

KEYWORD: Financial

DIGEST: Applicant has had a history of financial difficulties. His past financial difficulties were the result of a rather extraordinary set of circumstances in which he had little control. He has now paid some of his bills and has filed a Chapter 7 bankruptcy, in an attempt to resolve the rest of his past overdue debts. Appellant has consulted with financial advisors and has a more stable outlook about his finances. Mitigation has been shown. Clearance is granted.

CASENO: 04-03086.h1

DATE: 03/01/2005

DATE: March 1, 2005

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In Re:

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SSN: -----

Applicant for Security Clearance

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ISCR Case No. 04-03086

**DECISION OF ADMINISTRATIVE JUDGE**

**MARTIN H. MOGUL**

**APPEARANCES**

**FOR GOVERNMENT**

Jennifer I. Campbell, Esq., Department Counsel

**FOR APPLICANT**

J. Scott Miller, Esq.

## **SYNOPSIS**

Applicant has had a history of financial difficulties. His past financial difficulties were the result of a rather extraordinary set of circumstances in which he had little control. He has now paid some of his bills and has filed a Chapter 7 bankruptcy, in an attempt to resolve the rest of his past overdue debts. Appellant has consulted with financial advisors and has a more stable outlook about his finances. Mitigation has been shown. Clearance is granted.

## **STATEMENT OF THE CASE**

On August 12, 2004, the Defense Office of Hearings and Appeals (DOHA), pursuant to Executive Order 10865 and Department of Defense Directive 5220.6 (Directive), dated January 2, 1992, issued a Statement of Reasons (SOR) to Applicant which 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 and recommended referral to an Administrative Judge to determine whether clearance should be denied or revoked.

In a signed and sworn statement, dated September 2, 2004, Applicant responded in writing to the SOR allegations. He requested a clearance decision based on a hearing record.

On October 12, 2004, this case was assigned to this Administrative Judge to conduct a hearing and issue a written decision. A Notice of Hearing was issued to the parties on December 10, 2004, and the hearing was held on January 21, 2005.

At the hearing, Department Counsel offered six documentary exhibits (Government Exhibits 1 through 6), and no witnesses were called. Applicant, through counsel, offered two documentary exhibits, (Applicant Exhibits A and B), and offered his testimony, and that of five additional witnesses. The record was left open for Applicant to offer additional

documents to help clarify his position regarding some of the debts alleged in the SOR. He offered seven additional documentary exhibits, which have been identified as Applicant Exhibits C through I, and entered into evidence without objection. The transcript (Tr) was received on February 1, 2005.

### **FINDINGS OF FACT**

In the SOR, the Government alleges that a security risk may exist under Adjudicative Guideline F (Financial Considerations) of the Directive. The SOR contains 14 allegations, 1.a. through 1.n., under Guideline F. In his Response to the SOR (RSOR), Applicant admitted that all of the debts were unpaid as of June 18, 2004, the date alleged in the SOR for all of the debts. However, Applicant further responded that the following debts have been resolved subsequent to that date: allegations 1.a., 1.b., 1.c., 1.d., 1.e., 1.k., and 1.l. The admitted allegations are incorporated herein as Findings of Fact.

After a complete and thorough review of the evidence in the record, including Applicant's Answer to the SOR, the documents and the live testimony, and upon due consideration of that evidence, I make the following additional Findings of Fact:

Applicant is 51 years old. He had been an employee of a defense contractor until January 9, 2005, and he is seeking a security clearance so that he may return to his former employment. He has been married to his current wife for two years, and he has one daughter.

Applicant served in the United States Air Force from 1974 to 1995, when he received an honorable discharge.

#### **Paragraph 1 (Guideline F - Financial Considerations)**

The SOR lists 14 debts that Applicant owed as of June 18, 2004, 1.a. through 1.n, under Adjudicative Guideline F. The debts will be discussed in the order that they were listed in the SOR.

1.a. This overdue debt to Creditor 1 is in the amount of \$450. In his RSOR, and during his testimony, Applicant admitted that this debt was due and owing as of June 18, 2004, but he claimed that it has been subsequently resolved (Tr at 69-71). Exhibit C establishes that Applicant is now current with this creditor. I find that Applicant no longer owes this debt.

1.b. This overdue debt to Creditor 2 is in the amount of \$437. In his RSOR, Applicant admitted that this debt was due and owing as of June 18, 2004, but he claimed that it has been subsequently resolved. However, during his testimony, he stated that this debt to his previous attorney was in dispute, because he did not receive the services for which he was billed. Applicant has now listed it as a debt to be discharged in Chapter 7 bankruptcy proceedings, which he filed on January 20, 2005 (Exhibits 1 and D, Tr at 71-73). Since there is a legitimate question about the validity of this debt, I can not find that Applicant owes this debt.

