

KEYWORD: Financial

DIGEST: Between 1999 and 2001, Applicant amassed more than \$119,000 in delinquent credit card debt. A Chapter 7 bankruptcy petition filed in 2001 was dismissed without the debts being discharged and Applicant has yet to take any action to pay or otherwise resolve his obligations. Accordingly, he has failed to mitigate the security concerns about his finances. Clearance is denied.

CASENO: 06-24803.h1

DATE: 05/31/2007

DATE: May 31, 2007

In Re:	)	
	)	
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SSN: -----	)	ISCR Case No. 06-24803
	)	
Applicant for Security Clearance	)	
	)	

**DECISION OF ADMINISTRATIVE JUDGE  
MATTHEW E. MALONE**

**APPEARANCES**

**FOR GOVERNMENT**

Jeff A. Nagel, Esquire, Department Counsel

**FOR APPLICANT**

*Pro Se*

**SYNOPSIS**

Between 1999 and 2001, Applicant amassed more than \$119,000 in delinquent credit card debt. A Chapter 7 bankruptcy petition filed in 2001 was dismissed without the debts being

discharged and Applicant has yet to take any action to pay or otherwise resolve his obligations. Accordingly, he has failed to mitigate the security concerns about his finances. Clearance is denied.

## STATEMENT OF THE CASE

The Defense Office of Hearings and Appeals (DOHA) declined to grant Applicant's request for a security clearance. On February 8, 2007, DOHA issued to Applicant a Statement of Reasons (SOR),<sup>1</sup> which specified the basis for its decision – security concerns addressed in the Directive under Guideline F (financial considerations). On March 5, 2007, Applicant answered the SOR, admitted to all of the allegations therein, and requested a determination without a hearing.

On March 21, 2007, DOHA Department Counsel submitted a file of relevant materials (FORM)<sup>2</sup> in support of the government's preliminary decision, a copy of which Applicant received on March 28, 2007. Applicant was afforded 30 days in which to file a response to the FORM, but he submitted nothing before the deadline. The case was assigned to me on May 22, 2007.

## FINDINGS OF FACT

The government alleged through the SOR that Applicant declared bankruptcy in 2001 (SOR ¶ 1.a), and that he owes \$119,573 for 11 delinquent credit card accounts, most of which were referred for collection between August 2000 and August 2002 (SOR ¶¶ 1.b - 1.l). In response, Applicant admitted each of the SOR allegations and acknowledged he has not paid or otherwise resolved any of the listed debts. Applicant's admissions are incorporated herein as facts. After a thorough review of the pleadings and exhibits, I make the following additional findings of fact:

Applicant is a 42-year-old mechanical engineer employed since May 2004 by a defense contractor. His position requires him to have a security clearance.<sup>3</sup> To that end, he submitted an Electronic Questionnaire for Investigations Processing (e-QIP) form to initiate a background investigation to determine his suitability to have access to classified information. In that form, he disclosed the debts listed in the SOR. He also disclosed he had filed a Chapter 7 bankruptcy petition in 2001. (Item 4)

The ensuing background investigation confirmed through credit checks the debts listed in his e-QIP. (Items 6 and 7)<sup>4</sup> Investigators also obtained the records of his April 11, 2001, Chapter 7 bankruptcy petition showing he declared \$367,753 in liabilities against assets totaling \$337,240. On August 6, 2001, after a hearing on motion of the Trustee, the petition was dismissed. No reason was stated for the motion; however, there is no indication Applicant was discharged of any of his debts. (Item 8)

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<sup>1</sup> Required by Executive Order 10865, as amended, and by DoD Directive 5220.6 (Directive), as amended.

<sup>2</sup> The FORM included nine documents (Items 1 - 9) proffered in support of the government's case.

<sup>3</sup> Because this is an electronic version of the Questionnaire for National Security Positions (SF 86), I assume Applicant is requesting a security clearance, as opposed to a position of public trust, as stated in the FORM (see, "I. Introduction").

<sup>4</sup> A credit report dated March 21, 2007, the same day the FORM was issued, was not obtained by government investigators during Applicant's background investigation. (Item 5)

Applicant accrued his credit card debts between 1999 and 2001 by using cash advances from those accounts to invest in the stock market. To further complicate things, he invested on margin, meaning that he used funds borrowed from a broker to make his investments. His loans were called in when his stocks fell, but he did not have the money to pay them. He continued to get cash advances from his credit cards to pay his margin calls, but he could not keep up with the required payments. After his bankruptcy petition failed in August 2001, his attorney advised him to “do nothing” to resolve his delinquencies. With his credit card debts still outstanding, he has recently begun rebuilding his credit through two new credit card accounts.

### **POLICIES AND BURDEN OF PROOF**

A security clearance decision is intended to resolve whether it is clearly consistent with the national interest<sup>5</sup> for an applicant to either receive or continue to have access to classified information. The government bears the initial burden of producing admissible information on which it based the preliminary decision to deny or revoke a security clearance for an applicant. Additionally, the government must be able to prove controverted facts alleged in the SOR. If the government meets its burden, it establishes that it is not clearly consistent with the national interest for an applicant to have access to classified information. The applicant must then present sufficient evidence to refute, extenuate or mitigate the government’s case. Because no one has a right to a security clearance, applicants bear a heavy burden of persuasion to comply with the government’s compelling interest in ensuring each applicant possesses the requisite judgement, reliability and trustworthiness of one who will protect the national interests as his or her own.<sup>6</sup> The “clearly consistent with the national interest” standard compels resolution of any reasonable doubt about an applicant’s suitability for access in favor of the government.<sup>7</sup>

The Directive sets forth adjudicative guidelines<sup>8</sup> for consideration when evaluating an applicant’s suitability for access to classified information. Security clearance decisions must reflect consideration of disqualifying and mitigating conditions listed under each adjudicative guideline as may be applicable to the facts and circumstances of each case. Each decision must also reflect a fair and impartial common sense consideration of the factors listed in the Revised Adjudicative Guidelines, ¶ 2(a).<sup>9</sup> The presence or absence of a disqualifying or mitigating condition is not

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<sup>5</sup> See *Department of the Navy v. Egan*, 484 U.S. 518 (1988).

