

KEYWORD: Financial

DIGEST: Applicant is 29 years old and has worked as an information technology customer service representative for a federal contractor since 2003. Applicant served in the Marine Corps and a few months before he was honorably discharged he and his wife divorced. In addition to paying child support for his son, he was required to pay alimony for 30 months. After leaving the service he found himself severely underemployed and responsible for most of the marital debts. Applicant has recently started to make some payments on some of his debts, however he does not have a consistent record for being financially responsible and therefore he has failed to mitigate the security concerns under Guideline F regarding financial considerations. Clearance is denied.

CASENO: 05-02055.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. 05-02055

**DECISION OF ADMINISTRATIVE JUDGE**

**CAROL G. RICCIARDELLO**

**APPEARANCES**

**FOR GOVERNMENT**

**FOR APPLICANT**

*Pro se*

**SYNOPSIS**

Applicant is 29 years old and has worked as an information technology customer service representative for a federal contractor since 2003. Applicant served in the Marine Corps and a few months before he was honorably discharged he and his wife divorced. In addition to paying child support for his son, he was required to pay alimony for 30 months. After leaving the service he found himself severely underemployed and responsible for most of the marital debts. Applicant has recently started to make some payments on some of his debts, however he does not have a consistent record for being financially responsible and therefore he has failed to mitigate the security concerns under Guideline F regarding financial considerations. Clearance is denied.

**STATEMENT OF THE CASE**

On September 9, 2005, the Defense Office of Hearings and Appeals (DOHA) issued to Applicant Statement of Reasons (SOR) stating it was unable to find that it is clearly consistent with the national interest to grant or continue a security clearance. [\(U\)](#) The SOR, which is in essence the administrative complaint, alleged security concerns under Guideline F (financial considerations).

In a sworn statement, dated November 8, 2005, Applicant responded to the SOR allegations and requested a hearing. In his SOR response, Applicant admitted the allegations in ¶¶ 1.a, 1.b, 1.c, 1.d, and 1.e, under Guideline F. He failed to respond to allegation ¶ 1.f. The case was assigned to me on February 2, 2006. A notice of hearing was issued on February 15, 2006, scheduling the hearing for March 7, 2006. The hearing was conducted as scheduled. The government submitted five exhibits that were marked as Government Exhibits (GE) 1-5. The exhibits were admitted into the record without objection. Applicant testified on his own behalf, and submitted five exhibits that were marked as Applicant's Exhibits A-E. The exhibits were admitted without objection. DOHA received the hearing transcript (Tr.) on March 15, 2006.

**FINDINGS OF FACT**

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

Applicant is 29 years old and has worked as a information technology customer service representative for a federal contractor since 2003. He served in the Marine Corps from 1994 until February 2003, and was honorably discharged. He was married in 1997, and divorced in October 2002. He has a son from the marriage who is 6 years old and lives with his mother. When Applicant and his wife were divorced he assumed responsibility for some of the delinquent debts. He also was required to pay \$200 a month for 30 months in alimony, \$500 a month in child support, and half of his son's medical and dental expenses. (2) Often he is not notified by his ex-wife when his son needs medical or dental care. When this happens he often receives bills that he was not aware of or that have become delinquent. (3) It is difficult for him to budget for these expenses. He satisfied the alimony payments in May 2005, and he continues to pay child support.

When Applicant and his wife married he assumed her debts and he had two debts of his own. (4) He obtained part-time jobs so he could pay off their debts and eventually did. During their marriage his wife took care of the finances. SOR allegation ¶ 1.a was for a deferred payment plan through a military exchange facility. The original line of credit was for \$500, and in 1998, he believed the account was almost paid off. He later learned that his wife, without telling him, had the credit limit increased to \$1,100 and she had maximized the amount. (5) He tried to set up a plan to pay \$25 a month, but the creditor refused to accept the nominal amount. He wants to be able to pay an amount that he can afford, but is uncertain if the creditor will accept it. He has not paid the debt and has not taken any other action to resolve it. (6)

SOR allegations ¶¶ 1.b and 1.d are for the same credit card debt. Applicant acquired this credit card in 2000, while he was married and was he responsible for its payment upon his divorce. At the time of his divorce he did not have sufficient funds to make payments on the debt. He started making payments in October 2005 and has made four monthly payments of \$50. (7)

