

KEYWORD: Financial; Personal

DIGEST: Applicant is 50 years old and presently works as an environmental engineer for a federal contractor. Prior to this position, he worked for another federal contractor from 1984 through 1999. Sometime in 1997, members of his family became sick and he helped with their medical care and finances. By the end of 1999, he began suffering from stress-related illnesses, which resulted in the accumulation of significant medical bills over the next two years. In 2000, he filed a petition for bankruptcy that was re-filed in 2001. When he filled out his security clearance application in 2003, he did not disclose the first petition or his delinquent debts. All of the debts have been resolved. He mitigated the security concerns raised by his financial issues and personal conduct. Clearance is granted.

CASENO: 04-11553.h1

DATE: 03/22/2006

DATE: March 22, 2006

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In re:

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SSN: -----

Applicant for Security Clearance

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ISCR Case No. 04-11553

**DECISION OF ADMINISTRATIVE JUDGE**

**SHARI DAM**

**APPEARANCES**

## **FOR GOVERNMENT**

Eric Borgstrom, Esq.

## **FOR APPLICANT**

Eric A. Eisen, Esq.

## **SYNOPSIS**

Applicant is 50 years old and presently works as an environmental engineer for a federal contractor. Prior to this position, he worked for another federal contractor from 1984 through 1999. Sometime in 1997, members of his family became sick and he helped with their medical care and finances. By the end of 1999, he began suffering from stress-related illnesses, which resulted in the accumulation of significant medical bills over the next two years. In 2000, he filed a petition for bankruptcy that was re-filed in 2001. When he filled out his security clearance application in 2003, he did not disclose the first petition or his delinquent debts. All of the debts have been resolved. He mitigated the security concerns raised by his financial issues and personal conduct. Clearance is granted.

## **STATEMENT OF THE CASE**

On August 15, 2005, the Defense Office of Hearings and Appeals (DOHA) under Executive Order 10865, *Safeguarding Classified Information Within Industry*, as amended and modified, and Department of Defense Directive 5220.6, *Defense Industrial Security Clearance Review Program* (Directive), dated January 2, 1992, as amended and modified, issued a Statement of Reasons (SOR) to Applicant. The SOR detailed reasons under Guidelines F (Financial Considerations) and E (Personal Conduct) why DOHA could not make a preliminary affirmative finding under the Directive that it is clearly consistent with the national interest to grant a security clearance to Applicant. DOHA recommended the case be referred to an administrative judge to determine whether a clearance should be granted.

On September 26, 2005, Applicant filed his Answer and requested a hearing. He admitted many of the allegations in the SOR and denied others. The case was assigned to me on November 17, 2005. A Notice of Hearing was mailed on November 30, 2005, setting the case for hearing on December 19, 2005. At the hearing the Government entered Exhibits (GX) 1-12 into evidence. Applicant entered Applicant Exhibits (AX) A-N into evidence and testified in his case-in-chief. At the conclusion of the hearing the record was left open until January 10, 2006, to give Applicant an opportunity to submit additional evidence. By agreement of the parties that time was extended to January 20, 2006. On or about January 18, 2006, I received Applicant's supplemental exhibits that were subsequently labeled by Government Counsel as AX's 1-14. DOHA received the Transcript (Tr.) on January 5, 2006.

## FINDINGS OF FACT

Based on the entire record, including Applicant's admissions in his Answer to the SOR and at the hearing, I make the following findings of fact:

Applicant is 50 years old. In May 2001, he started a position as a senior environmental test engineer for a federal contractor.<sup>(1)</sup> He has held a confidential security clearance since February 1985.<sup>(2)</sup>

From February 1984 until December 1999, Applicant worked as an electronics technician for another federal contractor. For the last seven months of 1999, Applicant commuted from his home to another city because his employer relocated. During those months he accumulated significant travel expenses that he charged to his corporate credit card, which was held in both his and his company's name, and routinely paid by the employer.<sup>(3)</sup> After deciding to leave the company rather than relocate, he received approximately \$360 per week for 52 weeks as severance pay.<sup>(4)</sup>

Although Applicant wanted to remain with his employer of 18 years and relocate to the new city, he chose not to move because members of his family had become ill and required his assistance. In 1997, his diabetic brother moved into Applicant's rental property as he was sick and could not afford to pay rent. He subsequently required 24-hour care and remained at Applicant's apartment until his death in 1999. In 1998, Applicant's mother broke her hip, and in April 1999, his father was diagnosed with cancer and began an extensive period of recovery. Besides assisting with the physical and financial care of his family members, Applicant assumed some of the management responsibilities for his brother's company. He helped with that business from 1998 until 2001, when he started his present position. Applicant did not receive any remuneration for his efforts.<sup>(5)</sup>

By late 1999, Applicant began developing medical problems related to the stress of caring for his sick family, traveling, and loss of income. Over the course of the next two years, he was hospitalized numerous times, and bedridden for almost one year.<sup>(6)</sup> His medical bills, totaling approximately \$100,000.00,<sup>(7)</sup> were covered by his medical insurance company.

