

KEYWORD: Financial; Personal Conduct

DIGEST: Applicant has made substantial progress in resolving the delinquent debts that largely resulted from circumstances beyond his control. He did not intentionally fail to disclose the debts in the security clearance application he submitted. Clearance is granted.

CASENO: 04-10867.h1

DATE: 03/31/2006

DATE: March 31, 2006

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In re:

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SSN: -----

Applicant for Security Clearance

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ISCR Case No. 04-10867

**DECISION OF ADMINISTRATIVE JUDGE**

**HENRY LAZZARO**

**APPEARANCES**

**FOR GOVERNMENT**

Sabrina Redd, Esq., Department Counsel

## **FOR APPLICANT**

*Pro Se*

### **SYNOPSIS**

Applicant has made substantial progress in resolving the delinquent debts that largely resulted from circumstances beyond his control. He did not intentionally fail to disclose the debts in the security clearance application he submitted. Clearance is granted.

### **STATEMENT OF THE CASE**

On September 7, 2005, the Defense Office of Hearings and Appeals (DOHA) issued a Statement of Reasons (SOR) to Applicant stating it was unable to find it is clearly consistent with the national interest to grant or continue a security clearance for Applicant. [\(1\)](#) The SOR, which is in essence the administrative complaint, alleges security concerns under Guideline F (financial considerations) and Guideline E (personal conduct). Applicant submitted three responses to the SOR that were dated October 7, October 26, and November 6, 2005. In those answers, he admitted all guideline F allegations, denied both guideline E allegations, and requested a hearing.

This case was assigned to me on January 9, 2006. A notice of hearing was issued on February 13, 2006, scheduling the hearing for March 1, 2006. The hearing was conducted as scheduled. The government submitted eight documentary exhibits that were marked as Government Exhibits (GE) 1-8, and admitted into the record without objection. Applicant testified and submitted 24 documentary exhibits that were marked as Applicant's Exhibits (AE) 1-24, and admitted into the record without objection. The transcript was received March 23, 2006.

### **FINDINGS OF FACT**

Applicant's admissions to the SOR allegations are incorporated herein. In addition, after a thorough review of the pleadings, exhibits, and testimony, I make the following findings of fact:

Applicant is 44 years old and has been employed as an assembler by a defense contractor since December 2002. Applicant has been married since October 1987 and has two sons, ages five and eight, that he and his wife adopted in June 2002. Applicant's supervisors and coworkers submitted letters of recommendation on his behalf that indicate he is considered to possess a high sense of integrity, responsibility, and ambition. He has earned a reputation for being dependable, reliable, honest, and hard-working.

Applicant was unemployed from August 2002 until either December 2002 (GE 1) or April 2003 (GE 5, p. 3). He was employed as a spray painter by a different defense contractor from March 1996 until August 2002, and as a painter outside the defense industry from February 1995 until February 1996. Applicant was unemployed for six months in 1993 due to being laid off. He was underemployed thereafter, with his hourly wage being reduced from \$16-17.00 per hour to \$6.00 per hour, until he was hired as a painter in February 1995. Applicant's wife has also experienced several periods of unemployment in the past ten years.

As alleged in the SOR, Applicant had 11 accounts that were either listed as bad debts, charged off, or submitted for collection, totaling \$8,744.00. (2) He also owes past due state income taxes in the amount of \$2,513.00, and owed past due federal income taxes in the amount of \$25,132.00. Applicant submitted documentation that establishes he has paid the debts alleged in subparagraphs 1.a, 1.c, 1.d, 1.e, and 1.m, totaling \$807.00. He provided credible testimony that he has paid the debt alleged in subparagraph 1.n in the amount of \$722.00, although he did not submit any documentation in support of that assertion. Applicant has entered into a repayment agreement with the creditor alleged in subparagraph 1.b for a bad debt owing in the amount of \$3,076.00.

