

KEYWORD: Financial; Personal Conduct

DIGEST: Applicant is 43 years old and works as a computer trainer for a federal contractor. In 1992, his first wife incurred substantial credit card debt. He was unable to resolve the debt, and filed a Chapter 13 bankruptcy in 1997. Subsequently, the proceeding was dismissed because Applicant did not comply with the repayment order. To-date, Applicant has not resolved or paid the outstanding delinquent debt, which totals \$14,000. When he completed his security clearance application in 2001, he did not list his delinquent debts. He failed to mitigate the security concerns raised by financial considerations, but did mitigate those raised by personal conduct. Clearance is denied.

CASE NO: 04-04623.h1

DATE: 05/25/2006

DATE: May 25, 2006

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In re:

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SSN: -----

Applicant for Security Clearance

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ISCR Case No. 04-04623

**DECISION OF ADMINISTRATIVE JUDGE**

**SHARI DAM**

**APPEARANCES**

**FOR GOVERNMENT**

Stephanie Hess, Esq., Department Counsel

## **FOR APPLICANT**

Tomekia L. Lee-Chaney, Esq.

### **SYNOPSIS**

Applicant is 43 years old and works as a computer trainer for a federal contractor. In 1992, his first wife incurred substantial credit card debt. He was unable to resolve the debt, and filed a Chapter 13 bankruptcy in 1997. Subsequently, the proceeding was dismissed because Applicant did not comply with the repayment order. To-date, Applicant has not resolved or paid the outstanding delinquent debt, which totals \$14,000. When he completed his security clearance application in 2001, he did not list his delinquent debts. He failed to mitigate the security concerns raised by financial considerations, but did mitigate those raised by personal conduct. Clearance is denied.

### **STATEMENT OF THE CASE**

On June 24, 2005, the 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, issued a Statement of Reasons (SOR) to Applicant. The SOR detailed reasons under Guidelines F (Financial Considerations) and E (Personal Conduct) why DOHA could not make a preliminary affirmative finding 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 July 25, 2005, Applicant filed his Answer to the SOR and requested a hearing. On February 6, 2006, the case was assigned to another administrative judge. A Notice of Hearing was issued on February 13, 2006, setting the case for hearing on March 29, 2006. Applicant filed a Motion for a Continuance, which was granted, and the case was reassigned to me on March 23, 2006. A Notice of Hearing was issued on April 11, 2006, setting the case for hearing on May 2, 2006. At the hearing the Government introduced exhibits (GX) 1-14 into evidence. Applicant testified in his case-in-chief. DOHA received the hearing transcript (Tr.) on May 10, 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. For the last two years he has worked for a federal contractor training individuals in the armed forces on computer software. Prior to this position, he worked for other federal contractors, performing similar jobs. He has held a security clearance while working in private industry for about five years.<sup>(1)</sup> In May 2001, he filed his security clearance application (SCA).

Applicant served in the armed forces from 1983 until 1999, when he was honorably discharged. While serving overseas, he was arrested in 1997 for shoplifting. He was not formally disciplined, however, he was punished by his superiors. He admitted he made a serious mistake at that time.<sup>(2)</sup> He held a top-secret security clearance while in the armed forces.

Applicant's financial problems began in 1992 when his first wife incurred huge credit card debts. In 1993, he enrolled in a debt consolidation program in order to resolve them. After he divorced his wife in 1994, he continued having financial difficulties despite credit counseling and the consolidation program.<sup>(3)</sup> Sometime in 1996 or 1997, the consolidation company failed to make two payments, resulting in additional financial problems.<sup>(4)</sup> On November 19, 1997, he and his second wife decided to file a Chapter 13 bankruptcy, and establish a repayment plan. On September 25, 1998, the bankruptcy court entered an order confirming a repayment plan.<sup>(5)</sup> On July 22, 1999, the case was dismissed because Applicant failed to comply with the plan. Prior to leaving for overseas in fall of 1999, Applicant gave his bankruptcy attorney \$10,000 to put toward the resolution of his debts. On October 1, 1999, the case was reinstated.<sup>(6)</sup> Subsequently, his second wife failed to make some payments, and the case was again dismissed on February 8, 2000.<sup>(7)</sup> After returning home in May 2000, his lawyers informed him that his wife had absconded with the \$10,000.<sup>(8)</sup> His wife denied taking the money, and he believed her. On August 8, 2000, the court entered an order withdrawing another Motion for Reinstatement that had been filed on February 22, 2000.<sup>(9)</sup> The case was never refiled or reinstated. Applicant and his second wife divorced in the summer of 2000.

