

KEYWORD: Financial; Personal Conduct

DIGEST: Applicant, a 42-year-old employee of a federal contractor did sustain financial reversals due to poor health, retirement from the U. S. Navy, a period of unemployment, adoption of his wife's granddaughter, and his subsequent separation. However, his financial statements indicated an ability to repay old debts, maintain current expenses, with a surplus each month. The record contains no evidence that bills were paid even though he made assurances that they were being paid. He gave false answers on two successive security clearance questionnaires. He has not mitigated security concerns over his finances and personal conduct. Clearance is denied.

CASENO: 04-03074.h1

DATE: 04/08/2005

DATE: April 7, 2005

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In Re:

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SSN: -----

Applicant for Security Clearance

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ISCR Case No. 04-03074

**DECISION OF ADMINISTRATIVE JUDGE**

**CHRISTOPHER GRAHAM**

**APPEARANCES**

**FOR GOVERNMENT**

Edward W. Loughran, Esq., Department Counsel

## FOR APPLICANT

*Pro Se*

### SYNOPSIS

Applicant, a 42-year-old employee of a federal contractor did sustain financial reversals due to poor health, retirement from the U. S. Navy, a period of unemployment, adoption of his wife's granddaughter, and his subsequent separation. However, his financial statements indicated an ability to repay old debts, maintain current expenses, with a surplus each month. The record contains no evidence that bills were paid even though he made assurances that they were being paid. He gave false answers on two successive security clearance questionnaires. He has not mitigated security concerns over his finances and personal conduct. Clearance is denied.

### STATEMENT OF THE CASE

On November 23, 2004, 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 Personnel Security Clearance Review Program* (Directive), dated January 2, 1992, as amended and modified, issued a Statement of Reasons (SOR) to Applicant. The SOR alleged facts under Guideline F (financial considerations) and Guideline E (personal conduct) which detail 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 Applicant's security clearance, and recommended referral to an administrative judge to determine whether a clearance should be granted, continued, denied or revoked.

In a sworn written statement, dated December 13, 2004, Applicant responded to the allegations in the SOR. Department Counsel submitted a file of relevant material (FORM) in support of the Government's preliminary decision, a copy of which was received by Applicant on January 27, 2005. Applicant was afforded the opportunity to file objections and submit material in refutation, extenuation, or mitigation by February 26, 2005. Applicant declined to submit a response to the FORM. The case was assigned to me on March 17, 2005.

## FINDINGS OF FACT

Applicant has admitted to two of six of the SOR allegations pertaining to financial matters under Guideline F (subparagraphs 1.a. through 1.f.), and denied the two allegations of Guideline E (subparagraph 2.a. and b.) Those admissions are incorporated herein as findings of fact. After a complete and thorough review of the evidence in the record, I make the following additional findings of fact:

Applicant, who is separated from his wife, <sup>(1)</sup> is a 42-year-old employee of a federal contractor seeking to obtain a security clearance. <sup>(2)</sup> He was employed by this contractor in 2001 <sup>(3)</sup>, and he obtained a security clearance while in the U. S. Navy in 1987. <sup>(4)</sup> He has a history of unpaid debts going back to 1997. <sup>(5)</sup> The following chart sets forth each unpaid debt alleged in the SOR, the type, amount and the current status.

SOR ¶	DELINQUENT	TYPE DEBT	AMOUNT	CURRENT STATUS <sup>(6)</sup>
1.a.	April 2004	collection account	\$ 277.17	Unpaid
1.b.	April 2004	collection account	\$ 408.00	Disputed/unpaid
1.c.	April 2004	collection account	\$ 1,085.00	Unpaid
1.d.	April 2004	collection account	\$ 3,920.00	Disputed/unpaid
1.e.	April 2004	collection account	\$ 5,966.00	Unpaid
1.f.	April 2004	collection account	\$ 49.00	Disputed/no proof

Applicant disputes the debts in subparagraph 1.b., d., and f. But these debts appear on his credit reports. <sup>(7)</sup> All are unpaid except 1.f. which Applicant claims he has paid, and that there is documentation to prove he paid it. Although he provided no documentation, this debt does not appear on the last credit report of April 27, 2004. It could have been paid or it could have dropped off the report due to the age of the debt. The debt in 1.b. is disputed as Applicant denies having ever attended this trade school, but he supplied no proof, and it appears on all credit reports. He wrote letters to the creditor in April 2004 requesting the debts be removed from his credit report, but he had until the end of February 2005 to respond to the FORM and supply responses from his creditors or other mitigating evidence but failed to respond. He denied the debt in 1.d but again has not provided any rebuttal evidence.