Applicant submitted a \$5,000.00 offer in compromise to the IRS in January 2003 to satisfy the delinquent income taxes owing for tax years 1995-98 (GE 6). Although the offer in compromise was rejected, the IRS notified Applicant in September 2003 that they found he was currently unable to either pay the total balance or make installment payments (GE 6). Accordingly, he was instructed to make payments as he was able to do so, that his future refunds would be applied to satisfaction of the past due taxes, and that collection action may be taken "in the future" (GE 6). Applicant's 2004 federal income tax refund in the amount of \$3,242.00 was applied to the past due federal income tax and approximately \$3,000.00 more will be applied when his 2005 return is filed. (3)

Applicant's financial problems resulted from the periods of unemployment and underemployment experienced by him and his wife, and their willingness to assist a young woman who was pregnant and homeless. That woman delivered a son, and she and the child thereafter resided with and were supported by Applicant and his wife for a time. The \$721.00 debt alleged in subparagraph 1.g is for medical attention provided to this woman that Applicant mistakenly believed would be paid by his health insurance. The woman eventually moved out, had a second son, and both children were then neglected and abused. The court system took custody of those boys and they now have been adopted by Applicant and his wife.

Applicant has retained the services of an accountant to help him resolve the tax debts he owes. The accountant has also provided him limited advice on his other debts. SOR subparagraph 1.q alleges that a financial statement Applicant prepared in December 2004 (GE 8) discloses a negative monthly remainder that indicates he is unable to pay his delinquent debt. However, the figures in that form did not include any income for Applicant's wife because she was laid off at the time and not receiving unemployment compensation. Applicant's more recent financial statement (AE 11) discloses a net remainder of almost \$800.00 that is available to satisfy his remaining delinquent debt. In fact, Applicant has actually managed to pay off some of his lesser debts in the past few months while both he and his wife have been unemployed.

The SOR alleges Applicant deliberately failed to disclose state tax liens had been filed against him and he had debts that were more than 90 days delinquent at the time he submitted his security clearance application (SF 86). Applicant credibly testified he thought the question about liens was inquiring whether any property had been seized to satisfy delinquent taxes. The varying dates on the pages of the SF 86 offered in evidence by the government (GE 1), as discussed at length at the hearing, Applicant's testimony about how the SF 86 was prepared and signed, and the copy of the SF 86 Applicant offered in evidence (AE 9) establish he disclosed he had delinquent debts to his prospective employer. However, that information was omitted from the SF 86 prepared by the employer. The employer then faxed only the signature pages to Applicant who signed them and returned them to the employer without reviewing the completed SF 86 which was then submitted to the government.

## **POLICIES**

The Directive sets forth adjudicative guidelines to consider when evaluating a person's eligibility to hold a security clearance. Chief among them are the Disqualifying Conditions (DC) and Mitigating Conditions (MC) for each applicable guideline. Additionally, each clearance decision must be a fair and impartial commonsense decision based upon the relevant and material facts and circumstances, the whole person concept, and the factors listed in ¶ 6.3.1 through ¶ 6.3.6 of the Directive. Although the presence or absence of a particular condition or factor for or against clearance is not outcome determinative, the adjudicative guidelines should be followed whenever a case can be measured against this policy guidance. Considering the evidence as a whole, Guideline F, pertaining to financial considerations and Guideline E, pertaining to personal conduct, with their respective DC and MC, are most relevant in this case.

## **BURDEN OF PROOF**

The sole purpose of a security clearance decision is to decide if it is clearly consistent with the national interest to grant or continue a security clearance for an applicant.<sup>(4)</sup> The government has the burden of proving controverted facts.<sup>(5)</sup> The burden of proof in a security clearance case is something less than a preponderance of evidence<sup>(6)</sup>, although the government is required to present substantial evidence to meet its burden of proof.<sup>(7)</sup> "Substantial evidence is more than a scintilla, but less than a preponderance of the evidence."<sup>(8)</sup> Once the government has met its burden, the burden shifts to an applicant to present evidence of refutation, extenuation, or mitigation to overcome the case against him.<sup>(9)</sup> Additionally, an applicant has the ultimate burden of persuasion to obtain a favorable clearance decision.<sup>(10)</sup>

No one has a right to a security clearance<sup>(11)</sup> and "the clearly consistent standard indicates that security clearance determinations should err, if they must, on the side of denials."<sup>(12)</sup> Any reasonable doubt about whether an applicant should be allowed access to classified information must be resolved in favor of protecting national security.<sup>(13)</sup>

## **CONCLUSIONS**

Under Guideline F, a security concern exists when a person has significant unpaid 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.

