

KEYWORD: Financial

DIGEST: Applicant is 63 years old and an engineer technician for a federal contractor. He retired from the civil service after 34 years and receives a federal pension. Applicant has a \$37,000 delinquent debt for a recreational vehicle he returned to the creditor in 2001. He let the debt remain dormant until his security clearance became an issue. He has not made a good faith effort to resolve the debt. Applicant failed to mitigate the security concerns raised under Guideline F, financial considerations. Clearance is denied.

CASENO: 06-23746.h1

DATE: 07/30/2007

DATE: July 30, 2007

_____)	
In re:)	
)	
-----)	ISCR Case No. 06-23746
SSN: -----)	
)	
Applicant for Security Clearance)	
_____)	

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

APPEARANCES

FOR GOVERNMENT

Candace Le'i, Esq., Department Counsel

FOR APPLICANT

Margaret F. Stalnaker
Personal Representative

SYNOPSIS

Applicant is 63 years old and an engineer technician for a federal contractor. He retired from the civil service after 34 years and receives a federal pension. Applicant has a \$37,000 delinquent debt for a recreational vehicle he returned to the creditor in 2001. He let the debt remain dormant until his security clearance became an issue. He has not made a good faith effort to resolve the debt. Applicant failed to mitigate the security concerns raised under Guideline F, financial considerations. Clearance is denied.

STATEMENT OF THE 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 March 14, 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. Applicant answered the SOR in writing on April 10, 2007, and elected to have a hearing before an administrative judge. The case was assigned to me on June 1, 2007. I convened a hearing on June 26, 2007, to consider whether it is clearly consistent with the national interest to grant or continue a security clearance for Applicant. The Government offered six exhibits that were marked as GE 1-6 and admitted without objections. Applicant testified on his behalf and offered two exhibits that were marked as AE A-B and were admitted without objections. DOHA received the hearing transcript (Tr.) on July 18, 2007.

FINDINGS OF FACT

Applicant is 63 years old and retired from the Department of the Navy as a civilian employee after 34 years service and receives a pension. He has been married for 42 years and has three grown sons. After he retired he and his wife moved to another state. After a period of time he decided to return to work and is employed by a federal contractor as an engineering technician. He had a top secret clearance while he was employed with the Navy. It expired upon his retirement.

Applicant has one large delinquent debt that was charged off in the amount of \$37,798, in 2001. He incurred this debt in approximately 1995, when he purchased a recreational vehicle.¹ He experienced some financial problems due to medical issues of two of his family members.² He contacted the creditor and told them he had a buyer for the vehicle for \$26,000. He offered to continue making payments on the remainder of the balance, but the creditor refused Applicant's offer.³ Applicant subsequently returned the vehicle to the creditor in December 2001. He provided

¹Tr. 21.

²Tr. 22.

³Tr. 23.

the creditor with his address and a contact telephone number.⁴ He stated he was never contacted by the creditor, however, he was aware that he owed them money.⁵

In February 2006, when Applicant became aware the debt was affecting his ability to obtain a security clearance he contacted the creditor and attempted to settle the debt.⁶ He was advised by the creditor he owed the total \$37,000. Applicant presented a letter dated March 6, 2002.⁷ Applicant stated he never received this letter when it was sent and only recently received a faxed copy of it. It was a collection letter, detailing the vehicle was sold in 2002, and the net sale proceeds were listed as \$19,700, and a deficiency balance that included interest and late charges was listed as \$20,578.83.⁸ Applicant insists he wants further accounting data from the creditor. It was unclear as to what exactly further accounting Applicant expected from the creditor, as it was detailed in the March 6, 2002 letter. Applicant claimed he requested a “more detailed accounting” of the amount owed but never received one. On April 16, 2007, he received another letter referencing his conversation with the creditor and an offer to settle the debt for \$18,000. Applicant did not respond to the creditor and wants to settle for half the amount offered.⁹ When asked what his intentions are concerning the debt, he stated “Ignore it until I get something that is what I feel is in the ballpark. Otherwise I’m going to ignore it.”¹⁰ He went on to say “I would like to resolve the debt, but I would like to do it in somewhat along my terms instead of their terms.”¹¹ Additionally he stated: “[I]f we can come to some sort of terms between me and [creditor] I will resolve it. What I’m looking for is a 50/50 agreement on that \$18,000.”¹² He admits that when he returned the vehicle in 2001, the balance owed was approximately \$34,000, and with interest and penalties the balance increased.¹³ The vehicle was sold and there is a deficiency balance of approximately \$20,000. The creditor is willing to settle for \$18,000, but Applicant wants more documentation from the creditor.¹⁴ It is unclear exactly what he wants the creditor to produce and what exactly he disputes about the debt. He stated he had not

⁴*Id.*

⁵Tr. 24.

⁶Tr. 24-25.

⁷AE A.

⁸AE A.

⁹Tr.34.

¹⁰Tr. 27.

¹¹Tr. 28

¹²Tr. 30.

