

KEYWORD: Financial; Personal Conduct

DIGEST: Between 1999 and 2002, Applicant accrued nearly \$22,000 in bad debt through a repossessed car and a failed small business venture. Since 2002, Applicant has been steadily employed but has experienced additional debt problems stemming from his wife's terminal illness through October 2005. As of the hearing, Applicant was holding down two full-time jobs to pay his debts, actions he had no time for while he cared for his now-deceased wife. Applicant has mitigated the related security concerns about his finances and personal conduct. Clearance is granted.

CASENO: 04-07137.h1

DATE: 01/23/2006

DATE: January 23, 2006

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In Re:

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SSN: -----

Applicant for Security Clearance

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ISCR Case No. 04-07137

**DECISION OF ADMINISTRATIVE JUDGE**

**MATTHEW E. MALONE**

**APPEARANCES**

**FOR GOVERNMENT**

**FOR APPLICANT**

*Pro Se*

**SYNOPSIS**

Between 1999 and 2002, Applicant accrued nearly \$22,000 in bad debt through a repossessed car and a failed small business venture. Since 2002, Applicant has been steadily employed but has experienced additional debt problems stemming from his wife's terminal illness through October 2005. As of the hearing, Applicant was holding down two full-time jobs to pay his debts, actions he had no time for while he cared for his now-deceased wife. Applicant has mitigated the related security concerns about his finances and personal conduct. Clearance is granted.

**STATEMENT OF THE CASE**

After reviewing the results of Applicant's background investigation, adjudicators for the Defense Office of Hearings and Appeals (DOHA) were unable to make a preliminary affirmative finding<sup>(1)</sup> it is clearly consistent with the national interest to give Applicant a security clearance. On June 17, 2005, DOHA issued an SOR to Applicant regarding facts in his background that raise security concerns addressed in the Directive under Guideline F (financial considerations) and Guideline E (personal conduct). Specifically, the SOR presented allegations Applicant had accrued more than \$26,000 in delinquent debts in the form of 14 unpaid obligations (SOR ¶¶ 1.a - 1.n). The SOR also contained allegations Applicant deliberately withheld from a March 2003 security clearance application (SF 86) facts about his delinquent debts (SOR ¶¶ 2.a, 2.b and 2.c). Applicant timely answered the SOR, and requested a hearing.

This case was assigned to me on August 24, 2005, and I convened a hearing on October 18, 2005. The parties appeared as scheduled and the government presented six exhibits (GE 1 through 6), which were admitted without objection. Applicant testified in his own behalf and submitted a single exhibit admitted into the record as AE A.<sup>(2)</sup> DOHA received the transcript (Tr.) on November 3, 2005.

## FINDINGS OF FACT

After a thorough review of the pleadings, transcript, and exhibits, I make the following essential findings of fact:

Applicant is 50 years old. In October 2002, he was hired by a defense contractor to work as a pipefitter at a Navy shipyard. Sometime after he met with a government investigator for his subject interview in April 2004, Applicant began working a second full-time job as a heating and air conditioning mechanic. He works the night shift at the shipyard. Applicant served in the U.S. Air Force from 1973 until his honorable discharge in 1977. He held a secret clearance during his enlistment. He was granted an interim clearance when he submitted his SF 86 and still holds that access pending the outcome of this adjudication. Applicant requires at least a confidential clearance for unescorted access when working aboard Navy ships.

Applicant has been married twice. His first marriage lasted from 1980 until a divorce in 1995. He remarried in 1998, but his second wife became seriously ill and passed away on October 13, 2005. Applicant has a 19-year-old son by his first wife. Until about 2000, the boy lived with his mother and Applicant paid his ex-wife about \$290 in child support each month. At one point, Applicant fell behind in his payments and, as of August 1998, owed an arrearage of about \$2,888 (SOR 1.a).<sup>(3)</sup> Applicant claims that debt was paid when his tax refunds were attached by a collection agency. This is corroborated by a March 2005 credit report that reflects this arrearage has been reduced to \$298 (SOR ¶ 1.n).<sup>(4)</sup> Applicant's son has lived with him since 2000.<sup>(5)</sup>

Applicant's second wife had a daughter from a previous marriage. In 1999, Applicant and his wife took out a loan to buy a car for his step-daughter with the understanding the girl would make the monthly payments on a car loan Applicant and his wife obtained. He did not co-sign the loan or otherwise reduce their agreement to writing. She subsequently stopped paying and the car was repossessed and later re-sold. Applicant is still obligated to pay the \$11,000 deficiency after re-sale, but has not made any payments toward this debt (SOR ¶ 1.b).

