

KEYWORD: Financial Considerations

DIGEST: Applicant has a \$14,199 credit card debt. He made two attempts to resolve the debt but is unable to afford to pay the lump sum settlement amount demanded by the collection agency. His finances were adversely affected by a divorce in 1996. He has been methodically paying off his debts while meeting his child support obligations. He intends to make payments toward the credit card debt once he pays off his car note in August 2006. He does not live beyond his means and is current on his other debts. Based on his track record of meeting his financial obligations, Applicant is likely to follow through on his intentions to pay off the credit card debt. Clearance is granted.

CASE NO: 05-02276.h1

DATE: 06/22/2006

DATE: June 22, 2006

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In re:

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SSN: -----

Applicant for Security Clearance

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ISCR Case No. 05-02276

**DECISION OF ADMINISTRATIVE JUDGE**

**ERIN C. HOGAN**

**APPEARANCES**

**FOR GOVERNMENT**

Nichole Noel Esq., Department Counsel

## **FOR APPLICANT**

*Pro Se*

### **SYNOPSIS**

Applicant has a \$14,199 credit card debt. He made two attempts to resolve the debt but is unable to afford to pay the lump sum settlement amount demanded by the collection agency. His finances were adversely affected by a divorce in 1996. He has been methodically paying off his debts while meeting his child support obligations. He intends to make payments toward the credit card debt once he pays off his car note in August 2006. He does not live beyond his means and is current on his other debts. Based on his track record of meeting his financial obligations, Applicant is likely to follow through on his intentions to pay off the credit card debt. Clearance is granted.

### **STATEMENT OF THE CASE**

On October 4, 2005, the Defense Office of Hearings and Appeals (DOHA) issued to Applicant a Statement of Reasons (SOR) stating they were unable to find that it is clearly consistent with the national interest to grant or continue a security clearance. [\(1\)](#) The SOR, which is in essence the administrative complaint, alleged security concerns under Guideline F, Financial Considerations.

In a sworn statement dated October 24, 2005, Applicant responded to the SOR allegations and requested a hearing. The case was originally assigned to another administrative judge on November 4, 2005, and was transferred to me on February 17, 2006. A notice of hearing was issued on March 27, 2006, scheduling the hearing for April 20, 2006. The hearing occurred as scheduled. The government submitted eight exhibits that were marked as Government Exhibits (Gov Ex) 1-8. The exhibits were admitted into the record without objection. Applicant testified on his own behalf, and submitted one exhibit which was marked as Applicant's Exhibit (AE) A and admitted without objection. The record was held open until May 4, 2006. Applicant timely submitted a post-hearing submission which was marked as AE B and admitted without objection. DOHA received the hearing transcript (Tr.) on May 12, 2006.

### **FINDINGS OF FACT**

In his SOR response, Applicant admits to the allegation in subparagraph 1.a but denies the allegation in subparagraph 1.b. Applicant's admissions 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 a 44-year-old desktop support technician with a Department of Defense contractor who is seeking a security clearance. [\(2\)](#) He retired from the Air Force in 2003 with the rank of Technical Sergeant. [\(3\)](#)

Applicant has been divorced since December 1996. [\(4\)](#) Three children were born of the marriage, two daughters, ages 11 and 14, and one son, age 9. [\(5\)](#) Applicant experienced financial difficulties as a result of his divorce. The court ordered him to pay \$731 in child support, \$100 in alimony and ordered him to pay all the debts of the marriage which included three credit card accounts. He was also ordered to make his ex-wife's car payment and mortgage payments on two acres of land which were awarded to his ex-wife under the settlement agreement. [\(6\)](#)

A January 6, 2005, credit report revealed Applicant has two delinquent debts; a \$14,199 delinquent credit card account which was turned over for collection in October 2003 (SOR ¶ 1.a) and a \$133 collection account for a medical bill which was turned over for collection in December 2002 (SOR ¶ 2.b). [\(7\)](#) The majority of the debt on the credit card was related to attorney fees from his divorce. [\(8\)](#) The medical bill was for his children. Sometimes his ex-wife does not tell him about certain medical bills. He first learned about this account during his security clearance background investigation. He has paid off this account. [\(9\)](#)

Applicant was unable to make payments towards his credit card account because he had other court-ordered expenses that needed to be paid first. [\(10\)](#) He attempted to settle this account in 2003 but was unable to do so based on other financial obligations. [\(11\)](#) He contacted the creditor again a week prior to hearing. They were willing to settle the account in two payments. A payment of \$700 was due on April 22, 2006. A payment of \$6,284 was due on April 29, 2006. [\(12\)](#)

Applicant was unable to come up with the amount of money requested and the creditor would not negotiate another settlement agreement. He offered to pay them \$1000 within 30 days and to make monthly payments of \$315 a month in August after his car loan was paid off. [\(13\)](#)

Applicant's net monthly income is approximately \$3,649. His net monthly salary is \$2,316 and he receives a military [\(14\)](#) [\(15\)](#)

retirement check of \$1,333 each month. His monthly child support payments are currently \$1,400 a month. This is 38 percent of his monthly take home pay. He also pays approximately \$100 a month for prescription medicines for his children.<sup>(16)</sup> He has a \$315 car payment until August 2006. He has one other credit card with a balance of approximately \$4,763.<sup>(17)</sup> He pays approximately \$150 monthly on this account and is current on his payments.<sup>(18)</sup> He has a few hundred dollars left over each month after expenses.<sup>(19)</sup> He has no other delinquent debts.<sup>(20)</sup>

Applicant's performance review for April 2005 to April 2006, indicates that he provides an exceptional level of customer support. As a result, he was selected to work on special projects throughout the year. He is noted as a highly reliable employee and has a positive can-do attitude.<sup>(21)</sup>

## POLICIES

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."<sup>(22)</sup> In Executive Order 10865, *Safeguarding Classified Information Within Industry* (Feb. 20, 1960), the President set out guidelines and procedures for safeguarding classified information within the executive branch.

