

KEYWORD : Financial

DIGEST: Over the past five years, Applicant accrued approximately \$45,000 in financial delinquencies. Although he has satisfied approximately \$10,000 of these delinquencies, his uncorroborated contention that the remaining delinquencies were either satisfied entirely, in the process of being satisfied incrementally, or scheduled to be satisfied in the future, failed to mitigate the financial considerations security concerns. Clearance is denied.

CASE NO. 04-04324.h1

DATE: 05/19/2006

DATE: May 19, 2006

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In Re:

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SSN: -----

Applicant for Security Clearance

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ISCR Case No. 04-04324

**DECISION OF ADMINISTRATIVE JUDGE**

**MARC E. CURRY**

**APPEARANCES**

**FOR GOVERNMENT**

Candace Le'i, Esq., Department Counsel

## **FOR APPLICANT**

*Pro Se*

### **SYNOPSIS**

Over the past five years, Applicant accrued approximately \$45,000 in financial delinquencies. Although he has satisfied approximately \$10,000 of these delinquencies, his uncorroborated contention that the remaining delinquencies were either satisfied entirely, in the process of being satisfied incrementally, or scheduled to be satisfied in the future, failed to mitigate the financial considerations security concerns. Clearance is denied.

### **STATEMENT OF THE CASE**

On May 16, 2005, the Defense Office of Hearings and Appeals (DOHA) issued to Applicant a Statement of Reasons (SOR) stating they were unable to find that it was clearly consistent with the national interest to grant or continue a security clearance. [\(1\)](#) The SOR, which is in essence the administrative complaint, alleged security concerns under Guideline F, financial considerations. Applicant answered the SOR on June 8, 2005, and elected to have the case decided on the written record.

Department Counsel mailed the government's file of relevant material (FORM) to Applicant on July 29, 2005. He received it on August 16, 2005. Applicant was afforded an opportunity to file objections and submit material in refutation, extenuation, or mitigation. On September 15, 2005, Applicant submitted a 10-page response to the FORM. He did not object to any of the submissions in the FORM. The case was assigned to me on October 11, 2005.

### **FINDINGS OF FACT**

Applicant admitted allegations 1.a., 1.d. through 1.g., 1.i. through 1.k., and 1.o. through 1.q. He denied allegations 1.b., 1.c., 1.h., and 1.l. through 1.n. His admissions are incorporated herein as findings of fact.

Applicant is a 53-year-old, married man. He has one adult child. He is a veteran of the U.S. Air National Guard where he served from 1970-1997. He has been working as an operations supervisor for a federal contractor since 1993. Applicant is entrusted with a tremendous degree of responsibility on his job. He supervises more than 200 employees, and has held a security clearance since 1996.

Approximately seven years ago, Applicant's wife, a small business owner, suffered a disabling medical illness. Unable to pay his wife's medical and business expenses, in conjunction with their routine family expenses on one salary, Applicant began accruing financial delinquencies. By July 2004, he had made modest progress toward satisfying them. Four months later, his efforts toward debt repayment were sidetracked when he shattered his right heel. This injury required surgery and resulted in Applicant incurring more medical bills which again disrupted his efforts toward satisfying the older debts. By July 2005, he had accrued approximately \$44,023 of delinquent debt.

All of this debt is owed to banks for delinquent credit card balances, and has either been charged off or transferred to collection agencies. Applicant satisfied two of the delinquent credit card balances listed in subparagraphs 1.b. (2) and 1.h. (3) respectively. The government did not establish the delinquencies listed in subparagraph 1.c. and 1.l. The remaining SOR delinquencies continue to pose a security concern.

In approximately June 2004, the Government mailed interrogatories to Applicant. Among other things, the interrogatories requested him to disclose whether he had entered into a credit counseling program, and to provide records such as "canceled checks, money order receipts, payroll earnings statements showing payroll deductions, and receipts" (4) showing which debts either were being satisfied, or had been satisfied through the credit counseling program. At the time the interrogatories were executed, Applicant was not enrolled in a credit counseling program. When he subsequently enrolled in one approximately a year later, he failed to provide any of this information.

Applicant withdrew \$7,900 from his 401k to pay down his delinquent debt. He did not specify which of the delinquencies were satisfied with these funds.

## POLICIES

Enclosure 2 of the Directive sets forth adjudicative guidelines which must be considered in the evaluation of security suitability. In addition to brief introductory explanations for each guideline, the adjudicative guidelines are divided into those that may be considered in deciding whether to deny or revoke an individual's eligibility for access to classified information (Disqualifying Conditions) and those that may be considered in deciding whether to grant an individual's eligibility for access to classified information (Mitigating Conditions).

An administrative judge need not view the adjudicative guidelines as inflexible, ironclad rules of law. Instead, acknowledging the complexities of human behavior, these guidelines, when applied in conjunction with the factors set forth in the Adjudicative Process provision in Section E2.2., Enclosure 2, of the Directive, are intended to assist the administrative judge in reaching fair and impartial common sense decisions. Although the presence or absence of a particular condition or factor for or against clearance is not outcome determinative, the adjudicative guidelines should be followed whenever a case can be measured against this policy guidance.

Because the entire process is a conscientious scrutiny of a number of variables known as the "whole person concept," all available, reliable information about the person, past and present, favorable and unfavorable, should be considered in making a meaningful decision. Specifically these are: (1) the nature and seriousness of the conduct and surrounding circumstances; (2) the frequency and recency of the conduct; (3) the age of the applicant; (4) the motivation of the applicant, and the extent to which the conduct was negligent, willful, voluntary, or undertaken with knowledge of the consequences; (5) the absence or presence of rehabilitation; and (6) the probability that the circumstances or conduct will continue or recur in the future.