SOR allegation ¶ 1.c is a debt for a computer Applicant and his wife purchased in 1999, while married. The original cost was approximately \$1,300 and they paid approximately \$75 a month. Between 1998 to 2000, he and his wife had several separation periods when they were not living together. She took the computer with her and he did not receive the bill. He mistakenly believed she was staying current on the payments. Their payments became delinquent. In 2005, he made three payments of \$200 on the debt that had grown to over \$4,000. He has not made any other payments on this debt. (8)

Applicant and his wife purchased carpet for their house and owed approximately \$1,828, SOR ¶ 1.e. They made payments of \$55 a month for an undetermined time, but the debt eventually became delinquent. (9) Applicant attempted (10)

to contact the creditor, but they had gone out of business and he was unable to do so. He has not received any correspondence from the company. He was provided a copy of a credit report that provided contact information, but he was unaware the information was on the report and has not made any subsequent attempts to contact the creditor. He admits he still owes the debt. [\(11\)](#)

After Applicant was discharged from the Marine Corps he was significantly underemployed, recently divorced and responsible for considerable delinquent debt. He admitted all of the delinquent debts were under his name, despite acquiring most while he was married. [\(12\)](#) He saved money by living in a friend's garage for ten months. After meeting his monthly expenses and making a monthly payment on one of his debts he has approximately \$70 remaining each month, after paying his expenses. He has worked part-time jobs in the past and plans on getting a part-time job to satisfy his delinquent debts. He works full time, attends college and is taking ten credit hours this semester. He recently purchased a house with his fiancée and claims his portion of the mortgage payment is a little more than what he had been paying for rent. [\(13\)](#) Applicant is a devoted father who is attempting to obtain custody of his son. He has other debts related to his son and anticipates he will have some major dental expenses for him. [\(14\)](#) These debts and expenses are not listed in the SOR and are not considered for disqualifying purposes, but are considered with regard to his ability to meet all of his financial obligations. He has not sought any recent financial counseling and admits he is "climbing out of the hole," in reference to his finances. [\(15\)](#)

## **POLICIES**

Enclosure 2 of the Directive sets forth adjudicative guidelines to be considered in evaluating a person's eligibility to hold a security clearance. Included in the guidelines are disqualifying conditions (DC) and mitigating conditions (MC) applicable to each specific guideline. Additionally, each security clearance decision must be a fair and impartial commonsense decision based on the relevant and material facts and circumstances, the whole-person concept, along with the factors listed in the Directive. Specifically these are: (1) the nature and seriousness of the conduct and surrounding circumstances; (2) the frequency and recency of the conduct; (3) the age of the applicant; (4) the motivation of the applicant, and the extent to which the conduct was negligent, willful, voluntary, or undertaken with knowledge of the consequences; (5) the absence or presence of rehabilitation; and (6) the probability that the circumstances or conduct will continue or recur in the future. 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.

The sole purpose of a security clearance determination is to decide if it is clearly consistent with the national interest to grant or continue a security clearance for an applicant. [\(16\)](#) The government has the burden of proving controverted facts. [\(17\)](#) The burden of proof is something less than a preponderance of evidence. [\(18\)](#) 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. [\(19\)](#) Additionally, an applicant has the ultimate burden of persuasion to obtain a favorable clearance decision. [\(20\)](#)

No one has a right to a security clearance<sup>(21)</sup> and "the clearly consistent standard indicates that security clearance determinations should err, if they must, on the side of denials."<sup>(22)</sup> Any reasonable doubt about whether an applicant should be allowed access to sensitive information must be resolved in favor of protecting such sensitive information.<sup>(23)</sup> The decision to deny an individual a security clearance is not necessarily a determination as to the loyalty of an applicant.<sup>(24)</sup> 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.

Based upon consideration of the evidence, I find the following adjudicative guideline most pertinent to the evaluation of the facts in this case:

Guideline F- Financial Considerations-a security concern exists when a person has significant delinquent 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.

Conditions that could raise a security concern and may be disqualifying, as well as those which would mitigate security concerns, pertaining to the adjudicative guideline are set forth and discussed in the conclusions below.

## CONCLUSIONS

I have carefully considered all the facts in evidence and the legal standards. The government has established a *prima facie* case for disqualification under Guideline F.

Based on all the evidence, Financial Considerations Disqualifying Condition (FC DC) E2.A6.1.2.1 (*A history of not meeting financial obligations*), and FC DC E2.A6.1.2.3 (*Inability or unwillingness to satisfy debts*), apply in this case. Applicant accumulated significant delinquent debts. He did not take any action on the debts until his security clearance application became an obvious issue. Based on Applicant's income and expenses he does not have the financial means to meet all of his obligations.