Before hiring on at the shipyard, Applicant and his wife lived in another state. From 1995 until 2002, he worked as a custodian, first at a hospital, then for the local school district. In January 2002, Applicant and his wife tried to go into business for themselves running a small grocery store. They invested savings from Applicant's 401K retirement fund and obligated themselves to pay the building owner rent plus utilities, with any remaining proceeds theirs to keep. Unfortunately, they underestimated the costs associated with the store; specifically, the monthly electric bills were nearly triple what he had been led to believe when he took over the store. Having left his school district job to help his wife run the store, Applicant soon fell behind on a number of debts and had to abandon the business in September 2002. Some of the delinquencies in Applicant's credit report are personal accounts totaling about \$5,585, which Applicant had held and kept current before the grocery store (SOR ¶¶ 1.b, 1.d, 1.e, 1.g, 1.h, and 1.i).

Along with two unpaid utility bills for the grocery store (SOR ¶¶ 1.c and 1.f), and the aforementioned repossession debt, Applicant still owes about \$21,000 for ten delinquent debts either charged-off or placed for collection during the time he ran the grocery store (SOR ¶¶ 1.b - 1.j, 1.n).<sup>(6)</sup> When Applicant's business failed and until sometime after he and his moved, Applicant's initial inquiries with his creditors about possible settlement met only with demands for full payment. However, in the past year, Applicant has received several offers of settlement for partial payment. He intends to pursue these offers and intends to obtain assistance from a credit counseling firm, actions he has heretofore been unable to take given his wife's circumstances.

After the grocery store failed, Applicant and his wife moved to his current residence and each found work at the shipyard, as well as Applicant's other full-time job. In late 2003 or early 2004, Applicant's wife began a long course of treatment for medical problems that eventually culminated in her death due to chronic renal failure and cardiovascular collapse. From July 2004 until October 2005, Applicant was absent from his shipyard job on Family and Medical Leave. He continued to work his other job during the day, but at reduced hours so he could care for his wife. Applicant owes two unpaid medical bills related to his wife's treatment totaling about \$1,800 (SOR ¶¶ 1.k and 1.m). As evidenced by the absence of other reported delinquencies in his most recent credit report, his medical coverage through both his defense contractor job and his second job kept up with the medical expenses. Additionally, Applicant expects future reimbursement from his outside employer's medical insurance company.<sup>(7)</sup> Finally, Applicant also owes \$184 for a cell phone bill unpaid since at least March 2004 (SOR ¶ 1.l). He has not yet paid or otherwise resolved this debt.

Applicant submitted a security clearance application in March 2003. In response to question 35 (repossessions in the last seven years), question 38 (delinquencies longer than 180 days in the last seven years), and question 39 (debts currently greater than 90 days delinquent), Applicant disclosed only that he was, at that time, more than 90 days late on a car loan.<sup>(8)</sup> Applicant acknowledged he should have listed the repossession of his daughter's car in 1999, but asserts he did not know what to list because he could not access his financial records. In support of this claim, Applicant cites the fact he was still in a probationary status at the shipyard, his records were still in storage near his previous residence in another state, and, because he could not take leave as a probationary employee, he could not access his records. Applicant also asserts he told his company's security personnel he had some financial problems in his background.<sup>(9)</sup>

Applicant was interviewed by a Defense Security Service (DSS) agent in April 2004. The substance of the interview was reduced to writing in a statement Applicant signed. It included a personal financial statement (PFS) which did not reflect any income other than his and his wife's from the shipyard. It also did not reflect any discussion of Applicant's omissions from his SF 86.

