

KEYWORD: Financial

DIGEST: Applicant is a 38-year-old employee of a defense contractor. He accrued delinquent debts, some resulting in judgments and a garnishment to enforce the judgment in 2004. He has paid the majority of his debts. He has a repayment plan for the remaining two accounts. He has mitigated the financial considerations security concerns. Clearance is granted.

CASENO: 07-01488.h1

DATE: 09/10/2007

DATE: September 10, 2007

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In re:	)	
	)	
-----	)	ISCR Case No. 07-01488
SSN: -----	)	
	)	
Applicant for Security Clearance	)	
_____	)	

**DECISION OF ADMINISTRATIVE JUDGE  
NOREEN A. LYNCH**

**APPEARANCES**

**FOR GOVERNMENT**

Daniel F. Crowley, Esq., Department Counsel

**FOR APPLICANT**

Gene Bowman, Esq.,

**SYNOPSIS**

Applicant is a 38-year-old employee of a defense contractor. He accrued delinquent debts, some resulting in judgments and a garnishment to enforce the judgment in 2004. He has paid the majority of his debts. He has a repayment plan for the remaining two accounts. He has mitigated the financial considerations security concerns. Clearance is granted.

## **STATEMENT OF THE CASE**

On April 25, 2001, Applicant applied for a security clearance and submitted a Security Clearance Application (SF 86). On April 9, 2007, the Defense Office of Hearings and Appeals (DOHA) issued a Statement of Reasons (SOR) to him, 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 why, under Guideline F (Financial Considerations) of the revised Adjudicative Guidelines issued on December 29, 2005, and implemented by the Department of Defense, effective September 1, 2006, DOHA could not make the preliminary affirmative finding under the Directive that it is clearly consistent with the national interest to continue a security clearance for Applicant. The revised guidelines were provided to Applicant when the SOR was issued. Applicant answered the SOR on April 27, 2007, and elected to have a hearing before an administrative judge. The case was assigned to me on June 18, 2007. I scheduled a hearing for July 9, 2007. Counsel for Applicant requested a postponement. Department Counsel had no objection. By agreement, the case was rescheduled for August 21, 2007.

The hearing was convened as scheduled on August 21, 2007, to consider whether it is clearly consistent with the national interest to grant or continue a security clearance for Applicant. Government exhibits (GE 1-8) were admitted. Applicant's exhibits (AE A-L) were admitted into the record without objection. Testimony was taken from Applicant. At Applicant's request, I held the record open for post hearing submissions until September 4, 2007. Applicant timely forwarded a packet of material, marked as AE M. Department Counsel had no objection. The hearing transcript (Tr.) was received on September 4, 2007.

## **FINDINGS OF FACT**

Applicant's admissions to the allegations in the SOR ¶¶1.b, 1.c, and 1.k are incorporated herein. He denied all other allegations under subparagraph 1 because he paid the accounts.<sup>1</sup> In addition, after a thorough and careful review of the evidence and exhibits, I make the following findings of fact:

Applicant is 38 years old and works for a defense contractor.<sup>2</sup> He earned a Bachelor of Science degree in 1995. He is married with two young children. He completed a security clearance application on April 25, 2001.<sup>3</sup>

Applicant and his wife decided to build an addition to their family home in 2001 to provide more living space for their first child. Their first son was born in 2002. Applicant did the work for the home improvement on his own and incurred some debt for the materials. He and his wife also purchased furniture for the baby and other related items. The debt was reasonable for the family income of \$150,000. At that time Applicant's credit was good, and he had no history of late payments. He and his wife had been married since 1994, and always paid their bills on time.<sup>4</sup>

Applicant was traveling for his work extensively from 2002 until 2005. He was out of the country for six weeks at a time. During that time, a second son was born in 2004. Applicant was not involved with the family finances during this time. He was working six days a week and some of his deployments were almost two months. His wife, who is highly educated, was handling the financial matters. She was not working at the time, but she did not attend to the bills in a timely manner.<sup>5</sup>

In 2004, Applicant's pay was garnished because a judgment was placed against him for non-payment of an account. The account was charged off in the amount of \$7,641.<sup>6</sup> When Applicant returned home and learned from his employer that his wages were garnished, he discussed the matter with his wife. He understood from his wife that the account just slipped through the cracks and everything else was fine. He did not realize there were other instances of financial mishandling until 2005.<sup>7</sup> At that time, Applicant received a letter from his attorney advising him that his home was to be foreclosed. He immediately contacted the mortgage company. He learned that despite what his wife told him, there were missed payments on the mortgage. He withdrew an amount from his 401(k)

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<sup>1</sup>Applicant's response to the SOR, dated April 27, 2007.