Applicant had numerous debts that became severely delinquent, and income taxes that were unpaid. Disqualifying Conditions (DC) 1: *A history of not meeting financial obligations*; and DC 3: *Inability or unwillingness to satisfy debt* apply in this case.

Applicant has paid many of the delinquent accounts in full, entered into a payment plan with an additional creditor, and is working with the assistance of an accountant to satisfy his past due income taxes. He has continued to pay his creditors and resolve his debts despite both him and his wife being unemployed. He has convincingly established that upon being granted a security clearance and permitted to return to work with his defense contractor employer that he will expeditiously resolve his remaining delinquent debt. Mitigating Conditions (MC) 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*; and MC 6: *The individual initiated a good-faith effort to repay overdue creditors or otherwise resolve debts* apply.

Applicant and his wife have experienced several periods of unemployment and underemployment since 1993, through no fault of their own, that have severely impacted their ability to stay current on their debt. Further, they opened their home to a woman and her children who were in need and eventually adopted those children, thereby placing additional demands on their limited financial resources. MC 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)* applies.

Personal conduct under Guideline E is always a security concern because it asks the central question if a person's past conduct justifies confidence the person can be trusted to properly safeguard classified information. 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.

Applicant's explanation for failing to disclose the tax liens in the SF 86 he submitted is credible. The evidence convincingly establishes he disclosed his delinquent debt status to his employer, that the employer failed to include that information in the SF 86 submitted to the government, and that Applicant signed the SF 86 without reviewing it because only the signature pages were sent to him by the employer. Applicant did not deliberately fail to disclose information as alleged in the SOR and, therefore, no disqualifying condition applies.

Considering all relevant and material facts and circumstances present in this case, including the testimony and evidence provided by Applicant, the whole person concept, the factors listed in ¶ 6.3.1 through ¶ 6.3.6 of the Directive, and the applicable disqualifying and mitigating conditions, I find Applicant has mitigated the security concerns that existed in this case. He has overcome the case against him and satisfied his ultimate burden of persuasion. Guideline F and Guideline E are decided for Applicant.

## **FORMAL FINDINGS**

SOR ¶ 1-Guideline F: For Applicant

Subparagraphs a-q : For Applicant

SOR ¶ 2-Guideline E: For Applicant

Subparagraphs a-b: For 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 Applicant. Clearance is granted.

Henry Lazzaro

Administrative Judge

1. This action was taken under Executive Order 10865 and DoD Directive 5220.6, dated January 2, 1992, as amended and modified (Directive).
2. Two debts, those alleged in subparagraphs 1.k and 1.l, are duplicates of the debts alleged in subparagraphs 1.b and 1.c, and thus are not included in these totals.
3. Applicant's accountant estimated approximately \$6,000.00 would be applied for the two years (AE 24). However, that was before Applicant's wife's 2005 income and withholding taxes were included in the joint return they will file in 2006.
4. ISCR Case No. 96-0277 (July 11, 1997) at p. 2.
5. ISCR Case No. 97-0016 (December 31, 1997) at p. 3; Directive, Enclosure 3, Item E3.1.14.

6. *Department of the Navy v. Egan* 484 U.S. 518, 531 (1988).
7. ISCR Case No. 01-20700 (December 19, 2002) at p. 3 (citations omitted).
8. ISCR Case No. 98-0761 (December 27, 1999) at p. 2.
9. ISCR Case No. 94-1075 (August 10, 1995) at pp. 3-4; Directive, Enclosure 3, Item E3.1.15.
10. ISCR Case No. 93-1390 (January 27, 1995) at pp. 7-8; Directive, Enclosure 3, Item E3.1.15
11. *Egan*, 484 U.S. at 528, 531.
12. *Id* at 531.
13. *Egan*, Executive Order 10865, and the Directive.