

KEYWORD: Financial; Personal Conduct

DIGEST: Applicant incurred significant and reoccurring debt during his first marriage. Following the end of his military career and before he found permanent employment, he worked sporadically for about 18 months, making it difficult to pay his debts and causing him to fall behind in his child support payments. He subsequently assumed control of his debts, reduced his child support arrearage, paid much of his past debts, and timely pays his current debts. His continuing efforts to resolve his past outstanding financial obligations have successfully mitigated or overcome the government's case. The questions and doubts as to his security eligibility and suitability have been satisfied. Clearance is granted.

CASENO: 03-25628.h1

DATE: 02/13/2006

DATE: February 13, 2006

In re:

SSN: -----

Applicant for Security Clearance

ISCR Case No. 03-25628

DECISION OF ADMINISTRATIVE JUDGE

MARY E. HENRY

APPEARANCES

FOR GOVERNMENT

Jennifer I. Campbell, Esq.,

FOR APPLICANT

Pro Se

SYNOPSIS

Applicant incurred significant and reoccurring debt during his first marriage. Following the end of his military career and before he found permanent employment, he worked sporadically for about 18 months, making it difficult to pay his debts and causing him to fall behind in his child support payments. He subsequently assumed control of his debts, reduced his child support arrearage, paid much of his past debts, and timely pays his current debts. His continuing efforts to resolve his past outstanding financial obligations have successfully mitigated or overcome the government's case. The questions and doubts as to his security eligibility and suitability have been satisfied. Clearance is granted.

STATEMENT OF THE CASE

On January 26, 2005, the Defense Office of Hearings and Appeals (DOHA), pursuant to Executive Order 10865, *Safeguarding Classified Information Within Industry*, dated February 20, 1960, 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 why DOHA could not make the preliminary affirmative finding under the Directive that it is clearly consistent with the national interest to grant or continue a security clearance for Applicant. Specifically, the SOR set forth security concerns arising under Guideline F, Financial Considerations, and Guideline E, Personal Conduct, of the Directive. DOHA recommended the case be referred to an administrative judge to determine whether a clearance should be granted, continued, denied, or revoked. On February 22, 2005, Applicant submitted a notarized response to the allegations, and requested a hearing.

This matter was assigned to another administrative judge on September 14, 2005, but reassigned to me on November 22, 2005 because of caseload considerations. A notice of hearing was issued on November 22, 2005, and a hearing was held on December 16, 2005. Eleven government exhibits and three Applicant exhibits were admitted into evidence. Applicant testified. Subsequent to the hearing, Applicant submit two more documents, which have been admitted into evidence without objection. ⁽¹⁾ The hearing transcript (Tr.) was received by DOHA on January 11, 2006.

FINDINGS OF FACT

Applicant admitted, with explanation, the allegations in subparagraphs 1.a. through 1.h. and 1.j. of the SOR.⁽²⁾ These admissions are incorporated here as findings of fact. He denied the remaining allegations.⁽³⁾ After a complete review of the evidence in the record and upon due consideration, I make the following additional findings of fact:

Applicant is a 39-year-old senior information technology technician for a defense contractor.⁽⁴⁾ He has worked for this contractor for two and one-half years.⁽⁵⁾ He served sixteen years in the United States Air Force (Air Force).⁽⁶⁾ The nature of his discharge is unknown, but he has indicated he is not eligible to re-enlist.⁽⁷⁾ He completed a security clearance application (SF 86) in December 2001.⁽⁸⁾

Applicant married his first wife in 1984, and they divorced in February 2002.⁽⁹⁾ He has six children from this marriage: five daughters, ages 20, 19, 18, 16, and 10, and one son, age 10.⁽¹⁰⁾ Under the terms of his divorce, he pays child support for the three minor children.⁽¹¹⁾ He remarried in July 2002.⁽¹²⁾ He and his second wife have no children.⁽¹³⁾

During his first marriage, Applicant incurred significant and on going debt, partly due to the size of his family, limited income, and his former wife's spending habits.⁽¹⁴⁾ He has paid some of this debt, but not all of it. He pays his current debt timely, but remains in arrears on some of the old debt from his first marriage.⁽¹⁵⁾ Under the terms of his divorce, he and his ex-wife each assumed individual responsibility for payment of specific marital debts.⁽¹⁶⁾ His debts listed in the SOR are as follows:

SOR ¶	TYPE OF DEBT	AMOUNT	CURRENT STATUS
¶ 1.a.	medical bill ⁽¹⁷⁾	\$141.00 ⁽¹⁸⁾	Debt of ex-wife ⁽¹⁹⁾
¶ 1.b.	medical bill ⁽²⁰⁾	\$142.00 ⁽²¹⁾	Debt of ex-wife ⁽²²⁾
¶ 1.c.	cable bill ⁽²³⁾	\$369.00 ⁽²⁴⁾	Debt of ex-wife ⁽²⁵⁾
¶ 1.d.	Medical bill ⁽²⁶⁾	\$71.00 ⁽²⁷⁾	Debt of ex-wife ⁽²⁸⁾
¶ 1.e.	Personal services debt ⁽²⁹⁾	\$63.00 ⁽³⁰⁾	Debt of ex-wife ⁽³¹⁾
¶ 1.f.	Credit card ⁽³²⁾	\$3802.00 ⁽³³⁾	Paying monthly ⁽³⁴⁾
¶ 1.g.	Automobile loan ⁽³⁵⁾	\$2089.00 ⁽³⁶⁾	Unpaid ⁽³⁷⁾

¶ 1.h.	Telephone bill (38)	\$217.00 (39)	Unpaid (40)
¶ 1.i.	Store bill (41)	\$202.00 (42)	Paid in full July 6, 2004 (43)
¶ 1.j.	Bank card (company credit card) (44)	\$3651.00 (45)	Unpaid (46)

Applicant and his second wife sought the assistance of a credit counseling service in September 2003. [\(47\)](#) They entered into a debt management agreement on September 8, 2003. [\(48\)](#) Through this organization, he paid off a number of debts not listed in the SOR, except the bank card noted in allegation 1.j. [\(49\)](#) In 2004, he discontinued using this service, but continued to pay his debts. [\(50\)](#)

In January 2001, the Air Force denied Applicant re-enlistment because of his financial problems. [\(51\)](#) From March 2001 until October 2002, he worked temporary jobs when available. [\(52\)](#) Some months, he did not work. [\(53\)](#) As a result of his 18 months of sporadic employment, he did not pay regularly and timely his old debts. [\(54\)](#) He also failed to regularly pay his child support, causing an arrearage in the amount of \$20,000. [\(55\)](#) His current child support arrearage is approximately \$2900. [\(56\)](#) He clearly believes he has an obligation and responsibility to pay child support. [\(57\)](#)

In October 2002, he began permanent employment, which ended in June 2003. [\(58\)](#) His employer terminated him because he used his company credit card for personal expenses. [\(59\)](#) The bank holding this debt refused to accept the counseling service as his agent for resolving the debt owed and declined to accept a monthly payment to reduce the past due debt. [\(60\)](#) He has not heard from this creditor since he reported it to the Better Business Bureau for violation of the Fair Debt Collection Practices Act nor has he paid the debt. [\(61\)](#) Because of the negative problems he encountered in trying to resolve this debt, he does not want to pay the debt. [\(62\)](#)

In 2002, his car was repossessed for non-payment on his loan. [\(63\)](#) He has never received a bill from the loan company for the unpaid balance. [\(64\)](#) While he does not want to pay this debt, he understands that it is in his best interest to resolve it. [\(65\)](#) He pays between \$50 and \$100 a month on the credit card bill alleged in subparagraph 1.f.; however, his debt is not actually declining. [\(66\)](#) When he pays \$100, he is charged \$52 in interest and penalties, resulting in a debt reduction of \$48. [\(67\)](#) When he pays \$50, he is charged \$103 in interest and penalties, resulting in a debt increase of \$53. [\(68\)](#) Despite his monthly payments, he is actually increasing his debt. He stated at the hearing that he would consider debt consolidation/ counseling again. [\(69\)](#) He intends to pay his debt and clean up his credit report. [\(70\)](#)

Applicant earns \$44,000 a year, giving him a gross monthly income of \$3,667. After payroll deductions, including \$1,600 a month for child support, his net monthly income from work is \$1,500. [\(71\)](#) His wife's net monthly income is \$1,300. [\(72\)](#) He also receives other monthly income totaling \$625, for a total net household income of \$3,425. [\(73\)](#) The estimated monthly expenses total \$2,195. [\(74\)](#) This amount does not include the \$1,600 payroll deduction for child

support and appears to be an underestimation of actual expenses.⁽⁷⁵⁾ His only asset is \$7,000 in his 401k retirement account.⁽⁷⁶⁾

Applicant answer "no" to Question 38, which asked if in the last seven years, were any of his debts over 180 days delinquent.⁽⁷⁷⁾ He also answered "no" to Question 39, which asked if he was currently over 90 days delinquent on any debt.⁽⁷⁸⁾ He denies that he intentionally falsified his answer to this question.⁽⁷⁹⁾ He did list the lien for child support.⁽⁸⁰⁾ He completed his security clearance application in a hurry, worked off the top of his head, and he did not stop to verify his answers.⁽⁸¹⁾

POLICIES

Enclosure 2 of the Directive sets forth adjudication guidelines which must be considered in the evaluation of security suitability. An administrative judge need not view the adjudicative guidelines as inflexible ironclad rules of law. Instead, acknowledging the complexities of human behavior, these guidelines, when applied in conjunction with the factors set forth in the adjudicative process provision in Paragraph E2.2., Enclosure 2 of the Directive, are intended to assist the administrative judge in reaching fair and impartial common sense decisions.

