

KEYWORD: Financial

DIGEST: Applicant is a 41-year-old technician who has worked for a federal contractor since 2003. He and his wife have been separated since January 2001. They have over \$57,000 in delinquent debt. Applicant failed to monitor his financial situation while separated, but was aware of at least two large delinquent debts that remain unpaid. Applicant is waiting until he is divorced to resolve his financial problems. He has failed to mitigate the security concerns raised under Guideline F, financial considerations. Clearance is denied.

CASENO: 06-25780.h1

DATE: 08/16/2007

DATE: August 16, 2007

In re:)	
)	
-----)	
SSN: -----)	ISCR Case No. 06-25780
)	
Applicant for Security Clearance)	

**DECISION OF ADMINISTRATIVE JUDGE
CAROL G. RICCIARDELLO**

APPEARANCES

FOR GOVERNMENT
Jeff A. Nagel, Esq., Department Counsel

FOR APPLICANT
Pro Se

SYNOPSIS

_____ Applicant is a 41-year-old technician who has worked for a federal contractor since 2003. He and his wife have been separated since January 2001. They have over \$57,000 in delinquent debt. Applicant failed to monitor his financial situation while separated, but was aware of at least two large delinquent debts that remain unpaid. Applicant is waiting until he is divorced to resolve his financial problems. He has failed to mitigate the security concerns raised under Guideline F, financial considerations. Clearance is denied.

STATEMENT OF CASE

The Defense Office of Hearings and Appeals (DOHA) declined to grant or continue a security clearance for Applicant. As required by Department of Defense Directive 5220.6 ¶ E3.1.2 (Jan. 2, 1992), as amended, DOHA issued a Statement of Reasons (SOR) on April 26, 2007, detailing the basis for its decision—security concerns raised under Guideline F (financial considerations) of the revised Adjudicative Guidelines (AG) issued on December 29, 2005 and implemented by the Department of Defense effective September 1, 2006.

In a sworn statement dated May 21, 2007, Applicant responded to the SOR and admitted all of the allegations. Applicant elected to have his case decided on the written record. Department Counsel submitted the government’s file of relevant material (FORM) on June 11, 2007. The FORM was mailed to Applicant on June 13, 2007, and received on June 27, 2007. Applicant was afforded an opportunity to file objections and submit material in refutation, extenuation, or mitigation. Applicant did not provide additional information. The case was assigned to me on August 13, 2007.

FINDINGS OF FACT

_____ Applicant is 41 years old and has worked for a federal contractor since August 2003 as a technician. He married in 1987 and is the father of twin girls age 18 and a son age 15. Applicant and his wife have been separated since January 2001.

Applicant admitted he owes all the delinquent debts listed in SOR ¶¶ 1.a-1.j, which total more than \$57,000.¹ The debt in SOR ¶ 1.a is an unpaid judgment for \$5,255. The debts in SOR ¶¶ 1.b and 1.f are charged off. The debts in SOR ¶¶ 1.c, 1.d, 1.e, 1.h and 1.j are in collection. The debts in SOR ¶¶ 1.g and 1.i are past due. Applicant provided very little explanation as to why he has not paid his debts. He does allude to the fact he is going through a divorce and expected his wife to be compelled to divulge the full extent of their joint debts.² He also anticipated their divorce decree will specifically detail each person’s obligation regarding their joint debts. He admitted that the past several years have been very stressful due to his pending divorce and financial problems.³ He regrets

¹GE 3.

²*Id.*

³*Id.*

his decision to allow his wife to take responsibility for paying the bills after they separated.⁴ He stated if he had any idea that she would allow so many bills to go to collection or foreclosure he would have insisted that he handle the finances.⁵ He further stated he intends to take care of his finances and open an account with a credit counseling service to work out a repayment plan, however he is waiting until the debts have been divided.⁶

Applicant acknowledged on his security clearance application, that he completed in March 2005, that he had a car loan account that was delinquent and stated: “This is an old account and I do not even know the current status.”⁷ Regarding another car loan debt that he listed he stated: “To my knowledge, this car has been repossessed.”⁸ Applicant was aware he had at least two delinquent debts. No further comments were made about his intentions regarding these debts.

Applicant offered no other detailed information as to the specifics of his financial situation. He did not provide any information to show he is attempting to resolve any of the debts listed in the SOR, other than waiting for his divorce and what he intends to do in the future. No information was provided as to Applicant’s income status or if he has received any financial counseling.

POLICIES

“[N]o one has a ‘right’ to a security clearance.”⁹ 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.”¹⁰ 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.”¹¹ An applicant “has the ultimate burden of demonstrating that it is clearly consistent with the national interest to grant or continue his security clearance.”¹² “The clearly consistent standard indicates that security clearance determinations should

⁴*Id.*

⁵*Id.*

⁶*Id.*

⁷GE 4 at 9.

⁸*Id.*

⁹*Department of the Navy v. Egan*, 484 U.S. 518, 528 (1988).

¹⁰*Id.* at 527.

¹¹Exec. Or. 10865, *Safeguarding Classified Information within Industry* § 2 (Feb. 20, 1960).

