

KEYWORD: Financial

DIGEST: Applicant fell behind on his debts while serving on active duty in the Navy, when he was separated from his wife prior to their divorce. Applicant began paying his delinquent debts before the initiation of this action, has paid or resolved all but one of the outstanding obligations, and is current on the payment plan for the remaining debt. Applicant mitigated the security concerns arising from his financial difficulties. Clearance is granted.

CASENO: 05-03384.h1

DATE: 04/18/2006

DATE: April 18, 2006

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In re:

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SSN: -----

Applicant for Security Clearance

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ISCR Case No. 05-03384

**DECISION OF ADMINISTRATIVE JUDGE**

**MICHAEL J. BRESLIN**

**APPEARANCES**

**FOR GOVERNMENT**

Richard Stevens, Esq., Department Counsel

**FOR APPLICANT**

*Pro Se*

## **SYNOPSIS**

Applicant fell behind on his debts while serving on active duty in the Navy, when he was separated from his wife prior to their divorce. Applicant began paying his delinquent debts before the initiation of this action, has paid or resolved all but one of the outstanding obligations, and is current on the payment plan for the remaining debt. Applicant mitigated the security concerns arising from his financial difficulties. Clearance is granted.

## **STATEMENT OF THE CASE**

On January 5, 2001, Applicant submitted an application for a security clearance. The Defense Office of Hearings and Appeals (DOHA) declined to grant or continue a security clearance for Applicant under Executive Order 10865, *Safeguarding Classified Information Within Industry* (Feb. 20, 1960), as amended, and Department of Defense Directive 5220.6, *Defense Industrial Personnel Security Clearance Review Program* (Jan. 2, 1992), as amended (the "Directive"). On July 14, 2005, DOHA issued a Statement of Reasons (SOR) detailing the basis for its decision. The SOR alleges security concerns raised under Guideline F of the Directive, Financial Considerations.

Applicant answered the SOR in writing on August 3, 2005. He elected to have a hearing before an administrative judge.

I received the case assignment on January 23, 2006. With the concurrence of Applicant and Department Counsel, I convened the hearing on March 9, 2006. The government introduced Exhibits 1 through 5. Applicant presented Exhibits A through E and the testimony of five witnesses. Applicant also testified on his own behalf. At Applicant's request, I kept the record open until April 7, 2006, to allow Applicant time to submit additional matters. Applicant did not provide additional matters for consideration. DOHA received the final transcript of the hearing (Tr.) on March 17, 2006.

## **FINDINGS OF FACT**

Applicant admitted the factual allegations in ¶¶ 1.a, 1.d, 1.e, 1.f, and 1.g of the SOR. (Applicant's Answer to SOR, dated

August 3, 2005.) Those admissions are incorporated herein as findings of fact. He denied the allegations in ¶¶ 1.b, 1.c, and 1.h of the SOR. After a complete and thorough review of the evidence in the record, I make the following additional findings of fact.

Applicant was born in December 1974. (Ex. 1 at 1.) He joined the U.S. Navy in 1993 and served as a radioman. (Tr. at 15.) While in the Navy he successfully held a security clearance and worked in positions requiring the handling of classified material. (Tr. at 15-16; Ex. 1 at 8.) He received a high-level clearance in 1994. (Ex. 1 at 8.)

He was married in April 1995. (Ex. 2 at 2.) He has two children, a 9-year-old son and a 6-year-old daughter, and one step-child. (*Id.*)

In December 1999, Applicant and his wife purchased a home. (Tr. at 28.) They moved out of their apartment but did not complete a walk-through with the managers. (Tr. at 26.) Later, the apartment managers claimed Applicant owed \$575.00 for cleaning and repairing the apartment. (Tr. at 26.) The apartment managers obtained a judgment in the amount of \$575.00 against Applicant in March 1999. (Ex. 4 at 1.) Applicant paid the debt in about January 2004. (Tr. at 18; Ex. 4 at 1.)

Applicant's mother had an older vehicle that eventually broke down. (Tr. at 33.) Applicant transferred one of his two vehicles to his mother, with the understanding that she would make the payments. (Tr. at 33-34.) Two or three months later, she informed him the vehicle was repossessed because she had not been able to make the payments. (Tr. at 34.) Applicant was not in a position to pay enough to bring the debt current. (*Id.*) In July 2001, the financing company claimed a deficiency of \$4,677.00, which is listed as ¶ 1.h on the SOR.

In January 2001, Applicant submitted an SF 86, Security Clearance Application. (Ex. 1 at 1.) He reported the repossession of his vehicle in response to Question 35. (Ex. 1 at 8.)

