

KEYWORD: Financial

DIGEST: Applicant's history of financial indebtedness is exacerbated by his immature belief that he did not need to pay his bills. Though his work-related disability in 1996 provides explanation and extenuation for his inability to pay his bills during the latter part of the 1990s, no action was taken to repay his creditors until 2002 when the court garnished Applicant's wages to repay the car loan (subparagraph 1.j.). Applicant did nothing voluntarily to resolve his delinquent debts until after he was questioned about them in November 2004. Applicant's payment or settlement of three overdue debts weighs in his favor but does not overcome the documented evidence revealing that he still owes more than \$30,000.00 to six creditors. Clearance is denied.

CASENO: 04-09671.h1

DATE: 01/31/2006

DATE: January 31, 2006

---

In Re:

-----  
SSN: -----

Applicant for Security Clearance

---

ISCR Case No. 04-09671

**DECISION OF ADMINISTRATIVE JUDGE**

**PAUL J. MASON**

**APPEARANCES**

## **FOR GOVERNMENT**

Nichole L. Noel, Esq. , Department Counsel

## **FOR APPLICANT**

*Pro Se*

## **SYNOPSIS**

Applicant's history of financial indebtedness is exacerbated by his immature belief that he did not need to pay his bills. Though his work-related disability in 1996 provides explanation and extenuation for his inability to pay his bills during the latter part of the 1990s, no action was taken to repay his creditors until 2002 when the court garnished Applicant's wages to repay the car loan (subparagraph 1.j.). Applicant did nothing voluntarily to resolve his delinquent debts until after he was questioned about them in November 2004. Applicant's payment or settlement of three overdue debts weighs in his favor but does not overcome the documented evidence revealing that he still owes more than \$30,000.00 to six creditors. Clearance is denied.

## **STATEMENT OF THE CASE**

On December 22, 2004, the Defense Office of Hearings and Appeals (DOHA), pursuant to Department of Defense Directive 5220.6, dated January 2, 1992, as reissued through Change 4 thereto, dated April 20, 1999, issued a Statement of Reasons (SOR) to the Applicant which detailed reasons why DOHA could not make the preliminary affirmative finding under the Directive that it is clearly consistent with the national interest to grant or continue a security clearance for Applicant. DOHA recommended referral to an Administrative Judge to conduct proceedings and determine whether clearance should be granted, continued, denied or revoked. On January 12, 2005, Applicant responded to the SOR and requested a hearing before an Administrative Judge.

The case was assigned to me on April 22, 2005. On April 25, 2005, this case was set for hearing on May 10, 2005. The Government submitted nine exhibits (GE 1-9), and Applicant submitted one exhibit (AE A) reflecting the debt to the creditor in subparagraph 1.g. was settled in November 2004. Testimony was taken from Applicant. On May 19, 2005, Applicant furnished AE B, consisting of documentation showing the debt identified in subparagraph 1.b. was paid. AE B also includes documentation of a \$113.00 pay off on May 16, 2005 to the collection agency identified in subparagraph 1.i. The transcript (Tr.) was received on May 19, 2005.

On April 6, 2005, the Government filed a motion to amend the SOR by adding subparagraph 1.j. as follows: "You are indebted to a [federal credit union] in the approximate amount of \$14,280.78, plus interest, fees and costs for a judgment entered against you in September 1998. As of April 6, 2005, this judgement has not been paid." At the hearing, Applicant stated he had no objection to the proposed amendment (Tr.9). Pursuant to E3.1.17. of the Directive, the Motion to Amend was granted (Tr. 10)

### **FINDINGS OF FACT**

The SOR alleges financial considerations (Guideline F). Applicant owes nine creditors a total of \$30,655.00 for ten past due debts. Six of the ten debts were transferred for collection. Applicant admitted he owed all the debts but claimed he paid the debt identified in subparagraph 1.h. Applicant's documentation indicates he settled the hospital debt (subparagraph 1.g.) for \$259.00. Applicant is 34 years old and employed in test applications by a defense contractor. He seeks a secret level security clearance.