Some of Applicant's financial difficulties can be traced to a series of adverse events in his life. He suffered a heart attack; he retired from the U. S. Navy; he was unemployed for several months upon separation from the service; then his wife was laid off from her job; he then had to bring a 14-

year-old, pregnant, step-daughter to his home to provide care until the child was born; he and his wife subsequently adopted the grandchild; and finally, his wife quit working so she could provide care and nurturing for their adopted child.<sup>(8)</sup> Then he and his wife separated.<sup>(9)</sup> In his statement of July 12, 2002, Applicant gave assurances that these debts would be paid or that arrangements for payment would be forthcoming.<sup>(10)</sup> His financial statements indicate an ability to repay old debts, maintain current expenses, with a surplus each month.<sup>(11)</sup> Applicant has not submitted any evidence that this has occurred.

In answer to Standard Form 86, **Question 38. Your Financial Delinquencies - 180 Days. In the last 7 years, have you ever been over 180 days delinquent on any debts?**, his answer was "No". In answer to **Question 39. Your Financial Delinquencies - 90 Days. In the last 7 years, have you ever been over 90 days delinquent on any debts?**, his answer was "No".<sup>(12)</sup> He denied that these answers were false but his credit reports show that some of these debts have been outstanding for years, and some were written off as bad debts but he never paid them. Again, when given the opportunity to mitigate or explain, he was silent.

## POLICIES

"[No] one has a 'right' to a security clearance."<sup>(13)</sup> As Commander-in-Chief, 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."<sup>(14)</sup> The President has restricted eligibility for access to classified information to United States citizens "whose personal and professional history affirmatively indicates loyalty to the United States, strength of character, trustworthiness, honesty reliability, discretion, and sound judgment, as well as freedom from conflicting allegiances and potential coercion, and willingness and ability to abide by regulations governing use, handling, and protection of classified information."<sup>(15)</sup> Eligibility for a security clearance may be adjudicated using the security guidelines contained in the Directive.

Enclosure 2 of the Directive sets forth personnel security guidelines, as well as the disqualifying conditions (DC) and mitigating conditions (MC) under each guideline. In evaluating the security worthiness of an applicant, the administrative judge must also assess the adjudicative factors listed in ¶ 6.3 of the Directive: nature and seriousness of the conduct and surrounding circumstances; frequency and recency of the conduct; age of the Applicant; motivation of the applicant, and the extent to which the conduct was negligent, wilful, voluntary, or undertaken with knowledge of the consequences involved; absence or presence of rehabilitation; and probability that the circumstances or conduct will continue or recur in the future.

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.<sup>(16)</sup> The Directive presumes a nexus or rational connection between proven conduct under any of the disqualifying conditions listed in the guidelines and an applicant's security suitability.<sup>(17)</sup>

Once the Government establishes a disqualifying condition, the burden shifts to the applicant to rebut, explain, extenuate, or mitigate the facts. <sup>(18)</sup> An applicant "has the ultimate burden of demonstrating that it is clearly consistent with the national interest to grant or continue his security clearance." <sup>(19)</sup> A person who has access to classified information enters into a fiduciary relationship with the Government based on trust and confidence. The Government, therefore, has a compelling interest in ensuring each Applicant possesses the requisite judgment, reliability and trustworthiness of one who will protect the national interests as his or his own. The "clearly consistent with the national interest" standard compels resolution of any reasonable doubt about an Applicant's suitability for access in favor of the Government. <sup>(20)</sup> Decisions under this Directive include, by necessity, consideration of the possible risk an applicant may deliberately or inadvertently fail to protect or safeguard classified information. Such decisions entail a certain degree of legally permissible extrapolation as to potential, rather than actual, risk of compromise of classified information.

Applicant's allegiance, loyalty, and patriotism are not at issue in these proceedings. Section 7 of Executive Order 10865 specifically provides industrial security 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." Security clearance decisions cover many characteristics of an applicant other than allegiance, loyalty, and patriotism.