Applicant filed for Chapter 13 Bankruptcy Protection on three separate occasions. After falling behind in his mortgage payments in 1994, he filed his first petition in February 1995, in order to preserve an interest in his property and prevent the mortgage company from foreclosing. In September 1999, the court established a repayment plan for him and the matter was discharged.<sup>(8)</sup> (SOR ¶ 1.q.). In July 2000, he filed his second petition because the mortgagor claimed he was

delinquent on his payments; however, that petition was dismissed in December 2000 due to filing errors. (SOR ¶ 1.p.). In April 2001, Applicant's attorney re-filed the petition.<sup>(9)</sup> (SOR ¶ 1.o.). In July 2004, the mortgaged property was sold and the \$75, 596 in net proceeds will be released to Applicant in the future.<sup>(10)</sup> The only creditor listed throughout the bankruptcy proceedings was the mortgagor of the property in question.<sup>(11)</sup> In September 2005, Applicant filed a suit against the mortgagor for engaging in a fraudulent scheme to cause Applicant's house to be sold in foreclosure.<sup>(12)</sup>

Paragraph 1 of the SOR alleged that Applicant's delinquent debts totaled \$25,393. He owed \$869 in utility bills (SOR ¶¶ 1.a., 1.b., 1.f., and 1.m.), \$15,173 in medical bills (¶¶ 1.c., 1.e., 1.g., 1.h., 1.i., 1.j., 1.k., 1.l., and 1.n.), and \$9351 to one credit card company (SOR ¶ 1.d.).

All of the utility bills have been paid or resolved: SOR ¶ 1.a. (\$49) was paid in September 2005;<sup>(13)</sup> SOR ¶ 1.b. (\$232) was paid in June 2003;<sup>(14)</sup> SOR ¶ 1.f. (\$384) was paid in September 2005;<sup>(15)</sup> and SOR ¶ 1.m. (\$204) was not his debt.<sup>(16)</sup>

All of the medical bills have been paid or resolved. In January 2006, Applicant paid \$200 to the creditor referenced in SOR ¶ 1.c., and in September 2005, he paid \$40 to the creditor noted in SOR ¶ 1.e.<sup>(17)</sup> The hospital bill referred to in SOR ¶ 1.g. for \$6539 was reduced to \$4989, and paid in December 2005 by the insurance company, along with the \$1288 bill listed in SOR ¶ 1.h.<sup>(18)</sup> The insurance company also resolved the outstanding debts alleged in SOR ¶¶ 1.i. (\$462), 1.j. (\$25), 1.k. (\$342), 1.l. (\$528) as evidenced by AX 6 that stated all of Applicant's delinquent hospital bills have been satisfied. In January 2006, the hospital bill listed in SOR ¶ 1.n. for \$5749 was resolved with a \$1916 payment from Applicant.<sup>(19)</sup> Although Applicant was responsible for approximately \$2150 of these delinquent bills, the insurance company was responsible for the remainder.

Applicant is in the process of resolving the \$9351 owed to a credit card company by his former employer for expenses he incurred during the last months of his employment.<sup>(20)</sup> Recently, he resubmitted monthly expense reports for those months, documenting the outstanding charges as requested by the company. He previously submitted the reports and receipts, but they apparently were never received or paid.<sup>(21)</sup> According to a March 2003 credit report, the credit card company termed the delinquent bill a "bad debt."<sup>(22)</sup>

During a May 2003 interview with the Government investigator, Applicant learned about the delinquent debts noted in his credit report.<sup>(23)</sup> Until that time he had no knowledge that his medical bills had not been paid by his insurance company or that the credit card company carried an unpaid debt because he never received a bill from his employer or the credit card company. After learning of these problems, he began to work on resolving some of the issues.<sup>(24)</sup> In doing so he discovered that at least three of the debts listed on the credit report had been paid a year earlier.<sup>(25)</sup> Presently, he earns approximately \$100,000 a year and has adequate savings to cover any financial problems.<sup>(26)</sup>

In March 2003, Applicant completed a security clearance application (SCA). In executing that form he certified that his answers were "true, complete, and correct" to the best of his knowledge and belief. In response to Question 33. Your Financial Record - Bankruptcy (*In the last 7 years, have you filed a petition under any chapter of the bankruptcy code (to include Chapter 13)*), he disclosed the 2001 petition, but not the 2000 petition. He stated he did not include the 2000 filing because he did not know that after it was dismissed and re-filed in 2001, it was assigned a different docket number. (27) I find this explanation credible, given the fact he is not a lawyer and is unfamiliar with court proceedings.