## **POLICIES AND BURDEN OF PROOF**

A security clearance decision is intended to resolve whether it is clearly consistent with the national interest<sup>(10)</sup> for an Applicant to either receive or continue to have access to classified information. The government bears the initial burden of producing admissible information on which it based the preliminary decision to deny or revoke a security clearance for the Applicant. Additionally, the government must be able to prove controverted facts alleged in the SOR. If the government meets its burden, it establishes that it is not clearly consistent with the national interest for the Applicant to have access to classified information. The burden then shifts to the Applicant to refute, extenuate or mitigate the government's case. Because no one has a "right" to a security clearance, the Applicant bears a heavy burden of persuasion.<sup>(11)</sup> A person who has access to classified information enters into a fiduciary relationship with the government based on trust and confidence. The government, therefore, has a compelling interest in ensuring each Applicant possesses the requisite judgement, reliability and trustworthiness of one who will protect the national interests as his or her own. The "clearly consistent with the national interest" standard compels resolution of any reasonable doubt about an Applicant's suitability for access in favor of the government.<sup>(12)</sup>

To that end, the Directive sets forth adjudicative guidelines<sup>(13)</sup> for consideration when evaluating an Applicant's suitability for access to classified information. Security clearance decisions must reflect consideration of disqualifying and mitigating conditions under each adjudicative issue applicable to the facts and circumstances of each case. Each decision must also reflect a fair and impartial common sense consideration of the factors listed in Section 6.3 of the Directive. The presence or absence of a disqualifying or mitigating condition is not determinative of a conclusion for or against an Applicant. However, specific applicable guidelines should be followed whenever a case can be measured against them as they represent policy guidance governing the grant or denial of access to classified information. Having considered the record evidence as a whole, I conclude the relevant adjudicative guidelines to be applied here are Guideline E (personal conduct) and Guideline F (financial considerations).

## CONCLUSIONS

The security concern stated under Guideline E is that 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.<sup>(14)</sup> Here, the government alleged in SOR ¶ 2 that Applicant deliberately falsified answers to three financial questions in his SF 86. Available information establishes the underlying debts and that they were not disclosed in Applicant's SF 86. Accordingly, the government is reasonably concerned, in light of the results of Applicant's background investigation, about whether he can be relied on to tell the truth even under adverse circumstances. An applicant's completion of a security questionnaire is the initial step in requesting a security clearance. Because false or incomplete information given in the questionnaire is capable of affecting the way in which assesses a person's suitability to hold a clearance, it is material. Moreover, a false answer is material even if there is no proof that it actually influenced an agency's investigatory functions.

However, to be disqualifying such omissions must have been made deliberately.<sup>(15)</sup> Simple mistakes through forgetfulness, confusion about the question, or lack of available information do not indicate a defect in a person's reliability or integrity. Further, it is important to note that I found Applicant's testimony at hearing to be forthright, credible, and fully appreciative of the gravity of the government's concerns. He also made a full disclosure of the omitted debts when he was interviewed by a government investigator. As to his negative answers to questions 38 and 39, he relies on his claim he did not know what else to disclose without his records available. It is plausible that an individual of limited experience in this process would be so concerned about accuracy and completeness he might err, as

this Applicant has, by not making any disclosure he was not sure of. Likewise, there has been no ongoing effort to conceal this information or mislead the government about this or any other aspect of Applicant's background. While certainly not conclusive of the issue, I also note that DSS did not view Applicant's omissions as security significant given his explanations.

Applicant acknowledged at hearing he should have disclosed the repossession of his step-daughter's car. Rather than try to fix blame on his step-daughter for her failure to pay the car note, his only explanation for why he omitted the information was that he made a mistake. As to his answers to the other questions, Applicant disclosed a delinquent car payment, which indicated to the government that he had some financial issues in his background. Based on the totality of available information in this regard, Applicant did not intend to falsify his answers to the SF 86. On balance, absent intent to falsify his SF 86 or otherwise mislead the government about his finances, I conclude none of the Guideline E disqualifying conditions (DC) apply, and this guideline is resolved in favor of the Applicant.

The facts presented through the government's information offered in support of the SOR ¶1 allegations also raise security concerns addressed in the Directive under Guideline F. The government has established Applicant owes more than \$23,000 in delinquent debts dating back to at least 1998. He has been unable to pay those debts since 2002, when he and his wife tried to establish their small business. An applicant who is financially overextended through delinquent debt and poor personal financial management may be at risk of engaging in illegal acts to generate funds to resolve their fiscal difficulties. Failure to reasonably attend to personal finances may also indicate poor judgment and reliability in other facets of one's conduct. <sup>(16)</sup> The facts here support application of Guideline F disqualifying condition (DC) 1 <sup>(17)</sup> and DC 3. <sup>(18)</sup> DC 1 applies based on the fact there is a record of delinquencies attributable to the Applicant. As to DC 3, this case is more about Applicant's inability to pay than any unwillingness to pay his debts. His ability to meet his pre-2002 obligations (the car repossession and five other personal accounts) was interrupted, first by his failed business venture, then by the need to care for his dying wife.

