

KEYWORD: Financial Considerations

DIGEST: Applicant is a 47-year-old project manager working for a defense contractor. Between 1997 and 2001, he acquired a number of debts. After depleting much of his financial resources while on a 10-month assignment in a costly region and during a period of ill health, he filed a Chapter 7 bankruptcy petition which was ultimately dismissed. He admits the debts remain delinquent. Applicant has failed to mitigate security concerns. Clearance is denied.

CASE NO: 05-11101

DATE: 06/16/2006

DATE: June 16, 2006

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In re:

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SSN: -----

Applicant for Security Clearance

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ISCR Case No. 05-11101

**DECISION OF ADMINISTRATIVE JUDGE**

**ARTHUR E. MARSHALL, JR.**

**APPEARANCES**

**FOR GOVERNMENT**

Julie R. Edmunds, Esq., Department Counsel

## **FOR APPLICANT**

*Pro se*

### **SYNOPSIS**

Applicant is a 47-year-old project manager working for a defense contractor. Between 1997 and 2001, he acquired a number of debts. After depleting much of his financial resources while on a 10-month assignment in a costly region and during a period of ill health, he filed a Chapter 7 bankruptcy petition which was ultimately dismissed. He admits the debts remain delinquent. Applicant has failed to mitigate security concerns. Clearance is denied.

### **STATEMENT OF THE CASE**

On August 24, 2004, Applicant applied for a security clearance and submitted a Security Clearance Application (SF 86). On February 23, 2006, the Defense Office of Hearings and Appeals (DOHA) issued a Statement of Reasons (SOR) to Applicant, pursuant to Executive Order 10865, *Safeguarding Classified Information Within Industry*, February 20, 1960, as amended and modified, and Department of Defense Directive 5220.6, *Defense Industrial Personnel Security Clearance Review Program* (Directive), dated January 2, 1992, as amended and modified. The SOR detailed reasons, under Guideline F (Financial Considerations), 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, and recommended referral to an administrative judge to determine whether a clearance should be granted, continued, denied, or revoked.

In a notarized statement, dated March 14, 2006, Applicant responded to the SOR allegations, and elected to have his case decided on the written record in lieu of a hearing. Department Counsel prepared the government's written case on April 20, 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 in refutation, extenuation, or mitigation. Any such submissions were due by May 28, 2006. Applicant's response to the FORM, dated May 16, 2006, was received on May 19, 2006. The case was assigned to me on May 31, 2006.

### **FINDINGS OF FACT**

Applicant's admissions to the allegations in the SOR are incorporated herein. In addition, after a thorough and careful review of the evidence and exhibits, I make the following findings of fact:

Applicant is a 47-year-old project manager for a defense contractor. He has worked for the same employer for the past eight years. In 1994, he received a Bachelor of Science degree in Electrical Engineering. He is unmarried and has no children.

In November 2000, Applicant was assigned to a project in a distant city and state known for its exceptionally high cost of living.<sup>(1)</sup> Rather than risk unemployment, he left his hometown and moved to the new work site in December 2000. He remained in that area for 10 months, during which time he incurred medical expenses.<sup>(2)</sup> When the project was completed, he moved back to his hometown. These situations contributed to debt he started to accrue around 1997.<sup>(3)</sup> Much of the debt accumulated was on credit cards.

In March 2002, Applicant petitioned for Chapter 7 bankruptcy protection. His total debt, as filed in the petition, was \$45,000. In August 2002, the U.S. Bankruptcy Trustee moved to dismiss the petition. The Trustee stated that Applicant may have listed expenses not reasonably necessary for his maintenance, and suggested that if Applicant adjusted his stock purchases, pension contributions, pension plan loan repayments, and monthly expenditures, he could pay back many of his debts. Applicant could not afford to have his attorney object to the motion. The motion was granted and the matter dismissed on October 2, 2002.<sup>(4)</sup>

To date, Applicant continues living and expending funds as before, although no new debt has been acquired. His salary, as of April 2005, was approximately \$70,000; his stated assets were estimated in value to be about \$4,750.<sup>(5)</sup> His approximate net monthly income is \$4,220.