1.c. This overdue debt to Creditor 3 is listed in the SOR in the amount of \$446. In his RSOR and during his testimony, Applicant admitted that this debt was due and owing as of June 18, 2004, but he claimed that it has been subsequently resolved (Tr at 73-74). Exhibit D establishes that Applicant is now current with this creditor. I find that Applicant no longer owes this debt.

1.d. This overdue debt to Creditor 4 is in the amount of \$309. In his RSOR, Applicant admitted that this debt was due and owing as of June 18, 2004, but he claimed that it has been subsequently resolved. However, during his testimony, he stated that this debt has only been partially paid, and that he now owes \$472. Applicant has now listed it as a debt to be discharged in bankruptcy proceedings (Exhibit 1, Tr at 75-76). While this debt may be discharged in bankruptcy, I find that based on his testimony, at this time, Applicant owes \$472.

1.e. This overdue debt to Creditor 5 is in the amount of \$300. This overdue debt to Creditor 1 is in the amount of \$450. In his RSOR, and during his testimony, Applicant admitted that this debt was due and owing as of June 18, 2004, but he claimed that it has been subsequently resolved (Tr at 78-79). Exhibit F establishes that Applicant is now current with this creditor. I find that Applicant no longer owes this debt.

1.f. This overdue debt to Creditor 6 is listed in the SOR in the amount of \$2,967. In his RSOR and during his testimony, Applicant admitted that this debt is currently due and owing. Applicant has now listed it as a debt to be discharged in Chapter 7 bankruptcy proceedings. While this debt may be discharged in bankruptcy, I conclude that this debt has not yet been resolved.

1.g. This overdue debt to Creditor 7 is listed in the SOR in the amount of \$4,813. In his RSOR and during his testimony, Applicant admitted that this debt is currently due and owing. Applicant has now listed it as a debt to be discharged in Chapter 7 bankruptcy proceedings. While this debt may be discharged in bankruptcy, I conclude that this debt has not yet been resolved.

1.h. This overdue debt to Creditor 8 is listed in the SOR in the amount of \$9,558. In his RSOR and during his testimony, Applicant admitted that this debt is currently due and owing. Applicant has now listed it as a debt to be discharged in Chapter 7 bankruptcy proceedings. While this debt may be discharged in bankruptcy, I conclude that this debt has not yet been resolved.

1.i. This overdue debt to Creditor 9 is listed in the SOR in the amount of \$3,985. During his testimony, Applicant explained that this is the same debt as 1.e. (Tr at 79-81). Applicant has listed it as a debt to be discharged in Chapter 7

bankruptcy proceedings. Based on Applicant's explanation, I conclude that this debt is the same as 1.e., and I will not consider it to be due twice.

1.j. This overdue debt to Creditor 10 is listed in the SOR in the amount of \$7,858. In his testimony, Applicant explained that this is the same debt as 1.h. (Tr at 82-83). Applicant has now listed it as a debt to be discharged in Chapter 7 bankruptcy proceedings. Based on Applicant's explanation, I conclude that this debt is the same as 1.e., and I have not considered it to be due twice.

1.k. This overdue debt to Creditor 11 is listed in the SOR in the amount of \$62. In his RSOR and during his testimony, Applicant admitted that this debt is currently due and owing. Applicant has now listed it as a debt to be discharged in Chapter 7 bankruptcy proceedings. While this debt may be discharged in bankruptcy, I conclude that this debt has not yet been resolved.

1.l. This overdue debt to Creditor 12 is listed in the SOR in the amount of \$105. In his RSOR and during his testimony, Applicant admitted that this debt is currently due and owing. Applicant has now listed it as a debt to be discharged in Chapter 7 bankruptcy proceedings. While this debt may be discharged in bankruptcy, I conclude that this debt has not yet been resolved.

1.m. This overdue debt to Creditor 13 is listed in the SOR in the amount of \$3,448. In his RSOR,, Applicant admitted that this debt was due and owing. However, during his testimony, he stated that he was unaware of this debt, and since the creditor could not explain the reason for the debt, it was in dispute. Applicant has now listed it as a debt to be discharged in Chapter 7 bankruptcy proceedings (Tr at 84-85). Since there is a legitimate question about the validity of this debt, I do not find that Applicant owes this debt.

1.n. This overdue debt to Creditor 14 is listed in the SOR in the amount of \$6,962. In his RSOR and during his testimony, Applicant admitted that this debt is currently due and owing. Applicant has now listed it as a debt to be discharged in Chapter 7 bankruptcy proceedings. While this debt may be discharged in bankruptcy, I conclude that this debt has not yet been resolved.

