

KEYWORD: Financial

DIGEST: Applicant is 43 years old and works as a business manager for a federal contractor. From 1993 through the present, he has accumulated approximately \$20,000 of delinquent debt that he has not resolved and does not intend to pay. He failed to mitigate the security concerns raised by financial considerations. Clearance is denied.

CASENO: 04-04255.h1

DATE: 04/18/2006

DATE: April 18, 2006

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In re:

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SSN: -----

Applicant for Security Clearance

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ISCR Case No. 04-04255

**DECISION OF ADMINISTRATIVE JUDGE**

**SHARI DAM**

**APPEARANCES**

**FOR GOVERNMENT**

Francisco J. Mendez, Esq., Department Counsel

## FOR APPLICANT

*Pro Se*

### SYNOPSIS

Applicant is 43 years old and works as a business manager for a federal contractor. From 1993 through the present, he has accumulated approximately \$20,000 of delinquent debt that he has not resolved and does not intend to pay. He failed to mitigate the security concerns raised by financial considerations. Clearance is denied.

### STATEMENT OF THE CASE

On June 13, 2005, Defense Office of Hearings and Appeals (DOHA) under Executive Order 10865, *Safeguarding Classified Information Within Industry*, as amended, 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 June 27, 2005, Applicant filed his Answer to the SOR, admitting some of the allegations and denying others, and requested a hearing. On January 3, 2006, the case was assigned to me. A Notice of Hearing was mailed on January 31, 2006, and set the case for hearing on February 28, 2006. At the hearing the Government introduced exhibits (GX) 1-7 into evidence. Applicant introduced exhibit (AX) A into evidence. He testified in his case-in-chief. At the conclusion of the hearing, the record was left open until March 21, 2006, to give Applicant an opportunity to submit additional documents. As of that date, he did not file any other evidence. DOHA received the Transcript (Tr.) on March 9, 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 43 years old. He is married and has five children. Since December 2002, he has worked as a business manager for a defense contractor. Prior to this job he was self-employed from September 2001 to November 2002. Previously, he worked for a federal contractor from 1988 until 1998, during which time he held a security clearance.<sup>(1)</sup> He filed the pending security clearance application (SCA) in December 2002.

Beginning in 1993 and continuing to the present, Applicant's has experienced significant financial difficulties, most of which are attributable to his wife's indiscriminate spending over the years.<sup>(2)</sup> They were exacerbated while he was out of work for six months in 2002 during the time he was self-employed.<sup>(3)</sup> Many of his unpaid creditors are credit card companies.

In 1994, Applicant spoke to a credit counselor in an attempt to consolidate his debts. The counselor advised him not to pay debts that were more than two or three years old or written-off because subsequent payments would revive the debt and negatively affect his credit rating. He understood that those bad debts would be removed from his credit history after seven years.<sup>(4)</sup>

In his January 2004 statement to the Government, Applicant admitted that he did not have the means to satisfy all of his delinquent debts and did not plan to contact his creditors. He stated "The accounts which are fairly old I have basically just ignored and have hoped they would go away."<sup>(5)</sup>

Since September 2004, Applicant has been paying employment taxes that he incurred and failed to pay during the time he was self-employed. He owes \$7,800 and believes he will have it paid in the next two years through payroll deductions.

Paragraph 1 of the SOR alleged that Applicant's delinquent debts total \$21,819. He admitted he owes the following credit card debts: SOR ¶ 1.d for \$947, charged off in 1998; SOR ¶ 1.e for \$235, charged off in 1996; SOR ¶ 1.f for \$831, charged off in 1996; SOR ¶ 1.i for \$733, charged off in 2002; SOR ¶ j for \$3,925, charged off in 2003; and SOR ¶

1.m for \$497, charged off in 2002. He also admitted owing a \$99 medical bill alleged in SOR ¶ 1.c. He does not intend to pay these old debts, which total \$7,267. [\(6\)](#)

Applicant paid the utility debts alleged in SOR ¶¶ 1.h (\$463), 1.k (\$408) and 1.m (\$527), as evidenced by the February 2006 credit report. [\(7\)](#) These debts total \$1,398.