<sup>2</sup>*Id.* at 2.

<sup>3</sup>GE 1 (Security Clearance Application, dated April 25, 2001).

<sup>4</sup>Tr. 25.

<sup>5</sup>Tr. 26-27.

<sup>6</sup>GE 2 (Process of Garnishment, dated September 10, 2004); GE 3 (Writ of Garnishment, dated October 20, 2004).

<sup>7</sup>GE 4 ( Letter from Attorney, dated July 11, 2005 concerning foreclosure sale for mortgage).

to make payments and get the home out of foreclosure status. He also obtained a loan to take care of the fees and back payments.<sup>8</sup>

Applicant realized there was a serious problem that his wife was having in not attending to the financial matters and not paying bills in 2005. They sat down and he told his wife how the finances were to be handled in the future. He instructed his wife that the bills needed to be paid. However, his wife denied that there was any problem.

In January 2006, Applicant returned from his many travels. He again spoke to his wife and decided to review all his financial records and call creditors to obtain a clear picture. He did spreadsheets and listed his accounts and balances. He called creditors who led him to collection agencies. He located the delinquent debt. As soon as Applicant learned the debts were delinquent, he either paid them or entered into an arrangement to pay them monthly. He produced documentation

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<sup>8</sup>Tr. 28-30.

to support the status of the debts. He has two accounts that are not paid in full.<sup>9</sup> At the hearing, he acknowledged that he had not focused on his own finances due to the extensive traveling.<sup>10</sup> He will not have to travel for his work since the mission is completed.<sup>11</sup>

At no time did he consider bankruptcy. His intent was to clear his credit and pay all delinquent debt. He and his wife now have a family budget. The delinquent debt was contained in the period from 2002 until 2005. He contacted three credit bureau reporters, and has identified numerous errors.<sup>12</sup> He contacted a counselor regarding the delinquent debts.

The current status of Applicant's alleged debts listed in the SOR is as follows:

SOR ¶	Type of Account/Amount	Status	Evidence
1.a	judgment \$10,919 <sup>13</sup>	PAID (2005)	AE B.
1.b	credit card \$ 2,811	payment plan \$300	AE C and E
1.c	credit card \$17,309	PAID (2007)	AE D
1.d	credit card \$ 368	PAID (2007)	Tr. 37
1.e	judgment \$3,852	PAID (2006)	AE E and F
1.f	collection \$4,169	PAID (2006)	AE G
1.g	same as above	PAID (2006)	same as above
1.h	consumer debt \$3,580	settled (2006)	AE. H
1.i	cell phone \$1,858	PAID (2006)	AE I.
1.j	same as 1.a \$7,641	PAID (2005)	AE B
1.k	foreclosure proceedings	payment (2005)	Tr. 27; 28; AE K

Applicant is highly recommended by his employers. He is described as having an impeccable character and integrity. His work ethic and his commitment and dedication to his mission are beyond question. He is a highly valued employee.<sup>14</sup> He is highly rated as a professional and respected

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<sup>9</sup>Tr. 29

<sup>10</sup>TR. 61; 82.

<sup>11</sup>Tr. 64.

<sup>12</sup>Tr. 57; AE L (Credit Summary 2007).

<sup>13</sup>This amount increased from \$7,641 due to interest and fees. This is also the same as allegation 1.j.

<sup>14</sup>AE M (Letter from former employer)

member of his work team.<sup>15</sup> His direct supervisor praises him for his work ethic, reliability and dependability.<sup>16</sup> Applicant's performance reviews attest to his versatility and excellence in the job. He earned a merit pay increase, and is consistently rated excellent.<sup>17</sup>

Applicant earns approximately \$4,990 net a month.<sup>18</sup> This includes his wife's income. After monthly expenses, including \$2,000 in debt repayment, Applicant has approximately \$1,045 net remainder.<sup>19</sup> He lives a modest life style. They own both vehicles debt free. He does not use a credit card for personal use. However, he does use a credit card for travel.<sup>20</sup> He and his wife are in solid financial shape. They have a budget and financial plan. His savings have increased. His disposable income is allocated to savings and his repayment plan.

## **POLICIES**

The revised Adjudicative Guidelines (AG) set forth set forth both disqualifying conditions and mitigating conditions 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, extent and seriousness of the conduct and surrounding circumstances; (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. 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.

