

KEYWORD: Financial; Personal Conduct

DIGEST: Applicant accrued substantial personal debt during the three-year period before he was discharged for the Navy in December 1999. His financial difficulties were compounded when his wife left him during this period, and the government claimed reimbursement for overpayment of benefits paid to him upon his discharge. His current delinquent debt exceeds \$55,500.00, and Applicant failed to disclose the full extent of his debt on his Security Clearance Application (SF 86) filed in November 2002. No material payments have been made against the accounts since he was discharged from the military. Applicant failed to mitigate the security concerns raised by his financial problems and personal conduct. Clearance is denied.

CASENO: 04-09035.h1

DATE: 02/17/2006

DATE: February 17, 2006

In re:

SSN: -----

Applicant for Security Clearance

ISCR Case No. 04-09035

DECISION OF ADMINISTRATIVE JUDGE

DAVID S. BRUCE

APPEARANCES

FOR GOVERNMENT

Ray T. Blank, Jr., Esq., Department Counsel

FOR APPLICANT

Pro Se

SYNOPSIS

Applicant accrued substantial personal debt during the three-year period before he was discharged for the Navy in December 1999. His financial difficulties were compounded when his wife left him during this period, and the government claimed reimbursement for overpayment of benefits paid to him upon his discharge. His current delinquent debt exceeds \$55,500.00, and Applicant failed to disclose the full extent of his debt on his Security Clearance Application (SF 86) filed in November 2002. No material payments have been made against the accounts since he was discharged from the military. Applicant failed to mitigate the security concerns raised by his financial problems and personal conduct. Clearance is denied.

STATEMENT OF THE CASE

On, June 5, 2005, the Defense Office of Hearings and Appeals (DOHA), pursuant to Executive Order 10865, *Safeguarding Classified Information Within Industry*, dated February 20, 1960, as amended and modified, and Department of Defense Directive 5220.6, *Defense Industrial Review Program*, dated January 2, 1992, as amended and modified (Directive), issued a Statement of Reasons (SOR) to Applicant alleging facts that raise security concerns addressed in the Directive under Guideline F - Financial Considerations, and Guideline E - Personal Conduct. The SOR detailed why DOHA could not preliminarily determine under the Directive that it is clearly consistent with the national interest to grant or continue Applicant's request for a security clearance. By his answer signed July 11, 2005, Applicant admitted with explanations the allegations of subparagraphs 1.c., 1.e., 1.f., 1.h., 1.j - 1.n., 1.p. and 1.u. of the SOR, denied the allegations of subparagraphs 1.a, 1.b., 1.d., 1.g., 1.i., 1.o., 1.q. - 1.t. and 1.v., and 2.a. and 2.b., and requested a hearing before an administrative judge.

The case was assigned to me on August 18, 2005, and I conducted the hearing on December 14, 2005. The government submitted exhibits (GE) 1 through 6, which were admitted without objection. Applicant testified at the hearing along with two other witnesses, and further offered exhibits (AE) A through D, also admitted without objection. DOHA received the hearing transcript (Tr.) on January 4, 2006.

FINDINGS OF FACT

Applicant's admissions are incorporated herein by reference. In addition, after a thorough review of the pleadings, transcript, and exhibits, I make the following findings of fact:

Applicant is 34 years old and was married for the second time on November 7, 2005. He has a daughter, age 8, by his first marriage, which ended in divorce in November 2000.⁽¹⁾ He pays child support of \$310.00 per month to his first wife through a wage garnishment, and is current in his payments.⁽²⁾

Applicant served in the U.S. Navy from December 1989 to December 1999, and separated due to not advancing in grade. He was honorably discharged at paygrade E-4. He disputes his discharge date, and argues it was actually in January 2000.⁽³⁾ He was employed by a private company after he left the Navy until August 2000. He was then hired by a federal contractor and worked for that company for a little over a year. He earned about \$30,000.00 per year in each of the positions. He began working in his present job with a different contractor as a video conference engineer in September 2001, and currently makes about \$67,000.00 per year. He has not been unemployed since his discharge for the military.⁽⁴⁾ He held a clearance in 1999.⁽⁵⁾