¹²ISCR Case No. 01-20700 at 3 (App. Bd. Dec. 19, 2002).

err, if they must, on the side of denials.”¹³ Any reasonable doubt about whether an applicant should be allowed access to sensitive information must be resolved in favor of protecting such sensitive information.¹⁴ The decision to deny an individual a security clearance is not necessarily a determination as to the loyalty of an applicant.¹⁵ 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 clearance.¹⁶

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.¹⁷ “Substantial evidence” is “more than a scintilla but less than a preponderance.”¹⁸ The Guidelines presume a nexus or rational connection between proven conduct under any of the criteria listed therein and an applicant’s security suitability.¹⁹

Once the government establishes a disqualifying condition by substantial evidence, the burden shifts to the applicant to rebut, explain, extenuate, or mitigate the facts.²⁰ An applicant “has the ultimate burden of demonstrating that it is clearly consistent with the national interest to grant or continue his security clearance.”²¹ “[S]ecurity clearance determinations should err, if they must, on the side of denial.”²²

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

CONCLUSIONS

I have carefully considered all the facts in evidence and the legal standards discussed above. I reach the following conclusions regarding the allegations in the SOR.

¹³*Id.*

¹⁴*Id.*; Directive, Enclosure 2, ¶ E2.2.2.

¹⁵Executive Order 10865 § 7.

¹⁶*See* Exec. Or. 10865 § 7.

¹⁷*See Egan*, 484 U.S. at 531.

¹⁸*See v. Washington Metro. Area Transit Auth.*, 36 F.3rd 375, 380 (4th Cir. 1994).

¹⁹*See* ISCR Case No. 95-0611 at 2 (App. Bd. May 2, 1996)

²⁰*See* Directive ¶ E3.1.15.

²¹ISCR Case No. 01-207000 at 3 (App. Bd. Dec. 19, 2002)

²²*Egan*, 484 U.S. at 531; *see* Guidelines ¶ 2(b).

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

Financial Considerations are a security concern because 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. Compulsive gambling is a concern as it may lead to financial crimes including espionage. Affluence that cannot be explained by known sources of income is also a security concern. It may indicate proceeds from financially profitable criminal acts.

Based on all the evidence, Financial Considerations Disqualifying Condition (FC DC) 19(a) (*inability or unwillingness to satisfy debts*) and FC DC 19(c) (*a history of not meeting financial obligations*), apply in this case. Applicant has many debts that are delinquent. One is a judgement and the rest are in collection status, charged off, or overdue.

I have considered all the Financial Considerations Mitigating Conditions (FC MC), and especially considered FC MC 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*), FC MC 20(b) (*the conditions that resulted in the financial problem 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*), FC MC 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*), and FC MC 20(d) (*the individual initiated a good-faith effort to repay overdue creditors or otherwise resolve debts*). Applicant's debts are recent and unpaid and he failed to provide any information or tangible evidence that his actions are not likely to recur. The only information provided by Applicant is a statement that he is obtaining a divorce and when that is completed he will take action. I find FC MC 20(a) does not apply.

Applicant has been separated from his wife since January 2001, a period of more than six years. He presumably failed to minimally monitor his financial situation. He alluded to being unaware that his wife let their debts go to collection and foreclosure. However, he listed two car debts in his security clearance application in 2005. On one he stated it was an old account and the other he admitted it was repossessed. He failed to explain why he had not taken any action on the debts that he was fully aware of. He provided no other information other than his regret that he let his wife handle the finances while they were separated. Under these circumstances I find Applicant did not act responsibly and FC MC 20(b) does not apply.

Applicant did not provide any information that he has initiated a good-faith effort to repay his creditors, nor that he has received any financial counseling. The lack of information on any good-faith effort to repay or take action on the debts casts doubt on his reliability and good judgment. I find FC MC 20(c) and (d) do not apply.

Whole Person Analysis

In all adjudications, the protection of our national security is the paramount concern. The objective of the security-clearance process is the fair-minded, commonsense assessment of a person's life to make an affirmative determination that the person is eligible for a security clearance. Indeed, the adjudicative process is a careful weighing of a number of variables in considering the "whole person" concept. It recognizes that we should view a person by the totality of his or her acts, omissions, motivations and other variables. Each case must be adjudged on its own merits, taking into consideration all relevant circumstances, and applying sound judgment, mature thinking, and careful analysis.

In addition to considering the specific disqualifying and mitigating conditions under the guideline, I have also considered the adjudicative process factors listed in ¶ 2a (1)-(9) of the Guidelines to be considered in evaluating a person's eligibility to hold a security clearance. Specifically these are: (1) the nature, extent and seriousness of the conduct; (2) the circumstances and 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 was 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 Guidelines should be followed whenever a case can be measured against this policy guidance.

I considered all the evidence provided and also considered the "whole person" concept in evaluating Applicant's risk and vulnerability in protecting our national interests. After weighing the disqualifying and mitigating conditions under Guideline F and evaluating all the evidence in the context of the whole person, I conclude Applicant has not mitigated the security concerns based on financial considerations. Therefore, I am persuaded by the totality of the evidence in this case, that it is not clearly consistent with the national interest to grant Applicant a security clearance. Accordingly, Guideline F is decided against Applicant.

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	Financial Considerations (Guideline F)	AGAINST APPLICANT
	Subparagraph 1.a.-1.j	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 or continue a security clearance for Applicant. Clearance is denied.

Carol. G. Ricciardello
Administrative Judge