After spending \$915 per month on rent, \$700 on groceries, \$600 on utilities, \$175 on car-related expenses, \$160 on insurance policies, \$150 for medical expenses, \$118 on a student loan, and \$100 on one of his credit cards, Applicant has approximately \$1,200 remaining at the end of the month.<sup>(6)</sup> From this remainder, he deducts 401k contributions, 401k debt reduction plan payments, and Flex medical account contributions.<sup>(7)</sup> Of the debts listed in his bankruptcy petition, he has satisfied only one retail account balance, for approximately \$1,053.<sup>(8)</sup> He has admitted his inability to pay off more debt,<sup>(9)</sup> but notes he will work with creditors that make "reasonable offers (any offer that requires one payment for the full amount or 20-30% interest rates are not within [his] means) as the original debt amounts have been inflated with late fees, penalties and excessive interest."<sup>(10)</sup>

Applicant admits he owes the 11 debts cited in the SOR, amounting to approximately \$26,900. He points to the 10-month relocation to a notably costly region, as well as his medical bills and an aging car, as the causes of his resources

being depleted.<sup>(11)</sup> He also points to his effort to satisfy some older debt by borrowing against his 401k plan, and to the restructuring of his student loans.

## POLICIES

Enclosure 2 of the Directive sets forth adjudicative guidelines to be considered in evaluating a person's eligibility to hold a security clearance. Included in the guidelines are disqualifying conditions (DC) and mitigating conditions (MC) applicable to each specific guideline. Additionally, each security clearance decision must be a fair and impartial commonsense decision 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 and seriousness of the conduct and surrounding circumstances; (2) the frequency and recency of the conduct; (3) the age of the applicant; (4) the motivation of the applicant, and the extent to which the conduct was negligent, willful, voluntary, or undertaken with knowledge of the consequences; (5) the absence or presence of rehabilitation; and (6) the probability that the circumstances or conduct will continue or recur in the future. 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.<sup>(12)</sup> The government has the burden of proving controverted facts.<sup>(13)</sup> The burden of proof is something less than a preponderance of evidence.<sup>(14)</sup> Once the government has met its burden, the burden shifts to an applicant to present evidence of refutation, extenuation, or mitigation to overcome the case against

him.<sup>(15)</sup> Additionally, an applicant has the ultimate burden of persuasion to obtain a favorable clearance decision.<sup>(16)</sup>

No one has a right to a security clearance<sup>(17)</sup> and "the clearly consistent standard indicates that security clearance determinations should err, if they must, on the side of denials."<sup>(18)</sup> Any reasonable doubt about whether an applicant should be allowed access to sensitive information must be resolved in favor of protecting such sensitive information.<sup>(19)</sup> The decision to deny an individual a security clearance is not necessarily a determination as to the loyalty of an applicant.<sup>(20)</sup> 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 security clearance.

Based upon consideration of the evidence, I find the following adjudicative guideline most pertinent to the evaluation of the facts in this case:

**Guideline F - Financial Considerations.** *The Concern:* 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. [\(21\)](#)

Conditions pertaining to these adjudicative guidelines that could raise a security concern and may be disqualifying, as well as those which would mitigate security concerns, are set forth and discussed in the conclusions below.

## CONCLUSIONS

I have carefully considered all the facts in evidence and the legal standards. The government has provided substantial evidence that Applicant accrued approximately \$26,900 in debts between 1997 and 2001, and Applicant admits those debts remain unsatisfied. Consequently, under Guideline F, 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.

With the government's case established, the burden shifts to Applicant to present evidence of refutation, extenuation, or mitigation to overcome the case against him. Here, Applicant admits that the debts are multiple in number and remain unpaid. Therefore, neither FC MC E2.A6.1.3.1 (*the behavior was not recent*) nor FC MC E2.A6.1.3.2 (*it was an isolated incident*) applies.

Applicant argues that much of his financial debt is directly attributable to his 10-month relocation to a costly region and to medical care he received while there. Inasmuch as the region at issue is one of the costliest in the United States, this may be true. He has not, however, offered any corroborating evidence to show that failure to take the assignment necessarily meant he would be fired. [\(22\)](#) He similarly failed to provide any explanation as to the nature of the medical services he received. Based on the facts presently in the record, FC MC E2.A6.1.3.3 (*the 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)*) does not apply.

There is no evidence that Applicant has received financial counseling. This is unfortunate since the Bankruptcy Trustee's critique of his finances is valid. In the absence of such counseling, however, 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*) does not apply.

