

KEYWORD: Financial: Personal Conduct

DIGEST: Applicant is 33 years old and works for a federal contractor. Since 1999, he has accumulated a significant amount of debt that he has not paid or resolved. When he filed his security clearance application in July 2004, he did not disclose the delinquent debts. He failed to mitigate the security concerns raised by his personal conduct and financial considerations. Clearance is denied.

CASE NO: 05-10270.h1

DATE: 06/21/2006

DATE: June 21, 2006

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In re:

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SSN: -----

Applicant for Security Clearance

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ISCR Case No. 05-10270

**DECISION OF ADMINISTRATIVE JUDGE**

**SHARI DAM**

**APPEARANCES**

FOR GOVERNMENT

Lynette Andersen, Esq., Department Counsel

## **FOR APPLICANT**

*Pro Se*

### **SYNOPSIS**

Applicant is 33 years old and works for a federal contractor. Since 1999, he has accumulated a significant amount of debt that he has not paid or resolved. When he filed his security clearance application in July 2004, he did not disclose the delinquent debts. He failed to mitigate the security concerns raised by his personal conduct and financial considerations. Clearance is denied.

### **STATEMENT OF THE CASE**

On October 28, 2005, the Defense Office of Hearings and Appeals (DOHA) issued a Statement of Reasons (SOR) to Applicant, under Executive Order 10865, *Safeguarding Classified Information Within Industry*, as amended, and Department of Defense Directive 5220.6, *Defense Industrial Security Clearance Review Program* (Directive), dated January 2, 1992, as amended. The SOR detailed reasons under Guidelines F (Financial Considerations) and E (Personal Conduct) why DOHA could not make a preliminary affirmative finding under the Directive that it is clearly consistent with the national interest to grant a security clearance to Applicant. DOHA recommended the case be referred to an administrative judge to determine whether a clearance should be granted.

On November 7, 2005, Applicant filed his Answer, and elected to have the case decided on the written record in lieu of a hearing. On April 18, 2006, Department Counsel prepared a File of Relevant Material (FORM) containing eight Items, and mailed Applicant a complete copy on April 20, 2006. Applicant had 30 days from receipt of the FORM to file objections and submit material in refutation, extenuation, or mitigation. Applicant received the FORM on April 26, 2006, and submitted additional information within the 30-day time period that I marked as Item 9. The case was assigned to me on June 9, 2006.

## FINDINGS OF FACT

Based on the entire record, including Applicant's admissions in his Answer to the SOR, I make the following findings of fact:

Applicant is 33 years old and works for a federal contractor. In July 2004, he completed a security clearance application (SCA). He previously served in the armed forces from 1991 to 1992, during which time he held a secret clearance. (Item 9 at 3)

When Applicant signed his SCA, he certified his answers were "true, complete, and correct" to the best of his knowledge and belief. In response to Question 38. Your Financial Delinquencies - 180 Days (*In the last 7 years, have you been over 180 days delinquent on any debts(s)?*), he answered "No."

During a meeting with a government investigator in December 2004 regarding his answers to the financial questions in the SCA, Applicant acknowledged various debts, including those relating to three leases that he had broken. He indicated that he intended to pay off some of his outstanding debts, and establish payment plans for others. He refused to pay one of the debts attributable to a broken lease, and one to a credit card. He denied responsibility for a debt related to a car purchase on the basis that he voluntarily surrendered the car shortly after he purchased it because the engine broke. (Item 5) He did not disclose the numerous debts because "Although I was aware that I had some delinquent accounts, I could not remember any specifics on the accounts, and therefore did not list them on my security questionnaire." (Item 5 at 4)

In October 2005, the Government filed a SOR. Paragraph 1 of the SOR alleged that Applicant's delinquent debts totaled \$22,322, of which Applicant admitted owing \$5,930 (¶¶ 1.a, 1.b, 1.c, 1.e, 1.g, 1.h, 1.i, 1.j, 1.l, and 1.m), and agreed to pay. He denied owing the remaining \$16,372, and stated that ¶ 1.f (\$13,672) relating to the car purchase had been removed from his credit report. There is no proof in the record to confirm removal of the car debt or payment of any other debt, as noted in the October 2005 Credit Report. (Item 8) According to an August 2004 Credit Report, Applicant's financial problems date back to 1999. (Item 7)

In his response to the FORM, Applicant again stated that he did not answer Question 38 correctly "because I did not have the proper information needed to explain my delinquencies." (Item 9 at 3) He denied any intention to mislead the Government and indicated he started a small weekend business to help pay the debts alleged in the SOR. (*Id.*) However, I find his explanation for not disclosing his debts incredible because he knew he had several outstanding debts in July 2004, and had a responsibility to answer the question affirmatively.

## POLICIES

Enclosure 2 of the Directive, *Adjudicative Guidelines for Determining Eligibility for Access to Classified Information*, sets forth criteria, which must be evaluated when determining security clearance eligibility. Within those adjudicative guidelines are factors to consider in denying or revoking an individual's request for access to classified information (Disqualifying Conditions), and factors to consider in granting an individual's request for access to classified information (Mitigating Conditions). By recognizing that individual circumstances of each case are different, the guidelines provide substantive standards to assist an administrative judge in weighing the evidence in order to reach a fair, impartial and common sense decision.