In September 2004, Applicant answered Interrogatories regarding the debts subsequently alleged in the SOR. He noted that the debts alleged in ¶¶ 1. b (\$1,125), 1.c (\$731), 1.I (\$1,451), 1.j (\$49), 1.k (\$114), 1.l (\$616), 1.m (\$8,426), and 1.n (\$1,317) were either resolved in the previously filed bankruptcy or charged off by the creditor.<sup>(10)</sup> These debts totaled \$13,829. In his July 2005 Answer to the SOR, he stated the allegation contained in ¶ 1.o (\$134) was charged off. According to his Answer and testimony, the debts alleged in ¶¶ 1.d (\$33); 1.e (\$40); 1.f (\$48); 1.g (\$150); and 1.h (\$466) (totaling \$737), were paid. The delinquent debts alleged in Paragraph 1 of the SOR totaled \$14,700.

After Applicant received the SOR in June 2005, he again confronted his second ex-wife about the \$10,000, and she admitted she

stole the money. While testifying, he said he exercised poor judgment in handling the bankruptcy and financial situation with his second wife. Although he admitted owing the debts listed in the SOR, he never totaled them to determine the amount owed as he was "kind of scared to."<sup>(11)</sup> He was under the impression from his lawyer that he did not need to pay the debts because the statute of limitations had expired and they were no longer enforceable.<sup>(12)</sup> Until he received the SOR, he did not realize that failing to repay the delinquent debts could adversely impact his security clearance.

Currently, Applicant has a net monthly income of \$3,200. His third wife also works, but does not combine her money with his. After paying his expenses, he has about \$300 left. To-date, he has not resolved or established any form of a repayment plan for the outstanding debts, although he is willing to do so.<sup>(13)</sup>

When Applicant signed his SCA in May 2001, he swore his answers were "true, complete, and correct" to the best of his knowledge and belief. In response to Question 38. Your Financial Delinquencies - 180 Days (*In the last 7 years, have you been over 180 days delinquent on any debt(s)?*) he answered "No," and failed to disclose the debts listed in SOR ¶¶ 1.b, 1.c, 1.d and 1.e. In response to Question 39. Your Financial Delinquencies - 90 Days (*Are you currently over 90 days delinquent on any debt(s)*), he again answered "No," and did not list these debts. According to his written Answer, he was confused by the questions, and did not know if the questions sought the legal or the historical status of the debts. He sought clarification from his employer, who did not provide accurate information. He knew at the time that the bankruptcy was of record and would appear on his credit report, so he did not believe he was concealing the debts. Applicant was unaware that the debts were considered delinquent, and believed they had been either paid or discharged through the bankruptcy, or charged off by the creditor. I find his testimony and Answer credible, and do not believe he intentionally falsified his answers in the SCA.

## 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. ay 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 guidelines are 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.

**Guideline E - Personal Conduct:** A security concern may exist when 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.

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, and conclude as follows:

### Guideline F - Financial Considerations

The Government established its case for disqualification under Financial Consideration Disqualifying Condition (FC DC) E2.A6.1.2.1 (*A history of not meeting financial obligations*). Applicant admitted that his history of not meeting his financial obligations began in 1992, resulting in delinquent debts that have not been paid or resolved as of the hearing.

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 Financial Consideration 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 in this case. Applicant's financial difficulties are the result of unexpected marital problems with his first and second wife, which were factors beyond his control.

