

KEYWORD: Financial

DIGEST: Applicant incurred more than \$85,000.00 in debt as a result of overspending and poor financial management. His debts were twice discharged by the bankruptcy court in 1996 and again in 2003. Yet, he again incurred debt, some of which is currently delinquent and not resolved. He has not mitigated or overcome the government's concerns regarding his security eligibility and suitability based on financial considerations. Clearance is denied.

CASENO: 05-03482.h1

DATE: 03/28/2006

DATE: March 28, 2006

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In re:

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SSN: -----

Applicant for Security Clearance

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ISCR Case No. 05-03482

**DECISION OF ADMINISTRATIVE JUDGE**

**MARY E. HENRY**

**APPEARANCES**

**FOR GOVERNMENT**

**FOR APPLICANT**

*Pro Se*

**SYNOPSIS**

Applicant incurred more than \$85,000.00 in debt as a result of overspending and poor financial management. His debts were twice discharged by the bankruptcy court in 1996 and again in 2003. Yet, he again incurred debt, some of which is currently delinquent and not resolved. He has not mitigated or overcome the government's concerns regarding his security eligibility and suitability based on financial considerations. Clearance is denied.

**STATEMENT OF THE CASE**

On October 13, 2005, the Defense Office of Hearings and Appeals (DOHA), 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 Security Clearance Review Program* (Directive), dated January 2, 1992, as amended and modified, issued a Statement of Reasons (SOR) to Applicant. The SOR detailed reasons 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 a security clearance for Applicant. Specifically, the SOR set forth security concerns arising under Guideline F (Financial Considerations) of the Directive. DOHA recommended the case be referred to an administrative judge to determine whether a clearance should be granted, continued, denied, or revoked. Applicant submitted a notarized response to the allegations dated November 11, 2005. He elected to have his case decided on the written record in lieu of a hearing.

Department Counsel prepared a File of Relevant Material (FORM) and provided Applicant with a complete copy on December 30, 2005. Applicant had 30 days from receipt of the FORM to file objections and submit material in refutation, extenuation, or mitigation. He submitted a response and additional evidence on January 23, 2005. This case

was assigned to me on February 9, 2006.

### FINDINGS OF FACT

Applicant admitted, with explanation, all the allegations under Guideline F, subparagraphs 1.a. through 1.i., of the SOR. (1) Those admissions are incorporated here as findings of fact. After a complete review of the evidence in the record and upon due consideration, I make the following additional findings of fact:

Applicant is a 39-year-old materials handler for a defense contractor. (2) He has worked for this contractor for more than five years. (3) He married in 1991 and divorced in 2003 or 2004. (4) He pays child support for a child from another relationship. (5) He completed a security clearance application (SF 86) in May 2003. (6)

In 1996, Applicant filed for Chapter 7 Bankruptcy, with liabilities totaling \$51,853.00. The court discharged his debts on December 13, 1996. (7) He filed for Chapter 13 Bankruptcy in April 2002, which the court dismissed on July 11, 2002. (8) He filed a second Chapter 7 Bankruptcy on June 23, 2003, with liabilities in excess of \$35,000.00. (9) The court discharged his debts on October 15, 2003. (10) Since 2003, he has incurred new, unsatisfied debt.

Applicant's debts listed in the SOR are as follows:

SOR ¶	TYPE OF DEBT	AMOUNT OF DEBT	CURRENT STATUS
1.a.	utility bill (11)	\$ 140.00 (12)	Paid in full (13)
1.b.	credit bill (14)	\$ 57.00 (15)	Paid in full (16)
1.c.	credit bill (17)	\$ 833.00 (18)	Unknown (19)
1.d.	store bill (20)	\$ 62.00 (21)	Paid in full (22)
1.e.	child support arrearage (23)	\$7,661.00 (24)	Unknown
1.f.	store account (25)	\$1,140.00 (26)	Discharged in bankruptcy in 2003 (27)

He has provided documentary proof of the debts he has paid in full and the debt discharged in bankruptcy. (28)

Applicant submitted a copy of an agreement dated December 2, 1998, regarding payment terms for his monthly child support and for his \$11,045.19 in child support arrearage.<sup>(29)</sup> Under the terms of the agreement, he is to pay \$250.00 a month for child support, plus \$100.00 a month until his arrearage is paid.<sup>(30)</sup> He also agreed to a wage lien in the amount of \$350.00.<sup>(31)</sup> His credit report shows that he has paid at least \$3,400.00 on the child support arrearage, which averages approximately \$565.00 per year.<sup>(32)</sup> His yearly payments are about 50% of the agreed upon arrearage payment. Although he states that his wages are being garnished to pay the arrearage, he has not submitted any documentation to show the garnishment or the current balance on this debt. From the evidence of record, it does not appear that he is paying his arrearage as agreed.