The adjudicative process requires thorough consideration and review of all available, reliable information about the applicant, past and present, favorable and unfavorable, to arrive at a balanced decision. Section E2.2. of Enclosure 2 of the Directive describes the essence of scrutinizing all appropriate variables in a case as the "whole person concept." In evaluating the disqualifying and mitigating conduct an administrative judge should consider: (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.

Granting an applicant's clearance for access to classified information is based on a high degree of trust and confidence in the individual. Accordingly, decisions under the Directive must

include consideration of not only the *actual* risk of disclosure of classified information, but also consideration of any *possible* risk an applicant may deliberately or inadvertently compromise classified information. Any doubt about whether an applicant should be allowed access to classified information must be resolved in favor of protecting classified information. Directive ¶ E2.2.2. The decision to deny an individual a security clearance is not necessarily a judgment about an applicant's loyalty. Exec. Or. 10865, § 7. Instead, it is a determination that an applicant has not met the strict guidelines established by the Department of Defense for issuing a clearance.

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. *Departments of the Navy v. Egan*, 484 U.S. 518, 531 (1988). The Directive presumes a rational connection between past proven conduct under any disqualifying conditions and an applicant's present security suitability. ISCR Case No. 95-0611 at 2 (App. Bd. May 2, 1996).

Once the Government establishes a disqualifying condition by substantial evidence, the corresponding burden of rebuttal shifts to the applicant to present evidence in refutation, extenuation, or mitigation sufficient to overcome the position of the government. ISCR Case No. 01-20700 at 3 (App. Bd. Dec. 19, 2002); 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 clearance." *Id.*

Based upon the allegations contained in the SOR and a consideration of the evidence as a whole, the following adjudicative guidelines are pertinent to an evaluation of the facts of this case:

Guideline F - Financial Considerations: A security concern may exist when 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 - Personal Conduct: A security concern may exist when 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.

The disqualifying and mitigating conditions, raising either security concerns or mitigating security concerns applicable to this case, are set forth and discussed in the Conclusions section below.

## CONCLUSIONS

I considered all the facts in evidence and legal standards, including the "whole person" concept. The Government established a potential case for disqualification under Guidelines F and E.

### Guideline F: Financial Considerations

Based on the evidence, Financial Considerations Disqualifying Condition (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 to this case. Since 1999, Applicant has a history of failing to meet his financial obligations as evidenced by his admissions and credit card reports. Despite statements in 2004 and 2005 that he would pay the debts that he owed, he failed to do so, indicating his unwillingness to satisfy them.

I have also considered all of the Financial Considerations Mitigating Conditions (FC MC), particularly, FC MC E2.A6.1.3.1 (*The behavior was not recent*), and FC MC E2.A6.1.3.6 (*The individual initiated a good-faith effort to repay overdue creditors or otherwise resolve debts*), and conclude neither applies. Applicant's financial indebtedness began in 1999, and continued to the present, such that the problems are on-going and cannot be considered to have occurred in the past as required under FC MC E2.A6.1.3.1. Furthermore, there is no documentation in the record to indicate that he has taken steps or made a good-faith effort to resolve any of the listed debts since December 2004, when

he stated he intended to pay them. Thus, his conduct cannot be construed to fall within the requirements of FC MC E2.A6.1.3.6. Hence, all allegations under Guideline F are decided against him.

#### Guideline E: Personal Conduct

Based on the evidence, Personal Conduct Disqualifying Condition (PC DC) E2.A5.1.2.2 (*The deliberate omission, concealment, or falsification of relevant and 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*) applies. When Applicant filed his SCA in July 2004, he knew he had debts that were delinquent. His decision not to disclose them because he did not know the specifics about them, is not an adequate excuse for omitting his financial history.

I considered all of the mitigating conditions under Guideline E, in particular, Personal Conduct Mitigating Condition (PC MC) E2.A5.1.3.2 (*The falsification was an isolated incident, was not recent, and the individual has subsequently provided correct information voluntarily*), and concluded it does not apply. The falsification occurred in July 2004, and was not corrected until Applicant was confronted with the information at a December 2004 interview with a government investigator, despite his knowledge that he owed delinquent debts related to leases and other expenses. Hence, the allegation under Guideline E is decided against him.

I further considered the totality of the evidence in this case, including Applicant's age, his previous military service and present employment. While he expressed a willingness to resolve his financial obligations in 2004 and again in 2005, he has not established a budget to repay his debts, or a plan to demonstrate a track record of consistent financial management sufficient to mitigate the security concerns at this time. Accordingly, Applicant did not mitigate the security concerns raised by financial considerations and personal conduct, and Guidelines F and E are decided against him.

### **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 as follows:

Paragraph 1: Guideline F (Financial Considerations) AGAINST APPLICANT

Subparagraphs 1.a through 1.m: Against Applicant

Paragraph 2: Guideline E (Personal Conduct) AGAINST APPLICANT

Subparagraph 2.a: Against Applicant

**DECISION**

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

Shari Dam

Administrative Judge