Included in the guidelines are disqualifying conditions and mitigating conditions applicable to each specific guideline. In addition, each security clearance decision must be based on the relevant and material facts and circumstances, the whole-person concept, along with the factors listed in the Directive. Specifically, these are: (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. Although the presence or absence of a particular condition or factor for or against clearance is not outcome determinative, the adjudicative guidelines should be followed whenever a case can be measured against this policy guidance.

The sole purpose of a security clearance determination is to decide if it is clearly consistent with the national interest to grant or continue a security clearance for an applicant.⁽⁸²⁾ The government has the burden of proving controverted facts.⁽⁸³⁾ The burden of proof is something less than a preponderance of the evidence.⁽⁸⁴⁾ Once the government has met its burden, the burden shifts to the applicant to present evidence of refutation, extenuation, or mitigation to overcome the case against him.⁽⁸⁵⁾ Additionally, an applicant has the ultimate burden of persuasion to obtain a favorable clearance decision.⁽⁸⁶⁾

No one has a right to a security clearance⁽⁸⁷⁾ and "the clearly consistent standard indicates that security clearance determinations should err, if they must, on the side of denials."⁽⁸⁸⁾ Any reasonable doubt about whether an applicant should be allowed access to sensitive information must be resolved in favor of protecting such sensitive information.⁽⁸⁹⁾ Section 7 of Executive Order 10865 specifically provides industrial security clearance decisions shall be "in terms of the national interest and shall in no sense be a determination as to the loyalty of the applicant concerned." The decision to deny an individual a security clearance is not necessarily a determination as to the allegiance, loyalty, and patriotism of an applicant.⁽⁹⁰⁾ 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.

Based upon a consideration of the evidence as a whole, I find the following adjudicative guidelines most pertinent to an evaluation of the facts of this case:

Financial Considerations - Guideline F: 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.

Personal Conduct - Guideline E: Conduct involving questionable judgment, untrustworthiness, unreliability, lack of candor, dishonesty, or unwillingness to comply with rules and regulation could indicate that the person may not properly safeguard classified information.

CONCLUSIONS

Upon consideration of all the facts in evidence, and after application of all appropriate adjudicative factors, I conclude the following with respect to the allegations set forth in the SOR:

The government has established its case under Guideline F. Financial Considerations Disqualifying Conditions (FC DC) E2.A6.1.2.1. (*A history of not meeting financial obligations*) and FC DC E2.A6.1.2.3. (*Inability or unwillingness to satisfy debts*) apply. Applicant incurred significant and reoccurring debt during his first marriage. Because of limited income, he lacked the ability to pay the debt. He still has some outstanding bills from his first marriage.

I considered all the Financial Considerations Mitigating Conditions (FC MC), and conclude that FC MC E2.A6.1.3.3. (*The conditions that resulted in the behavior were largely beyond the person's control*); 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 is 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*) apply. Applicant's initial debt problems resulted from a large family, low income, and inappropriate financial spending decisions. Applicant incurred \$20,000 in over due child support following his separation from the Air Force and subsequent sporadic employment. It took him 18 months to obtain permanent employment, and thus, a regular income. He has reduced his child support arrearage by 85%. His divorce in 2002 added to his financial stress, making it more difficult to pay off debt. As part of his divorce settlement, his ex-wife agreed to pay the debts listed in allegations 1.a. through 1.e.

In 2003, he actively sought a way to manage his debt. He retained the services of a credit counseling agency. He used this agency's services and payment plan to resolve much of his old debt, but not all. In good faith and as a way to pay off his corporate credit card debt, he offered a monthly payment plan, which the bank refused. Rather, it demanded a one-time full payment, which he cannot make. He did not ignore this debt. His recent credit reports indicate a substantial reduction in his past overdue debt, and timely payments on current debt. Although old debt still exists, he has taken control over his debt. He has indicated he will seek further credit counseling to help resolve his remaining debt issues, including those debts he prefers not to pay. Applicant has mitigated the government security concerns under Guideline F.