Applicant wrote a check to a local store for \$149.90 in May 2002, which the bank dishonored.<sup>(33)</sup> The store filed criminal charges against him for theft and uttering a bad check.<sup>(34)</sup> He subsequently paid the check.<sup>(35)</sup> Since he had paid the check, he did not appear in court on the designated hearing date.<sup>(36)</sup> As a consequence, the court issued a warrant for his arrest.<sup>(37)</sup> He appeared in court on July 11, 2003, and pled guilty to the theft.<sup>(38)</sup> He was given probation before judgment and fined \$500.00. The court suspended \$455.00 of the fine.<sup>(39)</sup> He provided the court with documents reflecting payment of the check, and as a result, the uttering a bad check charge was nolle prossed.<sup>(40)</sup> The court also fined him \$55.00.<sup>(41)</sup>

In 2004, Applicant earned \$3,093.50 as his gross monthly income, and \$2,436.00 in net monthly income.<sup>(42)</sup> His monthly expenses are: rent \$875.00, utilities \$198.00, food \$125.00, car expense \$293.00, clothing \$20.00, miscellaneous expenses \$30.00, and child support of \$319.00, for a total of \$1,860.00.<sup>(43)</sup> His remaining available monthly income is \$576.00.<sup>(44)</sup> His student loan payments have been deferred.<sup>(45)</sup>

## **POLICIES**

Enclosure 2 of the Directive sets forth adjudication guidelines which must be considered in the evaluation of security suitability. An administrative judge need not view the adjudicative guidelines as inflexible ironclad rules of law. Instead, acknowledging the complexities of human behavior, these guidelines, when applied in conjunction with the factors set forth in the adjudicative process provision in Paragraph E2.2., Enclosure 2 of the Directive, are intended to assist the administrative judge in reaching fair and impartial common sense decisions.

Included in the guidelines are disqualifying conditions and mitigating conditions applicable to each specific guideline. In addition, each security clearance decision must be 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, extent, and seriousness of the conduct; (2) the circumstances surrounding the conduct; (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 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. (46) 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. (47) The government has the burden of proving controverted facts. (48) The burden of proof is something less than a preponderance of the evidence. (49) Once the government has met its burden, the burden shifts to the applicant to present evidence of refutation, extenuation, or mitigation to overcome the case against him. (50) Additionally, an applicant has the ultimate burden of persuasion to obtain a favorable clearance decision. (51)

No one has a right to a security clearance, (52) and "the clearly consistent standard indicates that security clearance determinations should err, if they must, on the side of denials." (53) Any reasonable doubt about whether an applicant should be allowed access to sensitive information must be resolved in favor of protecting such sensitive information. (54) Section 7 of Executive Order 10865 specifically provides industrial security clearance 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." The decision to deny an individual a security clearance is not necessarily a determination as to the allegiance, loyalty, and patriotism of an applicant. (55) 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 a consideration of the evidence as a whole, I find the following adjudicative guideline most pertinent to an evaluation of the facts of this case:

**Financial Considerations - 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.**

## CONCLUSIONS

Upon consideration of all the facts in evidence, and after application of all appropriate adjudicative factors, I conclude the following with respect to the allegations set forth in the SOR:

The government established its case under Guideline F. Applicant has a long history of excessive debt, as the result of over spending and poor financial management. After the bankruptcy court's 1996 discharge of more than \$50,000.00 of debt, he was given the opportunity to start fresh and manage his finances. He failed, and again incurred significant debt, which is now resolved because he filed for Chapter 7 bankruptcy a second time. Subsequent to his second bankruptcy discharge, he incurred additional unpaid debt. He still owes significant money in back child support. Under Guideline F, Financial Considerations Disqualifying Conditions (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.

A security concern based on financial problems can be mitigated in several ways. Applicant's debt problems have been ongoing for a number of years, are not recent, and are not an isolated incident. Thus, he has not established a mitigating condition under Financial Considerations Mitigating Conditions (FC MC) E2.A6.1.3.1. (*The behavior was not recent*), and E2.A6.1.3.2. (*It was an isolated incident*). Likewise, since he has not established that his debts are the result of factors beyond his control or that he received counseling for his credit problems, FC MC E2.A6.1.3.3. (*The conditions that resulted in the behavior were largely beyond the person's control...*), and 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*) do not apply.

