

KEYWORD: Financial; Personal Conduct

DIGEST: Applicant filed bankruptcy in 1998. Since then he has accumulated substantial unpaid debt. The illnesses and deaths of three family members depleted his savings because he paid to help them with medical bills, funeral costs, and his costs of travel cross-country. He had significant periods of unemployment, the last occasioned by this security clearance process. He provided a false answer to one question on a security clearance application, however, it was an isolated occurrence. He successfully mitigated security concerns about his financial considerations and personal conduct. Clearance is granted.

CASE NO: 05-03187.h1

DATE: 06/27/2006

DATE: June 27, 2006

In re:

SSN: -----

Applicant for Security Clearance

ISCR Case No. 05-03187

DECISION OF ADMINISTRATIVE JUDGE

CHRISTOPHER GRAHAM

APPEARANCES

FOR GOVERNMENT

Melvin A. Howry, Esq., Department Counsel

FOR APPLICANT

Pro Se

SYNOPSIS

Applicant filed bankruptcy in 1998. Since then he has accumulated substantial unpaid debt. The illnesses and deaths of three family members depleted his savings because he paid to help them with medical bills, funeral costs, and his costs of travel cross-country. He had significant periods of unemployment, the last occasioned by this security clearance process. He provided a false answer to one question on a security clearance application, however, it was an isolated occurrence. He successfully mitigated security concerns about his financial considerations and personal conduct. Clearance is granted.

STATEMENT OF THE CASE

On September 14, 2005, the Defense Office of Hearings and Appeals (DOHA) issued a Statement of Reasons (SOR) to Applicant pursuant to Executive Order 10865, *Safeguarding Classified Information Within Industry*, dated February 20, 1960, as amended and modified, and Department of Defense Directive 5220.6, *Defense Industrial Personnel Security Clearance Review Program* (Directive), dated January 2, 1992, as amended and modified. The SOR alleged reasons under Guidelines F (financial considerations) and E (personal conduct) why DOHA could not make the preliminary affirmative finding under the Directive that it is clearly consistent with the national interest to grant or continue Applicant's security clearance.

In a written statement dated October 4, 2005, Applicant responded to the allegations in the SOR and requested a hearing. The case was assigned to me on October 28, 2005. A Notice of Hearing was issued November 10, 2005, scheduling the hearing for December 15, 2005. The hearing was held as scheduled. At the hearing, the government offered eight exhibits. Applicant submitted two exhibits, and testified in his own behalf. I kept the record open until January 31, 2006. Applicant submitted a third exhibit, Exhibit C, dated January 23, 2006, and Department Counsel had no objection. Applicant Exhibit C is received in evidence. The transcript (Tr.) was received December 28, 2005.

FINDINGS OF FACT

Applicant admitted the allegations in the SOR except subparagraphs 1.d., 1.e., 1.h., 1.i., 1.l. through 1.s., 1.v., 1.z., and 2.a. Those admissions are incorporated herein as findings of fact. I make the following additional findings of fact.

Applicant is a 47-year-old employee of a federal contractor. ⁽¹⁾ He served 20 years in the U.S. Navy, receiving an honorable discharge in June 1997. ⁽²⁾ While serving in the Navy, Applicant successfully held a security clearance.

Applicant was unemployed during the following periods: May 31, 1997 to November 1, 1997; October 19, 2001 to March 18, 2002; five or more periods of unemployment due to layoffs between March 18, 2002 to June 2005 (several being three weeks in duration); June 2005 to August 2005; and after November 15, 2005. ⁽³⁾ He obtained a bachelor's degree in workforce education and development and training between 2002 and October 2005. ⁽⁴⁾ He was employed as a computer information technologist with a federal contractor until November 5, 2005. His job terminated because of this proceeding. ⁽⁵⁾ He is married and has two children. ⁽⁶⁾

Applicant petitioned for Chapter 7 bankruptcy in May 1998. He was discharged in bankruptcy on June 19, 1998. ⁽⁷⁾

In 1998, local police arrested Applicant and charged him with Assault - Domestic Violence. ⁽⁸⁾ The case ended in a mistrial in December 1998. ⁽¹⁰⁾ In March 1999, the case was dismissed. ⁽¹¹⁾ In April 2001, authorities arrested Applicant for harassment, phone harassment, and stalking. Charges were dismissed on May 14, 2001. ⁽¹²⁾

On June 18, 2002, Applicant submitted a Security Clearance Application. Question 26. On the form asked:

In the last 7 years, have you been arrested for, or charged with or convicted of any offense(s) not listed in modules 21, 22, 23, 24, or 25? (Leave out traffic fines of less than \$150.00 unless the violation was alcohol or drug related.) For this item, report information regardless of whether the record in your case has been "sealed" or otherwise stricken from the record. The single exception to this requirement is for certain convictions under the Federal Controlled Substances Act for which the court issued an expungement order under the authority of 212 U.S.C. 844 or 18 U.S.C. 3607. ⁽¹³⁾

He failed to list a 1998 arrest and charge for assault-domestic violence. He listed an arrest and charges for harassment,

phone harassment, and stalking on April 24, 2001.