Applicant owes the following amounts to the creditors referenced in the SOR:

1. Retail collection account - \$1,077.00. (Subparagraphs 1.a. and 1.h.)
2. Bank collection account - \$1,036.00. (Subparagraphs 1.b. and 1.d.)
3. Credit card account - \$777.25. (Subparagraph 1.c.)
4. Credit card account - \$2,146.00. (Subparagraphs 1.e., 1.m. and 1.t.)
5. Bank collection account - \$1,300.80. (Subparagraph 1.f.)
6. Credit Union collection account - \$709.00. (Subparagraph 1.g.)
7. Commercial lender account - \$3,677.00. (Subparagraph 1.i.)
8. Bank collection account \$3,061.00. (Subparagraph 1.j.)

9. Credit card account \$1,881.00. (Subparagraph 1.k.)
10. Automobile loan - \$20,993.00. (Subparagraph 1.n.)
11. Military Exchange account - \$1,320.00. (Subparagraph 1.p.)
12. Bank collection account - \$491.00. (Subparagraph 1.r.)
13. Department of Defense overpayment. - \$16,945.00. (Subparagraph 1.s.)
14. Phone services account. - \$140.00. (Subparagraph 1.u.)

Applicant's total debt set forth above is \$55,554.05.

Applicant's financial difficulties occurred during the final years of his military service. His wife was a nurse and provided the majority of the household income until she left him in December 1998 to return home to live with her parents in another state. The bills were all in his name and his military income of about \$15,000.00 per year at the time was not sufficient to meet his monthly obligations.⁽⁶⁾ He was then ordered to pay child support in the year following his discharge.⁽⁷⁾

With the exception of the small phone services bill, the above debts accrued before he separated from the military and were 'charged off' between August 1997 and November 2000. All remain unpaid. In late 2003, Applicant paid off two credit line accounts for which his wife was an authorized user of unspecified amounts not listed on the SOR. He also paid the debt referred to in subparagraph 1.v. of the SOR in the amount of \$195.76 for cell phone services,⁽⁸⁾ and recently paid \$500.00 in the last six months against the credit card debt referenced in number 3 above, reducing the balance of the account to the amount shown.⁽⁹⁾ On November 15, 2005, he received notice he could settle the account referenced in number 5 above by paying 50% of the balance shown, however, no evidence of any payment was submitted at the time of the hearing nearly a month later.⁽¹⁰⁾

When Applicant submitted his personal financial statement to the DSS Special Agent on January 23, 2004, he claimed he owned no assets of any value. He further represented he had positive net income of \$345.00 per month, which accounted for his monthly automobile loan payment of \$399.00 per month being current.⁽¹¹⁾

Applicant completed a handwritten Questionnaire for National Security Positions (SF 86) on October 31, 2002. As to Question 28 related to financial delinquencies in the last seven years 90 or 180 days overdue, he listed two credit debts totaling \$2,062.00, one of which was not listed among the SOR allegations.⁽¹²⁾ He submitted a Security Clearance Application (SF 86) on November 13, 2002. In response to Question 38 related to delinquent debts over 180 days, Applicant listed the same two debts. He failed to list any delinquent debts in response to Question 39 relating to existing

financial delinquencies over 90 days.⁽¹³⁾

POLICIES

Enclosure 2 of the Directive, *Adjudicative Guidelines For Determining Eligibility For Access To Classified Information*, sets forth the criteria which must be evaluated when determining security clearance eligibility. The adjudicative guidelines specifically distinguish between those factors that are considered in denying or revoking an employee's request for access to classified information (Disqualifying Conditions), together with those factors that are considered in granting an employee's request for access to classified information (Mitigating Conditions). By acknowledging that individual circumstances of each case are always different, the guidelines provide substantive standards to assist an administrative judge in reaching fair and impartial common sense decisions.