¹³*Id.*

¹⁴Tr. 35-36.

received any letter or been contacted by the creditor from December 2001 to April 2007. He also admitted that he had not made any attempt to contact the creditor during this time period.¹⁵

Applicant has a full time job and receives a pension. His wife does not work. He estimates that after paying his monthly expenses he has approximately \$1,500 remaining.¹⁶ He has approximately \$25,000 in savings and owns a house that has a mortgage. He has not contacted the credit agency to advise them that he disputes the debt. He stated he is “somewhat” willing to try to settle the debt, but he is still far apart on the amount he is willing to accept as a settlement.¹⁷ He has not made a counter offer to the creditor.

POLICIES

“[N]o one has a ‘right’ to a security clearance.”¹⁸ 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.”¹⁹ 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.”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 “The clearly consistent standard indicates that security clearance determinations should err, if they must, on the side of denials.”²² Any reasonable doubt about whether an applicant should be allowed access to sensitive information must be resolved in favor of protecting such sensitive information.²³ The decision to deny an individual a security clearance is not necessarily a determination as to the loyalty of an applicant.²⁴ It is merely an indication that the applicant has not

¹⁵Tr. 42.

¹⁶Tr. 47.

¹⁷Tr. 55.

¹⁸*Department of the Navy v. Egan*, 484 U.S. 518, 528 (1988).

¹⁹*Id.* at 527.

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

²¹ISCR Case No. 01-20700 at 3 (App. Bd. Dec. 19, 2002).

²²*Id.*

²³*Id.*; Directive, Enclosure 2, ¶ E2.2.2.

²⁴Executive Order 10865 § 7.

met the strict guidelines the President and the Secretary of Defense have established for issuing a clearance.²⁵

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.²⁶ “Substantial evidence” is “more than a scintilla but less than a preponderance.”²⁷ The Guidelines presume a nexus or rational connection between proven conduct under any of the criteria listed therein and an applicant’s security suitability.²⁸

Once the government establishes a disqualifying condition by substantial evidence, the burden shifts to the applicant to rebut, explain, extenuate, or mitigate the facts.²⁹ An applicant “has the ultimate burden of demonstrating that it is clearly consistent with the national interest to grant or continue his security clearance.”³⁰ “[S]ecurity clearance determinations should err, if they must, on the side of denial.”³¹

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

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

Financial Considerations is a 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.

²⁵See Exec. Or. 10865 § 7.

²⁶See *Egan*, 484 U.S. at 531.

²⁷See *v. Washington Metro. Area Transit Auth.*, 36 F.3rd 375, 380 (4th Cir. 1994).

²⁸See ISCR Case No. 95-0611 at 2 (App. Bd. May 2, 1996)

²⁹See Directive ¶ E3.1.15.

³⁰ISCR Case No. 01-207000 at 3 (App. Bd. Dec. 19, 2002)

³¹*Egan*, 484 U.S. at 531; see Guidelines ¶ 2(b).

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 was aware he owed a deficiency debt on a recreational vehicle and ignored it since 2001 because the creditor did not contact him. He has not accepted a settlement offer and has not made a counter offer. Applicant will only resolve the debt on his own terms. Both disqualifying conditions apply.

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*), FC MC 20(d) (*the individual initiated a good-faith effort to repay overdue creditors or otherwise resolve debts*).

Applicant has one large debt that remains unpaid. He was aware for the past six years that he owed at least something on the debt, but had not addressed it until his security clearance became an issue. Applicant's testimony reflected an uncertainty as to what he really intended to do about the debt. It appears he will only pay it if it is on his terms and for the amount he wants to pay. He stated he disputes the amount he owes, but fails to appreciate the debt has been delinquent for more than six years and it is likely he incurred additional interest expenses from the original debt. I do find this situation is unlikely to recur in the future. However, I also find that Applicant's failure to address it and minimally set up a repayment plan years ago does cast doubt on his judgment. I find FC MC 20(a) does not apply. Applicant failed to provide amplifying information beyond he had medical debts to pay to show the situation was beyond his control. Even if he was confronted with financial difficulties due to medical debts, he failed to ensure that he worked out some plan to repay the vehicle debt rather than letting it sit dormant for years. He is working full time and receives a pension and has the means to resolve the debt. I find FC MC 20(b) does not apply. No evidence was provided that Applicant received financial counseling or that there are clear indications the problem is being resolved. Applicant has not made a good faith effort to resolve the debt. He waited six years to address the debt and then will only do so on his own terms. He failed to minimally make a counter offer to the settlement offer. I find neither FC MC 20(c) nor (d) 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.

I considered the whole person in evaluating the case. I considered Applicant's credibility, demeanor and responsiveness when testifying. I considered the age of the debt and the fact he only has one large debt. Applicant has the means to resolve the debt, but has not. He has made minimal effort to attempt to resolve it and only did so after his security clearance became an issue. I conclude Applicant continues to exercise poor judgment with regard to this debt and has failed to mitigate the security concerns raised under Guideline F, financial considerations.

The following are my conclusions as to each allegation in the SOR:

Subparagraph 1.a: Against Applicant

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

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