

KEYWORD: Financial; Personal Conduct; Criminal Conduct

DIGEST: The Applicant has not shown a present ability to resolve his indebtedness in a reasonable period of time. He has also not shown that the past due indebtedness was due largely to his divorce. He did show that he did not falsify a questionnaire concerning his debt situation. All things considered, the Applicant has not shown that he is currently eligible for a security clearance. Clearance is denied.

CASENO: 04-03485.h1

DATE: 01/17/2006

DATE: January 17, 2006

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In Re:

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SSN: -----

Applicant for Security Clearance

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ISCR Case No. 04-03485

**DECISION OF ADMINISTRATIVE JUDGE**

**WILFORD H. ROSS**

**APPEARANCES**

**FOR GOVERNMENT**

**FOR APPLICANT**

*Pro Se*

**SYNOPSIS**

The Applicant has not shown a present ability to resolve his indebtedness in a reasonable period of time. He has also not shown that the past due indebtedness was due largely to his divorce. He did show that he did not falsify a questionnaire concerning his debt situation. All things considered, the Applicant has not shown that he is currently eligible for a security clearance. Clearance is denied.

**STATEMENT OF THE CASE**

On May 2, 2005, the Defense Office of Hearings and Appeals (DOHA), pursuant to Executive Order 10865 (as amended) and Department of Defense Directive 5220.6 (Directive), dated January 2, 1992, issued a Statement of Reasons (SOR) to the 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 the Applicant and recommended referral to an Administrative Judge to determine whether a clearance should be denied or revoked.

The Applicant responded to the SOR in writing on May 27, 2005, and requested a hearing. The case was received by the undersigned on July 5, 2005, and a Notice of Hearing was issued on July 28, 2005.

A hearing was held on August 17, 2005, at which the Government presented five documentary exhibits. Testimony was taken from the Applicant, who also submitted three hearing exhibits. He subsequently submitted three post-hearing exhibits. Applicant's Exhibit D consists of an additional written statement of the Applicant and divorce records.

Applicant's Exhibit E consists of payment receipts from creditors. Applicant's Exhibit F is a written statement from the Applicant's employer. The transcript was received on September 6, 2005.

### **FINDINGS OF FACT**

The Applicant is 27, married and has a GED. He is employed by a defense contractor as a Dispatcher, and he seeks to obtain a DoD security clearance in connection with his employment in the defense sector.

The Government opposes the Applicant's request for a security clearance, based upon the allegations set forth in the Statement of Reasons (SOR). The following findings of fact are entered as to each paragraph and guideline in the SOR. They are based on the Applicant's Answer to the SOR, the exhibits and the live testimony.

Paragraph 1 (Guideline F - Financial irresponsibility). The Government alleges that the Applicant is ineligible for clearance in that he is financially overextended and therefore at risk of having to engage in illegal acts to obtain funds. The Applicant admitted all the allegations under this paragraph. Those admissions are hereby deemed findings of fact.

The Applicant has had severe financial difficulties for several years. His financial situation, while improving, is still not good. The Applicant's first wife, from whom he is now divorced, admitted in writing that she opened accounts and ran up bills without his knowledge. (Applicant's Exhibit A.) The Applicant allowed his ex-wife to run the finances and he trusted her to pay the bills on time.

In January 2004, the Applicant was interviewed by a Special Agent of the Defense Security Service. At this time, he was shown a copy of his credit report. He acknowledged that the debts were incurred during his marriage. (Government Exhibit 2.) When the Applicant and his ex-wife were divorced, their petition states the following with regard to their debts, "We are keeping whatever debts are on our credit." (Applicant's Exhibit D at 4.) The Applicant and his ex-wife were divorced in September 2003. (Applicant's Exhibit D at 7.)

The Applicant has begun to resolve his debts. He has remarried and, with the addition of his new wife's pay, is in a better position to pay off his debts. (Transcript at 47-50.) His actions are set forth below.

Subparagraph 1.a. The Applicant has paid off this past due medical bill in the amount of \$76.72. (Applicant's Exhibit E at 1.)