The Applicant has denied the government's allegation of falsification under Guideline E, subparagraph 2.a and 2.b. of the SOR. The government has established that Applicant's answers to Questions 38 and 39 are inaccurate regarding a material fact, the existence of overdue debts. For Personal Conduct Disqualifying Conditions (PC DC) E2.A5.1.2.2. (*The deliberate omission, concealment, or falsification of relevant and material facts from any personnel security questionnaire...*) and PC DC E2.A5.1.2.3. (*Deliberately providing false or misleading information concerning relevant and material matters to an investigator...*) to apply, Applicant must have deliberately falsified his answers.⁽⁹¹⁾ By his testimony and actions, he did not deliberately falsify his answers to Questions 38 and 39. He does not deny his long-term debt problems. He credibly testified that he completed his application in a hurry without verifying his answers. His failure to provide immediate information on his debts was the result of sloppiness when completing his security clearance application. While he should have taken more care, his carelessness does not equal intentional falsification. When the investigator questioned him about his debt, he willingly discussed and specifically outlined his financial problems. He also voluntarily advised the investigator that he had been terminated from his job in 2003. In his application, he advised about the lien filed against him. Because he provided other detrimental information and has been forthcoming about his debts, I find he did not deliberately fail to provide this information when he completed his security clearance application.

As to subparagraph 2.c. and 2.d, PC DC E2 A5.1.2.1. (*Reliable, unfavorable information provided by associates, employers, coworkers, neighbors and other acquaintances*) applies. Applicant's financial problems ended his career in the Air Force after 16 years. In 2003, he violated company policy and used his company credit card for personal expenses during a period of financial crisis.

MC PC E2 A5.1.3.1. (*The information was unsubstantiated or not pertinent to a determination of judgment,*

trustworthiness, or reliability) applies. Applicant has a new career, which made the reasons for his departure from the Air Force no longer pertinent. He offered to pay the corporate credit card debt on a monthly basis. The bank holding this debt refused his offer of payment. His actions have made this information no longer pertinent to a determination on his trustworthiness. He has mitigated the government's concerns under Guideline E.

Finally, I have considered the "whole person" concept in evaluating Applicant's risk and vulnerability in protecting our national interests. He married in 1984 at the age of 18. Within five years, he and his first wife had four young children. Six years later, twins were born. Throughout this time, he did not earn sufficient income to meet the needs of the family, forcing him to incur debt. During the later years of his marriage, his first wife inappropriately spent money, causing further debt problems. He is no longer married to his first wife and three of his children are grown. With his divorce, he no longer is responsible to his first wife's spending habits. In the last few years, with the help of his current wife, he has worked to resolve many of his old debts. He pays new debt in a timely manner. His decision to use the company credit card showed a lack of good decision making. He, however, has taken full responsibility for his conduct. He still owes this debt because the holder of the debt rejected his good faith offer resolve the debt. He is successfully resolving his debt issues.

Accordingly, for the reasons stated, I find that it is clearly consistent with the national interest to grant a security clearance to Applicant.

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:

Paragraph 1, Guideline F (Financial Considerations): FOR APPLICANT

Subparagraph 1.a: For Applicant

Subparagraph 1.b: For Applicant

Subparagraph 1.c: For Applicant

Subparagraph 1.d: For Applicant

Subparagraph 1.e: For Applicant

Subparagraph 1.f: For Applicant

Subparagraph 1.g: For Applicant

Subparagraph 1.h: For Applicant

Subparagraph 1.I: For Applicant

Subparagraph 1.j: For Applicant

Paragraph 2, Guideline E (Personal Conduct): FOR APPLICANT

Subparagraph 2.a: For Applicant

Subparagraph 2.b: For Applicant

Subparagraph 2.c: For Applicant

Subparagraph 2.d: For Applicant

DECISION

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

Mary E. Henry

Administrative Judge

1. These documents have been marked as Applicant Exhibits D and E.

2. Applicant's Response to SOR, dated February 22, 2005, at 1.

3. *Id.*

4. Tr. at 15; Government Exhibit 2 (Applicant's signed statement, dated September 24, 2003) at 1.

5. *Id.*

6. Tr. at 15-16.

7. *Id.*

8. Government Exhibit 1 (Security Clearance Application, dated October 9, 2002) at 1.

9. *Id.* at 7; Tr. at 17.

10. Tr. at 17.

11. *Id.* at 18.

12. *Id.* at 17.

