

KEYWORD: Financial

DIGEST: Due to persistent efforts of Applicant and his wife, seven delinquent debts have been paid or settled even with Applicant's poor health and recurring mechanical problems with his truck. Because of the commendable efforts of Applicant and his wife in paying past due debts, I am confident they will continue to pay off the remaining creditors while ensuring these problems do not recur. Clearance is granted.

CASENO: 04-04700.h1

DATE: 11/30/2005

DATE: November 30, 2005

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In Re:

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SSN: -----

Applicant for Security Clearance

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ISCR Case No. 04-04700

**DECISION OF ADMINISTRATIVE JUDGE**

**PAUL J. MASON**

**APPEARANCES**

**FOR GOVERNMENT**

**FOR APPLICANT**

*Pro Se*

**SYNOPSIS**

Due to persistent efforts of Applicant and his wife, seven delinquent debts have been paid or settled even with Applicant's poor health and recurring mechanical problems with his truck. Because of the commendable efforts of Applicant and his wife in paying past due debts, I am confident they will continue to pay off the remaining creditors while ensuring these problems do not recur. Clearance is granted.

**STATEMENT OF CASE**

On December 15, 2004, the Defense Office of Hearings and Appeals (DOHA), pursuant to Department of Defense Directive 5220.6, dated January 2, 1992, as reissued through Change 4 thereto, dated April 20, 1999, 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 Applicant. DOHA recommended referral to an Administrative Judge to conduct proceedings and determine whether clearance should be granted, continued, denied or revoked. On December 28, 2004, Applicant responded to the SOR and requested a hearing before an Administrative Judge.

The case was assigned to me on February 17, 2005. On March 2, 2005, this case was set for hearing on March 18, 2005. The Government submitted four exhibits, and Applicant submitted five exhibits. Testimony was taken from Applicant and one witness. The transcript (Tr.) was received on March 28, 2005. Following the hearing, Applicant furnished additional documentation through Department Counsel that shall be received in evidence as Applicant's Exhibit (AE) F, AE G, and AE H. The exhibits contain information regarding Applicant's efforts in paying his overdue creditors, his truck maintenance costs, and family budget sheets.

## FINDINGS OF FACT

The SOR alleges financial considerations. Applicant admitted all 14 debts but noted he contacted all the creditors and paid some of them. Applicant is 44 years old and has been employed as a truck driver since 1996, the same year he received a Chapter 7 discharge in bankruptcy. Between 1996 and 2001, Applicant drove for six employers but left for a variety of work-related reasons that did not include poor work performance. In 1996 and 1997, Applicant missed three months of work due to sleep apnea that required four operations. Applicant was hospitalized for two weeks in March 2000 after suffering a heart attack.<sup>(1)</sup> Just before his discharge, the doctors informed him that he had diabetes. (Tr. 16)

Applicant lost his health insurance some time after his hospitalization in 2000 (Tr. 30), and had to pay some of the hospital bills out of his pocket. Several medical bills became delinquent in 2000 and 2001. Still having no health insurance currently (Tr. 35), Applicant pays about \$500.00 a month for medications to treat his conditions, including high blood pressure (Tr. 34).

In 2001, Applicant started his own truck hauling business. His wife joined him as a driver. Unfortunately, he did not earn much money over the next three years because many close relatives passed away and he had to ensure they were buried properly. (Tr. 27-29) Though Applicant grossed more than \$194,000.00 in 2004, after paying off several creditors, his actual net income for the year was about \$70,000.00. While Applicant's wife is disconsolate about the impact of the security

investigation on their trucking business, she is confident they will be able to repay the overdue creditors. She said:

Because of all the derogatory [information] that we had been trying to clear up, we have been turned down on 11 loans, me and Mr. [Applicant], for our house refinancing. So we could go in and get all of these bills taken care [of], which is a stumbling stone which just means that we've got to work harder to try and get more people paid off. (Tr. 73)

Applicant's 14 debts (listed in the SOR) appear in the table below. The table is divided into three columns. The first column identifies the creditor or collection agency. The second column identifies the current status of the debt. The third column identifies the location in the record where the debt is discussed.

