

KEYWORD: Financial

DIGEST: Applicant is 42 years old and works for a federal contractor. Since 2004, he accumulated a significant amount of debt that he has not paid or resolved. He did not mitigate the security concerns raised by financial considerations. Clearance is denied.

CASENO: 06-11520.h1

DATE: 08/30/2007

DATE: August 30, 2007

In re:	)	
	)	
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SSN: -----	)	ISCR Case No. 06-11520
	)	
Applicant for Security Clearance	)	

**DECISION OF ADMINISTRATIVE JUDGE  
SHARI DAM**

**APPEARANCES**

**FOR GOVERNMENT**

Julie R. Edmunds, Esq., Department Counsel

**FOR APPLICANT**

*Pro Se*

**SYNOPSIS**

Applicant is 42 years old and works for a federal contractor. Since 2004, he accumulated a significant amount of debt that he has not paid or resolved. He did not mitigate the security concerns

raised by financial considerations. Clearance is denied.

### **STATEMENT OF THE CASE**

On March 10, 2005, Applicant submitted a security clearance application (SF-86). 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) to Applicant on March 30, 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.

On April 24, 2007, Applicant filed his Answer and elected to have the case decided on the written record in lieu of a hearing. On June 4, 2007, Department Counsel prepared a File of Relevant Material (FORM), containing six Items, and mailed Applicant a complete copy on June 4, 2007. Applicant had 30 days from receipt of the FORM to file objections and submit material in refutation, extenuation, or mitigation. Applicant received the FORM on June 12, 2007, and chose not to file any additional information. The case was assigned to me on August 15, 2007.

### **FINDINGS OF FACT**

Based on the entire record, including Applicant's admissions in his Answer to the SOR, I make the following findings of fact:

Applicant is a 42-year-old technician who works for a federal contractor. He began his current position in August 2004. Prior to this job, he was unemployed for approximately one year. In March 2005, he completed a SF-86. (Item 4). He subsequently received an interim security clearance. (Item 3).

In March 2007, the Government filed a SOR, alleging that Applicant has four delinquent debts which total \$15,0858. In his Answer, Applicant admitted owing the debts and stated that he was unable to resolve them previously because of a period of unemployment. Although he is now employed and is current with his obligations, his salary is insufficient to repay the debts. (Item 3). In his October 2006 statement, he acknowledged that because he was unable to pay the delinquent debts, they were charged off by the creditors. He never negotiated a repayment plan for them. (Item 6). A budget that he submitted with the statement indicated that he was making monthly payments on three different obligations, and had very little money left after paying all of his expenses. (*Id.* at 4). A March 2007 credit report confirms that his financial problems began in 2004. (Item 5).

## POLICIES

In an evaluation of an applicant's security suitability, an administrative judge must consider the "Adjudicative Guidelines for Determining Eligibility for Access to Classified Information" (Guidelines). In addition to brief introductory explanations for each guideline, the Guidelines are divided into Disqualifying Conditions (DC) and Mitigating Conditions (MC), which are used to determine an applicant's eligibility for access to classified information.

These Guidelines are not inflexible ironclad rules of law. Instead, recognizing the complexities of human behavior, an administrative judge should apply these Guidelines in conjunction with the factors listed in the adjudicative process. Guideline ¶ 2. An administrative judge's overarching adjudicative goal is a fair, impartial and common sense decision. Because the entire process is a conscientious scrutiny of a number of variables known as the "whole person concept," an administrative judge should consider all available, reliable information about the person, past and present, favorable and unfavorable, in making a decision. Guideline ¶ 2(c).

Specifically, an administrative judge should consider the nine adjudicative process factors listed at Guideline ¶ 2(a): (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 voluntariness of participation; (6) the presence or absence of rehabilitation and other 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.

Granting an applicant's clearance for access to classified information is based on a high degree of trust and confidence in the individual. Accordingly, decisions under the Directive must include consideration of not only the *actual* risk of disclosure of classified information, but also consideration of any *possible* risk an applicant may deliberately or inadvertently compromise classified information. Any doubt about whether an applicant should be allowed access to classified information must be resolved in favor of protecting classified information. Directive ¶ E2.2.2. The decision to deny an individual a security clearance is not necessarily a judgment about an applicant's loyalty. Exec. Or. 10865, § 7. Instead, it is a determination that an applicant has not met the strict guidelines established by the Department of Defense for issuing a clearance.

Initially, the Government must establish, by substantial evidence, conditions in the personal or professional history of the applicant that disqualify, or may disqualify, the applicant from being eligible for access to classified information. *Department of the Navy v. Egan*, 484 U.S. 518, 531 (1988). The Directive presumes a rational connection between past proven conduct under any disqualifying conditions and an applicant's present security suitability. ISCR Case No. 95-0611 at 2 (App. Bd. May 2, 1996).

Once the Government establishes a disqualifying condition by substantial evidence, the burden shifts to the applicant to present evidence in refutation, extenuation, or mitigation sufficient to overcome the position of the Government. Directive ¶ E3.1.15 provides, "The applicant is responsible for presenting witnesses and other evidence to rebut, explain, extenuate, or mitigate facts admitted by applicant or proven by Department Counsel, and [applicant] has the ultimate burden of persuasion as to obtaining a favorable clearance decision."

## CONCLUSIONS

Upon consideration of all facts in evidence and after application of the appropriate adjudicative factors and pertinent legal standards, I conclude the following with respect to the allegations set forth in the SOR:

#### Guideline F: Financial Considerations

Guideline 18 articulates the Government's concern regarding financial problems. "Failure to live within one's means 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 a risk of having to engage in illegal acts to generate funds."

Based on the evidence, including Applicant's admissions and credit report, the Government raised a security concern under two Financial Considerations Disqualifying Conditions: Guideline ¶ 19(a) (*inability or unwillingness to satisfy debts*) and ¶ 19(c) (*a history of not meeting financial obligations*). Since 2004, Applicant has a history of being unable to meet his financial obligations.

After the Government produced substantial evidence of those two disqualifications, the burden shifted to Applicant to produce evidence of mitigation. Four Financial Considerations Mitigating Conditions are potentially applicable under this Guideline. Because Applicant's financial troubles began in approximately 2004 and continue to the present, Guideline ¶ 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*) is not applicable. Applicant's financial problems arose as a result of a period of unemployment, which triggers the application of Guideline ¶ 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*). However, Applicant did not produce any evidence indicating that he took steps to manage his debts during his unemployment, which is necessary for the full application of this mitigating condition.

Guideline ¶ 20 (c) (*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*) is not applicable. Applicant has not participated in counseling for his financial difficulties or provided information that the problems are resolved or under control. In addition, Applicant admitted that he has not taken steps to resolve the debts, which is necessary for application of Guideline ¶ 20(d) (*the individual initiated a good-faith effort to repay overdue creditors or otherwise resolve debts*).

#### "Whole Person" Analysis

In addition to the enumerated disqualifying and mitigating conditions, I considered the general adjudicative guidelines related to the whole person concept under the Directive. Applicant is 42 years old, sufficiently mature to be fully responsible for his obligations. His decision not to address any of the delinquent debts (including a \$41 telephone debt) when he learned in October

