

KEYWORD: Financial

DIGEST: Applicant is a former employee of a defense contractor, eligible for rehire if he obtains a security clearance. In February 2000, Applicant was laid off from his job with a federal agency where he had worked for over 12 years, making him unable to pay his debts. Thereafter, he has been able to secure only sporadic employment. For many years, Applicant has not been in a position to pay over \$45,000.00 in delinquent debt. He admits he will be unable to do so until he finds full-time employment. Applicant failed to mitigate security concerns arising from his financial difficulties. Clearance is denied.

CASENO: 04-06328.h1

DATE: 03/28/2005

DATE: March 28, 2005

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In re:

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SSN: -----

Applicant for Security Clearance

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ISCR Case No. 04-06328

**DECISION OF ADMINISTRATIVE JUDGE**

**MICHAEL J. BRESLIN**

**APPEARANCES**

**FOR GOVERNMENT**

Stephanie Hess, Esq., Department Counsel

**FOR APPLICANT**

*Pro Se*

**SYNOPSIS**

Applicant is a former employee of a defense contractor, eligible for rehire if he obtains a security clearance. In February 2000, Applicant was laid off from his job with a federal agency where he had worked for over 12 years, making him unable to pay his debts. Thereafter, he has been able to secure only sporadic employment. For many years, Applicant has not been in a position to pay over \$45,000.00 in delinquent debt. He admits he will be unable to do so until he finds full-time employment. Applicant failed to mitigate security concerns arising from his financial difficulties. Clearance is denied.

**STATEMENT OF THE CASE**

On June 5, 2003, Applicant submitted an application for a security clearance. The Defense Office of Hearings and Appeals (DOHA) declined to grant or continue a security clearance for Applicant under Department of Defense Directive 5220.6, *Defense Industrial Personnel Security Clearance Review Program* (Jan. 2, 1992), as amended and modified (the "Directive"). On June 8, 2004, DOHA issued a Statement of Reasons (SOR) detailing the basis for its decision. The SOR alleges security concerns raised under Guideline F, Financial Considerations, of the Directive.

Applicant answered the SOR in an undated response. Applicant elected to have a hearing before an administrative judge. Transcript (Tr.) at 7.

I was assigned the case on September 10, 2004. With the concurrence of the parties, I conducted the hearing on November 23, 2004. At the time of the hearing, Applicant had been terminated from his employment, but was eligible

for rehire if he obtains a security clearance. Tr. at 8. The department counsel introduced four exhibits. Applicant presented documents admitted as Exhibits A through E, inclusive, and testified on his own behalf. DOHA received the transcript on December 2, 2004.

### FINDINGS OF FACT

Applicant admitted all the factual allegations in the SOR. Answer to SOR, undated, at 1-2. Those admissions are incorporated herein as findings of fact. After a complete and thorough review of the evidence in the record, I make the following additional findings of fact.

Applicant is 53 years old. Ex. 1 at 1. He completed high school in 1971 and joined the U.S. Army in September of that year. Tr. at 26. Applicant served on active duty in the Army and the Army National Guard between 1971 and 1977. Tr. at 27; Ex.1 at 5. He rose to the rank of sergeant (E-5). Ex.1 at 5. He successfully held a security clearance when required for one assignment. Tr. at 27.

After leaving the Army, Applicant enrolled in college. Tr. at 28. While in school he worked full-time in the mail room for a government agency-a position that required a security clearance. *Id.* Applicant subsequently earned an associate's degree. *Id.*

Applicant worked in a variety of jobs between about 1979 and 1984. Tr. at 29. In July 1984, Applicant began working as a communications equipment operator for a Department of Defense telecommunications center. Tr. at 29. Applicant held a top secret security clearance during this time. *Id.* In 1987, Applicant transferred to another federal agency. He worked as a clerk for that federal agency for about 12 years, from October 1987 until he was laid off in February 2000. Ex. 1 at 3; Tr. at 23, 30.

After he was laid-off, Applicant could not find full-time employment. Tr. at 20. He found part-time employment at a convention center helping arrange and handle events. *Id.*; Ex. 1 at 3. Unfortunately, the hours are sporadic. Tr. at 20. He has also found occasional work, from time to time. Tr. at 23.

