

KEYWORD: Financial

DIGEST: Applicant is 49 years old, divorced, and works for a defense contractor. He has 15 delinquent debts alleged in the SOR, with a total value of \$161,544. Applicant did not submit any evidence specifically addressing his resolution, if any, of these 15 debts. Applicant failed in his burden of proof and did not mitigate the financial considerations security concern. Clearance is denied.

CASENO: 04-09051.h1

DATE: 04/28/2006

DATE: April 28, 2006

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In re:

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SSN: -----

Applicant for Security Clearance

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ISCR Case No. 04-09051

**DECISION OF ADMINISTRATIVE JUDGE**

**PHILIP S. HOWE**

**APPEARANCES**

**FOR GOVERNMENT**

Eric H. Borgstrom, Esq., Department Counsel

## **FOR APPLICANT**

*Pro Se*

### **SYNOPSIS**

Applicant is 49 years old, divorced, and works for a defense contractor. He has 15 delinquent debts alleged in the SOR, with a total value of \$161,544. Applicant did not submit any evidence specifically addressing his resolution, if any, of these 15 debts. Applicant failed in his burden of proof and did not mitigate 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 June 2, 2005, DOHA issued a Statement of Reasons<sup>(1)</sup> (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 September 23, 2005. Applicant requested his case be decided on the written record in lieu of a hearing.

On November 7, 2005, Department Counsel submitted the Department's written case. A complete copy of the file of relevant material (FORM) was provided to the Applicant. He was given the opportunity to file objections and submit material in refutation, extenuation, or mitigation. Applicant filed a response to the FORM on or before December 23, 2005, within the 30 day time allowed. On March 6 and 13, 2006, Applicant submitted additional documentation in support of his response. The case was assigned to me on March 23, 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 49 years old, divorced, and works for a defense contractor. Applicant has 15 delinquent debts totaling \$161,544 due and owing. He hired an attorney in 2004 to represent him in his various debt resolution matters. (Items 2 and 3)

Applicant's response includes copies of his attorney's letters to various creditors not listed in the SOR, copies of checks not related to the SOR alleged debts, and other documents pertaining to delinquent debts not listed on the SOR. Applicant denied owing the debts listed in subparagraphs 1.a, 1.f, 1.h, 1.n., 1.o, 1p. He admitted the other 10 delinquent debts. (Answer in Item 2, Response and attached exhibits)

Applicant did not submit any documentation or statement directly responding to any of the delinquent debts listed in the SOR. All the listed debts remain delinquent. The debt amounts, types of creditors, and evidence showing the debt and current delinquency are as follows:

DEBT AMOUNT	CREDITOR TYPE	RECORD EVIDENCE
1.a. \$10,205	credit card	Credit reports, Items 6, 7
1.b. \$3,990	financial lender	Applicant's statement and credit reports, Items 5, 7, 8
1.c. \$1,439	credit card	Applicant's statement, credit reports, Items 5-8
1.d. \$5,192	financial lender	Applicant's statement, credit reports, Items 5-8, Applicant's exhibit H
1.e. \$3,411	bank	Applicant's statement, credit reports, Items 5-8
1.f. \$9,357	financial lender	Credit reports, Items 6, 7
1.g. \$3,229	financial lender	Applicant's statement, credit reports, Items 5-7
1.h. \$4,629	collector for financial lender	Credit reports, Items 6, 7
1.i. \$11,323	credit corporation lender	Credit reports, Items 6-8
1.j. \$3,474	bank lender	Credit reports, Items

		6-8
1.k. \$51,717	financial lender	Credit reports, Items 6, 7; Applicant's exhibit F
1.l. \$3,211	bank lender	Credit reports, Item 8, Applicant's statement, Item 5
1.m. \$2,046	bank lender	Credit reports, Items 6-8; Applicant's statement, Item 5
1.n. \$3,935	finance company lender	Credit report Item 8; Applicant's statement, Item 5
1.o. \$44,386	financial lender now in foreclosure process	Credit reports, Items 6, 7
1.p. \$1,683 net monthly income remainder, showing Applicant paying only one debt at that time. His remainder could have paid several smaller debts over a one or two year period, but he did not submit any evidence he used that money to make those payments.	personal financial statement of February 18, 2004	Applicant's statement, Item 5

## 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. Applicant provided no evidence directly related to any of the SOR allegations. The evidence he submitted pertained to debts not listed in the SOR.

The Disqualifying Conditions (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) apply. Applicant has 15 delinquent debts alleged in the SOR. He provided no evidence addressing those specific debts and his plan to pay, settle, or otherwise resolve them. He provided documents pertaining to delinquent debts not alleged in the SOR.

The burden of proof is on Applicant, and nothing he provided persuaded me that the 15 delinquent debts about which the Government is concerned have been paid in full, settled, or subject to an installment agreement. He ignored those 15 debts in his Answer to the SOR and his Response to the FORM. I examined each of his documents before I came to this conclusion. Therefore, I conclude no Mitigating Conditions apply, and resolve this financial considerations security concern 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  
Subparagraph 1.j: Against Applicant  
Subparagraph 1.k: Against Applicant  
Subparagraph 1.l: Against Applicant  
Subparagraph 1.m: Against Applicant  
Subparagraph 1.n: Against Applicant  
Subparagraph 1.o: Against Applicant  
Subparagraph 1.p: Against Applicant

### **DECISION**

In light of all of the circumstances presented by the record in this case, it is not clearly consistent with the interests of national security 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).