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 well-informed decisions. 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 conduct of the applicant and the circumstances in any case, the factors an administrative judge should consider pursuant to the concept are: (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 the 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.

Protecting national security is the paramount concern in reaching a decision in any case, and is dependent upon the primary standard that issuance of a clearance must be clearly consistent with the interests of national security. Granting an applicant's clearance for access to classified information is predicated on a high degree of trust and confidence in the individual. Accordingly,

decisions under the Directive must include consideration of not just the *actual* risk of disclosure of such information, but also consideration of any *possible* risk an applicant may deliberately or inadvertently compromise classified information in any aspect of his or her life. Any doubt about whether an applicant should be allowed access to classified information must be resolved in favor of protecting classified information.⁽¹⁴⁾ The decision to deny a security clearance request to an individual is not necessarily a determination of the loyalty of the applicant.⁽¹⁵⁾ It is merely an indication the applicant has not met the strict guidelines established by the Department of Defense for issuing a clearance.

In accordance with the Directive, the government bears the burden of proof in the adjudicative process to first establish, by substantial evidence, conditions which indicate it is not clearly consistent with the national interest to grant or continue an applicant's access to classified information.⁽¹⁶⁾ The legal standard for the burden of proof is something less

than a preponderance of the evidence. ⁽¹⁷⁾ When the government meets this burden, the corresponding heavy burden of rebuttal then falls on the applicant to present evidence in refutation, explanation, extenuation or mitigation sufficient to overcome the position of the government, and to ultimately demonstrate it is clearly consistent with the national interest to grant or continue the applicant's clearance. ⁽¹⁸⁾

Upon consideration of all the evidence in this matter, the following adjudicative guidelines are appropriate for evaluation with regard to the facts of this case:

Guideline F - A security concern exists when a person has significant delinquent debts. An individual who is financially overextended is at risk of having to engage in illegal or unethical acts to generate funds to meet financial obligations. Similarly, an individual who is financially irresponsible may also be irresponsible, unconcerned, or careless in their obligation to protect classified information. Behaving responsibly or irresponsibly in one aspect of life provides an indication of how a person may behave in other aspects of life.

Guideline E - Personal conduct is a security concern because conduct involving questionable judgment, trustworthiness, unreliability, lack of candor, dishonesty, or unwillingness to comply with rules and regulations could indicate that the person may not properly safeguard classified information.

CONCLUSIONS

I have thoroughly considered all the facts in evidence in this case and the legal standards required by the Directive. The government has established its case for disqualification under Guideline F.

Based on all the evidence, Financial Considerations Disqualifying Condition (FC DC) E2.A6.1.2.1. (*A history of not meeting financial obligations*) and E2.A6.1.2.3. (*Inability or unwillingness to satisfy debts*) apply in this case. Applicant's irresponsible inattention to his financial affairs causes great concern.

I have considered all the Financial Considerations Mitigating Conditions (FC MC), and specifically FC MC E2.A6.1.3.1. (*The behavior was not recent*), FC C E2.A6.1.3.2. (*It was an isolated incident*), 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)*), and FC MC E2.A6.1.3.6. (*The individual initiated a good faith effort to repay overdue creditors or otherwise resolve debts*). I conclude none apply to this case.