Applicant opened an account with the creditor in subparagraph 1.a. in October 1996. The debt became delinquent in April 1997 in an amount of \$2448.00. Applicant claims that the creditor has no record of the bill, however, Applicant provided no documentation to support his claim. Applicant owes a collection agency (subparagraph 1.b.) for an account (\$35.00) placed for collection in October 1997. He was informed by the collections service several times they could not find his account. Applicant paid the debt after the hearing on May 19, 2005 (AE B).

Applicant owes a collection agency for two delinquent accounts (\$428.00, subparagraphs 1.c. and 1.d.) that were transferred for collection in January 1998. According to Applicant, the collection agency could not find his records.

Applicant owes the collection agency in subparagraph 1.e. \$303.00 for a medical bill that was transferred for collection in November 1999. Applicant recalls contacting the original creditor but was told they had no record of his delinquent debt. He did not call the collection agency (Tr. 32).

A car loan account totaling \$11,311.00 (subparagraph 1.f.) was transferred for collection by the original creditor in July 2000. Applicant cosigned for a car for his mother. After about a month, the car developed electrical problems that started a fire destroying the car. Applicant testified the car was still under warranty and the dealer was supposed to pay the car off or talk to the creditor and resolve the loss freeing Applicant of liability (Tr. 34). No documentation was furnished to support Applicant's claim.

A judgment was entered against Applicant in March 2001 for a delinquent medical account (subparagraph 1.g.) amounting to \$433.00. Applicant presented documentation verifying he had settled the debt in November 2004 for \$259.00 (AE A) Subparagraph 1.h. identifies a delinquent account totaling \$1,304.00 that Applicant claims he paid off some time ago. No documentation was provided. Applicant did not know about the collection account (\$113.00) listed in subparagraph 1.i. of the SOR (Tr. 39); on May 16, 2005, Applicant paid the outstanding balance (AE B).

Subparagraph 1.j. describes a delinquent debt totaling \$14,270.00 to a credit union for a loan on a car that was repossessed in 1998. The debt became delinquent when Applicant incurred a work-related injury in 1996, requiring him to go on disability. Applicant's wages were garnished \$418.00 a month since 2002; he believes the amount he currently owes the credit union is less. He is trying to work out a payment plan with the credit union to avoid paying so much interest (Tr. 40). Applicant provided no documentation validating the garnishment or the amount he currently owes, or his efforts in working out a payment plan.

Applicant was officially put on notice of the SOR debts in June 2004 when he provided a sworn statement. He was questioned about the debts a second time in November 2004. Except for the garnishment in 2002, Applicant began taking steps to pay his debts in November 2004 because he is concerned about his career and his security clearance. Before his current action to repay his debts, he was not concerned about them as he believed they did not need to be paid (Tr. 41). Applicant has paid \$407.00 to three of the SOR collection agencies or creditors. He still owes \$30,248.00 to five creditors.

Applicant provided no documentary character evidence. The Security clearance application (SCA) reflects Applicant has been consistently employed since 1993, except for the period between April 1996 and April 1998 when Applicant was on disability.

## **POLICIES**

Enclosure 2 of the Directive sets forth guidelines containing disqualifying conditions (DC) and mitigating conditions (MC) that should be given binding consideration in making security clearance determinations. These conditions must be considered in every case along with the general factors of the whole person concept. However, the conditions are not automatically determinative

of the decision in any case nor can they supersede the Administrative Judge's reliance on his own common sense.

## **Burden of Proof**

Initially, the government must establish, by substantial evidence, that conditions exist in the personal or professional history of the applicant which disqualifies, or may disqualify, the applicant from being eligible for access to classified information. *See Department of the Navy v. Egan*, 484 U.S. 518, 531 (1988) "[T]he Directive presumes there is a nexus or rational connection between proven conduct under any of the Criteria listed therein and an applicant's security suitability." ISCR Case No. 95-0611 at 2 (App. Bd. May 2, 1996) (quoting DISCR Case No. 92-1106 (App. Bd. Oct. 7, 1993)).

Once the government establishes a disqualifying condition by substantial evidence, the burden shifts to the applicant to rebut, explain, extenuate, or mitigate the facts. "[S]ecurity clearance determinations should err, if they must, on the side of denials." *See Egan*, 481 U.S. at 531; *see* Directive E2.2.2.