After his discharge in bankruptcy, Applicant incurred delinquent debts due to circumstances beyond his control. Applicant came from a poor family. He was the only member of his family who was employed between 2000 and 2003. He incurred substantial expense due to family illness. At the time, he lived in the Pacific Northwest and his family lived in Texas and Louisiana. One brother went into a diabetic coma. At the same time, his other brother was diagnosed with lymphatic cancer. [\(14\)](#) Applicant made many trips to help his brothers. He took his immediate family on one trip. Both brothers died. [\(15\)](#) His mother had to have her legs amputated and died in 2003. [\(16\)](#) He made several cross-country trips to assist his mother. None of his family had insurance and he helped pay their medical expenses and their burial costs. He depleted his savings with these expenses. [\(17\)](#) From 2001 to 2003, Applicant experienced problems with his cervical discs. [\(18\)](#)

Applicant accumulated a large number of delinquent debts. He attempted credit counseling in 2002 but could not afford the cost. [\(19\)](#) He met with a consumer counseling service on December 13, 2005. The counseling service could not develop a repayment plan for Applicant but gave him advice on steps to achieve debt reduction. [\(20\)](#) He is attempting to follow this advice within the constraints of his current unemployment. [\(21\)](#)

The following table shows the delinquent debts on September 14, 2005, and the current status of each. The total indebtedness is \$21,373.65. Of the 25 debts listed, six are paid or will be paid by insurance, two are unknown, four are denied, and 12 are unpaid.

SOR ¶	DEBTOR	AMOUNT	CURRENT STATUS
1.a.	Utility	\$634.00	Unpaid (25)
1.b.	Cable	\$81.00	Unpaid (26)
1.c.	Collection	\$315.00	Unpaid (27)
1.d.	Collection	\$120.00	Unknown (28)
1.e.	Collection	\$217.00	Not his bill (29)
1.f.	Doctor	\$1,002.00	Unpaid (30)
1.g.	Medical	\$101.00	Unpaid (31)
1.h.	Grocer	\$91.00	Paid (32)
1.i.	Collection	\$96.00	Denied (33)
1.j.	Credit account	\$1,398.00	Unpaid (34)
1.k.	Collection	\$660.00	Unpaid (35)
1.l.	Collection	\$340.00	Denied (36)
1.m.	Collection	\$590.00	Denied (37)
1.n.	Credit card	\$1,001.00	Denied/Paid (38)

1.o.	Collection	\$622.00	Unknown (39)
1.p.	Credit account	\$230.00	Denied (40)
1.q.	Collection	\$239.98	TRICARE to pay (41)
1.r.	Medical (MRI)	\$24.34	TRICARE to pay (42)
1.s.	Collection	\$409.00	Paid (43)
1.t.	Telephone	\$1,167.33	Unpaid (44)
1.u.	Auto repossession	\$10,961.00	Unpaid (45)
1.v.	Judgment	\$555.00	Paid (46)
1.w.	Bankruptcy	-----	Discharged - June 19, 1998
1.x.	Collection	\$355.00	Unpaid (47)
1.y.	Collection	\$68.00	Unpaid (48)
1.z.	Collection	\$96.00	Unpaid (49)

At the hearing, Applicant testified he did not understand question 26 on his security clearance application, as he believed that if the charges were dismissed his answer should be "no." (50)

POLICIES

"[No] one has a 'right' to a security clearance." (51) 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." (52) The President has restricted eligibility for access to classified information to United States citizens "whose personal and professional history affirmatively indicates loyalty to the United States, strength of character, trustworthiness, honesty reliability, discretion, and sound judgment, as well as freedom from conflicting allegiances and potential coercion, and willingness and ability to abide by regulations governing use, handling, and protection of classified information." (53) Eligibility for a security clearance may be adjudicated using the security guidelines contained in the Directive.

Enclosure 2 of the Directive sets forth personnel security guidelines, as well as the disqualifying conditions (DC) and mitigating conditions (MC) under each guideline. In evaluating the security worthiness of an applicant, the administrative judge must also assess the adjudicative factors listed in ¶ 6.3 of the Directive: nature and seriousness of the conduct and surrounding circumstances; frequency and recency of the conduct; age of the Applicant; motivation of the applicant, and the extent to which the conduct was negligent, wilful, voluntary, or undertaken with knowledge of the consequences involved; absence or presence of rehabilitation; and probability that the circumstances or conduct will continue or recur in the future.