I have considered all the Financial Considerations Mitigating Conditions (FC MC), and especially considered FC MC E2.A6.1.3.1 (*The behavior was not recent*), FC MC E2.A6.1.3.2 (*It was an isolated incident*), FC MC 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)*), and FC MC E2.A6.1.3.6 (*The individual initiated a good-faith effort to repay overdue creditors or otherwise resolve debts*).

Applicant has four delinquent debts that he has not paid in full. The debts are recent because they have not been fully paid. FC MC E2.A6.1.3.1 does not apply. The number of debts negates the application of FC MC E2.A6.1.3.2. When Applicant left the Marine Corps he was significantly underemployed and recently divorced. He was required to pay marital debts that were beyond his means and provide alimony for a period of 30 months and child support. Applicant was also responsible for half of the medical and dental bills incurred by this son. He would often not find out about the bills from his ex-wife until they were delinquent, causing financial turmoil. FC MC E2.A6.1.3.3 applies. Applicant has slowly been moving his life forward and taking responsibility for his debts. He has worked in the past at part-time jobs and credibly testified he plans on getting one in the future to pay off the remainder of his debts. Although Applicant is committed to paying them all off he has not made any payments on the debts listed in SOR ¶¶ 1.a and 1.e. He only recently started a payment plan on SOR ¶¶ 1. b and 1.d, which are the same debt. He made four payments on his consumer debt in SOR ¶ 1.c, but has not resumed paying off the debt. At this juncture, Applicant has more expenses and debts than his monthly income can accommodate. It has been three years since his divorce and discharge, and it was not until recently that he started to focus on his delinquencies. Despite his commitment to resolving his debts, he needs more time to show a consistent payment history on those he is paying and a valid payment plan on the others. I find FC MC E2.A6.1.3.6 does not apply. Therefore, I find he has failed to mitigate the security concerns under Guideline F regarding financial considerations.

In all adjudications, the protection of our national security is the paramount concern. The objective of the security-clearance process is the fair-minded, commonsense assessment of a person's life to make an affirmative determination that the person is eligible for a security clearance. Indeed, the adjudicative process is a careful weighing of a number of variables in considering the "whole person" concept. It recognizes that we should view a person by the totality of their acts, omissions, motivations and other variables. Each case must be adjudged on its own merits, taking into consideration all relevant circumstances, and applying sound judgment, mature thinking, and careful analysis.

I considered the whole person and I find Applicant failed to mitigate the security concerns regarding Guideline F. Therefore, I am persuaded by the totality of the evidence in this case that it is not clearly consistent with the national interest to grant Applicant a security clearance at this time. Accordingly, Guideline F is decided against Applicant.

### **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:

Paragraph 1. Guideline F: AGAINST THE APPLICANT

Subparagraph 1.a: Against the Applicant

Subparagraph 1.b: Against 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

**DECISION**

In light of all of the circumstances in this case, it is not clearly consistent with the national interest to grant or continue a security clearance for Applicant. Clearance is denied.

Carol G. Ricciardello

Administrative Judge

1. This action was taken under Executive Order 10865, dated February 20, 1960, as amended, and DoD Directive 5220.6, dated January 2, 1992, as amended and modified (Directive).
2. Tr. 29
3. *Id.*
4. Tr. 44.
5. Tr. 38-39

6. Tr, 40-42.
7. AE E; Tr. 35-36, 42-43.
8. Tr. 45.
9. Tr. 46.
10. *Id.*
11. Tr. 70-72.
12. Tr.45, 48.
13. Tr. 34, 49.
14. Tr. 31-32.
15. Tr. 52.
16. ISCR Case No. 96-0277 at p. 2 (App. Bd. Jul 11, 1997).
17. ISCR Case No. 97-0016 at p. 3 (App. Bd. Dec. 31, 1997); Directive, Enclosure 3, ¶ E3.1.14.
18. *Department of the Navy v. Egan*, 484 U.S. 518, 531 (1988).
19. ISCR Case No. 94-1075 at pp. 3-4 (App. Bd. Aug. 10, 1995); Directive, Enclosure 3, ¶ E3.1.15.
20. ISCR Case No. 93-1390 at pp. 7-8 (App. Bd. Jan. 27, 1995); Directive, Enclosure 3, ¶ E3.1.15.
21. *Egan*, 484 U.S. at 531.
22. *Id.*
23. *Id.*; Directive, Enclosure 2, ¶ E2.2.2.
24. Executive Order 10865 § 7.