Having considered the SOR allegations and having reviewed the record evidence as a whole, I conclude the relevant adjudicative guidelines to be applied here are those conditions listed under Guideline F (financial considerations) (FC), Directive, ¶ E2.A6.1.1. *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;* and Guideline E (personal conduct) (PC), Directive, ¶ E2.A5.1.1. *Conduct involving questionable judgment, untrustworthiness, unreliability, lack of candor, dishonesty, or unwillingness to comply with rules and regulations 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 legal precepts, factors, and conditions, including those described briefly above, I conclude the following with respect to each allegation set forth in the SOR:

The Government has established its case under Guideline F. As indicated above, Applicant's financial situation deteriorated beginning in 1997. Notwithstanding a series of adverse events in his life, his financial statements indicate an ability to pay his debts. But the debts listed in the SOR continue to show up on successive credit reports as unpaid. He indicated he would make payments or that he had suffered identity theft but when given an opportunity to respond to the FORM and provide answers, he failed to submit any mitigating evidence. Though his answers and statements indicate an intent to pay debts, Applicant has not provided any documentation that he has paid his creditors. Failure to

pay outstanding financial obligations gives rise to Financial Considerations Disqualifying Condition (FC DC) E2.A6.1.2.1. (*A history of not meeting financial obligations*); and FC DC E2A6.1.2.3. (*Inability or unwillingness to satisfy debts*).

The fact that he had health problems, retired from the service, and experienced marital discord might be argued were situations largely beyond his control. This could bring his case within the Financial Considerations Mitigating Condition (FC MC) E2A6.1.3.3. (*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)*). But the financial statements indicated an ability to pay debts with a surplus on hand, and Applicant has not made a good-faith effort to pay down his debts. His actions do not rise to the level necessary to satisfy FC MC E2A6.1.3.6. (*The individual initiated a good-faith effort to repay overdue creditors or otherwise resolve debts*). Given the surplus shown on his financial statements, Applicant had the ability to pay something toward his arrearage. The fact that these larger debts show no progress toward payment, combined with the fact that he did not submit any response to the FORM, cannot be characterized as a "good-faith effort." I conclude SOR allegations 1.a. through f. against Applicant.

The Government also alleged that Applicant falsely answered two questions on his security clearance application on two different submissions in 2000 and 2002, by omitting that he had periods of delinquent debts greater than 90 and 180 days, respectively. The credit reports and his admissions demonstrate that he had debts in excess of these time periods. These false statements come under Guideline E, Personal Conduct Disqualifying Condition (PC DC) E2.A5.1.2.2. (*the deliberate omission, concealment, or falsification of relevant material facts from any personnel security questionnaire, personal history statement, or similar form used to conduct investigations, determine employment qualifications, award benefits or status, determine security clearance eligibility or trustworthiness, or award fiduciary responsibilities*). Applicant offered no rebuttal. No mitigating conditions are applicable. I conclude SOR allegation 2.a. and b. against the Applicant.

## **FORMAL FINDINGS**

Formal findings For or Against Applicant on the allegations set forth in the SOR, as required by ¶ E3.1.25 of Enclosure 3 of the Directive, are:

Paragraph 1. Guideline F: AGAINST THE APPLICANT

Subparagraph 1.a. - 1.f. Against the Applicant

Paragraph 2. Guideline E: AGAINST THE APPLICANT

Subparagraph 2.a. -2.b. Against the Applicant

**DECISION**

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

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Christopher Graham

Administrative Judge

1. Item 11 (*Applicant's Reply to Financial Interrogatories dated April 21, 2004*) at 3.
2. Item 4 (*Applicant's Application for National Security Clearance SF86 January 28, 2000*) at 1-3.
3. Item 7 (*Applicant's Statement dated July 12, 2002*) at 1.
4. Item 11, *supra*, at 3.
5. Item 5 (*Credit Report Dated April 3, 2000*) at 4-7.
6. *Id.*
7. Item 5, *supra*; Items 8, 9 and 10 (*Credit Reports dated April 10, 2002, September 30, 2003 and April 27, 2004, respectively*).
8. Item 7, *supra*, at 1-2.
9. Item 11 (*Applicant's Reply to Financial Interrogatories, dated April 21, 2004*) at 3.
10. Item 7, *supra*, at 2-3.

11. Item 7, *supra*, at 4; Item 11, *supra*, at 4.

12. Item 4, *supra*, at 11; Item 6 (*Applicant's Application for National Security Clearance SF86 April 5, 2002*) at 10-11.

13. See *Department of the Navy v. Egan*, 484 U.S. 518, 528 (1998).

14. *Id.*, at 527.

15. Exec. Or. 12968, *Access to Classified Information* § 3.1(b) (Aug. 4, 1995).

16. *Egan, supra*, at 531.

17. See *ISCR Case No. 95-0611* at 2 (App. Bd. May 2, 1996).

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

19. *Id.*, at 3.

20. See *Egan*; Directive ¶ E2.2.2.