In response to Question 38. Your Financial Delinquencies - 180 Days (*In the last 7 years, have you been over 180 days delinquent on any debts*), Applicant answered "Yes," and listed his mortgage, but not the debts referenced in SO ¶¶ 1.b. through 1.d., and 1.g. through 1.n. because he was unaware of them until his interview in May 2003. Based on the confusion regarding the payment of his medical bills by the insurance company and the corporate credit card by his former employer, I find his explanations credible for not listing the debts.

## POLICIES

Enclosure 2 of the Directive, *Adjudicative Guidelines for Determining Eligibility for Access to Classified Information*, sets forth criteria which must be evaluated when determining security clearance eligibility. Within those adjudicative guidelines are factors to consider in denying or revoking an individual's request for access to classified information (Disqualifying Conditions), and factors to consider in granting an individual's request for access to classified information (Mitigating Conditions). By recognizing that individual circumstances of each case are different, the guidelines provide substantive standards to assist an administrative judge in weighing the evidence in order to reach a fair, impartial and common sense decision.

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 a balanced decision. 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 disqualifying and mitigating conduct an administrative judge should consider: (1) the nature, extent, and seriousness of the conduct; (2) the circumstances surrounding the conduct; (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 participation; (6) the presence or absence of rehabilitation and other 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.

Granting an applicant's clearance for access to classified information is based on a high degree of trust and confidence in the individual. Accordingly, decisions under the Directive must include consideration of not only the *actual* risk of disclosure of classified information, but also consideration of any *possible* risk an applicant may deliberately or inadvertently compromise classified information. Any doubt about whether an applicant should be allowed access to classified information must be resolved in favor of protecting classified information. Directive, Enclosure 2, ¶ E2.2.2. The decision to deny an individual a security clearance is not necessarily a judgment about an applicant's loyalty.

Executive Order 10865, § 7. Instead, it is a determination that an applicant has not met the strict guidelines established by the Department of Defense 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. *Department of the Navy v. Egan*, 484 U.S. 518, 531 (1988). The Directive presumes a rational connection between past proven conduct under any of the disqualifying conditions listed in the guidelines and an applicant's security suitability. ISCR Case No. 95-0611 at 2 (App. Bd. May 2, 1996).

Once the Government establishes a disqualifying condition by substantial evidence, the corresponding burden of rebuttal shifts to the applicant to present evidence in refutation, extenuation, or mitigation sufficient to overcome the position of the government. ISCR Case No. 01-20700 at 3 (App. Bd. Dec. 19, 2002); Directive, Enclosure 3, ¶ E3.1.15. An applicant "has the ultimate burden of demonstrating that it is clearly consistent with the national interest to grant or continue his clearance." *Id.*

Based upon the allegations contained in the SOR and a consideration of the evidence as a whole, the following adjudicative guidelines are pertinent to an evaluation of the facts of this case:

**Guideline F - Financial Considerations:** A security concern may exist when an individual who is financially overextended is at risk of having to engage in illegal acts to generate funds. Unexplained affluence is often linked to proceeds from financially profitable criminal acts.

**Guideline E - Personal Conduct:** A security concern may exist when 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.

The disqualifying and mitigating conditions, either raising security concerns or mitigating security concerns applicable to this case, are discussed in the Conclusions section below.

## **CONCLUSIONS**

After consideration of all the facts in evidence, an assessment of credibility, and the application of the appropriate legal standards, I conclude the following with respect to the allegations set forth in the SOR:

#### Guideline F: Financial Considerations

The Governments established its case under Guideline F. Applicant had difficulty paying his mortgage in 1994, which led to his first bankruptcy petition in 1995. From 2000 to 2002, he incurred debt that he failed to resolve until recently, such that Financial Consideration Disqualifying (FC DC) E2.A6.1.2.1. (*A history of not meeting financial obligations*) applies.

