

KEYWORD: Financial; Personal Conduct

DIGEST: Applicant incurred numerous debts, due to several circumstances beyond his control. He engaged the services of a debt management agency and was making installment payments on most of his debts when he was suspended from work pending adjudication of his eligibility to continue holding a security clearance. He mistakenly answered "no" to a question about delinquent debts on his security clearance application (SF 86) after orally disclosing his financial situation. He has refuted the allegation of falsifying his SF 86 and mitigated the security concern based on financial considerations. Clearance is granted.

CASENO: 04-12170.h1

DATE: 01/12/2006

DATE: January 12, 2006

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In re:

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SSN: -----

Applicant for Security Clearance

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ISCR Case No. 04-12170

**DECISION OF ADMINISTRATIVE JUDGE**

**LEROY F. FOREMAN**

**APPEARANCES**

**FOR GOVERNMENT**

Richard Stevens, Esq., Department Counsel

## FOR APPLICANT

*Pro Se*

### SYNOPSIS

Applicant incurred numerous debts, due to several circumstances beyond his control. He engaged the services of a debt management agency and was making installment payments on most of his debts when he was suspended from work pending adjudication of his eligibility to continue holding a security clearance. He mistakenly answered "no" to a question about delinquent debts on his security clearance application (SF 86) after orally disclosing his financial situation. He has refuted the allegation of falsifying his SF 86 and mitigated the security concern based on financial considerations. Clearance is granted.

### STATEMENT OF THE CASE

On October 19, 2005, the Defense Office of Hearings and Appeals (DOHA) issued a Statement of Reasons (SOR) detailing the basis for its decision to deny Applicant a security clearance. This action was taken under Executive Order 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). The SOR alleges security concerns under Guidelines F (Financial Considerations) and E (Personal Conduct).

Applicant answered the SOR in writing on October 26, 2005. Under Guideline F, he admitted all the debts except the one alleged in SOR ¶ 1.d. Under Guideline E, he denied falsifying his SF 86. He explained his efforts to resolve his debts and requested a hearing. The case was assigned to me on November 29, 2005, and heard on December 13, 2005. [\(1\)](#) I kept the record open to permit Applicant to submit additional documentary evidence. His additional evidence was received on December 14, 2005, and it is incorporated in the record as Applicant's Exhibits (AX) K and L. DOHA received the transcript (Tr.) on December 23, 2005.

## FINDINGS OF FACT

Applicant's admissions in his answer to the SOR and at the hearing are incorporated into my findings of fact. I also make the following findings:

Applicant is a 55-year-old messaging system controller for a defense contractor. He previously served on active duty in the U.S. Army and U.S. Air Force for more than 20 years, retiring from the Army in May 1990 as a sergeant first class (E-7).<sup>(2)</sup> During his military service, he received several decorations and commendations for his outstanding performance of duty.<sup>(3)</sup>

After retiring from the military, Applicant worked for several defense contractors. He worked overseas at four locations and at several locations in the U.S.<sup>(4)</sup> He was unemployed from July until October 2002. He has worked for his current employer since October 2002. A co-worker with Applicant's most recent employer described him as a "model employee" who was hard-working, dedicated, and highly skilled.<sup>(5)</sup>

Applicant held a security clearance while on active military duty and retained it until September 9, 2005, when it was suspended pending adjudication of his eligibility to continue holding it.<sup>(6)</sup> At the same time, he was suspended from work without pay. Since his suspension, his only income has been his military retired pay (about \$625 per month after taxes), disability pay (about \$324 per month), and unemployment compensation (about \$293 per month).

In January 2003, Applicant executed a SF 86. In response to question 38, asking if he had been more than 180 days delinquent on any debts during the last seven years, he responded "no." His credit bureau report dated October 3, 2005, listed 12 delinquent debts totaling about \$15,000. There had been no activity on several of those accounts since February 2002 or earlier.<sup>(7)</sup>

Applicant disputed one debt (SOR ¶ 1.d). This alleged debt arose because he did not receive credit for turning in a cable box.<sup>(8)</sup>

After submitting his SF 86, Applicant engaged a debt management agency. He terminated that agency because his debts were not being timely paid.<sup>(9)</sup> In August 2005, before the SOR was issued, Applicant engaged another debt management agency, and it was making regular payments on the debts alleged in SOR ¶¶ 1.a., 1.b., 1.c., 1.e., 1.f., and 1.k.<sup>(10)</sup> Because the debt management company would not handle accounts already charged off, he engaged other

agencies to negotiate payment plans for the debts in SOR ¶¶ 1.h. and 1.i. <sup>(11)</sup> He is paying the delinquent student loans in SOR ¶ 1.i. by automatic deduction from his checking account. <sup>(12)</sup> He is negotiating directly with the creditor for the debt in SOR ¶ 1.j. <sup>(13)</sup> SOR ¶ 1.e. duplicates ¶ 1.c., and SOR ¶ 1.l. duplicates ¶ 1.j.