The total debt under the SOR allegations exceeds \$55,500.00. The amount is substantial and took time to accumulate. With the exception of the government's claim for overpayment of funds paid to him when he separated from the military, the debts were ostensibly for consumer purchases that accrued while Applicant was in the military. While he may not have been able to prevent his wife from leaving with their daughter in December 1998, it is likely Applicant sensed the gradual deterioration of the marriage and might have reasonably foreseen their separation. He either blindly permitted his credit to be used to allow the family to continue living beyond their means, or he altogether neglected his finances for a lengthy period. Applicant failed to recognize the magnitude of his escalating debt, and took no affirmative steps to curtail his wife's spending habits or limit her use of his available credit to get their financial affairs in order. His wife leaving the home only compounded Applicant's developing financial difficulties because the bills were all in his name. Applicant virtually ignored the debts for nearly five years from the time he left the Navy until security concerns related to his present employment became an issue. Accordingly, I consider the debts recent, in the sense they remain unpaid. Likewise, I cannot consider accumulation of the debts to be an isolated event because the debts are multiple and were progressively incurred over a lengthy period.

Applicant represented to the DSS investigator in January 2004 he would either initiate efforts to begin paying the accounts since he was working and had a good job, or he would consider filing bankruptcy to get the accounts resolved. Two years later, only a bare minimum of payments had been made, and only negligible repayment plans or schedules had been implemented by Applicant with any of the creditors listed in the SOR. A different conclusion might be appropriate had Applicant adjusted his budget and made good-faith efforts to repay some significant portion of the total debt after he left the Navy, or after he filed his SF 86 over three years ago. It is troublesome the matter concerning overpayment of government benefits to him is still not resolved. Applicant never initiated efforts to benefit from meaningful credit counseling throughout the period. It appears he chose to ignore certain debts, and keep others current, in spite of having had an ability to accomplish some partial repayment over the last several years. Applicant has not shown failure to pay his debts was due principally to conditions beyond his control, and he has not made a good-faith effort to repay his creditors or otherwise conscientiously resolve his debts that he acknowledges are his responsibility.

The government also established its case for disqualification under Guideline E - Personal Conduct. Considering all the evidence, 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*) applies. Applicant was aware he had a number of overdue debts when he signed his SF 86 on November 13, 2002. His financial difficulties accrued prior to being discharged from the military in December 1999, and the vast majority of the debts were charged off as bad debts by the end of 2000. His omission with regard to the government's claim for reimbursement of substantial benefits previously paid to him is especially troublesome, regardless of the fact he may genuinely dispute the claim. One objective of the security clearance process is to determine all relevant and material information concerning an applicant. Based upon truth and honesty, the process requires full and open disclosure by the applicant of all requested information. Any intentional misrepresentation or omission by an applicant raises serious concerns about the character and overall integrity of the individual. The evidence presented and Applicant's admissions constitute substantial evidence of PC DC E2.A5.1.2.2. under Guideline E.

I have considered all the Personal Conduct Mitigating Conditions (PC MC), and specifically PC MC E2.A5.1.3.3. (*The*

individual made prompt, good-faith efforts to correct the falsification before being confronted with the facts), and conclude it does not apply. Applicant had an affirmative obligation to determine the true status of all information requested in the SF 86, and to fully provide complete and accurate answers to each item of the questionnaire. The omissions on his SF 86 were apparent to Applicant when he prepared his answers and were made intentionally. The omissions were a deliberate and self-serving attempt by Applicant to mislead and inappropriately influence the outcome of his security clearance application. He met with a DSS Special Agent on November 23, 2004. He did not openly disclose the facts related to his prior debts until confronted with the information. Applicant had two years to reconsider his responses on his application and properly disclose the correct information. Considering all the circumstances, Applicant's candor and credibility are questionable, and he has failed to successfully mitigate the personal conduct security concerns raised in this case.

I have further reviewed all the record evidence under the "whole person" concept required by the Directive in evaluating Applicant's vulnerability in protecting our national security. An applicant with a good or even exemplary work history may engage in conduct that has negative security implications. Although Applicant's loyalty to the United States is not in question, I am persuaded by the totality of the evidence that it is not clearly consistent with the national interest to grant Applicant a security clearance. For the reasons stated, Applicant has not met the strict guidelines for issuance of a clearance, and he has failed to mitigate the security concerns regarding his financial matters and personal conduct. Accordingly, Guidelines F and E are decided against Applicant.

