

KEYWORD: Financial

DIGEST: Applicant is 50 years old and works as a security associate for a federal contractor. Beginning in 1994 to the present, he accumulated a significant amount of delinquent debt that resulted from a previous divorce, child support payments, medical bills, and periods of medical disability. Although he is willing to resolve these matters, he did not provide any evidence establishing a plan to attain financial stability. He failed to mitigate the security concerns raised by his financial problems. Clearance is denied.

CASENO: 04-02160.h1

DATE: 04/14/2006

DATE: April 14, 2006

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In re:

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SSN: -----

Applicant for Security Clearance

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ISCR Case No. 04-02160

**DECISION OF ADMINISTRATIVE JUDGE**

**SHARI DAM**

**APPEARANCES**

**FOR GOVERNMENT**

Francisco Mendez, Esq.

**FOR APPLICANT**

*Pro Se*

**SYNOPSIS**

Applicant is 50 years old and works as a security associate for a federal contractor. Beginning in 1994 to the present, he accumulated a significant amount of delinquent debt that resulted from a previous divorce, child support payments, medical bills, and periods of medical disability. Although he is willing to resolve these matters, he did not provide any evidence establishing a plan to attain financial stability. He failed to mitigate the security concerns raised by his financial problems. Clearance is denied.

**STATEMENT OF THE CASE**

On May 26, 2005, the 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 July 11, 2005, Applicant filed his Answer and requested a hearing. He admitted many of the allegations in the SOR and denied others. On November 2, 2005, the case was assigned to another administrative judge and reassigned to me on November 28, 2005. A Notice of Hearing was mailed on January 31, 2006, setting the case for hearing on February 27, 2006. At the hearing the Government entered Exhibits (GX) 1-6 into evidence. Applicant did not enter any exhibits into evidence, but testified in his case-in-chief. At the conclusion of the hearing I left the record open until March 20, 2006, to give him an opportunity to submit additional evidence, which he did not do. DOHA received the Transcript (Tr.) on March 7, 2006.

## 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 50 years old. From 1986 until the present, he worked as a security associate for a federal contractor, earning approximately \$1,500 per month after taxes. During this period of time he also held a job as a local constable from January 1987 until December 2000, earning about \$800 per month.<sup>(1)</sup> He has held a secret security clearance since March 1987.<sup>(2)</sup> He filed the pending security clearance application (SCA) in June 2002.

Applicant was married to his first wife from 1977 until 1994. They have four children.<sup>(3)</sup> Prior to his divorce he began accruing debt, some of which related to his wife's expenditures. After the divorce he paid child support and his children's medical bills, which created financial problems that eventually "spiraled out of control."<sup>(4)</sup> In July 1995, Applicant married his second wife, who has three children, two of whom live with them and have medical problems.<sup>(5)</sup> His wife works and earns \$12 per hour.

Applicant's medical problems have also contributed to his financial difficulties over the last ten years. From approximately 1995 through the present, Applicant has been on medical disability leave periodically for various problems. Since July 2005, he has received a \$1,600 monthly disability payment related to a cervical fusion surgery.<sup>(6)</sup>

After meeting with a Government investigator in September 2003, Applicant completed a written statement regarding debts noted on a credit report. He acknowledged some of the medical bills and indicated that two of the credit card bills belonged to his first wife.<sup>(7)</sup> In his July 2004 answers to the Government's Interrogatories, Applicant submitted documents indicating that he contacted his credit card creditors in an attempt to resolve the matters.<sup>(8)</sup>

At the hearing in February 2006, Applicant stated his wife manages all of the household money and gives him a weekly allowance. He does not control or have specific knowledge of their finances. He is unclear about the status of many of the debts.<sup>(9)</sup> He agreed that his delinquent debt totals about \$10,000, not including his medical bills.<sup>(10)</sup> He admitted that he is not in a position to pay the debts listed on the SOR.<sup>(11)</sup> He obtained credit counseling about four or five years

ago, but has not sought help recently.<sup>(12)</sup> He does not know why he has not set up a budget to repay the debts, although he believes he could do so.<sup>(13)</sup>

Paragraph 1 of the SOR alleged that Applicant's delinquent debts totaled \$10,500. The debt consists of \$8,690 owed to credit card companies (SOR ¶¶ 1.a, 1.k, 1.l, and 1.m); \$78 owed to a telephone company (SOR ¶ 1.b); and \$1,022 in medical bills (SOR ¶¶ 1.d, 1.e, 1.f, 1.g, and 1.h). He disputes SOR ¶ 1.c for \$385, and does not know the "Unknown Creditor" referenced in SOR ¶ 1.j for \$90. He remains unfamiliar with the debts listed in SOR¶ 1.b for \$136, and SOR ¶ 1.n for \$100 although both appear on a 2002 credit report.<sup>(14)</sup> He stated he paid the credit card bill listed in SOR ¶ 1.1 for \$395, but did not produce any documentation to support his assertion, or other evidence indicating he resolved the other credit card debts he investigated in July 2004.

## **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*). Starting in 1994, Applicant began accumulating debt. Based on his testimony, a 2004 statement, and credit reports, he continued to incur debts from 1994 to the present that he is unable to pay.

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 accumulated during his first marriage and subsequent to his divorce, and continued to accrue as a result of medical expenses related to his children and his medical disabilities, all of 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. After being confronted with the problem in September 2003 and July 2004, Applicant took some action to investigate the matters. However, he did not seek credit counseling or establish a repayment plan that would demonstrate a good-faith effort to resolve the debts, many of which have been known to him for several years. As of February 2006, all of the debts are unpaid and unresolved.

I have further considered the totality of the evidence in this case, including Applicant's age, his periodic medical disabilities, and his years of holding a security clearance without any adverse incidents. While Applicant expressed his willingness to resolve his debts, he has not demonstrated a consistent track record of financial management and responsibility sufficient to mitigate the security concerns. Hence, all allegations are concluded against him, except SOR ¶ 1.j that references an Unknown Creditor because the Government failed to provide proper notice as to the identity of the creditor. 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

Subparagraph 1.e: Against Applicant

Subparagraph 1.f: Against Applicant

Subparagraph 1.g: Against Applicant

Subparagraph 1.h: Against Applicant

Subparagraph 1.i: Against Applicant

Subparagraph 1.j: For Applicant

Subparagraph 1.k: Against Applicant

Subparagraph 1.l: Against Applicant

Subparagraph 1.m: Against Applicant

Subparagraph 1.n: 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. 46.
2. GX 1 at 1 and 7.
3. Tr. 19.
4. Tr. 48 and 58.
5. GX 1 at 3-4; Tr. 52.
6. Tr. 45.
7. GX 2 at 2.
8. GX 3.
9. Tr. 32.
10. Tr. 29.
11. Tr. 35.
12. Tr. 30.
13. Tr. 35.
14. GX 4.