While he was working full-time, Applicant made minimum payments on his credit card debts. Tr. at 25. After he lost his full-time position, he found himself unable to stay current on his payments. *Id.* Applicant also relied on his credit card accounts to pay for doctor visits, prescription medicines, clothing, and other purchases. Tr. at 19.

Applicant found full-time employment with a defense contractor beginning in about May 2003. Ex. 1 at 2. The position required a security clearance. Tr. at 23-24. Applicant submitted an SF 86, Security Clearance Application, dated June 5, 2003. Ex. 1 at 1. Question 38 on the application form inquired whether Applicant had been over 180 days delinquent on any debts within the preceding seven years. Ex. 1 at 9. Applicant answered, "No," to that question. In response to question 39, Applicant indicated he was not then over 90 days delinquent on any debts. *Id.*

In March 2004, a security investigator interviewed Applicant and obtained a sworn statement. Ex. 2. Applicant indicated he was aware of his outstanding debts and intended to make arrangements to pay them, but he was unable to do so until he found full-time employment. *Id.* at 1. Applicant stated he thought he had reported the debts on his security clearance application. *Id.*

While his security clearance application was pending, Applicant was suspended from his employment because he did not have a security clearance. Tr. at 8-9. He continues to work part-time at the convention center, but does not get enough hours to address his delinquent debts. Ex. B.

At the hearing, Applicant admitted that the eleven debts listed in the SOR were delinquent. He declared his intention to pay all the debts, but explained that he would have to find a full-time job to do so. Tr. at 17. He indicated he recently inherited some funds from his mother's estate and intended to pay the \$921.00 debt listed in ¶ 1.f of the SOR. Tr. at 16-17, 21, 22; Ex. A. Applicant negotiated a settlement with the creditor listed in ¶ 1.b of the SOR (Ex. D), and stated his intention to pay that debt soon. Tr. at 22. Applicant also negotiated a settlement of the \$14,090.06 debt listed in ¶ 1.c of the SOR (Ex. C), but admitted he was unable to make the settlement payment by the date due under the agreement. Tr. at 21-22.

As listed in the SOR, the debts total over \$60,000.00. The SOR also alleges that several of the debts were transferred, sold, or charged off between 1986 and 1999. In his initial reply, Applicant admitted the allegations in the SOR. However, he later indicated he did not know the balances due on the accounts, and denied that any of the accounts were delinquent before he lost his full-time job in February 2000. Tr. at 34-37. A careful review of the available evidence indicates some of the amounts alleged in the SOR cited the "high-credit" amounts from the credit report, not the "balance due." Ex. 3 at 4, 6. Also, some allegations incorrectly used the date the account was opened as the date the account was transferred or charged off. *Id.* The available evidence indicates Applicant's delinquent debts at the time of the hearing totaled about \$48,000.00. The evidence does not indicate Applicant was delinquent before he lost his full-time job in February 2000. Ex. 4.

## **POLICIES**

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." *Department of the Navy v. Egan*, 484 U.S. 518, 527 (1988). In Executive Order 10865, *Safeguarding Classified Information Within Industry* (Feb. 20, 1960), the President set out guidelines and procedures for safeguarding classified information within the executive branch.

To be eligible for a security clearance, an applicant must meet the security guidelines contained in the Directive. Enclosure 2 of the Directive sets forth personnel security guidelines, as well as the disqualifying conditions and mitigating conditions under each guideline. The adjudicative guideline at issue in this case is:

Guideline F, Financial Considerations - An individual who is financially overextended is at risk of having to engage in illegal acts to generate funds. Directive, ¶ E2.A6.1.1.