Applicant plans to dispute SOR ¶ 1.l for \$11,562, which relates to his son's previous lease. He claims he has no knowledge of the creditors listed in SOR ¶¶ 1.b (\$148), 1.o (\$464), and 1.p (\$896). [\(8\)](#) However, a March 2005 credit report listed all of them, and noted next to the debt alleged in SOR ¶ 1.o, "Consumer Disputes This Account," and, inserted "Account Closed by Consumer" under the debt referred to SOR ¶ 1.b. [\(9\)](#) These debts total \$13,154.

Applicant denied owing the debts referenced in SOR ¶¶ 1.a (\$42) and 1.g (\$42). He claimed they related to an insurance premium previously paid. The debt remains on the February 2006 credit report, but is listed only once as SOR ¶ 1.g. In January 2004, he said he would have the matter resolved "no later than by the end of FEB 04." [\(10\)](#)

In January 2006, Applicant spoke to a mortgage broker about improving his credit rating in order to purchase a house. [\(11\)](#) He was again advised not to make payments on old debts to avoid their reactivation and a potential problem with his credit rating. [\(12\)](#) At the hearing, he candidly stated that he does not intend to pay the debts, but plans to wait seven years at which time they will be removed from his credit history. [\(13\)](#)

Presently, Applicant earns \$86,000 annually. [\(14\)](#) His monthly net income is \$5,269. After paying his monthly expenses, including a mortgage, car payments, and other debts, he has a net remainder of \$300. [\(15\)](#) He and his wife have attempted to follow a budget since October 2005, in order to resolve their financial problems and purchase a home.

## **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 considered all of the facts in evidence, legal standards, including the "whole person" concept and Applicant's credibility. The Government 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*). From 1993 to the present, Applicant accumulated a significant amount of delinquent debt. Based on his testimony, credit reports, and a current budget, he remains unable and unwilling to pay that debt.

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 none applies. Financial Consideration Mitigating Condition (FC MC) E2.A6.1.3.1 (*The behavior was not recent*) does not apply as the problem spans a twelve-year period of time, beginning in 1993 through the present. FC MC E2.A6.1.3.2 (*It was an isolated incident*) is inapplicable given the ongoing nature of the problems. Although Applicant's unemployment for six months may have contributed to his financial difficulties, it was not the underlying cause of his financial troubles. His wife's spending habits led to his indebtedness, which was a factor in his control, such that 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)*) does not mitigate the disqualifying conditions. He testified that he recently received credit counseling in order to purchase a house, but he did not present any evidence that his financial problems are being resolved or under control, as required under 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*). His repeated assertions that he does not intend to repay his delinquent debt and his failure to submit proof documenting disputed debts, preclude the application of FC MC E2.A6.1.3.6 (*The individual initiated a good-faith effort to repay overdue creditors or otherwise resolve debts*).

I further considered the totality of the evidence in this case, including Applicant's ten years of holding a security

clearance, his resolution of unpaid self-employment taxes, the recent implementation of a household budget, and his candid testimony about his finances. While Applicant expressed a willingness to resolve his financial obligations for purposes of obtaining a mortgage, he did not present a plan to resolve his unpaid creditors or to establish a consistent track record of financial management sufficient to mitigate the security concerns raised by a history of unpaid debts for purposes of this application process. As of arch 2006, most of the debts in the SOR are unpaid and unresolved, Hence, all allegations are concluded against him, except ¶ 1.a that is a duplicate of ¶ 1.g, and ¶¶ 1.h, 1.k and 1.m, which have been paid. 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: For 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: For Applicant

Subparagraph 1.i: Against Applicant

Subparagraph 1.j: Against Applicant

Subparagraph 1.k: For Applicant

Subparagraph 1.l: Against Applicant

Subparagraph 1.m: Against Applicant

Subparagraph 1.n: For Applicant

Subparagraph 1.o: Against Applicant

Subparagraph 1.p: 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. 17-18.

2. Tr. 43-44.

3. Tr. 47.

4. Tr. 50-51.

5. GX 3 at 1.

6. Tr. 38.

7. GX 6.

8. Tr. 25.

9. GX 4 at 6-7.



10. GX 3 at 2.

11. Tr. 42.

12. Tr. 20.

13. Tr. 37 and 57.

14. Tr. 56.

15. Tr. 47.