13. *Id.*

14. Government Exhibit 8 (Applicant's signed statement, dated January 22, 1996) at 2; Tr. at 16.

15. Tr. at 37, 42.

16. Applicant Exhibit A (Copy of the Marital Settlement Agreement/Addendum to Judgment, dated January 17, 2002) at 2.

17. Government Exhibit 3 (Credit Report, dated November 13, 2004) at 1; Government Exhibit 5 (Credit Report, dated October 18, 2002) at 7.

18. *Id.*

19. Tr. at 18-19; Applicant Exhibit A, *supra* note 16, at 2.

20. Government Exhibit 5, *supra* note 16 at 6.

21. *Id.*

22. Tr. at 20.

23. Government Exhibit 5, *supra* note 17, at 6; Government Exhibit 3, *supra* note 17, at 1; *Id.* at 20-21.

24. Government Exhibit 5, *supra* note 17, at 6; Government Exhibit 3, *supra* note 17, at 1.

25. Tr. at 20-21; Applicant Exhibit A, *supra* note 16, at 2.

26. Government Exhibit 7 (Credit Report, dated September 5, 2003), at 6-7.

27. *Id.*

28. Tr. at 21; Applicant Exhibit A, *supra* note 16, at 2.

29. Government Exhibit 7, *supra* note 26, at 7.

30. *Id.*

31. Tr. at 21-22; Applicant Exhibit A, *supra* note 16, at 2.

32. Government Exhibit 3, *supra* note 17, at 1.

33. *Id.*

34. Applicant Exhibit D (August 2005, October 2005, and November 2005 statements on account).

35. Government Exhibit 5, *supra* note 17, at 5.

36. *Id.*

37. Tr. at 24-25.

38. *Id.* at 25-26.

39. *Id.*

40. *Id.*

41. Government Exhibit 3, *supra* note 17, at 1.

42. *Id.*

43. Applicant Exhibit E (Letter, dated December 22, 2005).

44. Government Exhibit 3, *supra* note 17, at 1.

45. *Id.*

46. Tr. at 27-28.

47. Government Exhibit 6 (Letter, service contract, payment and other documents related to credit counseling in 2003) at 1.

48. *Id.* at 2-3.

49. *Id.* at 4-14; Tr. at 28-30; Applicant Exhibit B (Credit Report, dated December 2005); Applicant Exhibit C (Credit Report, dated December 13, 2005).

50. Tr. at 30.

51. *Id.* at 15-16.

52. *Id.* at 33.

53. *Id.*

54. Government Exhibit 2, *supra* note 4, at 1-2.

55. *Id.* at 2.

56. Tr. at 31.

57. Government Exhibit 2, *supra* note 4, at 1-

58. *Id.* at 1; Tr. at 33.

59. Tr. at 33.

60. *Id.* at 28-29.

61. *Id.* at 27-29.

62. *Id.* at 27-28.

63. *Id.* at 24-25.

64. *Id.*

65. *Id.*

66. Applicant Exhibit D, *supra* note 34, at 1-3.

67. *Id.*

68. *Id.*

69. Tr. at 30.

70. *Id.* at 44.

71. Government Exhibit 11 (Personal financial statement, dated December 16, 2005); Tr. at 36-37.

72. *Id.*

73. *Id.*

74. *Id.*

75. Tr. at 36-37.

76. Government Exhibit 11, *supra* note 71, at 1.

77. Government Exhibit 1, *supra* note 8, at 11.

78. *Id.*

79. Applicant's Response to SOR, *supra* note 2, at 2.

80. Government Exhibit 1, *supra* note 8, at 11.

81. *Id.* at 34-35.

82. ISCR Case No. 96-0277 (July 11, 1997) at 2.

83. ISCR Case No. 97-0016 (App. Bd., December 31, 1997) at 3; Directive, Enclosure 3, ¶ E3.1.14.

84. *Department of the Navy v. Egan*, 484 U.S. 518, 528 (1988).

85. ISCR Case No. 94-1075 (App. Bd., August 10, 1995) at 3-4; Directive, Enclosure 3, ¶ E3.1.15.

86. ISCR Case No. 93-1390 (App. Bd. Decision and Reversal Order, January 27, 1995) at 7-8; Directive, Enclosure 3, ¶ E3.1.15.

87. *Egan*, 484 U.S. at 531.

88. *Id.*

89. *Id.*; Directive, Enclosure 2, ¶ E2.2.2.

90. Executive Order No. 10865 § 7.

91. Applicant admitted he was arrested by the police (subparagraph 2.a.), but denied he deliberately falsified his security clearance application. In light of his denial of deliberate falsification, his answer to the allegation in subparagraph 2.a. is deemed a denial.