In April 2003, a security investigator interviewed Applicant concerning his application for a security clearance. (Ex. 2.) Applicant revealed his financial difficulties and indicated his intent to resolve his debts no later than October 2003. (Ex. 2 at 3.) A personal financial statement executed at that time indicated he had almost \$900.00 in discretionary funds available each month after payment of regular expenses. (Ex. 2 at 5.)

In November 2001, Applicant was assigned to duty aboard a ship. (Ex. 2 at 1.) His wife and family went to live with her parents, and Applicant rented out his home for about one year. (Tr. at 28-29.)

After his shipboard assignment, Applicant learned he would receive an unaccompanied overseas assignment. (Tr. at 31; Ex. 2 at 2.) While waiting for overseas orders, Applicant injured his shoulder, requiring surgery in early 2003. (Tr. at 30.) The Navy placed him on medical hold pending a determination of his fitness for duty. (Ex. 2 at 2.) Applicant's wife decided to continue to live separately. (Ex. 2 at 2.) Applicant, then an E-6, lived in the family home while supporting his family who lived with his wife's parents. (Tr. at 29, 31.) He began to fall behind on his debts. (*Id.*) In January 2002, Applicant began working for a civilian company part-time. (Ex. 2 at 1-2.)

In October 2003, Applicant was honorably discharged from the Navy and began working for his present employer, a defense contractor. (Tr. at 30.) During the interval between active duty service and civilian employment, he fell behind on some debts, including his mortgage. (Tr. at 29.) He traveled overseas and to another state as part of his civilian duties. (Tr. at 31.) According to Applicant, he was away for a few weeks on business, and when he returned the home had been repossessed. (Tr. at 29.) The bank foreclosed upon Applicant's home in November 2004. (Tr. at 28.) The outstanding mortgage debt is listed in ¶ 1.g of the SOR.

Applicant asserts the contents of the home were removed as part of the foreclosure. Among those contents were the hardware for his cable service and satellite television service. (Tr. at 28.) The debts listed in the SOR, ¶¶ 1.d and 1.e, are for the missing equipment.

He was divorced in October 2005. (Tr. at 23.) Applicant pays child support each month to his ex-wife, between \$600.00 and \$1,000.00, depending on the hours worked each month. (Tr. at 24.)

Applicant works as a field service technician for a government contractor. (Tr. at 16.) His former leading petty officer in the Navy praised his character and responsibility. (Tr. at 38.) Co-workers described him as honest, dedicated, and an outstanding worker. (Tr. at 41-42; 46-47.) Applicant's project managers indicated he performed his duties well and had no disciplinary problems. (Tr. at 43-44; 48-49.)

At the hearing, Applicant addressed the debts listed in the SOR. Regarding the debt listed at ¶ 1.a of the SOR, a \$232.00 credit account with a military retailer, he testified that he paid the debt with a cashier's check a few days before the hearing, but did not have a receipt. (Tr. at 16-17.)

As noted above, Applicant paid the judgment for the apartment cleaning in January 2004. (Tr. at 18, 26; Ex. 4; Ex. 5.) He also provided a bank statement reflecting the payment of the \$110.00 debt to a telephone service provider, listed as ¶ 1.c in the SOR. (Tr. at 18, 27; Ex. A.)

With regard to the \$811.00 debt listed in ¶ 1.d of the SOR, Applicant testified that he negotiated a settlement in the amount of \$176.00, and paid it on March 6, 2006. (Tr. at 19; Ex. E.) He also paid the \$313.00 debt to the satellite television service provider (¶ 1.e of the SOR) on March 6, 2006. (Tr. at 19; Ex. E.) Applicant provided a receipt for his payment of the \$371.23 debt to the cable service provider (¶ 1.f of the SOR) on April 15, 2004. (Tr. at 19-20; Ex. B.)

With regard to the debt owed after the foreclosure on the home (¶ 1.g of the SOR), Applicant testified he arranged to pay \$350.00 each month, by allotment from his civilian pay, and that he had been making the payments for about one year. (Tr. at 20, 32-33.) He did not present any bank records reflecting the payments.

Applicant testified that in April 2005, he negotiated a settlement of the \$4,677.00 debt listed in the SOR, ¶ 1.h, remaining after the repossession of his vehicle. The agreement required him to make five monthly payments totaling \$950.00. (Tr. at 21; Ex. C.) He indicated he made the payments as required, but did not have documents reflecting the payments. (Tr. at 21, 35.)

## 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." (*Department of the Navy v. Egan*, 484 U.S. 518, 527 (1988).) 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 potentially disqualifying 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. (Directive ¶ E2.A6.1.1.)