After considering all of the mitigating conditions under this guideline, I conclude that two of them apply. (1) Financial Consideration Mitigating Condition (FC C) 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)*). In 1997, Applicant began taking care of sick family members and providing financial assistance, which strained his budget and affected his income. From late 1999 to 2001, his health was compromised, causing him to incur large medical bills, some of which were not timely resolved by his insurance company. Unbeknownst to him, around the same time his previous employer did not pay the expenses placed on a jointly held credit card. (2) FC MC E2.A6.1.3.6 (*The individual initiated a good-faith effort to repay overdue creditors or otherwise resolve debts.*). After learning of the debts in May 2003, he attempted to resolve many of the bills. By the time of the hearing, he had paid some of them, and the insurance company had resolved others. Additionally, he contacted his former employer, who is willing to pay the corporate credit card bill on receipt of additional documentation that Applicant has been providing. At this time, all of the debts have been resolved and he has mitigated the financial concerns raised in the SOR. Accordingly, Guideline F is concluded in his favor.

#### Guideline E: Personal Conduct

The Government alleged in SOR ¶ 2.a. and ¶ 2.b. that Applicant deliberately falsified his SCA by failing to disclose the 2000 bankruptcy and several delinquent debts. Based on all of the evidence, I find that none of the disqualifying conditions under this guideline apply. Although he failed to list one of the bankruptcies, the omission was not deliberate, but attributable to his lack of knowledge about the court's docketing system and his belief that the 2000 bankruptcy was incorporated into the re-filed 2001 case. I also find that his failure to list the numerous delinquent debts was unintentional and not deliberate. His testimony that he was unaware of them until confronted by the Government in 2003 is credible, in view of the truthful disclosure of his mortgage, and a belief that the medical bills were paid by his insurance company and the corporate charges taken care of by his former employer. Accordingly, these allegations are concluded in favor of the Applicant.

I have further considered the totality of the evidence in this case, including Applicant's age, his 18-year work history

with his previous employer, the absence of a security violation since holding a clearance, the fact that the majority of the debts contained in the SOR were not his sole responsibility, his current salary and savings, as well as the amount of time it has taken him to resolve these problems since being apprised of them in May 2003. I have also reviewed the circumstances underlying these security concerns related to his finances, and conclude they are unlikely to recur. Therefore, I am persuaded by the totality of the evidence that it is clearly consistent with the national interest to grant Applicant a security clearance.

For the reasons stated, I conclude Applicant is eligible for access to classified information.

### **FORMAL FINDINGS**

Formal Findings for or against Applicant on the allegations set forth in the SOR, as required by Section E3.1.25 of Enclosure 3 of the Directive, are as follows:

Paragraph 1: Guideline F (Financial Considerations) FOR APPLICANT

Subparagraph 1.a: For Applicant

Subparagraph 1.b: For Applicant

Subparagraph 1.c: For Applicant

Subparagraph 1.d: For Applicant

Subparagraph 1.e: For Applicant

Subparagraph 1.f: For Applicant

Subparagraph 1.g: For Applicant

Subparagraph 1.h: For Applicant

Subparagraph 1.i: For Applicant

Subparagraph 1.j: For Applicant

Subparagraph 1.k: For Applicant

Subparagraph 1.l: For Applicant

Subparagraph 1.m: For Applicant

Subparagraph 1.n: For Applicant

Subparagraph 1.o: For Applicant

Subparagraph 1.p: For Applicant

Subparagraph 1.q: For Applicant

Paragraph 2: Guideline E (Personal Conduct) FOR APPLICANT

Subparagraph 2.a: For Applicant

Subparagraph 2.b: For Applicant

### **DECISION**

In light of all of the circumstances presented by the record in this case, it is clearly consistent with the national interest to grant Applicant a security clearance. Clearance is granted.

Shari Dam

## Administrative Judge

1. Tr. 29.
2. GX 1 at 7.
3. Tr. 67-68; AX 3 at 4.
4. Tr. 65.
5. Tr. 64.
6. AX 3 at 1-2; Tr. 63.
7. Tr. 88-89.
8. GX 3 at 5.
9. GX 3 at 5.
10. AX 14 at 2.
11. Tr. 37.
12. Tr. 53.
13. AX J.
14. AX 1.
15. AX J at 6.
16. AX 7 at 2.
17. AX 2 and 4.
18. AX's L, 5 and 6.
19. AX 8 at 1 and 2.
20. Tr. 87.
21. AX N.
22. AX H at 3.
23. Tr. 36-37.
24. AX H.
25. AX J.
26. Tr. 60; AX 3 at 3.
27. AX 3 at 3.