As that mitigating condition standing alone is insufficient to overcome the Government's present concern, I also considered 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*), and FC MC E2.A6.1.3.6 (*The individual initiated a good-faith effort to repay overdue creditors or otherwise resolve debts*), and conclude neither applies. In 1993, Applicant entered into a debt consolidation plan to manage his financial issues. However, the plan did not resolve his problems, and in 1997 he decided to file a Chapter 13 bankruptcy. Subsequently, the bankruptcy was dismissed, and many of the debts listed in the SOR remain unpaid or unresolved, as required under FC MC E2.A6.1.3.4. Since that dismissal in 2000, Applicant has paid about \$700 of the delinquent debts. Although he now acknowledges his obligation to repay the debts and resolve his financial affairs, he has not taken sufficient affirmative steps to do so (despite learning of the security clearance problem in June 2005), as contemplated under the "good faith" language of FC MC E2.A6.1.3.6. Hence, the allegations contained in SOR ¶¶ 1.b, 1.c, 1.i through 1.o are concluded against him. As to the allegation in ¶ 1.a, it is concluded for him, as he initially attempted to resolve his problems in 1997 through a bankruptcy repayment plan. The allegations contained in ¶¶ 1.d, 1.e, 1.f, 1.g, and 1.h are paid, and are also concluded in his favor. Accordingly, Guideline F is decided against Applicant.

### Guideline E - Personal Conduct

The Government established a case under Personal Conduct Disqualifying Condition (PC DC) E2.A5.1.2.1 (*Reliable, unfavorable information provided by associates, employers, coworkers, neighbors and other acquaintances*). In 1997, Applicant was disciplined for shoplifting by his employer, a branch of the armed forces. This incident demonstrated conduct, involving questionable judgment or untrustworthiness. However, that condition is mitigated by the passage of nine years without evidence of any other misconduct, and an indication that Applicant learned a lesson from the experience and is unlikely to make a similar mistake in the future. Thus, SOR ¶ 2.a is concluded for Applicant.

The Government also alleged that Applicant falsified his SCA by failing to disclose debts in the previous seven years that were more than 90 or 180 days delinquent, which constitutes a disqualification under Personal Conduct Disqualifying Condition (PC DC) E2.A5.1.2.2 (*The deliberate omission, concealment, or falsification of relevant and 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 denied those allegations.

When a falsification allegation is controverted or denied, the government has the burden of proving it. Proof of an omission, standing alone, does not establish or prove an applicant's state of mind when the omission occurred. An administrative judge must consider the record evidence as a whole to determine whether there is direct or circumstantial evidence concerning an applicant's state of mind at the time the omission occurred. *See* ISCR Case No. 03-09483 at 4 (App. Bd. Nov. 17, 2004) (explaining holding in ISCR Case No. 02-23133 at 5 (App. Bd. Jun. 9, 2004)).

Based on Applicant's demeanor and testimony at the hearing, along with his June 2003 answers to the Interrogatories, and his confusion as to the information sought by the questions regarding his debts, viz., legal versus historical status, I found Applicant's explanation for failing to list his debts credible. I am satisfied that he did not intend to conceal the debts when he initially completed the SCA in May 2001. I am also convinced that he will resolve the matters in the future. Hence, SOR ¶¶ 2. b and 2.c are concluded for him. Accordingly, Guideline E is decided in his favor.

However, for the reasons stated under Guideline F, 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: 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: Against Applicant

Subparagraph 1.j: Against Applicant

Subparagraph 1.k: Against Applicant

Subparagraph 1.l: Against Applicant

Subparagraph 1.m: Against Applicant

Subparagraph 1.n: Against Applicant

Subparagraph 1.o: Against Applicant

Paragraph 2: Guideline E (Personal Conduct) FOR APPLICANT

Subparagraphs 2.a through 2. c: For 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. 30.
2. Tr. 30 and 85.
3. Tr. 74.
4. Tr. 74-75.
5. GX 14.
6. *Id.*
7. GX 3 at 2; GX at 2.
8. *Id.*
9. GX 14.
10. GX 4.
11. Tr. 78.
12. *Id.*
13. Tr. 82.