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.⁽⁵⁴⁾ The Directive presumes a nexus or rational connection between proven conduct under any of the disqualifying conditions listed in the guidelines and an applicant's security suitability.⁽⁵⁵⁾

Once the Government establishes a disqualifying condition, the burden shifts to the applicant to rebut, explain, extenuate, or mitigate the facts.⁽⁵⁶⁾ An applicant "has the ultimate burden of demonstrating that it is clearly consistent with the national interest to grant or continue his security clearance."⁽⁵⁷⁾ A person who has access to classified information enters into a fiduciary relationship with the Government based on trust and confidence. The Government, therefore, has a compelling interest in ensuring each Applicant possesses the requisite judgment, reliability and trustworthiness of one who will protect the national interests as his or his own. The "clearly consistent with the national interest" standard compels resolution of any reasonable doubt about an Applicant's suitability for access in favor of the Government.⁽⁵⁸⁾ Decisions under this Directive include, by necessity, consideration of the possible risk an applicant may deliberately or inadvertently fail to protect or safeguard classified information. Such decisions entail a certain degree of legally permissible extrapolation as to potential, not actual, risk of compromise of classified information.

Applicant's allegiance, loyalty, and patriotism are not at issue in these proceedings. Section 7 of Executive Order 10865 specifically provides industrial security decisions shall be "in terms of the national interest and shall in no sense be a determination as to the loyalty of the applicant concerned." Security clearance decisions cover many characteristics of an applicant other than allegiance, loyalty, and patriotism.

Having considered the evidence as a whole, I find the following guidelines most pertinent to an evaluation of the facts of this case:

Guideline F: 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: 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.

CONCLUSIONS

Financial Considerations. The government has established its case under Guideline F. Financial Considerations Disqualifying Condition (FC DC) E2.A6.1.2.1. arises where there is *(A history of not meeting financial obligations.)* Similarly, FC DC E2.A6.1.2.3. applies where the information shows an *(Inability or unwillingness to satisfy debts.)* The available information demonstrates Applicant has a history of not meeting his financial obligations. He has been delinquent in payments on numerous accounts. The pattern continued even after his discharge in Chapter 7 bankruptcy in 1998. I conclude that FC DC E2.A6.1.2.1. and FC DC E2.A6.1.2.3. apply.

Various conditions can mitigate the security concerns arising from financial difficulties. The Directive sets out Financial Considerations Mitigating Condition (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).* "Given the wording of this mitigating condition, it is not unreasonable to construe it as covering a situation where the record evidence shows that events beyond an applicant's control resulted in, or significantly contributed to the applicant's debts becoming delinquent, the applicant becoming unable to deal with or otherwise address debts that had become delinquent previously, and the applicant incurring new, unforeseen debts that aggravate or exacerbate the applicant's financial situation."⁽⁵⁹⁾

Since his retirement from active duty in 1997, he has had significant periods of unemployment. He had financially debilitating expenses incurred with the illnesses and deaths of his brothers and mother. FC MC E2.A6.1.3.3. applies.

FC MC E2.A6.1.3.4. *(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)* might be applicable. He sought credit counseling assistance in 2002 and 2005. He could not afford the services in 2002, and in the most recent, the service could not establish a plan for him. While a plan could not be established, he was given suggestions to follow and he is attempting to do this within the constraints of his unemployment and income. He earned a bachelor's degree to make himself a better candidate for employment. He paid about a fourth of his debts, and those challenged or unknown, constitute another fourth. His security clearance is denied because of his debts and he lost his job in the process. He is resolving his problem as best he can under his circumstances. FC MC E2.A6.1.3.4. applies.

FC MC E2.A6.1.3.6. may apply where *(The individual initiated a good-faith effort to repay overdue creditors or otherwise resolve bad debts).* In spite of his medical problems and his periods of unemployment, he completed a bachelor's degree so he would be a better applicant for employment. He managed to pay about a fourth of his debts. His family illnesses and burials, and the necessary travels cross-country depleted his savings. He encountered substantial days of unemployment. He is trying to support a wife and two children. These multiple extenuating circumstances have made it most difficult for Applicant to make any significant progress with his debt reduction without consistent employment. I believe he has demonstrated a good-faith effort to repay his creditors. FC C E2.A6.1.3.6. applies.

I carefully weighed all of the available evidence, and I applied the appropriate disqualifying and mitigating conditions.

Further, I made a fair and commonsense assessment of the record before me as required by Directive Section E2.2.3. While his unpaid debts raise concerns, the extenuating circumstances of his financial pressures with family deaths and his unemployment are sufficient mitigators when combined with his efforts at counseling and his successful furthering of his education to make him more qualified for employment. He provided 20 years of honorable service to his country. I found his testimony to be both credible and believable. Given steady employment I am confident he will earnestly work to continue to resolve his indebtedness. Therefore, I conclude Guideline F for Applicant.