Since Applicant's bankruptcy petition was dismissed, he has paid off only one credit card. Apparently, none of the debts at issue have been paid, negotiated for repayment, or addressed. Although he states that he will "work with the creditors that have made reasonable offers," [\(23\)](#)

he has offered no evidentiary example of this willingness. Lacking such evidence, or any proffer demonstrating his efforts to otherwise address his debts, FC MC E2.A6.1.3.6 (*[t]he individual initiated a good-faith effort to repay overdue creditors or otherwise resolve debts*) does not apply.

I have considered both the record evidence and Applicant in light of the "whole person" concept. He is a mature, unmarried, professional with a career that gives him the opportunity to work in various areas on differing projects. Along the way, he accrued substantial debt. Applicant has had almost six years to resolve the debt that he claims started his financial problems, but he has offered no evidence that he has made anything more than a nominal effort to repay his debts. He clearly has shown an unwillingness to pay his creditors. This is reflected in a budget seemingly devoid of any attempts to economize, and which is devoted more toward saving for his future than to honoring past obligations. Moreover, his attitude toward only working with creditors that meet his terms demonstrates a disregard for his financial responsibilities and reflects poorly on his judgment and reliability. Therefore, based on his admissions and the record, Applicant has failed to mitigate important security concerns arising under Guideline F (Financial Consideration). Consequently, clearance is denied.

### **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. Against Applicant

Subparagraph 1.b. Against Applicant

Subparagraph 1.c. Against Applicant

Subparagraph 1.d. Against Applicant

Subparagraph 1.e. Against Applicant

Subparagraph 1.f. Against Applicant

Subparagraph 1.g. Against Applicant

Subparagraph 1.h. Against Applicant

Subparagraph 1.i. Against Applicant

Subparagraph 1.j. Against Applicant

Subparagraph 1.k. Against Applicant

Subparagraph 1.l. Against Applicant

### **DECISION**

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

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Arthur E. Marshall, Jr.

Administrative Judge

1. As an example of increased costs in his new town of residence, Applicant's rent went from \$700 a month to \$1,900 a month. Applicant's Response to the FORM (dated May 16, 2006).
2. Applicant does not describe the nature of the treatment, but SOR subparagraph 1.b. notes an emergency room visit in a hospital in the vicinity of his 10-month long residence.
3. *See* Item 3 (Applicant's Response to the SOR, dated March 14, 2006), Item 5 (Applicant's Statement, dated April 19, 2005), Item 6 (Credit Report, dated December 8, 2005), and Item 7 (Motion to Dismiss Chapter 7 Bankruptcy, dated August 28, 2002, and Dismissal Order, dated October 2, 2002).
4. Item 7, *supra*, note 5.
5. Item 5, *supra*, note 5.

6. *Id.*
7. Applicant's Response to the FORM, *supra*, note 3. Applicant does not, however, note the amounts of these contributions and deductions.
8. *Id.* at 3.
9. *Id.* at 4, 6, and 7.
10. Applicant's Response to the FORM, *supra*, note 3.
11. *Id.* at 2.
12. ISCR Case No. 96-0277 at 2 (App. Bd. Jul 11, 1997).
13. ISCR Case No. 97-0016 at 3 (App. Bd. Dec 31, 1997); Directive, Enclosure 3, ¶ E3.1.14.
14. *Department of the Navy v. Egan*, 484 U.S. 518, 531 (1988).
15. ISCR Case No. 94-1075 at 3-4 (App. Bd. Aug 10, 1995); Directive, Enclosure 3, ¶ E3.1.15.
16. ISCR Case No. 93-1390 at 7-8 (App. Bd. Jan 27, 1995); Directive, Enclosure 3, ¶ E3.1.15.
17. *Egan*, 484 U.S. 518, at 531.
18. *Id.*
19. *Id.*; Directive, Enclosure 2, ¶ E2.2.2.
20. Executive Order 10865 § 7.
21. Directive, Enclosure 2, ¶ E2.A6.1.1
22. Even in the event Applicant had provided evidence this was the case, such as a letter from a superior stating he would be let go for refusing to move and asserting there was no cost of living adjustment compensation offered, it remain unclear whether this incident would then meet the criteria necessary to find that FC MC E2.A6.1.3.3 applies.
23. Applicant's Response to the FORM, *supra*, note 3.