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

"The adjudicative process is an examination of a sufficient period of a person's life to make an affirmative determination that the person is eligible for a security clearance." Directive, ¶ E2.2.1. An administrative judge must apply the "whole person concept," and consider and carefully weigh the available, reliable information about the person. *Id.* An administrative judge should consider the following factors: (1) the nature, extent, and seriousness of the conduct; (2) the circumstances surrounding the conduct, to include knowledgeable participation; (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 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. *Id.*

Initially, the Government must present evidence to establish controverted facts in the SOR that disqualify or may disqualify the applicant from being eligible for access to classified information. Directive, ¶ E3.1.14. Thereafter, the applicant is responsible for presenting evidence to rebut, explain, extenuate, or mitigate the facts. Directive, ¶ 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 security clearance." ISCR Case No. 01-20700 at 3 (App. Bd. Dec. 19, 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.

A person granted access to classified information enters into a special relationship with the government. 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. The decision to deny an individual a security clearance is not a determination as to the loyalty of the applicant. Exec. Ord. 10865, § 7. It is merely an indication that the applicant has not met the strict guidelines the President has established for issuing a clearance.

## CONCLUSIONS

I considered carefully all the facts in evidence and the legal standards discussed above. I reach the following conclusions regarding the allegations in the SOR.

Paragraph E2.A6.1.2.1 of the Directive provides that it may be a disqualifying condition if the evidence reveals "[a] history of not meeting financial obligations." Similarly, ¶ E2.A6.1.2.3 indicates that an "[i]nability or unwillingness to satisfy debts" may be disqualifying. Applicant has a history of not meeting his financial obligations. He has had delinquent debts totaling over \$48,000.00 for many years. Because of his employment experiences, Applicant has not been in a position to make significant payments toward his delinquent debts for some time. I find Applicant has shown both a history of failing to meet his financial obligations and an inability to satisfy his debts. I conclude both these potentially disqualifying conditions apply.

The security concerns arising from Applicant's financial difficulties can be mitigated under certain circumstances. Under the Directive, ¶ E2.A6.1.3.1, it may be mitigating where "the behavior was not recent." Most of Applicant's delinquent debts date from 2000. Nonetheless, most of the debts remain unpaid at this time. I find Applicant's inability to pay his delinquent debts is recent, therefore this mitigating condition does not apply.

Paragraph E2.A6.1.3.2 of the Directive provides that it may be mitigating where the financial difficulty "was an isolated incident." Applicant has numerous delinquent debts, and they remain unpaid after many years. I conclude this mitigating condition does not apply.

Under ¶ E2.A6.1.3.3, it may be mitigating where, "[t]he 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)." The available evidence indicates Applicant became unable to pay his debts because he lost his full-time job with the government agency where he had worked for about 12 years. He continued to work part-time, but was unable to secure full-time employment that would allow him to catch up on his financial obligations. His difficulties were exacerbated by his suspension from employment because of his lack of a security clearance. This unexpected loss of employment was a circumstance beyond his control and could mitigate the security concerns arising from financial difficulties. I find this potentially mitigating condition applies.

Proof that "[t]he 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," may be mitigating, under ¶ E2.A6.1.3.4 of the Directive. Applicant has not sought or received financial counseling. Moreover, there is no evidence Applicant has been able to resolve this problem or has taken significant steps to get the problem under control. I find this mitigating condition does not apply.

Finally, it may be mitigating where "[t]he individual initiated a good-faith effort to repay overdue creditors or otherwise resolve debts." Directive, ¶ E2.A6.1.3.6. Applicant was unable to make any significant payment toward the delinquent debts listed in the SOR before the hearing. To his credit, he indicated his willingness to make some partial payments sometime after the hearing. Unfortunately, the payments he was able to make would not reduce substantially his outstanding indebtedness. I conclude this mitigating condition does not apply.

I considered the potentially disqualifying and mitigating circumstances in light of the "whole person" concept. Although the original cause of his financial difficulties was beyond his control, Applicant still faces a heavy burden of delinquent debt. Under the guidelines that govern the issuance of security clearances, individuals who are financially overextended may be a security risk. Balancing all these factors, I conclude Applicant has not mitigated the security concerns arising from his history of failing to meet his financial obligations and his inability to pay his debts.

### **FORMAL FINDINGS**

My conclusions as to each allegation in the SOR are:

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

Subparagraph 1.j: Against Applicant

Subparagraph 1.k: 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.

Michael J. Breslin

Administrative Judge