The following adjudicative guideline is raised:

**Guideline F - Financial Considerations: 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.**

Conditions pertaining to this adjudicative guideline that could raise a security concern and may be disqualifying, as well as those which could mitigate security concerns, are set forth and discussed in the conclusions below.

Since the protection of national security is the paramount consideration, the final decision in each case must be reached by applying the standard that the issuance of the clearance is "clearly consistent with the interests of national security," [\(5\)](#) or "clearly consistent with the national interest." For the purposes herein, despite the different language in each, I have concluded both standards are one and the same. In reaching this decision, I have drawn only those conclusions that

are reasonable, logical, and based on the evidence contained in the record. Likewise, I have avoided drawing inferences grounded on mere speculation or conjecture.

The Government is responsible for presenting witnesses and other evidence to establish facts in the SOR that have been controverted. The applicant is responsible for presenting witnesses and other evidence to rebut, explain, extenuate, or mitigate facts admitted by the applicant or proven by the Government, and has the ultimate burden of persuasion as to obtaining a favorable security decision.

A person who seeks access to classified information enters into a fiduciary relationship with the government predicated upon trust and confidence. It is a relationship that transcends normal duty hours and endures throughout off-duty hours as well. It is because of this special relationship the government must be able to repose a high degree of trust and confidence in those individuals to whom it grants access to classified information. 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.

One additional comment is worthy of note. Applicant's allegiance, loyalty, and patriotism are not at issue in these proceedings. Section 7 of Executive Order 10865 specifically provides industrial security clearance 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. Nothing in this Decision should be construed to suggest I have based this decision, in whole or in part, on any express or implied decision as to Applicant's allegiance, loyalty, or patriotism.

## CONCLUSIONS

Upon consideration of all the facts in evidence, and after application of all appropriate legal precepts, factors, and conditions, including those described above, I conclude the following with respect to each allegation set forth in the SOR:

Applicant has struggled with his finances for more than five years, accruing approximately \$44,023 of delinquent debt. The available evidence raises Financial Considerations Disqualifying Condition (FC DC) E2.A6.1.2.1. (*A history of not meeting financial obligations*), and FC DC E2.A5.1.2.3. (*Inability or unwillingness to satisfy debts*).

The financial delinquencies accrued over a seven-year period. Throughout this period, Applicant has struggled to satisfy them, and the majority of them remain delinquent at present. Neither Financial Considerations Mitigating Condition (FC MC) E2.A6.1.3.1. (*The behavior was not recent*), nor FC MC E2.A.6.1.3.2 (*It was an isolated incident*), apply.

Applicant and his wife experienced medical problems that exacerbated his financial difficulties. Financial Considerations 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 contends that these remaining delinquencies were either satisfied in their entirety, in the process of being satisfied incrementally, or scheduled to be satisfied in the future. Also, he contends that he has been working with a credit counselor to satisfy them. He provided no corroborating evidence to support these contentions. Neither FC MC E2.A6.1.3.4. (*The person has received or is receiving counseling for the problem*), nor FC MC E2.A6.1.3.6 (*The individual initiated a good-faith effort to repay overdue creditors or otherwise resolve debts*) applies.

Given the nature of his job, Applicant is a highly responsible and competent individual. He dedicated nearly his entire adult life to public service as a member of the U.S. Air National Guard. Having evaluated all of Applicant's statements in the FORM and the response to the FORM, it is clear that he is taking some steps to satisfy his delinquencies. He failed, however, to describe them with any particularity or to verify them with any corroborating evidence, despite being instructed to do so in an interrogatory mailed to him nearly two years ago. Consequently, any positive inference generated by his strong character is outweighed by the negative inferences generated by his ongoing financial difficulties. I conclude Applicant has not mitigated the Financial Considerations security concern.

### **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:

Paragraph 1-Guideline F: Against Applicant

Subparagraph 1.a.: Against Applicant

Subparagraph 1.b.: For Applicant

Subparagraph 1.c.: For 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.: Against Applicant

Subparagraph 1.l.: For Applicant

Subparagraph 1.m.: Against Applicant

Subparagraph 1.n.: Against Applicant

Subparagraph 1.o.: Against Applicant

Subparagraph 1.p.: Against 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 Applicant. Clearance is denied.

Marc E. Curry

Administrative Judge

1. This action was taken under Executive Order 10865, dated February 20, 1960, as amended, and DoD Directive 5220.6, dated January 2, 1992, as amended and modified (Directive).
2. Credit Bureau Report of September 8, 2005, at 6, as included in Applicant's response to the FORM, dated September 15, 2005.
3. Item 7, Credit Bureau Report of July 20, 2005, at 4.
4. Item 6, Interrogatories executed July 8, 2004, at 10. The exact date the Interrogatories were propounded is unknown.
5. The Directive, as amended by Change 4, dated April 20, 1999, uses "clearly consistent with the national interest" (Sec. 2.3.; Sec. 2.5.3.; Sec. 3.2; and Sec. 4.2.; Enclosure 3, Sec. E3.1.1.; Sec. E3.1.2.; Sec. E3.1.25.; Sec. E3.1.26.; and Sec. E3.1.27.), "clearly consistent with the interests of national security" (Enclosure 2, Sec. E2.2.3.) and "clearly consistent with national security" (Enclosure 2, Sec. E2.2.2.).