

KEYWORD: Financial

DIGEST: Applicant is 53 years old, married, a veteran, who works for a defense contractor. Applicant was discharged in Chapter 7 bankruptcy in 1999. After the discharge, he incurred other debts he deliberately decided not to pay after May 2002 because he claimed he did not have the income to repay them. He has done nothing to repay these delinquent debts since then. Applicant has not mitigated the financial considerations security concern. Clearance is denied.

CASENO: 04-05204.h1

DATE: 11/25/2005

DATE: November 25, 2005

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In re:

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SSN: -----

Applicant for Security Clearance

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ISCR Case No. 04-05204

**DECISION OF ADMINISTRATIVE JUDGE**

**PHILIP S. HOWE**

**APPEARANCES**

**FOR GOVERNMENT**

**FOR APPLICANT**

Pro Se

**SYNOPSIS**

Applicant is 53 years old, married, a veteran, who works for a defense contractor. Applicant was discharged in Chapter 7 bankruptcy in 1999. After the discharge, he incurred other debts he deliberately decided not to pay after May 2002 because he claimed he did not have the income to repay them. He has done nothing to repay these delinquent debts since then. Applicant has not mitigated the financial considerations security concern. Clearance is denied.

**STATEMENT OF THE CASE**

The Defense Office of Hearings and Appeals (DOHA) declined to grant or continue a security clearance for Applicant. On February 16, 2005, DOHA issued a Statement of Reasons [\(1\)](#) (SOR) detailing the basis for its decision-security concerns raised under Guideline F (Financial Considerations) of the Directive. Applicant answered the SOR in writing on March 4, 2005. He requested his case be decided on the written record in lieu of a hearing.

On June 17, 2005, Department Counsel submitted the Department's written case. A complete copy of the file of relevant material (FORM) was provided to the Applicant, and he received it on August 3, 2005. He was given the opportunity to file objections and submit material in refutation, extenuation, or mitigation. Applicant filed no response to the FORM within the scheduled due date of September 2, 2005. The case was assigned to me on September 20, 2005.

**FINDINGS OF FACT**

Applicant's admissions to the SOR allegations are incorporated here as findings of fact. After a complete and thorough review of the evidence in the record, and full consideration of that evidence, I make the following additional findings of fact:

Applicant is 53 years old, married with two minor children and a minor step-child. He is a veteran, and worked as a teacher from 1994 to 1998. He left teaching to work in sales, and found it not as lucrative as teaching. His teaching salary enabled Applicant to pay his debts regularly. Applicant works for a defense contractor, and currently is on active duty as a recalled reserve officer. (Exhibits 4, 6, 7)

When he left teaching, he could not make his payments, and filed Chapter 7 bankruptcy in December 1998. His delinquent debts totaled \$209,523.57 and his assets \$144,010. He was discharged on April 28, 1999. (Exhibit 10)

Applicant has ten delinquent debts that he opened after his discharge in bankruptcy, and do not appear on the schedule of debts to be discharged in his Chapter 7 bankruptcy. Those debts are listed in the SOR. The debts total \$11,764. Applicant's statement of December 18, 2003, admits that, in May 2002, he decided not to pay those debts because "it became difficult again to pay new debt after the bankruptcy." Applicant attributes this decline in ability to pay his debt due to a decline in part-time employment with defense contractors because military units were deployed to the middle east after the September 11, 2001, attack. All of these debts remain delinquent, and Applicant has not provided any information in his Answer to the SOR or response to the FORM concerning when they will be paid. (Exhibits 6, 8, 9, 10)

The delinquent debts are as follows in the order listed in the SOR:

Three credit card accounts to one card issuer for \$2,905

A credit card for \$1,182

Another credit card for \$534

A bank credit card for \$3,833

Another credit card to the same bank issuer for \$1,415

Two telephone accounts totaling \$1,312

An account for a mail order food company for \$291

An orthopedic medical account for \$292 (Exhibits 6, 8, 9)

Applicant is currently serving in the military, having been recalled to active duty. His FORM response and Answer show he had financial difficulties from 1991, and he and his wife have struggled to pay their debts while getting more education in their respective professional fields. He asserts he is patriotic and he is not a threat to divulge classified

material even with his delinquent debts. (FORM Response emails and SOR Answer)

## POLICIES

"[N]o one has a 'right' to a security clearance." *Department of the Navy v. Egan*, 484 U.S. 518, 528 (1988). As Commander in Chief, the President has "the authority to . . . control access to information bearing on national security and to determine whether an individual is sufficiently trustworthy to occupy a position . . . that will give that person access to such information." *Id.* at 527. The President has authorized the Secretary of Defense or his designee to grant applicants eligibility for access to classified information "only upon a finding that it is clearly consistent the national interest to do so." Exec. Or. 10865, *Safeguarding Classified Information with Industry*

§ 2 (Feb. 20, 1960). Eligibility for a security clearance is predicated upon the applicant meeting the security guidelines contained in the Directive. An applicant "has the ultimate burden of demonstrating that it is clearly consistent with the national interest to grant or continue his security clearance." ISCR Case No. 01-20700 at 3.