Debt	Status	Record
1.a. Medical inpatient 3/00, \$312	Unpaid	Tr. 50, bill not paid due to funerals 9/04, AE F, p.10
1.b. Medical emergency, room, 3/00, \$138	Unpaid	Insurance covered part of bill; remainder will be paid when funds available, AE p.12
1.c. collection agency, \$2542; 1.j. original creditor, \$4293 credit card	Settled \$2,200	AE F, p.17
1.d. telephone, \$79	Paid	AE F, p. 19
1.e. Medical, \$285	Unpaid	Will pay when funds available, AE F, p. 20
1.f. telephone, collection agency, \$965	Settled, \$482.68	AE F, pp. 21-22
1.g. credit card, \$1058	Unpaid	Made three payments in 2004, AE F pp. 23-26
1.h. credit card, \$3210	Unpaid	Made two payments in 2004, AE F, p. 27
1.i., Loan, \$304	Paid	Payment made to make account current, pp. 31-33
1.k. Medical, \$292	Paid	AE F, p. 43
1.l. Medical, \$107	Paid	AE F, p. 44
1.m. & 1.n. Medical, \$99	Paid	AE F, p. 46
Total	Applicant paid 7 creditors \$2682	Applicant still owes 7 creditors \$5003

Applicant purchased a used truck in 2002. The transmission prematurely stopped working, and Applicant had to pay about \$7,500.00 for a rebuilt transmission. While Applicant estimates the yearly maintenance cost for his truck is about \$30,000.00, he has had other unanticipated engine costs. (AE G) AE G reflects other truck repairs made in 2002 and 2003. (2) In October 2002, Applicant had to replace a clutch costing \$2,290.00. In February 2003, Applicant had to pay \$311.00 to repair the right rear brake shoe. One month later Applicant had to spend \$1,034.00 to repair the clutch that had been installed incorrectly in October 2002. In August 2003, Applicant had to pay \$912.00 for a new water pump. Then, later in the month, Applicant paid \$2,028.00 for additional engine repair. All remaining debts listed in the SOR became delinquent in 2003.

Applicant formally disputed two debts with a credit agency. (AE H) One of the those debts appears in the SOR under subparagraph 1.i. The credit agency informed her they were unable to accept the documentation she sent but would transfer the documentation to the source of the disputed information. Applicant also provided in AE H monthly budget sheets for 2002 and March 2005. Finally, AE H discloses that Applicant tried to obtain a home equity loan from his mortgage company. His request was refused based on level of delinquency of his accounts. AE F contains several letters to overdue creditors describing Applicant's financial position and repeatedly requesting some type of negotiated settlement be arranged in smaller amounts.

## POLICIES

Enclosure 2 of the Directive sets forth guidelines containing disqualifying conditions (DC) and mitigating conditions (MC) that should be given binding consideration in making security clearance determinations. These conditions must be considered in every case along with the general factors of the whole person concept. However, the conditions are not automatically determinative of the decision in any case nor can they supersede the Administrative Judge's reliance on his own common sense.

### **Burden of Proof**

Initially, the government must establish, by substantial evidence, that conditions exist in the personal or professional history of the applicant which disqualifies, or may disqualify, the applicant from being eligible for access to classified information. *See Department of the Navy v. Egan*, 484 U.S. 518, 531 (1988) "[T]he Directive presumes there is a nexus or rational connection between proven conduct under any of the Criteria listed therein and an applicant's security suitability." ISCR Case No. 95-0611 at 2 (App. Bd. May 2, 1996) (quoting DISCR Case No. 92-1106 (App. Bd. Oct. 7, 1993)).

Once the government establishes a disqualifying condition by substantial evidence, the burden shifts to the applicant to rebut, explain, extenuate, or mitigate the facts. "[S]ecurity clearance determinations should err, if they must, on the side of denials." *See Egan*, 481 U.S. at 531; *see* Directive E2.2.2.

### **Financial Considerations**

An Inability to pay bills lawfully incurred places the debtor at risk of violating the law.

