). From 1998 to 2004, Applicant accumulated a significant amount of debt. Based on his testimony, credit reports, and a current budget, he remains unable to pay that delinquent debt.

The Government having established its case, the burden shifted to Applicant to mitigate or rebut the allegations. After reviewing all of the mitigating conditions, I conclude Financial Consideration Mitigating Condition (FC MC) 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. Applicant provided evidence that his delinquent debts initially accumulated after his medical injury, his wife started an internet business, a land contract failed to close, and he could not locate another tenant or buyer, which were factors outside of his control.

As that mitigating condition standing alone is insufficient to overcome the Government's present concern, I also considered FC MC 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 under control*), and FC MC E2.A6.1.3.6 (*The individual initiated a good-faith effort to repay overdue creditors or otherwise resolve debts*), and conclude neither applies. Although Applicant received credit counseling from his church and lawyers, the evidence does not indicate that his financial difficulties are under control. As of September 2005, his property was repossessed. There is no documentation, indicating whether a foreclosure sale has concluded, and what, if any, monies are still owed to the mortgage company. Consequently, SOR ¶ 1.a. remains unresolved. Two of the credit card debts, mentioned in SOR ¶¶ 1.c. and 1.d. also remain unresolved and unpaid. Despite his statement that SOR ¶ 1.b. has recently been resolved, he did not present any evidence verifying the resolution.

I have further considered the totality of the evidence in this case, including Applicant's age, his previous medical injury, his responsible attitude and candid testimony, as well as his supportive supervisor. While Applicant expressed a commitment and willingness to resolve his financial obligations, he did not present a plan and solid budget to repay the three credit card creditors, or demonstrate a consistent track record of financial management sufficient to mitigate the security concerns at this time. As of March 2006, all of the debts in the SOR are unpaid and unresolved. Hence, all

allegations are concluded against him. Accordingly, Guideline F is decided against Applicant.

For the reasons stated, I conclude Applicant is not eligible for access to classified information.

### **FORMAL FINDINGS**

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

Paragraph 1: Guideline F (Financial Considerations) AGAINST APPLICANT

Subparagraph 1.a: Against Applicant

Subparagraph 1.b: Against Applicant

Subparagraph 1.c: Against Applicant

Subparagraph 1.d: Against Applicant

## DECISION

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

Shari Dam

Administrative Judge

1. Tr. 19.
2. GX 2 at 6.
3. Tr. 21 and 43.
4. Tr. 41.
5. Tr. 44.
6. Tr. 46.
7. Tr. 25; GX 3, 4, and 5.
8. AX D.
9. Tr. 51.
10. Tr. 37.
11. GX 2 at 2; Tr.54.
12. Tr. 39.
13. Tr. 40.
14. Tr. 54.
15. Tr. 35.