The adjudication process is based on the whole person concept. All available, reliable information about the person, past and present, is to be taken into account in reaching a decision as to whether a person is an acceptable security risk. Enclosure 2 of the Directive sets forth personnel security guidelines, as well as the disqualifying conditions (DC) and mitigating conditions (MC) under each guideline that must be carefully considered in making the overall common sense determination required.

In evaluating the security worthiness of an applicant, the administrative judge must also assess the adjudicative process factors listed in ¶ 6.3 of the Directive. Those assessments include: (1) the nature, extent, and seriousness of the conduct; (2) the circumstances surrounding the conduct, and the extent of knowledgeable participation; (3) how recent and frequent the behavior was; (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 pertinent 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 (See Directive, Section E2.2.1. of Enclosure 2). Because each security case presents its own unique facts and circumstances, it should not be assumed that the factors exhaust the realm of human experience or that the factors apply equally in every case. Moreover, although adverse information concerning a single condition may not be sufficient for an unfavorable determination, the individual may be disqualified if available information reflects a recent or recurring pattern of questionable judgment, irresponsibility, or other behavior specified in the Guidelines.

The decision to deny an individual a security clearance is not necessarily a determination as to the loyalty of the applicant. *See* Exec. Or. 10865 § 7. It is merely an indication that the applicant has not met the strict guidelines the President and the Secretary of Defense have established 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. The Directive presumes a nexus or rational connection between proven conduct under any of the disqualifying conditions listed in the guidelines and an applicant's security suitability. *See* ISCR Case No. 95-0611 at 2 (App. Bd. ay 2, 1996). All that is required is proof of facts and circumstances that indicate an applicant is at risk for mishandling classified information, or that an applicant does not demonstrate the high degree of judgment, reliability, or trustworthiness required of persons handling classified information. ISCR Case No. 00-0277, 2001 DOHA LEXIS 335 at \*\*6-8 (App. Bd. 2001). Once the Government has established a *prima facie* case by substantial evidence, the burden shifts to the applicant to rebut, explain, extenuate, or mitigate the facts. *See* Directive ¶ E3.1.15. An applicant "has the ultimate burden of demonstrating that is clearly consistent with the national interest to grant or continue his security clearance. ISCR Case No. 01-20700 at 3 (App. Bd. 2002). "Any doubt as to whether access to classified information is clearly consistent with national security will be resolved in favor of the national security." Directive ¶ E2.2.2. "[S]ecurity clearance determinations should err, if they must, on the side of denials." *Egan*, 484 U.S. at 531. *See* Exec. Or. 12968 § 3.1(b).

Based upon a consideration of the evidence as a whole, I find the following adjudicative guidelines most pertinent to an evaluation of the facts of this case:

Guideline F:Financial Considerations: *The Concern*: An individual who is financially overextended is at risk of having to engage in illegal acts to generate funds. E2.A6.1.1

## CONCLUSIONS

The Government established by substantial evidence and Applicant's admissions each of the allegations in the SOR. The Disqualifying Conditions (DC) applicable are DC 1 (A history of not meeting financial obligations E2.A6.1.2.1) and DC 3 (Inability or unwillingness to satisfy debts E2.A6.1.2.3). Applicant's 2003 statement admits he deliberately ceased making payments on the debts alleged in the SOR. Applicant opened these accounts and incurred these debts after being discharged in Chapter 7 bankruptcy from other debts in 1999.

No Mitigating Conditions (MC) are applicable in this case. Applicant's financial situation is a factor to be considered under MC 3 (The conditions that resulted in the behavior were largely beyond the person's control, e.g., a loss of employment, a business downturn, unexpected medical emergency, or a death, divorce or separation E2.A6.1.3.3), but Applicant made only unsupported claims about his employment history after his 1999 bankruptcy that are not persuasive when contrasted with the substantial credit card debt incurred after Applicant's bankruptcy. Applicant stated he made a deliberate decision in May 2002 not to pay these debts. Since then, he has done nothing to pay even the three debts under \$1,000.

After examining the entire file, including the three credit bureau reports in Exhibits 5, 8, and 9, and Applicant's two statements from 2000 and 2003, and all his emails from his current military assignment to the Department Counsel, I conclude Applicant has not provided enough evidence to overcome the concern in the guideline that an applicant "who is financially overextended is at risk of having to engage in illegal acts to generate funds."

"Any determination under this order adverse to an applicant 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."(Directive, Section 7) And so it is with Applicant's case; it is not his loyalty or patriotism at issue, but the national interest and his decision not to repay these debts. None of his submissions in response to the SOR provided any information on when and by what method he would repay these delinquent debts. Therefore, I conclude this guideline against Applicant.

### **FORMAL FINDINGS**

The following are my conclusions as to each allegation in the SOR:

Paragraph 1. Guideline F: AGAINST APPLICANT

Subparagraph 1.a: Against 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: Against Applicant

Subparagraph 1.i: 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 or continue a security clearance for Applicant. Clearance is denied.

Philip S. Howe

Administrative Judge

1. Pursuant to Exec. Or. 10865, *Safeguarding Classified Information within Industry* (Feb. 20, 1960), as amended and modified, and Department of Defense Directive 5220.6, *Defense Industrial Personnel Security Clearance Review Program* (Jan. 2, 1992), as amended and modified (Directive).