

KEYWORD: Financial

DIGEST: Applicant accumulated seven delinquent debts totaling about \$34,320. He refuted an allegation of unpaid state taxes. He negotiated a payment plan for delinquent federal income taxes. After he received the Statement of Reasons, he resolved three delinquent debts, but he took no action to resolve three delinquent credit card accounts totaling more than \$15,800. The security concern based on financial considerations is not mitigated. Clearance is denied.

CASENO: 05-04469.h1

DATE: 03/30/2006

DATE: March 30, 2006

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In re:

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SSN: -----

Applicant for Security Clearance

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ISCR Case No. 05-04469

**DECISION OF ADMINISTRATIVE JUDGE**

**LEROY F. FOREMAN**

**APPEARANCES**

**FOR GOVERNMENT**

**FOR APPLICANT**

*Pro Se*

**SYNOPSIS**

Applicant accumulated seven delinquent debts totaling about \$34,320. He refuted an allegation of unpaid state taxes. He negotiated a payment plan for delinquent federal income taxes. After he received the Statement of Reasons, he resolved three delinquent debts, but he took no action to resolve three delinquent credit card accounts totaling more than \$15,800. The security concern based on financial considerations is not mitigated. Clearance is denied.

**STATEMENT OF THE CASE**

On September 14, 2005, the Defense Office of Hearings and Appeals (DOHA) issued a Statement of Reasons (SOR) detailing the basis for its preliminary decision to not grant a security clearance to Applicant.<sup>(1)</sup> The SOR alleged security concerns under Guideline F (Financial Considerations). It alleged Applicant had seven delinquent debts totaling more than \$21,000. Applicant answered the SOR in an undated document. He admitted all allegations except ¶ 1.b., alleging a debt of \$1,337. He admitted a lesser amount than alleged for the federal tax debt in ¶ 1.g. He elected to have the case decided on the written record in lieu of a hearing. Department Counsel submitted the Government's written case on January 18, 2006. A complete copy of the file of relevant material (FORM) was provided to Applicant, and he was afforded an opportunity to file objections and submit material to refute, extenuate, or mitigate the disqualifying conditions. Applicant received the FORM on January 23, 2006 and his response was received by DOHA on March 6, 2006. The case was assigned to me on arch 14, 2006.

**PROCEDURAL RULING**

Department Counsel's submission included a motion to amend the SOR to add paragraph 1.g., alleging an additional delinquent debt of \$14,473. Applicant denied the allegation in his response to the FORM and produced evidence the debt was settled, but he did not object to amending the SOR. The motion to amend the SOR by adding paragraph 1.g. is granted.

**FINDINGS OF FACT**

Based on the entire record, I make the following findings of fact:

Applicant is a 52-year-old operations analyst for a defense contractor. He has worked in this position since March 2003. He previously served in the U.S. Navy from April 1980 to April 2000. He appears to be eligible for military retirement, but the record does not reflect whether he receives military retirement benefits. He held two civilian jobs before his current position. He received a security clearance in September 1999. He submitted the current security clearance application in March 2003.

Applicant was married in September 1980 and divorced in August 1999. He has two children, born in 1982 and 1984.

In his answer to the SOR, Applicant stated he incurred significant credit card debt after his divorce. He lost his job in March 2002. He worked at another job at about half the pay he had been making until he accepted his current position in March 2003. (2) Applicant disclosed on his March 2003 security clearance application that he owed about \$2,000 from his 2001 federal tax return and that his wages were garnished for \$50 per month to pay his delinquent federal taxes. (3) His credit report dated March 31, 2003, reflected the debts alleged in SOR ¶¶ 1.d. and 1.e. were 30 days past due and the debt alleged in ¶ 1.a. was 120 days past due. All other accounts were current. (4) His credit report dated November 4, 2003, less than eight months later, showed all accounts current. (5) His credit report dated July 14, 2005, showed three charged off credit card accounts, corresponding to the SOR ¶¶ 1.a., 1.c., and 1.e. (6) Finally, his credit report dated January 12, 2006, showed the debt alleged in SOR ¶ 1.c. settled, the debts alleged in ¶¶ 1.a., 1.d., and 1.h. as charged off, and the debt alleged in ¶ 1.f. as sent to collection. (7)

The evidence concerning the debts alleged in the SOR is summarized in the following table.