Personal Conduct. Applicant's response on his security clearance application to question 26 falls within Personal Conduct Disqualifying Condition (PC DC) E2.A.1.2.2. (*the deliberate omission, concealment, or falsification of relevant material facts from any personnel security questionnaire, personal history statement, or similar form used to conduct investigations, determine employment qualifications, award benefits or status, determine security clearance eligibility or trustworthiness, or award fiduciary responsibilities*). To apply, Applicant must have made a deliberate omission. Based upon his testimony which I found to be credible, he did not make a deliberate omission. He did not understand the question, because he thought that if charges in the criminal case were dismissed, he should answer "no." In all other respects, he has been completely honest in detailing his finances and other unfavorable incidents on his application. When confronted with this information he gave correct information voluntarily. I find that PC DC E2.A.1.2.2. does not apply. Accordingly, I conclude Guideline E for Applicant.

FORMAL FINDINGS

Formal findings For or Against Applicant on the allegations set forth in the SOR, as required by 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

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

Subparagraph 1.r. For Applicant

Subparagraph 1.s. For Applicant

Subparagraph 1.t. For Applicant

Subparagraph 1.u. For Applicant

Subparagraph 1.v. For Applicant

Subparagraph 1.w. For Applicant

Subparagraph 1.x. For Applicant

Subparagraph 1.y. For Applicant

Subparagraph 1.z. For Applicant

Paragraph 2. Guideline E: 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 or continue Applicant's security clearance. Clearance is granted.

Christopher Graham

Administrative Judge

1. Tr. at 15.

2. *Id.* at 16.

3. *Id.* at 2-3; Tr. at 70-73.

4. *Id.* at 15; Applicant's Response to the SOR, dated October 4, 2005, at 4.

5. *Id.* at 18.

6. *Id.* at 15.

7. Government Exhibit 1 (Standard Form 86 (SF 86), *Security Clearance Application*, dated May 31, 2002) at 8.

8. [\(9\)](#)

9. Government Exhibit 4 (Court Records, dated from October 1, 1998 to March 12, 1999) at 1-3. -

10. *Id.* at 3.

11. *Id.* at 4.

12. Applicant's Exhibit C, *supra*, at 13-14.

13. Government Exhibit 1, *supra*, note 7, at 7.

14. *Id.* at 51.

15. *Id.* at 52-53.

16. *Id.*

17. *Id.*

18. Applicant's Exhibit C, *supra*, note 8, at 2-8.

19. *Id.*

20. Applicant's Exhibit A (Letter from Credit Counseling Service, dated December 13, 2005) at 1.

21. [\(22\)](#)

22. Government Exhibit 1 (Applicant's *Security Clearance Application* dated May 31, 2002) at 8. [\(23\)](#)

23. Government Exhibit 1 (Applicant's *Security Clearance Application* dated May 31, 2002) at 8. [\(24\)](#)

24. Government Exhibit 1 (Applicant's *Security Clearance Application* dated May 31, 2002) at 8. ' ' -

25. *Id.* at 24.

26. *Id.* at 25.

27. *Id.* at 25.

28. *Id.* at 24-25.

29. *Id.* at 25-26.

30. *Id.* at 26.

31. *Id.* at 26.

32. *Id.* at 27; Applicant's Exhibit C (Applicant's Letter, dated January 23, 2006) at 1.

33. *Id.* at 28.

34. *Id.* at 29.

35. *Id.*

36. *Id.*

37. *Id.* at 30-31.

38. *Id.*

39. *Id.* at 32.

40. *Id.*

41. *Id.* at 33; Applicant's Exhibit C, *supra*, at 2-8.

42. *Id.*

43. *Id.* at 34.

44. *Id.* at 35.

45. *Id.* at 36-37.

46. *Id.* at 38; Applicant's Exhibit C, *supra*, at 9-10.

47. Tr. at 40.

48. *Id.*

49. *Id.* at 41.

50. Tr. at 42-45; Government Exhibit 1 (Applicant's *Security Clearance Application* dated May 31, 2002) at 6.

51. *See Department of the Navy v. Egan*, 484 U.S. 518, 528 (1998).

52. *Id.* at 527.

53. Exec. Or. 12968, *Access to Classified Information*, § 3.1(b) (Aug. 4, 1995).

54. *Egan, supra*, at 531.

55. *See* ISCR Case No. 95-0611 at 2 (App. Bd. May 2, 1996).

56. *See* ISCR Case No. 01-20700 at 3 (App. Bd. Dec. 19, 2002).

57. *Id.*, at 3.

58. *See Egan*; Directive ¶ E2.2.2.

59. ISCR Case No. 02-25499 at 2 (App. Bd. June 5, 2006).