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<sup>15</sup>AE M (Letter from current supervisor, dated August 23, 2007).

<sup>16</sup>*Id.*

<sup>17</sup>AE M (Performance Evaluations 2005-2007).

<sup>18</sup>AE A (Personal Financial Statement, dated August 2007).

<sup>19</sup>*Id.*

<sup>20</sup>*Id.*

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>21</sup> The government has the burden of proving controverted facts.<sup>22</sup> The burden of proof is something less than a preponderance of evidence.<sup>23</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>24</sup> Additionally, an applicant has the ultimate burden of persuasion to obtain a favorable clearance decision.<sup>25</sup>

No one has a right to a security clearance<sup>26</sup> and “the clearly consistent standard indicates that security clearance determinations should err, if they must, on the side of denials.”<sup>27</sup> Any reasonable doubt about whether an applicant should be allowed access to classified information must be resolved in favor of protecting such classified information.<sup>28</sup> The decision to deny an individual a security clearance is not necessarily a determination as to the loyalty of an applicant.<sup>29</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.

## CONCLUSIONS

I have carefully considered all the facts in evidence and the legal standards. Based upon consideration of the evidence, I find Guideline F of the revised adjudicative guidelines (AG) most pertinent to the evaluation of the facts in this case. That guideline reads in pertinent part:

**Guideline F - Financial Considerations.** *The Concern: Failure 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>30</sup>

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<sup>21</sup> ISCR Case No. 96-0277 at 2 (App. Bd. Jul 11, 1997).

<sup>22</sup> ISCR Case No. 97-0016 at 3 (App. Bd. Dec 31, 1997); Directive, Enclosure 3, ¶ E3.1.14.

<sup>23</sup> *Department of the Navy v. Egan*, 484 U.S. 518, 531 (1988).

<sup>24</sup> ISCR Case No. 94-1075 at 3-4 (App. Bd. Aug 10, 1995); Directive, Enclosure 3, ¶ E3.1.15.

<sup>25</sup> ISCR Case No. 93-1390 at 7-8 (App. Bd. Jan 27, 1995); Directive, Enclosure 3, ¶ E3.1.15.

<sup>26</sup> *Egan*, 484 U.S. 518, at 531.

<sup>27</sup> *Id.*

<sup>28</sup> *Id.*; Directive, Enclosure 2, ¶ E2.2.2.

<sup>29</sup> Executive Order 10865 § 7.

<sup>30</sup> AG ¶ 18.



In this matter, the government provided substantial evidence that Applicant accrued delinquent debts from 2003 until 2005. He had a garnishment in 2004 as a result of a judgment. He did not dispute the delinquent debts. Consequently, Financial Considerations Disqualifying Condition (FC DC), AG ¶ 19(a), (*inability or unwillingness to satisfy debts*) and FC DC, ¶ 19(c), (*a history of not meeting financial obligations*) apply.

Applicant is an educated individual married to an educated woman. He was willing to pay his debts, but due to his extensive work travel, he had no knowledge that his bills were not being paid. He acknowledged that he was not focusing on his finances due to his work out of the country.

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. Therefore, FC MC, AG ¶ 20(b), (*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) and the individual acted responsibly under the circumstances*) partially applies. Applicant is not absolved from his financial responsibility even though his wife did not carry out her delegated responsibility. His extensive travels may have been beyond his control but that is not sufficient for full mitigation. However, he did act very responsibly when he learned that there were major financial problems.

The majority of bills are resolved. They were taken care of in 2004, 2005 and 2006. This period of time from 2003 until 2005 was unique for Applicant and his wife. Applicant will not be traveling for his work at this point. He and his wife have a budget and a good income. Applicant never had any problems before or after this period while he was away from home. Therefore, Financial Considerations Mitigating Condition (FC MC), ¶ AG 20(a), (*the behavior happened so long ago, was so infrequent, or occurred under such circumstances that it is unlikely to recur and does not cast doubt on the individual's current reliability, trustworthiness, or good judgment*) partially applies.