Subparagraph 1.b. The Applicant admits owing this past due debt for telephone services in the amount of \$167 since 2000. He has not contacted this creditor because he was unable to find contact information. He will contact this creditor and determine whether the debt is his. If it is, he will pay it. (Transcript at 27-31.)

Subparagraph 1.c. The Applicant admits owing this past due debt for a credit card in the amount of \$833 since January 2001. He has not yet contacted this creditor for two reasons. First, there is some indication that this debt may have been sold to another company and the Applicant needs to find out who actually owns this debt. Second, he wants to wait on sending a letter to this creditor until he is in a better position to pay them. (Transcript at 31-32.)

Subparagraph 1.d. The Applicant admits owing this past due debt in the amount of \$242 since January 2001. He has not yet contacted this creditor for two reasons. First, there is some indication that this debt may have been sold to another company and the Applicant needs to find out who actually owns this debt. Second, he wants to argue with this creditor that the debt is actually his ex-wife's. If the Applicant does owe the debt, he intends to pay it off in one lump sum. (Transcript at 32-34.)

Subparagraph 1.e. The Applicant admits owing this past due debt in the amount of \$6,845 for an automobile repossessed in February 2001. He has not yet contacted this creditor. When he does, the Applicant wants to try and negotiate a payment arrangement where he only has to pay half the debt, since it was incurred during his first marriage. In any event, he will make payments on this debt. (Transcript at 35-37.)

Subparagraph 1.f. The Applicant admitted in his Answer owing this past due debt for a bad check in the amount of \$32 since 2001. At the hearing, the Applicant testified that he has not paid this debt and is confused as to whether he owes this debt at all. If it is proven to be his debt, the Applicant will pay it. (Transcript at 39.)

Subparagraph 1.g. The Applicant admits owing this past due debt in the amount of \$1,678 for a credit card since March 2001. He has not yet contacted this creditor, but intends on paying off this debt. (Transcript at 39-40.)

Subparagraph 1.h. The Applicant admits owing this past due debt in the amount of \$3,638 for an automobile repossessed in February 2001. He has not yet contacted this creditor. When he does, the Applicant wants to try and negotiate a payment arrangement where he only has to pay half the debt, since it was incurred during his first marriage. In any event, he will make payments on this debt. (Transcript at 40-41.)

Subparagraph 1.i. The Applicant admits owing this past due debt in the amount of \$633 for a credit card since June 2001. He has not yet contacted this creditor. When he does, he will make payments on this debt. (Transcript at 35-37.)

Subparagraph 1.j. The Applicant paid this debt in the amount of \$53.65 for cable television services in August 2005. (Applicant's Exhibit E at 2-3.)

Subparagraph 1.k. The Applicant admits owing this debt in the amount of \$445 since July 2002. He has not yet contacted this creditor and hopes to settle this account for a lesser amount. (Transcript at 43-45.)

Subparagraph 1.l. The Applicant admits owing this debt in the amount of \$102 since June 2003. He has contacted this creditor and hopes to settle this account as soon as they contact him. (Transcript at 45.)

Subparagraph 1.m. The Applicant admits owing this debt in the amount of \$1,019 for a credit card since September 2003. He has not yet contacted this creditor and hopes to settle this account once he has paid off the smaller debts. (Transcript at 45-46.)

Subparagraph 1.n. The Applicant admits owing this debt in the amount of \$451 since September 2003. He has not yet contacted this creditor and hopes to settle this account for a lesser amount. (Transcript at 46.)

Subparagraph 1.o. The Applicant admits owing this debt in the amount of \$444 for telephone service. He has not yet contacted this creditor and hopes to settle this account for a lesser amount. (Transcript at 47.)

Paragraph 2 (Guideline E - Personal conduct). The Government alleges in this paragraph that the Applicant is ineligible for clearance because he intentionally falsified material aspects of his personal background during the clearance screening process.