Applicant was married in 1989. While he worked overseas for defense contractors, his wife remained in the U.S., requiring him to maintain two homes. <sup>(14)</sup> His wife recently abandoned him, leaving him responsible for several joint debts. He knows where she works but does not know where she lives. <sup>(15)</sup> After his father's recent death, he began supporting his 73-year-old mother, who lives alone and is dying of cancer. <sup>(16)</sup>

Applicant testified he meant to answer "yes" to question 38 on his SF 86. He hurriedly executed the form online and inadvertently entered a "no" answer. He denied any intention to deliberately falsify his application. <sup>(17)</sup> When he was interviewed by a security investigator on February 25, 2003, a month after electronically submitting his application, he readily admitted and fully disclosed his financial situation. The interview transcript refers twice to a previous security interview about his delinquent debts, corroborating his testimony at the hearing that he "had already turned in a listing of what accounts [he] had open" when he executed his SF 86. <sup>(18)</sup>

## **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 with the national interest to do so." Exec. Or. 10865, *Safeguarding Classified Information within Industry* § 2 (Feb. 20, 1960), as amended and modified. 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 Directive sets forth adjudicative guidelines for determining eligibility for access to classified information, and it lists the disqualifying conditions (DC) and mitigating conditions (MC) for each guideline. Each clearance decision must be a fair, impartial, and commonsense decision based on the relevant and material facts and circumstances, the whole person concept, and the factors listed in the Directive ¶¶ 6.3.1 through 6.3.6.

In evaluating an applicant's conduct, an administrative judge should consider: (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 applicant'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. Directive ¶¶ E2.2.1.1 through E2.2.1.9.

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 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 which disqualify, or may disqualify, the applicant from being eligible for access to classified information. *See Egan*, 484 U.S. at 531. "[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. ISCR Case No. 01-20700 at 3 (App. Bd. Dec. 19, 2002); *see* Directive ¶ 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 security clearance." ISCR Case No. 01-20700 at 3 (App. Bd. Dec. 19, 2002). "[S]ecurity clearance determinations should err, if they must, on the side of denials." *Egan*, 484 U.S. at 531; *see* Directive ¶ E2.2.2.

## **CONCLUSIONS**

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

Under this guideline, "[a]n individual who is financially overextended is at risk of having to engage in illegal acts to generate funds." Directive ¶ E2.A6.1.1. A person who fails or refuses to pay long-standing debts or is financially irresponsible may also be irresponsible or careless in his or her duty to protect classified information. Two disqualifying conditions (DC) under this guideline could raise a security concern and may be disqualifying in this case. DC 1 applies where an applicant has a history of not meeting his or her financial obligations. Directive ¶ E2.A6.1.2.1. DC 3 applies where an applicant has exhibited inability or unwillingness to satisfy debts. Directive ¶ E2.A6.1.2.3. Applicant's credit history and his admissions establish DC 1 and DC 3.

Applicant justifiably disputed the debt alleged in SOR ¶ 1.d. I resolve this allegation in his favor.

The debts alleged in SOR ¶¶ 1.c. and 1.e. duplicate each other, as do the debts alleged in SOR ¶¶ 1.j. and 1.l. When the same conduct is alleged twice in the SOR, one of the duplicative allegations should be resolved in Applicant's favor. *See* ISCR Case No. 03-04704 (App. Bd. Sep. 21, 2005) at 3. Accordingly, I resolve SOR ¶¶ 1.e. and 1.l. in Applicant's favor.

A security concern based on financial problems can be mitigated by showing the delinquent debts were not recent (MC 1) or an isolated incident (MC 2). Directive ¶ E2.A6.1.3.1., E2.A6.1.3.2. Applicant has multiple delinquent debts that are not yet fully resolved. I conclude MC 1 and MC 2 are not established.