FORMAL FINDINGS

In accordance with Section E3.1.25 of Enclosure 3 of the Directive, the following are the formal findings as to each allegation in the SOR:

Paragraph 1. Financial Considerations (Guideline F) AGAINST THE APPLICANT

Subparagraph 1.a. Against the Applicant

Subparagraph 1.b. Against the Applicant

Subparagraph 1.c. Against the Applicant

Subparagraph 1.d. For the Applicant

Subparagraph 1.e. Against the Applicant

Subparagraph 1.f. Against the Applicant

Subparagraph 1.g. Against the Applicant
Subparagraph 1.h. For the Applicant
Subparagraph 1.i. Against the Applicant
Subparagraph 1.j. Against the Applicant
Subparagraph 1.k. Against the Applicant
Subparagraph 1.l. Against the Applicant
Subparagraph 1.m. For the Applicant
Subparagraph 1.n. Against the Applicant
Subparagraph 1.o. Against the Applicant
Subparagraph 1.p. Against the Applicant
Subparagraph 1.q. Against the Applicant
Subparagraph 1.r. Against the Applicant
Subparagraph 1.s. Against the Applicant
Subparagraph 1.t. For the Applicant
Subparagraph 1.u. Against the Applicant
Subparagraph 1.v. For the Applicant

Paragraph 2. Personal Conduct (Guideline E) AGAINST THE APPLICANT

Subparagraph 2.a. Against the Applicant
Subparagraph 2.b. Against the Applicant

DECISION

In light of all 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.

David S. Bruce

Administrative Judge

1. In his statement provided to a Defense Security Service (DSS) Special Agent on January 23, 2004 (GE 5 at 1), Applicant stated his child's birth date to be arch 29, 1997, which would make her 8 years old at the time of the hearing. In his testimony, he said his child was 9-years-old. (Tr. at 19). He also provided the name and birth place of his first wife in his DSS statement, however, the name is different from the name and birth place he provided for his first wife on his handwritten Questionnaire for National Security Position he signed on October 31, 2002 (AE D, at 7), and his Security Clearance Application (SF 86) dated November 13, 2002 (GE 1, at 3). No explanation was provided for these discrepancies.
2. GE 1 (Applicant's Security Clearance Application (SF 86) dated November 13, 2002), at 1 and 3. See also Tr. at 18-20.
3. *Id.* at 4, and Tr. at 16-18.
4. GE 1, *supra* note 1, at 2-3. See also Tr. 21-22.
5. *Id.* at 7.
6. Tr. at 56-58. See also GE 5, *supra* note 1, at 1.
7. *Id.*, at 20 and 60.
8. GE 5, *supra* note 1, at 1. Applicant stated he paid the cell phone debt in July 2005, but submitted no verification of payment. Nonetheless, I accepted his statement as credible.
9. AE A (Credit card debt payment correspondence), at 6.
10. AE B (Bank credit account letter dated November 15, 2005).
11. Note: Applicant stated his gross income on his financial statement to be \$3,752.00 per month , which equates to \$45,024.00 per year. He testified at the hearing in December 2005 he made \$67,000.00 per year. (Tr. at 21). The significant increase of his annual salary between January 23, 2004, and December 14, 2005, while working for the same contractor was not explained.
12. AE D, *supra* note 1, at 9.
13. GE 1, *supra* note 1, at 7 and 8.
14. Directive, Enclosure 2, Para. E2.2.2.
15. Executive Order 10865 § 7.
16. ISCR Case No. 96-0277 (July 11, 1007) at p. 2.

17. *Department of the Navy v. Egan*, 484 U.S. 518, 531 (1988).

18. ISCR Case No. 94-1075 (August 10, 1995) at pp. 3-4; Directive, Enclosure 3, Para. E3.1.15.