Paragraph 3 (Guideline J - Criminal conduct). The Government alleges in this paragraph that the Applicant is ineligible for clearance because he has engaged in criminal acts.

On January 9, 2004, the Applicant completed an official DoD questionnaire in which he stated that he had not been more than 180 days delinquent on any debts within the last seven years. (Government Exhibit 1 at question 38.) He further stated that he was not currently 90 days delinquent on any debts as of the date of the questionnaire. (Government Exhibit 1 at question 39.) Finally, he also stated that he had never had any property repossessed for any reason. (Government Exhibit 1 at question 35.) All of these statements were false answers to material questions pertaining to the Applicant's financial and debt situation.

However, at question 43 of Government Exhibit 1, "General Remarks," the Applicant stated, "Also all credit related items were marked NO due to them being caused by my 'soon to be' ex-wife. I have not had my credit ran in so long I have no idea what repo's or delinque[n]ces I have."

The Applicant testified that he had no intent to deceive the Government when he originally filled out the form and answered questions 35, 38 and 39 "Yes." He did not have specific information concerning his debts, and the form was returned to him by his company security manager. While he filled out a questionnaire by hand, the final version would be the Electronic Personnel Security Questionnaire. (Transcript at 50-53.) The Applicant informed the security manager that he did not know specifics about his debts and testified, "She said that what you have to do then is put no, because when they do the investigation they check anyway, and they'll come to you on it if they have questions. So just put something in the remarks section of the clearance request form that you may have something but you don't know, and then put why, and that's what I did." (Transcript at 51.)

Mitigation. The Applicant's employer submitted a letter in which it is stated, "[The Applicant] has been an outstanding associate with numerous commendations from his superiors." (Applicant's Exhibit F at 2.)

## **POLICIES**

Security clearance decisions are not made in a vacuum. Accordingly, the Department of Defense, in Enclosure 2 of the 1992 Directive, has set forth policy factors which must be given "binding" consideration in making security clearance determinations. These factors should be followed in every case according to the pertinent guideline. However, the factors are neither automatically determinative of the decision in any case, nor can they supersede the Administrative Judge's reliance on his own common sense, as well as his knowledge of the law, human nature and the ways of the world, in making a reasoned decision. Because each security clearance case presents its own unique facts and circumstances, it cannot be assumed that these factors exhaust the realm of human experience, or apply equally in every case. Based on the Findings of Fact set forth above, the factors most applicable to the evaluation of this case set forth under CONCLUSIONS, below.

In addition, as set forth in Enclosure 2 of the Directive at pages 16-17, "In evaluating the relevance of an individual's conduct, the [Administrative Judge] should consider the following factors [General Factors]:

- a. The nature, extent and seriousness of the conduct
  
- b. The circumstances surrounding the conduct, to include knowledgeable participation
  
- c. The frequency and recency of the conduct
  
- d. The individual's age and maturity at the time of the conduct
  
- e. The voluntariness of participation
  
- f. The presence or absence of rehabilitation and other pertinent behavior changes
  
- g. The motivation for the conduct
  
- h. The potential for pressure, coercion, exploitation or duress
  
- i. The likelihood of continuation or recurrence."

The eligibility guidelines established in the DoD Directive identify personal characteristics and conduct which are reasonably related to the ultimate question of whether it is "clearly consistent with the national interest" to grant an

Applicant's request for access to classified information.

In the defense industry, the security of classified industrial secrets is entrusted to civilian workers who must be counted upon to safeguard such sensitive information twenty-four hours a day. The Government is therefore appropriately concerned where available information indicates that an Applicant for clearance may be involved in acts of falsification and criminal conduct, as well as financial irresponsibility, that demonstrates poor judgement, untrustworthiness or unreliability on the Applicant's part.