SOR Paragraph	Debt	Amount	Status as of Date of Department Counsel's Submission	FORM

1.a.	Credit card; charged off October 2002	\$5,013	Unpaid	Items 1 and 3
1.b.	State taxes; lien filed April 2003	\$1,337	Settled, 12-13-03, before SOR was issued	Item 10
1.c.	Credit card; charged off September 2003	\$2,733	Settled, 11-14-05	Items 11 and 12
1.d.	Credit card; charged off December 2003	\$5,985	Unpaid	Items 1 and 3
1.e.	Credit card; charged off December 2003	\$4,799	Unpaid	Items 1 and 3
1.f.	Dental bill; collection January 2004	\$217	Paid in Full, 1-20-06	Response to FORM
1.g.	Federal taxes for 2002 and 2003	\$1,100	Paying \$200 per month; balance is about \$385	Items 1 and 3
1.h. (added by motion)	Bank Loan, charged off May 2004	\$14, 473	Settled, 2-13-06	Response to FORM

In March 2004, Applicant hired a lawyer to assist him in settling his debts. He agreed to pay the lawyer \$110 per month until her fee of \$1,900 was paid and then pay \$110 per month toward his delinquent debts.

## POLICIES

"[N]o one has a 'right' to a security clearance." *Department of the Navy v. Egan*, 484 U.S. 518, 528 (1988). 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." *Id.* at 527. The President has authorized the Secretary of Defense or his designee to grant applicants eligibility for access to classified information "only upon a finding that it is clearly consistent with the national interest to do so." Exec. Or. 10865, *Safeguarding Classified Information within Industry* § 2 (Feb. 20, 1960), as amended and modified. Eligibility for a security clearance is predicated upon the applicant meeting the security guidelines contained in the Directive. 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).

The Directive sets forth adjudicative guidelines for determining eligibility for access to classified information, and it lists the disqualifying conditions (DC) and mitigating conditions (MC) for each guideline. Each clearance decision must be a fair, impartial, and commonsense decision based on the relevant and material facts and circumstances, the whole

person concept, and the factors listed in the Directive ¶¶ 6.3.1 through 6.3.6.

In evaluating an applicant's conduct, an administrative judge should consider: (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 applicant'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. Directive ¶¶ E2.2.1.1 through E2.2.1.9.

The decision to deny an individual a security clearance is not necessarily a determination as to the loyalty of the applicant. *See* Exec. Or. 10865 § 7. It is merely an indication the applicant has not met the strict guidelines the President and the Secretary of Defense have established for issuing a clearance.

Initially, the government must establish, by substantial evidence, conditions in the personal or professional history of the applicant which disqualify, or may disqualify, the applicant from being eligible for access to classified information. *See Egan*, 484 U.S. at 531. "[T]he Directive presumes there is a nexus or rational connection between proven conduct under any of the Criteria listed therein and an applicant's security suitability." ISCR Case No. 95-0611 at 2 (App. Bd. May 2, 1996) (quoting DISCR Case No. 92-1106 (App. Bd. Oct. 7, 1993)).

Once the government establishes a disqualifying condition by substantial evidence, the burden shifts to the applicant to rebut, explain, extenuate, or mitigate the facts. ISCR Case No. 01-20700 at 3; *see* 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). "[S]ecurity clearance determinations should err, if they must, on the side of denials." *Egan*, 484 U.S. at 531; *see* Directive ¶ E2.2.2.

## CONCLUSIONS

Under Guideline F (Financial Considerations), "[a]n individual who is financially overextended is at risk of having to engage in illegal acts to generate funds." Directive ¶ E2.A6.1.1. A person who fails or refuses to pay long-standing debts or is financially irresponsible may also be irresponsible or careless in his or her duty to protect classified information.

Two disqualifying conditions (DC) under Guideline F could raise a security concern and may be disqualifying in this

case. DC 1 applies where an applicant has a history of not meeting his or her financial obligations. Directive ¶ E2.A6.1.2.1. DC 3 applies where an applicant has exhibited inability or unwillingness to satisfy debts. Directive ¶ E2.A6.1.2.3. Applicant's history of delinquent debts and continued inability to satisfy them establishes DC 1 and DC 3.