Applicant has received financial counseling. He never ignored his creditors. He did not know that the mortgage was not paid and going into foreclosure until he returned from his travels and received a letter from his attorney. He had not received notices before the 2004 judgment for the charged off account until he received a letter sent to his employer. At the time Applicant learned his financial affairs were not in order, he took action. He has a plan and a budget. He paid off his debts in accelerated payments. The remaining two accounts will be paid by 2008. There are clear indications that the problem is being resolved or is under control. He worked diligently to contact creditors and credit bureau reporters. He accelerated payments and has two accounts that are in repayment plans. FC MC, AG ¶ 20(c) (*the person has received or is receiving counseling for the problem and/ or there are clear indications that the problem is being resolved or is under control*) applies.<sup>31</sup>

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<sup>31</sup>"Even if Applicant's financial difficulties initially arose, in whole or in part, due to circumstances outside his or her control, the Judge could still consider whether Applicant has since acted in a reasonable manner when dealing with those financial difficulties." ISCR Case No. 05-11366 at 4 n.9 (App. Bd. Jan. 12, 2007) (citing ISCR Case No. 99-0462 at 4 (App. Bd. May 25, 2000); ISCR Case No. 99-0012 at 4 (App. Bd. Dec. 1, 1999); ISCR Case No. 03-13096 at 4 (App. Bd. Nov. 29, 2005)).

Until 2004, Applicant had no financial difficulties. He paid his delinquent accounts, except for two accounts left that are in repayment status. The other alleged debts are all satisfied. Some have been satisfied since 2005. Therefore, FC MC, ¶ 20(d) (*the individual initiated a good-faith effort to repay overdue creditors or otherwise resolve debts*) applies.<sup>32</sup>

The issue is whether Applicant acted conscientiously and with sufficient diligence to resolve his debts, and whether he has presented sufficient evidence of extenuation, mitigation or changed circumstances to warrant a favorable security clearance decision. His two remaining unpaid debts do not constitute a security risk. He is not in a vulnerable position. He has a professional position with a good income and has no other delinquent debt.

## **Whole Person**

I have considered both the record and Applicant in light of the “whole person” concept. He is an earnest, mature individual who was working very hard and traveling extensively out of the country. His focus on his mission, and reliance on his wife to keep all accounts current resulted in the financial delinquencies. His reasonable expectation was that his wife would attend to the financial matters. She did not. He accelerated payments and paid off the majority of the debts. By next year all of the debt will be paid. He took actions as soon as he learned about his situation. Prior to 2003, Applicant had a fine credit history. After 2005, he has had no new delinquent debt.

Applicant is highly regarded in his profession. He is regarded as a man of integrity and character. He took reasonable action to resolve the financial problems before the SOR was issued. Most of the debts have been paid, and the remaining debts do not raise security concerns. Under Applicant's current circumstances the likelihood of a recurrence of his previous financial problems is remote.

Applicant has regained control of his finances. In sum, the likelihood of new debt problems is low. Applicant and his wife have been married for many years and until the incident in 2004 and 2005, Applicant's bills were timely paid and his credit history was fine. He used good judgment in dealing with the financial issues that arose. After weighing the disqualifying and mitigating conditions, and all the facts and circumstances, in the context of the whole person, I conclude he has mitigated the security concerns pertaining to financial considerations.

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<sup>32</sup>The Appeal Board has previously explained what constitutes a “good faith” effort to repay overdue creditors or otherwise resolve debts:

In order to qualify for application of [the “good faith” mitigating condition], an applicant must present evidence showing either a good-faith effort to repay overdue creditors or some other good-faith action aimed at resolving the Applicant's debts. The Directive does not define the term ‘good-faith.’ However, the Board has indicated that 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.’ Accordingly, an applicant must do more than merely show that he or she relied on a legally available option (such as bankruptcy) in order to claim the benefit of [the “good faith” mitigating condition].

(internal citation and footnote omitted) ISCR Case No. 02-30304 at 3 (App. Bd. Apr. 20, 2004) (quoting ISCR Case No. 99-9020 at 5-6 (App. Bd. June 4, 2001)).

Substantial evidence supports Applicant's eligibility and suitability for a security clearance. I take this position based on the law, my "careful consideration of the whole person factors"<sup>33</sup> and supporting evidence, as well as my application of the pertinent factors under the Adjudicative Process and my interpretation of my responsibilities. For the reasons stated, I conclude Applicant is eligible for his security clearance. Clearance is granted.

### **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):      FOR APPLICANT

Subparagraphs 1.a.- 1.k:      For Applicant

### **DECISION**

In light of all of the circumstances in this case, it is clearly consistent with the national interest to grant a security clearance for Applicant. Clearance is granted.

Noreen A. Lynch.  
Administrative Judge

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<sup>33</sup>See ISCR Case No. 04-06242 at 2 (App. Bd. June 28, 2006).