## **Financial Considerations (Guideline F)**

Failure to pay debts often leads to financial irresponsibility and acts of poor judgment.

## **CONCLUSIONS**

When a person spends more money than he earns, sooner or later he encounters difficulty paying bills. The failure to pay bills on time can lead to decisions based on desperation rather than judgment. In the erroneous belief he can resolve his financial troubles, he resorts to finding quick fixes to resolve his bill-paying problems by applying for personal loans without collateral or misusing credit cards. After he finds he is in worse financial shape, there is a very real possibility he could engage in criminal acts to generate funds.

The amount, age and number of Applicant's delinquent debts make financial considerations (FC) disqualifying condition (DC) E2.A6.1.2.1. (*a history of not meeting financial obligations*) applicable to the resolution of this case. At the time of the SOR was amended in May 2005, Applicant owed ten creditors \$30,655.00. One of the debts became delinquent in April 1997 while another was transferred for collection in June 2001. Because of Applicant's lack of concern about his

past due debts until November 2004, FC DC E2.A6.1.2.3. (*inability or unwillingness to satisfy debts*) must be given serious consideration.

There are five mitigating conditions (MC) that may enable Applicant to satisfy his ultimate burden of persuasion. FC MC E2.A6.1.3.1. (*the behavior was not recent*) is not relevant to the circumstances of this case as one of Applicant's debts became delinquent in June 2001. FC MC E2.A6.1.3.2. (*it was an isolated incident*) is not applicable since Applicant's financially irresponsible conduct shows that he has compiled a delinquent debt history with ten creditors or collection agencies since 1997.

FC MC E2.A6.1.3.3. (*the conditions that resulted in the behavior were largely beyond the person's control*) is a condition that acknowledges unforeseen incidents that can disrupt the timely payment of bills. Applicant's two year period of disability between 1996 and 1998 extenuates those bills that fell into delinquency during the period and also for a reasonable period of time after he returned to work in January 1998. However, the period of extenuation does not extend much beyond the end of 1998 and certainly not beyond 2000 after Applicant had been back to work for two years. Consideration of Applicant's single marital status and having no children to support throughout the period of disability and convalescence must also be evaluated to determine when Applicant should have been taking responsible action to resolve his debts. On balance, Applicant receives very limited consideration under FC MC E2.A6.1.3.3.

The matter of financial counseling is not relevant to the decision in this case as Applicant has had no counseling and, until recently, his apathetic attitude about financial issues, i.e., failure to locate creditors/collection agencies, confirms his delinquent debt problem is still far from being resolved or under any kind of semblance of control. *See*, FC MC E2.A6.1.3.4. (*the 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*)

A good faith effort to repay creditors as set forth in FC MC E2.A6.1.3.6. (*the individual initiated a good-faith effort to repay overdue creditors or otherwise resolve debts*), applies when the record shows a track record of sustained payments to creditors or collection agencies. Voluntary efforts to repay creditors clearly has more probative value than repayment efforts conducted under court order, as is the case with the garnishment. While Applicant's repayment evidence to three of the nine creditors weighs in his favor, the circumstances of the repayment detract from the positive value of the evidence because Applicant did not begin to take action until five months after his sworn statement in June 2004. The favorable evidence of repayment must also be weighed against the garnishment (subparagraph 1.j.) that has been in effect since 2002, and the other car loan (subparagraph 1.f.) Applicant has not addressed to date. In sum, Applicant has not met his ultimate burden of persuasion under the FC guideline and the general factors of the whole person concept.

## **FORMAL FINDINGS**

Formal Findings required by Paragraph 25 of Enclosure 3 are:

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

Subparagraph 1.a. Against the Applicant.

Subparagraph 1.b. For the Applicant.

Subparagraph 1.c. Against the Applicant.

Subparagraph 1.d. Against the Applicant.

Subparagraph 1.e. Against the Applicant.

Subparagraph 1.f. Against the Applicant.

Subparagraph 1.g. For the Applicant.

Subparagraph 1.h. Against the Applicant.

Subparagraph 1.i. For the Applicant.

Subparagraph 1.j. Against the Applicant (added by amendment).

### **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.

Paul J. Mason

Administrative Judge