

KEYWORD: Financial Considerations

DIGEST: Applicant stopped making payments on two credit card accounts totaling more than \$40,000 when he lost his job in February 2004. He has not made any payments on these debts even though he started his current job in April 2004. He incurred additional expenses when his parents asked him to leave their house in May 2004, where he had lived most of his life. Security concerns based on financial considerations are not mitigated. Clearance is denied.

CASE NO: 05-08459.h1

DATE: 05/12/2006

DATE: May 12, 2006

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In re:

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SSN: -----

Applicant for Security Clearance

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ISCR Case No. 05-08459

**DECISION OF ADMINISTRATIVE JUDGE**

**LEROY F. FOREMAN**

**APPEARANCES**

**FOR GOVERNMENT**

Francisco Mendez, Esq., Department Counsel

## **FOR APPLICANT**

*Pro Se*

### **SYNOPSIS**

Applicant stopped making payments on two credit card accounts totaling more than \$40,000 when he lost his job in February 2004. He has not made any payments on these debts even though he started his current job in April 2004. He incurred additional expenses when his parents asked him to leave their house in May 2004, where he had lived most of his life. Security concerns based on financial considerations are not mitigated. Clearance is denied.

### **STATEMENT OF THE CASE**

On November 3, 2005, the Defense Office of Hearings and Appeals (DOHA) issued a Statement of Reasons (SOR) detailing the basis for its preliminary decision to deny Applicant a security clearance. The SOR alleges security concerns under Guideline F (Financial Considerations). It alleges two delinquent credit card accounts, both charged off as bad debts, in the amounts of \$29,023.32 (¶ 1.a) and \$13,245.00 (¶ 1.b).

Applicant answered the SOR in writing on November 16, 2005, admitted the allegations, offered explanations, and requested a hearing. The case was assigned to an administrative judge on January 12, 2006, and reassigned to me on February 6, 2006, based on workload considerations. On February 22, 2006, DOHA issued a notice of hearing setting the case for March 27, 2006. The case was heard as scheduled. DOHA received the transcript (Tr.) on April 4, 2006.

### **FINDINGS OF FACT**

Applicant's admissions in his answer to the SOR and at the hearing are incorporated into my findings of fact. I make the following findings:

Applicant is a 42-year-old metrologist technician for a defense contractor. He first received a clearance in April 1982. He has worked as a government employee or government contractor for more than 22 years.

Applicant is unmarried and lived with his parents most of his life. His father is legally blind, and his mother suffers from Alzheimer's disease. Because he was unmarried and not supporting a family, he elected to stay with his parents and care for them. <sup>(1)</sup>

In February 2004, Applicant was laid off from his position, and he remained unemployed until he began his current position in April 2004. While he was laid off, he received about \$660 per month in unemployment benefits, which amounted to about half of what he previously earned. <sup>(2)</sup> He stopped making payments on the two credit card accounts listed in the SOR when he was laid off, and he did not resume payments when he began his current position. On his security clearance application dated August 11, 2004, he disclosed the two delinquent accounts with balances of about \$30,000 and \$12,900. <sup>(3)</sup>

In a signed and sworn statement executed on December 30, 2004, Applicant told a security investigator he stopped making payments on the two accounts to save money for his parents' future medical expenses. In a financial statement executed on the same day, he indicated net monthly income of about \$2,500, expenses and debt payments of about \$1,490, and a remainder of about \$1010. <sup>(4)</sup> He reiterated his concern for his parents' future medical expenses at the hearing. <sup>(5)</sup>

Applicant testified he was not contributing anything toward his mother's medical expenses at present, except for about \$100 "for odds and ends that they may need every now and then." He paid \$225 for his mother's private room during a brief hospital stay. <sup>(6)</sup> Most of his parents' medical expenses have been covered by insurance and their savings. <sup>(7)</sup> The balances on the two delinquent accounts alleged in the SOR were not for medical expenses, but for items purchased by Applicant for himself. <sup>(8)</sup>