### **CONCLUSIONS**

Inability to pay bills in a timely manner places an individual at risk of engaging in illegal acts to generate funds, and requires his conduct be evaluated under the financial considerations (FC) guideline. Because Applicant's indebtedness began in 2000, his financial problems fall within FC disqualifying condition (DC) E2.A6.1.2.1. (*a history of not meeting financial obligations*) There are 14 creditors involved with delinquent debt totaling approximately \$13,684.00 before the debts in subparagraphs 1.f. and 1.j. were settled for reduced amounts. FC DC E2.A6.1.2.3. (*inability or unwillingness to*

*satisfy debts*) also applies to the circumstances of this case, because Applicant does not have the available funds to resolve the remaining overdue debts. However, there is no evidence demonstrating an unwillingness to pay the past due debt.

There are five mitigating conditions (MC) that may apply to mitigate the security concerns of Applicant's indebtedness. FC MC E2.A6.1.3.1. (*the behavior was not recent*) may apply to circumstances that reflect the underlying behavior that caused the financial difficulties was not recent. Most of Applicant's overdue debt occurred in 2000 and 2001 when he was hospitalized. Some of the debt occurred in 2003 when Applicant was dealing with the unanticipated engine problems. However, because the 2003 debt delinquencies occurred less than three years ago, I conclude E2.A6.1.3.1. does not apply. FC MC E2.A6.1.3.2. (*it was an isolated incident*) cannot apply either as there are more than 14 delinquent debts involved.

FC MC E2.A6.1.3.3. (*the conditions that resulted in the behavior were largely beyond the person's control*) applies to the circumstances of this case because of the number and type of unforeseen developments that contributed heavily to Applicant's financial dilemma. Applicant could not have foreseen the severe medical problems he experienced in 2000. He lost his medical insurance and still has no coverage to pay for the \$500.00 in monthly medication that is required to properly treat the chemical imbalance in Applicant's body, as well as his high blood pressure. Losing so many close relatives over a five year period certainly takes an emotional and monetary toll on a person's life that may require years to overcome. Finally, the engine problems with Applicant's truck were additional unanticipated expense that could have been applied to the past due debt. Given Applicant's health problems, the number of relatives lost, and his mechanical problems with his truck, Applicant receives considerable consideration under FC MC E2.A6.1.3.3.

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 is under control*) applies to cases where there is reason to believe counseling may have influenced the debtor to make more frugal decisions about their overdue debt. I find FC MC E2.A6.1.3.4. is not germane to the circumstances of this case as Applicant (and his wife) appear to have implemented good financial practices. Their problem is not having the money to pay off all creditors due to unanticipated events.

FC MC E2.A6.1.3.6. (*the individual initiated a good-faith effort to repay overdue creditors or otherwise resolve debts*) applies to the circumstances of this case as Applicant has settled or paid seven debts for a total of \$2682.00, more than 33% of the outstanding balance. He has constantly kept in touch with the creditors, keeping them advised of his financial plight. Based on his success in resolving the debts to seven creditors, I am confident he will continue his good-faith efforts until all debts are satisfied. Applicant's favorable evidence under FC MC E2.A6.1.3.3. and FC MC E2.A6.1.3.6. overcomes Applicant's history of not meeting financial obligations identified in FC DC E2.A6.1.2.1., and also warrants a favorable outcome under the general factors of the whole person described at E2.2.1. of the Directive.

## **FORMAL FINDINGS**

Formal Findings required by Paragraph 25 of Enclosure 3 are:

Paragraph 1 (Financial Considerations, Guideline F):

Subparagraph a. For the Applicant.

Subparagraph b. For the Applicant.

Subparagraph c. For the Applicant.

Subparagraph d. For the Applicant.

Subparagraph e. For the Applicant.

Subparagraph f. For the Applicant.

Subparagraph g. For the Applicant.

Subparagraph h. For the Applicant.

Subparagraph i. For the Applicant.

Subparagraph j. For the Applicant.

Subparagraph k. For the Applicant.

Subparagraph l. For the Applicant.

Subparagraph m. For the Applicant.

Subparagraph n. For the Applicant.

Subparagraph o. For the Applicant.

## **DECISION**

In light of all the circumstances presented by the record in this case, it is clearly consistent with the national interest to grant or continue a security clearance for Applicant.

Paul J. Mason

Administrative Judge

1. When Applicant was a baby, he acquired a very serious nervous condition that left him physically challenged. (Tr. 43).
2. The exhibit also contains earnings figures for 2000 and 2001 before Applicant became an independent truck hauler. Those figures reflect Applicant had many administrative expenses even though he was working for someone else.