<sup>6</sup> See *Egan*, 484 U.S. at 528, 531.

<sup>7</sup> See *Egan*; see also Revised Adjudicative Guidelines, ¶ 2(b).

<sup>8</sup> The Adjudicative Guidelines in Directive, Enclosure 2 have been superseded by the Revised Adjudicative Guidelines, approved by the President on December 29, 2005, and implemented by the Department of Defense on September 1, 2006. Pending formal revision of the Directive, the Revised Adjudicative Guidelines supersede the guidelines listed in Enclosure 2 to the Directive. They apply to all adjudications or trustworthiness determinations in which an SOR was issued on or after September 1, 2006.

<sup>9</sup> “The adjudicative process is an examination of a sufficient period of a person’s life to make an affirmative determination that the person is an acceptable security risk. Eligibility for access to classified information is predicated upon the individual meeting these personnel security guidelines. The adjudication process is the careful weighing of a number of variables known as the whole-person concept. Available, reliable information about the person, past and

determinative of a conclusion for or against an applicant. However, specific applicable guidelines should be followed whenever a case can be measured against them as they represent policy guidance governing the grant or denial of access to classified information. Having considered the pleadings and the record evidence as a whole, I conclude the relevant adjudicative guideline to be applied here is Guideline F (financial considerations).

## CONCLUSIONS

**Financial Considerations.** Based on the facts presented in this case, the security concern about Applicant's finances, as expressed in the Revised Adjudicative Guidelines, is that "[f]ailure or inability to live within one's means, satisfy debts, and meet financial obligations may indicate poor self-control, lack of judgment, or unwillingness to abide by rules and regulations, all of which can raise questions about an individual's reliability, trustworthiness, and ability to protect classified information. An individual who is financially overextended is at risk of having to engage in illegal acts to generate funds."<sup>10</sup> Here, through a poorly conceived, high-risk approach to stock market investment, Applicant accrued more than \$119,000 in delinquent credit card debt between 1999 and 2001. The only corrective action he has taken was to file for bankruptcy protection, but that failed and he has done nothing further to resolve his delinquencies. Under this guideline and on these facts, disqualifying conditions 19(a), 19(b), and 19(c)<sup>11</sup> apply.

In response to the government's concerns, Applicant has not presented any information that would support application of any of the Guideline F mitigating conditions. His explanation that he was simply following his attorney's advice when he decided not to repay his debts is insufficient. As a matter of credit reporting, such advice may be sound; however, the government's interest is not in Applicant's credit rating. Rather, the government looks to Applicant's willingness to fulfill his responsibilities and manage his personal affairs so that he will not be at risk of undue influence or coercion that may result in compromise of classified information. Applicant's debt arose from poor judgment and his willingness to ignore his past due debts is directly at odds with the government's concerns in this regard. I conclude this guideline against the Applicant.

**Whole Person.** Having assessed the facts presented in this record and applied the appropriate adjudicative factors, pro and con, under Guideline F, I turn now to a review of the record before me

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present, favorable and unfavorable, should be considered in reaching a determination. In evaluating the relevance of an individual's conduct, the adjudicator should consider the following factors: (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 individual's age and maturity at the time of the conduct; (5) the extent to which participation is voluntary; (6) the presence or absence of rehabilitation and other permanent 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."

<sup>10</sup> Revised Adjudicative Guidelines, Section 18.

<sup>11</sup> (a) inability or unwillingness to satisfy debts; (b) indebtedness caused by frivolous or irresponsible spending and the absence of any evidence of willingness or intent to pay the debt or establish a realistic plan to pay the debt; (c) a history of not meeting financial obligations;

in the context of the whole person factors listed in Revised Adjudicative Guidelines, ¶ 2(a).<sup>12</sup> Applicant is 42 years old and, by virtue of his education and professional experience, a mature, intelligent adult. However, for the past six years, he has been unwilling to address the significant financial obligations brought about by his deliberately risky behavior. The financial aspects of his background continue to put him at risk of pressure, coercion, exploitation, or duress. It is unlikely these conditions will change in the future.

A fair and commonsense assessment<sup>13</sup> of the entire record before me shows the government's doubts about Applicant's suitability to have access to classified information are based on reliable information about his finances. In response, Applicant has failed to carry his burden of producing information sufficient to resolve those doubts. Accordingly, available information shows it is not clearly consistent with the national interest to grant Applicant's request for access to classified information.

### **FORMAL FINDINGS**

Formal findings regarding each SOR allegation are as follows:

Paragraph 1, Guideline F (Financial Considerations):     **AGAINST THE APPLICANT**

Subparagraphs 1.a - 1.1   **Against the 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 a security clearance for the Applicant. Clearance is denied.

Matthew E. Malone  
Administrative Judge

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<sup>12</sup> See footnote 9, supra.

<sup>13</sup> Required by the Revised Adjudicative Guidelines, ¶ 2(c).