Security concerns arising from financial problems can be mitigated by showing they are the result of conditions beyond the person's control (MC 3). Directive ¶ E2.A6.1.3.3. Applicant's employment with several defense contractors required him to maintain two households while he was overseas. Although he and his wife had no children, his wife apparently elected to stay at home and let him support her. Her present employment suggests her earlier lack of employment was a matter of choice and not a matter of unemployability or lack of opportunities. When his spouse abandoned him, he was left solely responsible for jointly-incurred obligations. Applicant was unemployed for about four months in 2002, shortly before he began work with his current employer. He became solely responsible for his ailing mother after his father died. In spite of his financial difficulties, he attempted to make whatever payments he could and to resolve disputed debts. In light of all these circumstances, I conclude MC 3 is established.

A mitigating condition (MC 4) applies when an applicant "has received or is receiving counseling for the problem and there are clear indications that the problem is being resolved or is under control." Directive ¶ E2.A6.1.3.4. Applicant engaged one debt counseling agency, fired it when it failed to make timely payments, engaged a second agency, and was making progress in righting his financial ship until he was suspended from work in September because of his lack of a clearance. If his clearance and employment are reinstated, he can continue to resolve his financial problems. I conclude MC 4 is established.

A security concern arising from financial problems can be mitigated by showing a good-faith effort to resolve debts (MC 6). Directive ¶ E2.A6.1.3.6. The concept of good faith "requires a showing that a person acts in a way that shows reasonableness, prudence, honesty, and adherence to duty or obligation." ISCR Case No. 99-0201, 1999 WL 1442346 at \*4 (App. Bd. Oct. 12, 1999). Applicant began working on his financial problems well before the SOR was issued. He has diligently and persistently used the services of a debt management agency to resolve some debts and had personally negotiated resolution of others. He is living frugally and is determined to restore his fiscal health. I conclude MC 6 is established.

Applicant has the burden of proving a mitigating condition, and the burden of disproving it is never shifted to the government. *See* ISCR Case No. 02-31154 at 5 (App. Bd. Sep. 22, 2005). He has carried his burden of establishing MC 3, 4, and 6. He has held a security clearance for most of his working life. He has given the nation more than 35 years of dedicated service. He has a reputation as a dependable, hard-working employee. After weighing the disqualifying and mitigating conditions and evaluating all the evidence in the context of the whole person, I conclude he has mitigated the security concern based on financial considerations.

### **Guideline E (Personal Conduct)**

Under this guideline, 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. Directive ¶ E2.A5.1.1. A disqualifying condition (DC 2) may arise where there has been a deliberate omission or falsification of relevant and material facts from any personal security questionnaire. Directive ¶ E2.A5.1.2.2.

Applicant denied intentionally falsifying his SF 86. When a falsification allegation is controverted, department counsel has the burden of proving it. Proof of an omission, standing alone, does not establish or prove an applicant's intent or state of mind when the omission occurred. An administrative judge must consider the record evidence as a whole to determine whether there is direct or circumstantial evidence concerning an applicant's intent or state of mind at the time the omission occurred. *See* ISCR Case No. 03-09483 at 4 (App. Bd. Nov. 17, 2004) (explaining holding in ISCR Case No. 02-23133 at 5 (App. Bd. Jun. 9, 2004)).

After considering Applicant's testimony, observing his demeanor, assessing his credibility, and considering all the evidence of record, I am satisfied he did not intentionally falsify his SF 86. He has a long record of faithful government service. He held a security clearance for most of his career and he was familiar with the clearance process, making it unlikely he would omit derogatory financial information on the chance it would not be discovered. He apparently turned in a list of creditors at or before the time he executed the SF 86. He readily disclosed his financial problems when interviewed by a security investigator shortly after executing his SF 86. Accordingly, I conclude DC 2 is not established.

### **FORMAL FINDINGS**

The following are my findings as to each allegation in the SOR:

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

Paragraph 2. Guideline E (Personal Conduct): FOR APPLICANT

Subparagraph 2.a.: 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 Applicant a security clearance. Clearance is granted.



LeRoy F. Foreman  
Administrative Judge

1. Applicant received less than the 15-day notice required by the Directive ¶ E3.1.8. He requested an expedited hearing and expressly waived the notice requirement. Tr. 15-16.
2. AX K at p. 2.
3. AX K at pp. 5-10.
4. Tr. 38-40.
5. Tr. 75, 81-82.
6. Tr. 5, 35.
7. GX 10.
8. Tr. 48-49.
9. GX 2-3; Tr. 67.
10. AX A at pp. 5-6.
11. AX E and F.
12. AX F and L; Tr. 52.
13. AX G; Tr. 25-26.
14. Tr. 64-65.
15. Tr. 42-43.
16. AX I, J; Tr. 58-59.
17. Tr. 55, 57.
18. GX 7 at 1-3; Tr. 56, 67-68.