Since the government produced substantial evidence to establish DC 1 and DC 3, the burden shifted to Applicant to produce evidence to rebut, explain, extenuate, or mitigate the facts. Directive ¶ E3.1.15. Applicant has the burden of proving a mitigating condition, and the burden of disproving it is never shifted to the government. *See* ISCR Case No. 02-31154 at 5 (App. Bd. Sep. 22, 2005).

A security concern based on financial problems can be mitigated by showing the delinquent debts were not recent (MC 1) or an isolated incident (MC 2). Directive ¶ E2.A6.1.3.1., E2.A6.1.3.2. Applicant has multiple delinquent debts that are not yet fully resolved. I conclude MC 1 and MC 2 are not established.

Security concerns arising from financial problems can be mitigated by showing they are the result of conditions "largely beyond the person's control" (MC 3). Directive ¶ E2.A6.1.3.3. Even if Applicant's financial difficulties initially arose due to circumstances outside his control, an administrative judge may consider whether Applicant acted in a reasonable manner when dealing with his financial difficulties. ISCR Case No. 02-02116 at 4 (App. Bd. Sep. 25, 2003).

Applicant attributes his financial problems to credit card debt incurred after his divorce in August 1999, loss of employment in March 2002, and the necessity of taking a lower-paying job until he obtained his current position in March 2003. However, he has not shown any impact of his 1999 divorce on his financial problems. The evidence shows he had only three past due credit card debts when he started his current job, and he owed federal taxes for 2001. Less than eight months later he had no delinquent credit card debts, but a civil suit had been filed for \$1,337 in state taxes. He now owes federal taxes for 2002 and 2003.

His credit card and bank loan delinquencies first began appearing on his credit report in July 2005, almost two years after starting in his current position. He has not explained why he owed federal taxes for 2003. He has not explained why he was current on all his credit card accounts eight months after starting his current job, but heavily in debt two years later. I conclude MC 3 is not established.

A mitigating condition (MC 4) applies when an applicant "has received or is receiving counseling for the problem and there are clear indications that the problem is being resolved or is under control." Directive ¶ E2.A6.1.3.4. The record shows Applicant hired a lawyer in March 2004 to assist him, but two years later no action has been taken to resolve three of the four largest delinquent debts. I conclude MC 4 is not established because the record does not show the problem is being resolved.

A security concern arising from financial problems can be mitigated by showing a good-faith effort to resolve debts (MC 6). Directive ¶ E2.A6.1.3.6. The concept of good faith "requires a showing that a person acts in a way that shows reasonableness, prudence, honesty, and adherence to duty or obligation." ISCR Case No. 99-0201, 1999 WL 1442346 at \*4 (App. Bd. Oct. 12, 1999). Evidence of past irresponsibility is not mitigated by payment of debts only under pressure of qualifying for a security clearance. The record shows Applicant made some progress with his financial situation after he submitted his SF 86, but he still owes almost \$15,800 in delinquent credit card debts, and he apparently has no plan to resolve them. He settled the additional \$14,473 debt after he received the motion to amend the SOR. He presented no evidence he followed through with his plan to allocate \$110 per month to resolving delinquent debts. I conclude Applicant has not carried his burden of establishing MC 6.

After weighing the disqualifying and mitigating conditions and evaluating all the evidence in the context of the whole person, I conclude Applicant has not mitigated the security concern based on financial considerations.

### **FORMAL FINDINGS**

The following are my findings as to each allegation in the SOR:

Paragraph 1. Guideline F (Financial Considerations): AGAINST APPLICANT

Subparagraph 1.a.: Against Applicant

Subparagraph 1.b.: For Applicant

Subparagraph 1.c.: For Applicant

Subparagraph 1.d.: Against Applicant

Subparagraph 1.e.: Against Applicant

Subparagraph 1.f.: For Applicant

Subparagraph 1.g.: For Applicant

Subparagraph 1.h.: For Applicant

## DECISION

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

LeRoy F. Foreman

Administrative Judge

1. This action was taken under Executive Order 10865, *Safeguarding Classified Information within Industry* (Feb. 20, 1960), as amended and modified, and Department of Defense Directive 5220.6, *Defense Industrial Personnel Security Clearance Review Program* (Jan. 2, 1992), as amended and modified (Directive).
2. FORM Item 3.
3. FORM Item 4 at 11-12.
4. FORM Item 9.
5. FORM Item 8.
6. FORM Item 7.
7. FORM Item 6.