While the government is reasonably concerned about the risks attendant to Applicant's indebtedness, the facts also support application of Guideline F MC 3. <sup>(19)</sup> At the time he started the grocery store, Applicant had experienced some financial difficulties in the form of the unpaid car loan for his step-daughter and a child support arrearage, 90% of which has been satisfied. He owes the car repossession debt because his step-daughter failed make the monthly car payments. His business failed because the operating costs were unexpectedly too high. He left a steady job to try to salvage the business, but those efforts caused him to fall behind on other obligations consisting mainly of personal credit accounts. However, Applicant and his wife took action to resolve their finances when they moved to another state to take jobs at a shipyard, and, in Applicant's case, a second full-time job to supplement their income. Had he not had to significantly curtail his income earning to care for his sick wife, Applicant likely would have had both the money and the time to address his past due obligations. Thus, MC 3 also works in Applicant's favor because of the unexpected impediments to his efforts to resolve these debts.

In addition to the specific factors under Guideline F, I have tried to make a fair and commonsense assessment of the record before me as required by Directive Section E2.2.3. While it cannot be denied Applicant still owes a great deal of money, cases occasionally present themselves requiring assessment of more than just assets and liabilities. The fact money is still owed or the amount of the debt should not be the end of the analysis here. The government is rightly concerned about the risk Applicant would turn to illegal acts to generate funds, but the government is not a bill

collector. The fact Applicant still owes significant debt must be weighed in the context of the difficult circumstances and events related thereto. Applicant is not overly sophisticated in matters of finance. Nor has he much experience in the personnel security process. What he does well is work hard. There is no record of any new delinquencies nor is there any indication of gross mismanagement of his personal finances. He still works two jobs so he can resolve his financial affairs, and he now has the time to address his debts, albeit for the unfortunate reason that his wife recently succumbed to her illnesses. On balance, I conclude Guideline F for the Applicant.

### **FORMAL FINDINGS**

Formal findings regarding each SOR allegation are as follows:

Paragraph 1, Guideline F (Financial): FOR THE APPLICANT

Subparagraph 1.a: For the Applicant

Subparagraph 1.b: For the Applicant

Subparagraph 1.c: For the Applicant

Subparagraph 1.d: For the Applicant

Subparagraph 1.e: For the Applicant

Subparagraph 1.f: For the Applicant

Subparagraph 1.g: For the Applicant

Subparagraph 1.h: For the Applicant

Subparagraph 1.i: For the Applicant

Subparagraph 1.j: For the Applicant

Subparagraph 1.k: For the Applicant

Subparagraph 1.l: For the Applicant

Subparagraph 1.m: For the Applicant

Subparagraph 1.n: For the Applicant

Paragraph 2, Guideline E (Personal Conduct): FOR THE APPLICANT

Subparagraph 2.a: For the Applicant

Subparagraph 2.b: For the Applicant

Subparagraph 2.c: 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 the Applicant. Clearance is granted.

Matthew E. Malone

Administrative Judge

1. Required by Executive Order 10865, as amended, and by DoD Directive 5220.6 (Directive), as amended.
2. AE A is 214 pages long and is described in the transcript at pp. 23 - 31.
3. GE 2.
4. GE 4. Accordingly, the debts listed in SOR ¶¶ 1.a and 1.n appear to be the same account.
5. Tr., 40.
6. GE 3.
7. Tr., 52 - 53.
8. GE 1.
9. Tr., 34 - 38.
10. *See Department of the Navy v. Egan*, 484 U.S. 518 (1988).
11. *See Egan*, 484 U.S. at 528, 531.
12. *See Egan*; Directive E2.2.2.



13. Directive, Enclosure 2.

14. Directive, E2.A5.1.1.

15. Directive, 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; (emphasis added)

16. Directive, E2.A6.1.1.

17. Directive, E2.A6.1.2.1. A history of not meeting financial obligations;

18. Directive, E2.A6.1.2.3. *Inability* or unwillingness to satisfy debts; (emphasis added)

19. Directive, 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);