In May 2004, Applicant's mother asked him to leave the house and find somewhere else to live. <sup>(9)</sup> He attributes his mother's animosity to her illness. <sup>(10)</sup> He lived with an aunt for a month and a half, and then lived with his sister for six months. He gave his sister about \$150 a month. <sup>(11)</sup> Before he left his parents' house, he was paying about \$800 a month on his various credit card accounts other than the two alleged in the SOR. <sup>(12)</sup> He was not paying them off in full each month, but was making more than the minimum payments. <sup>(13)</sup>

When it became apparent to him he would not be able to continue living in his parents' home, he rented living quarters and purchased furniture, appliances, and household items. He withdrew his IRA savings of about \$8,000 to pay several smaller credit card debts, insurances, taxes, and living expenses.<sup>(14)</sup> He now pays monthly rent of \$715.

At the hearing, Applicant testified he did not know the total amount of his living expenses because he does not have a budget. He has current credit card debt of about \$8,500, in addition to the two delinquent accounts alleged in the SOR.<sup>(15)</sup> His current credit card debt is for some essentials such as household furnishings, as well as nonessentials such as entertainment.<sup>(16)</sup> He contacted a credit counseling and debt management agency, but did not follow through because he concluded it was a waste of money.<sup>(17)</sup> At the time of the hearing, he had savings of about \$100.<sup>(18)</sup>

## **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 this guideline 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 admissions in his answer to the SOR and the credit reports corroborating those admissions establish 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). Directive ¶ E2.A6.1.3.1. Applicant's debts became delinquent in February 2004 and remain delinquent. I conclude

MC 1 is not established.

A mitigating condition (MC 2) may exist if the indebtedness was "an isolated incident." Directive ¶ E2.A6.1.3.2. This is not the case of a single unpaid debt. Applicant has two delinquent credit card accounts, each involving numerous individual transactions resulting in large unpaid balances. I conclude MC 2 is not established.

Security concerns arising from financial problems can be mitigated by showing they are the result of conditions 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, it is appropriate to consider whether he acted in a reasonable manner when dealing with his financial difficulties. ISCR Case No. 02-02116 at 4 (App. Bd. Sep. 25, 2003). Applicant's loss of employment in February 2004 and his unexpected ejection from his parents' home in May 2004 were circumstances beyond his control. However, even though he lived virtually rent-free until January 2005, he did not make any payments after starting his new job in April 2004. He was heavily in debt even before his temporary unemployment. There is no evidence he attempted to negotiate payment arrangements on either of the two debts. He did not avail himself of any debt consolidation or debt management services. He appears to have done little to scale down his standard of living after it became necessary for him to provide a home for himself. 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. MC 4 is not established because Applicant abandoned his brief inquiry into financial counseling, and the problem is not 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). MC 6 is not established because Applicant presented no evidence of efforts to resolve, compromise, or pay the two delinquent debts alleged in the SOR.

Applicant's decision to care for his ailing parents was certainly admirable, but it also allowed him to live a comfortable lifestyle without the usual costs of maintaining a home. Although he expressed concern for his parents' future medical expenses, his meager savings belie his concern. He accumulated credit card debt of more than \$40,000, but only about \$8,000 in retirement savings during 22 years of gainful employment. His actions in response to a brief period of unemployment and loss of free room and board apparently did not include scaling back his lifestyle. By the time of the hearing, he had acquired more than \$8,000 in new credit card debt in addition to the debts alleged in the SOR. He had no budget and no firm plan for resolving his debts. After considering the disqualifying conditions and the absence of mitigating conditions and evaluating 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: Against 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. Applicant's Exhibits (AX) C, D, E; Tr. 54, 62-63.

2. AX A.

3. Government Exhibit (GX) 1 at 5.

4. GX 3.

5. Tr. 53.

6. Tr. 43-44.

7. Tr. 58.

8. Tr. 59.

9. Tr. 45.

10. Tr. 44.

11. Tr. 47.

12. Tr. 61.

13. Tr. 57-58.

14. Tr 35, 61.

15. GX 5; Tr. 49-50.

16. Tr. 50-51.

17. Tr. 52.

18. Tr. 42.