Conditions that could raise a security concern and may be disqualifying, as well as those which could mitigate security concerns pertaining to this adjudicative guideline, 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." (Directive, ¶ E2.2.1.) An administrative judge must apply the "whole person concept," and consider and carefully weigh the available, reliable information about the person. (*Id.*) 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. (*Id.*)

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. (Directive, ¶ E3.1.14.) Thereafter, the applicant is responsible for presenting evidence to rebut, explain, extenuate, or mitigate the facts. (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).) "Any doubt as to whether access to classified information is clearly consistent with national security will be resolved in favor of the national security." (Directive, ¶ E2.2.2.)

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. (Exec. Ord. 10865, § 7.) It is merely an indication that the applicant has not met the strict guidelines the President has established for issuing a clearance.

## CONCLUSIONS

I considered carefully all the facts in evidence and the legal standards discussed above. I reach the following conclusions regarding the allegations in the SOR.

Paragraph E2.A6.1.2.1 of the Directive provides that it may be a disqualifying condition if the evidence reveals "[a] history of not meeting financial obligations." Applicant failed to meet some significant financial obligations between about 1999 and 2005. I conclude the available evidence raises this potentially disqualifying condition.

Under the Directive, ¶ E2.A6.1.2.3, an "[i]nability or unwillingness to satisfy debts" may be disqualifying. Applicant was unable to satisfy his debts in the past, but at the time of the hearing he had either paid the debts, settled them for a lesser amount, or begun a repayment plan. I conclude this potentially disqualifying condition does not apply.

Security concerns arising from Applicant's financial difficulties can be mitigated. Under the Directive, ¶ E2.A6.1.3.1, it may be mitigating where "the behavior was not recent." The behavior in question is his failure to pay or otherwise resolve the delinquent debts. While Applicant paid several of the debts well before the initiation of this action, some were not paid until shortly before the hearing. I find this mitigating condition applies in part.

Paragraph E2.A6.1.3.2 of the Directive provides that it may be mitigating where the financial difficulty "was an isolated incident." Applicant had several delinquent debts that arose at different times; therefore, this was not an isolated incident. I conclude this mitigating condition does not apply.

Under ¶ E2.A6.1.3.3, it may be mitigating where, "[t]he 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)." Applicant's financial problems arose as a result of conditions largely beyond his control. First, the marital separation that eventually led to divorce resulted in financial strain and ultimately the foreclosure of his mortgage. Secondly, his mother's inability or unwillingness to make the required payments on the vehicle Applicant transferred to her generated one of the debts. I conclude this mitigating condition applies.

Proof that "[t]he 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," may be mitigating, under ¶ E2.A6.1.3.4 of the Directive. Applicant did not present evidence that he sought or received financial counseling, therefore this mitigating condition does not apply.

Paragraph E2.A6.1.3.6 of the Directive states it may be mitigating where, "[t]he individual initiated a good-faith effort to repay overdue creditors or otherwise resolve debts." Applicant provided documentary evidence that he paid the debts listed in ¶¶ 1.b, 1.c, 1.d, 1.e, and 1.f of the SOR. He did not provide documentary proof, but testified that he paid the debt in ¶ 1.a shortly before the hearing, that he previously negotiated a settlement and paid off the debt in ¶ 1.h, and that he arranged a repayment plan for the debt in ¶ 1.g and had been making the payments through a bank allotment for about one year. As noted above, an applicant bears the burden of presenting evidence to mitigate security concerns. In a case like this, documentary evidence of payment makes decisions easy. However, testimony is also evidence, and if determined to be credible, may be sufficient. A determination of the credibility of testimony is reserved for the administrative judge; indeed, the Appeal Board is required to defer to an administrative judge's credibility determination. I considered all the circumstances in this case, including the details of his testimony and its inherent probability or improbability, the extent to which it is corroborated by other evidence, the evidence of Applicant's character for honesty and trustworthiness, and the biases and motivations of the witnesses. I find Applicant's testimony about the resolution of his debts to be credible. I conclude this potentially mitigating condition applies.

I considered the potentially disqualifying and mitigating circumstances in light of the "whole person" concept. I note Applicant is a mature individual with many years of service to this country as a military member and an employee of a defense contractor. He successfully held a security clearance-including a high-level clearance-for many years. Marital

problems arising, in part, from the requirements of military service largely caused his financial problems. Applicant began paying his debts before the initiation of this action, has paid most of the delinquent obligations, and is current on the payment plan for the remaining debt. I conclude Applicant mitigated the security concerns arising from his history of failing to meet his financial obligations.

### **FORMAL FINDINGS**

My conclusions as to each allegation in the SOR 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

### **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 or continue a security clearance for Applicant. Clearance is granted.

Michael J. Breslin  
Administrative Judge