To be eligible for a security clearance, an applicant must meet the security guidelines contained in the Directive. Enclosure 2 of the Directive sets forth personnel security guidelines, as well as the disqualifying conditions and mitigating conditions under each guideline. The adjudicative guideline at issue in this case is:

Guideline F, Financial Considerations: An individual who is financially overextended is at risk of having to engage in illegal acts to generate funds.<sup>(23)</sup>

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

"The adjudicative process is an examination of a sufficient period of a person's life to make an affirmative determination that the person is eligible for a security clearance."<sup>(24)</sup> An administrative judge must apply the "whole person concept," and consider and carefully weigh the available, reliable information about the person.<sup>(25)</sup> An administrative judge should consider the following factors: (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

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 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. <sup>(26)</sup>

Initially, the Government must present evidence to establish controverted facts in the SOR that disqualify or may disqualify the applicant from being eligible for access to classified information. <sup>(27)</sup> Thereafter, the applicant is responsible for presenting evidence to rebut, explain, extenuate, or mitigate the facts admitted by the applicant or proven by Department Counsel. The applicant has the ultimate burden of persuasion as to obtaining a favorable clearance decision. <sup>(28)</sup> Any doubt as to whether access to classified information is clearly consistent with national security will be resolved in favor of the national security. <sup>(29)</sup>

A person granted access to classified information enters into a special relationship with the government. The government must be able to repose a high degree of trust and confidence in those individuals to whom it grants access to classified information. The decision to deny an individual a security clearance is not a determination as to the loyalty of the applicant. It is merely an indication that the applicant has not met the strict guidelines the President has established for issuing a clearance.

## 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 - Financial Considerations.

Applicant had two delinquent debts. The more significant debt was a \$14,000 delinquent credit card account which was placed for collection. The other delinquent account was a \$133 medical bill. Under Guideline F, Disqualifying Conditions (FC DC) E2.A6.1.2.1: (*A history of not meeting financial obligations*) and FC DC 3 E2.A6.1.2.3: (*Inability or unwillingness to satisfy debts*) apply to Applicant's case. He has been unable to pay off the credit account for a number of years. It was turned over for collection in 2003.

The security concern under Guideline F can be mitigated. I find the following Financial Considerations Mitigating Conditions (FC MC) apply:

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)*) applies. Applicant's divorce caused significant financial problems. He was responsible for the marital debt and was ordered to pay 30% of his income towards child support. He currently pays 38% of his net income towards child support. He has met all of his obligations with regards to child support and the terms of his divorce settlement. This limits the disposable

income left over for paying off his debts. Although his divorce occurred close to ten years ago, it has taken Applicant several years to meet the obligations of his settlement agreement.

FC MC E2.A6.1.3.6 (*The individual initiated a good-faith effort to repay overdue creditors or otherwise resolve debts*) applies. Applicant has paid off the majority of the debt he was obligated to pay in his divorce agreement. The sole remaining debt is the \$14,000 credit card account. He attempted to resolve this debt in 2003 but was unable to resolve it since he did not have the money the credit card company wanted in a lump sum amount. He attempted to settle the account a week prior to hearing. He was willing to pay \$1000 up front and \$315 a month starting in August after he pays off his automobile loan. The collection agency was only willing to settle for a \$6900 settlement to made in two payments within the month. Applicant still intends to pay off the debt. He has made a reasonable effort to settle the account and should not be penalized for the creditor's unwillingness to work with him.

Applicant has met all the terms of his divorce and child support obligations. He does not live above his means. He has paid off other marital debts that he was responsible for as a result of the divorce agreement. His child support obligations take up a large part of his disposable income. He has gradually paid off other debts. Based on his past financial history, I find credible Applicant's intentions to resolve the outstanding debt in the near future. Applicant has mitigated the security concern under Guideline F.

### **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: FOR APPLICANT

Subparagraph 1.a: For Applicant

Subparagraph 1.b: For Applicant

### **DECISION**

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

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ERIN C. HOGAN

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. at 3, 16.
3. Tr. at 24.
4. Gov Ex 1, #8; AE B; Separation Agreement.
5. Tr. at 14.
6. AE B, Separation Agreement, dated October 4, 1996.
7. Gov Ex 7.
8. Gov Ex 5 at 2.
9. Tr. at 13.
10. *Id.*
11. Tr. at 21.
12. AE A.
13. Tr. at 11-12.
14. Gov 5 at 7.
15. Tr. at 14.
16. Tr. at 20.
17. Gov Ex 8.
18. Tr. at 19-20.
19. Tr. at 20.

20. Tr. at 24.

21. AE B at 4.

22. *Department of the Navy v. Egan*, 484 U.S. 518, 527 (1988).

23. Directive, ¶ E2.A6.1.1.

24. Directive, ¶ E2.2.1.

25. *Id.*

26. *Id.*

27. Directive, ¶ E3.1.14.

28. Directive, ¶ E3.1.15.

29. Directive, ¶ E.2.2.2.