Applicant testified that his financial problems occurred during a period that he was working in the Middle East, from 1997 through 2000. His wife, who was living with him, became ill with breast cancer and returned to the United States. Subsequently, as she became more ill, she began making large expenditures, and she did not let him know of them. Ultimately, she severed ties with Applicant by filing for legal separation. At the separation hearing, in which he was unrepresented, his wife was awarded virtually all of their assets, leaving Applicant with almost nothing. He attempted to appeal the order, but because his wife had died before he filed, they would not overturn the previous distribution of assets. As a result, when he returned to the United States, he was forced

to live for several months in a tent. In addition, because he did not have an address, he did not become aware of some of the overdue debts for some time (Tr at 56-65).

Applicant acknowledged that when he did become aware of the financial problems in which he had been placed, he did not react as well as he might have, by attempting to resolve the debts as quickly as possible. He is now attending a three month course with his current wife where he is learning to better handle his finances. He indicated that with his wife, he has been learning how to use and be aware of his credit, how to budget, and how to save systematically.

Five witnesses testified on behalf of Applicant. All of them have known him in his capacity, either with the United States Air Force or in a subsequent civilian position, training air force personnel. They all strongly recommended him as an extremely competent employee, who has been and continues to be honest and trustworthy.

### **POLICIES**

Enclosure 2 of the Directive sets forth adjudicative guidelines that must be carefully considered in evaluating an individual's security eligibility and making the overall common sense determination required. The Administrative Judge must take into account the conditions raising or mitigating security concerns in each area applicable to the facts and circumstances presented. Although the presence or absence of a particular condition for or against clearance is not determinative, the specific adjudicative guidelines should be followed whenever a case can be measured against this policy guidance, as the guidelines reflect consideration of those factors of seriousness, recency, motivation, *etc.*

The adjudication process is based on the whole person concept. All available, reliable information about the person, past and present, is to be taken into account in reaching a decision as to whether a person is an acceptable security risk.

Each adjudicative decision must also include an assessment of: (1) the nature, extent, and seriousness of the conduct; (2) the circumstances surrounding the conduct, and the extent of knowledgeable participation; (3) how recent and frequent the behavior was; (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 pertinent 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 (See Directive, Section E2.2.1. of Enclosure 2).

### **BURDEN OF PROOF**

Initially, the Government must prove controverted facts alleged in the Statement of Reasons. If the Government meets that burden, the burden of persuasion then shifts to Applicant to establish his security suitability through evidence of refutation, extenuation or mitigation sufficient to demonstrate that, despite the existence of disqualifying conduct, it is nevertheless clearly consistent with the national interest to grant or continue the security clearance. Assessment of

Applicant's fitness for access to classified information requires evaluation of the whole person, and consideration of such factors as the recency and frequency of the disqualifying conduct, the likelihood of recurrence, and evidence of rehabilitation.

A person who seeks access to classified information enters into a fiduciary relationship with the U.S. Government that is predicated upon trust and confidence. Where facts proven by the Government raise doubts about Applicant's judgment, reliability, or trustworthiness, Applicant has a heavy burden of persuasion to demonstrate that he or she is nonetheless security worthy. As noted by the United States Supreme Court in *Department of the Navy v. Egan*, 484 U.S. 518, 531 (1988), "the clearly consistent standard indicates that security-clearance determinations should err, if they must, on the side of denials."

### **CONCLUSIONS**

Having considered the evidence of record in light of the appropriate legal precepts and factors, I conclude the following with respect to guidelines F:

With respect to Guideline F, the Government has established that Applicant has had a history of financial difficulties. However, this has resulted from a rather extraordinary set of circumstances that put him in this tenuous financial situation. He has now paid some of his bills and has filed a Chapter 7 bankruptcy in an attempt to resolve the rest of his past overdue debts. I, therefore, resolve Guideline F for Applicant.

Regarding Disqualifying Conditions, I conclude both DC E2.A6.1.2.1., and DC E2.A6.1.2.3 apply, because of Applicant's history of not meeting financial obligations and his inability to satisfy his debts. However, I find MC E2.A6.1.3.3 applies because Applicant's past financial difficulties occurred as a result of the actions of his former wife, who incurred much of Applicant's debt and received the vast majority of their combined assets upon their legal separation. This was largely beyond Applicant's control. Additionally, MC E2.A6.1.3.4 applies because Applicant has consulted with financial advisors, and together with his current wife, he has a more stable and mature outlook about his finances, and he would react more expeditiously to any difficult financial situation in which he found himself. It is likely that he will remain current on all of his future debts.

### **FORMAL FINDINGS**

Formal Findings as required by Section E3.1.25 of Enclosure 3 of the Directive are hereby rendered as follows:

**Financial Considerations, Guideline F: 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

Subparagraph 1.k.: For Applicant

Subparagraph 1.l.: For Applicant

Subparagraph 1.m.: For Applicant

Subparagraph 1.n.: For Applicant

**DECISION**

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

Martin H. Mogul  
Administrative Judge