The DoD Directive states, "Each adjudication is to be an overall common sense determination based upon consideration and assessment of all available information, both favorable and unfavorable, with particular emphasis placed on the seriousness, recency, frequency, and motivation for the individual's conduct; the extent to which conduct was negligent, willful, voluntary, or undertaken with the knowledge of the circumstances or consequences involved; and, to the extent that it can be estimated, the probability that conduct will or will not continue in the future." The Administrative Judge can only draw those inferences or conclusions that have a reasonable and logical basis in the evidence of record. The Judge cannot draw inferences or conclusions based on evidence which is speculative or conjectural in nature. Finally, as emphasized by President Eisenhower in Executive Order 10865, "Any determination under this order...shall be a determination in terms of the national interest and shall in no sense be a determination as to the loyalty of the applicant concerned."

## CONCLUSIONS

It is the Government's responsibility to present substantial evidence to support the finding of a nexus, or rational connection, between the Applicant's conduct and the granting of a security clearance. If such a case has been established, the burden then shifts to the Applicant to go forward with evidence in rebuttal, explanation or mitigation which is sufficient to overcome or outweigh the Government's case. The Applicant bears the ultimate burden of persuasion in proving that it is clearly consistent with the national interest to grant him or her a security clearance.

In this case the Government has met its initial burden of proving by substantial evidence that the Applicant is financially overextended, and does not yet have his finances under control (Guideline F).

The Applicant, on the other hand, has not introduced persuasive evidence in rebuttal, explanation or mitigation which is sufficient to overcome the Government's case against him, except in part. Turning to Paragraphs 2 and 3, I find that the Government has failed to make its initial burden. The evidence shows that the Applicant notified the Government as best he could that he had financial problems. Given his divorce and the problems with his now ex-wife, he could not know the true extent of his debts. The electronic version of the Personnel Security Questionnaire requires considerable



information concerning a person's bad debts in order to be validated, information which he did not have. Under the whole person standard, and considering the state of the evidence, I find that the Applicant did not have the intent to deceive the Government. Guidelines E and J are found for the Applicant.

The situation is different when it comes to his financial situation. The Applicant admits owing \$16,710. He stated at the hearing that his ex-wife may be responsible for some of the debt, a fact which she admits, but he is unable to state with particularity what debts she is responsible for. He submitted evidence showing that he has paid two debts worth \$129. This is less than 10% of the total amount owed. He has not contacted all of his creditors as of yet, and he has no specific plan for paying them off. While he has shown the beginnings of a good-faith effort to resolve his indebtedness, it is simply too soon in the process to have confidence that he will be able to complete it.

Under the facts of this case, Disqualifying Conditions E3.A6.1.2.1. *A history of not meeting financial obligations* and E3.A6.1.2.3. *Inability or unwillingness to satisfy debts* apply. The behavior is recent, in that the debts are long-standing and continue to be unpaid. In addition, they are not isolated. I have considered the Applicant's separation and divorce in analyzing this case. However, I do not believe that, *The conditions that resulted in the behavior were largely beyond the person's control.* (Mitigating Condition E2.A6.1.3.3.)

The Applicant's efforts at reform are noted, and he is commended for his decision to pay off his debts as soon as possible. If he continues to show the ability to maintain his current debt situation and pay off his past indebtedness, he may be eligible for a clearance in the future. Under the particular circumstances of this case, this evidence does not overcome the adverse information that has been presented by the Government.

On balance, it is concluded that the Applicant has failed to overcome the Government's information opposing his request for a security clearance. Accordingly, the evidence supports a finding against the Applicant as to the conclusionary allegations expressed in Paragraph 1 of the Government's Statement of Reasons. As set forth above, Paragraphs 2 and 3 are found for the Applicant.

## **FORMAL FINDINGS**

Formal findings For or Against the Applicant on the allegations in the SOR, as required by Paragraph 25 of Enclosure 3 of the Directive, are:

Paragraph 1: Against the Applicant.

Subparagraphs 1.a. through 1.p.: Against the Applicant.

Paragraph 2: For the Applicant.

Subparagraphs 2.a. through 2.c.: For the Applicant.

Paragraph 3: For the Applicant.

Subparagraph 3.a.: For 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 a security clearance for the Applicant.

Wilford H. Ross

Administrative Judge