Applicant has initiated a good faith effort to repay the small debt. Since receiving the SOR, he has paid three of his previously unpaid debts. He has also established that one debt was discharged as a result of his 2003 bankruptcy filing. While the credit reports reflect that he has paid some money on his child support arrearage, he has not provided any information showing a recent reduction in the amount owed on his back child support or the monthly child support garnishment payments, which he contends he is paying. Several years ago, he paid the check dishonored by the bank. In light of these efforts, FC MC E2.A6.1.3.6. (*The individual initiated a good-faith effort to repay overdue creditors or otherwise resolve debts*) may apply. However, he still has several unresolved, delinquent debts. His long and repeated history of excessive debt reflects a pattern of problematic financial management which outweighs his recent efforts to pay some of his outstanding debt. Since his most recent bankruptcy discharge, he has again failed to pay all his debts, even though he has sufficient monthly income to do so. He has not demonstrated an ability to manage his finances on a consistent level. Since he will be paying student loans in the future, I have concerns about his ability to pay this debt given his inability to manage his finances. He has failed to overcome the government's concerns regarding his security worthiness. Accordingly, for the reasons stated, I find that it is not clearly consistent with the national interest to grant a security clearance to 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 (Financial Considerations): AGAINST APPLICANT

Subparagraph 1.a: For Applicant

Subparagraph 1.b: For Applicant

Subparagraph 1.c: Against Applicant

Subparagraph 1.d: For Applicant

Subparagraph 1.e: Against Applicant

Subparagraph 1.f: For Applicant

Subparagraph 1.g: Against Applicant

Subparagraph 1.h: Against Applicant

Subparagraph 1.I: Against Applicant

**DECISION**

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

Mary E. Henry

Administrative Judge

1. Item 3 (Response to SOR, dated November 11, 2005) at 1-2.
2. Item 4 (Applicant's security clearance application, dated May 1, 2003) at 1.
3. *Id.*
4. *Id.* at 3; Item 6 (Applicant's signed statement, dated July 28, 2004) at 3.
5. Item 3, *supra* note 1, at 11-12.
6. Item 4, *supra* note 2, at 1.
7. Item 9 (Credit Report, dated September 28, 2005) at 1; Item 8 (Credit Report, dated May 8, 2003) at 1, 5.
8. *Id.*
9. Item 11 (Applicant's Voluntary Petition for Chapter 7 Bankruptcy, dated June 23, 2003) at 1-2; Item 3, *supra* note 1, at 13.
10. Item 3, *supra* note 1, at 2.
11. Item 9, *supra* note 7, at 1.
12. *Id.*
13. Item 3, *supra* note 1, at 4-5; Applicant's supplement response, dated January 23, 2006, at 2-3.
14. Item 9, *supra* note 7, at 1.
15. *Id.*
16. Item 3, *supra* note 1, at 6-8.
17. Item 9, *supra* note 7, at 1.
18. *Id.*
19. Applicant states that he is paying this bill monthly. Item 3, *supra* note 1, at 1. He has not submitted a copy of the payment plan.
20. Item 9, *supra* note 7, at 1.
21. *Id.*
22. Item 3, *supra* note 1, at 9-10.
23. Item 9, *supra* note 7, at 2.
24. *Id.*
25. Item 8, *supra* note 7, at 5.
26. *Id.*
27. Item 3, *supra* note 1, at 13; Item 11, *supra* note 9, at 1-2.



28. Item 3, *supra* note 1, at 4-10, 13; Item 11, *supra* note 9, at 1-2.
29. Item 3, *supra* note 1, at 11-12.
30. *Id.*
31. *Id.*
32. Item 9, *supra* note 7, at 2.
33. Item 12 (Court papers regarding dishonored check, dated April 7, 2003) at 3.
34. *Id.*
35. Item 7 (Applicant's signed statement, dated January 7, 2005) at 1.
36. *Id.*
37. *Id.*
38. Item 3, *supra* note 1, at 15-16.
39. *Id.*
40. *Id.*; Item 7, *supra* note 35, at 1.
41. Item 3, *supra* note 1, at 15-16.
42. Item 6 (Applicant's signed statement with financial statement, dated July 28, 2004) at 5.
43. *Id.*
44. *Id.*
45. Item 9, *supra* note 7, at 2.
46. Directive, Enclosure 2, ¶ E2.2.1.1. through E2.2.1.9.
47. ISCR Case No. 96-0277 (July 11, 1997) at 2.
48. ISCR Case No. 97-0016 (App. Bd., December 31, 1997) at 3; Directive, Enclosure 3, ¶ E3.1.14.
49. *Department of the Navy v. Egan*, 484 U.S. 518, 528 (1988).
50. ISCR Case No. 94-1075 (App. Bd., August 10, 1995) at 3-4; Directive, Enclosure 3, ¶ E3.1.15.
51. ISCR Case No. 93-1390 (App. Bd. Decision and Reversal Order, January 27, 1995) at 7-8; Directive, Enclosure 3, ¶ E3.1.15.
52. *Egan*, 484 U.S. at 531.
53. *Id.*
54. *Id.*; Directive, Enclosure 2, ¶ E2.2.2.
55. Executive Order No. 10865 § 7.