

KEYWORD: Financial

DIGEST: Security concerns are raised pertaining to Applicant's history of financial irresponsibility as evidenced by his four bankruptcy filings between 1992 to 2003. His more recent filings occurred in 2002 and 2003 under Chapter 13. Both cases were dismissed due to his failure to meet his payments under the plan. In 2004, his home was foreclosed and his automobile was repossessed. He has not met his burden to mitigate the concerns raised under financial considerations. Clearance is denied.

CASENO: 06-14330.h1

DATE: 03/30/2007

DATE: March 30, 2007

In re:

SSN: -----

Applicant for Security Clearance

ISCR Case No. 06-14330

**DECISION OF ADMINISTRATIVE JUDGE
ERIN C. HOGAN**

APPEARANCES

FOR GOVERNMENT

Eric H. Borgstrom, Esquire, Department Counsel

FOR APPLICANT

Pro Se

SYNOPSIS

_____ Security concerns are raised pertaining to Applicant's history of financial irresponsibility as evidenced by his four bankruptcy filings between 1992 to 2003. His more recent filings occurred in 2002 and 2003 under Chapter 13. Both cases were dismissed due to his failure to meet his payments under the plan. In 2004, his home was foreclosed and his automobile was repossessed. He has not met his burden to mitigate the concerns raised under financial considerations. Clearance is denied.

STATEMENT OF CASE

On November 9, 2006, the Defense Office of Hearings and Appeals (DOHA) issued to Applicant a Statement of Reasons (SOR) stating they were unable to find that it is clearly consistent with the national interest to grant or continue a security clearance.¹ The SOR, which is in essence the administrative complaint, alleges security concerns 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 December 19, 2006, Applicant responded to the SOR allegations. Applicant elected to have his case decided on the written record. Department Counsel submitted the government's file of relevant material (FORM) on January 9, 2007. The FORM was mailed to Applicant on January 18, 2007, and received on January 24, 2007. Applicant was afforded an opportunity to file objections and submit material in refutation, extenuation, or mitigation. Applicant did not submit a response. The case was assigned to me on March 22, 2007.

PROCEDURAL ISSUES

It is not evident in the record that Applicant received a copy of the revised Adjudicative Guidelines, effective September 1, 2006. On March 23, 2007, an order was issued directing Department Counsel to confirm Applicant received a copy of the revised adjudicative guidelines. On March 29, 2007, Department Counsel confirmed Applicant had received a copy of the revised Adjudicative Guidelines. Department Counsel personally spoke with Applicant. Applicant had no further submissions for the record.

Department Counsel submitted Items 5 and 6, Report of Investigation, Personal Subject Interviews, as part of the documentary evidence to support allegations in the SOR. These documents are unsworn, unsigned summaries of the interviews OPM conducted with Applicant on November 17, 2005, and February 24, 2006. Enclosure 3 of the Directive, Additional Procedural Guidance, ¶ E3.1.20, states in part: "Official records or evidence compiled or created in the regular course of business, **other than DoD personnel background reports of investigation (ROI)**, may be received and considered by the Administrative Judge without authenticating witnesses ..." (*emphasis added*). It goes on to say "An ROI may be received **with** an authenticating witness provided it is otherwise

¹This action was taken under Executive Order 10865, dated February 20, 1960, as amended, and DoD Directive 5220.6, dated January 2, 1992, as amended and modified (Directive); and the Revised Adjudicative Guidelines, issued on December 29, 2005, implemented by the Department of Defense on September 1, 2006.

admissible under the Federal Rules of Evidence” (*emphasis added*). The Government had the opportunity to request a hearing in order to call an authenticating witness. I did not consider Items 5 and 6 when making my decision based on ¶ E3.1.20 of the Directive.

FINDINGS OF FACT

____ Applicant is 59 years-old and an employee of a defense contractor. He submitted a security clearance application on September 20, 2004, as part of a periodic re-investigation.² He admits to all of the allegations in the SOR.³ He served on active duty in the United States Navy from January 19, 1965, to May 1, 1991. He retired at the rank of Petty Officer First Class. He is married.⁴

Applicant first encountered financial problems when he retired from the Navy in 1991. His wages were reduced by 50 percent and he had difficulty finding a well paying job. He was unable to pay his debts.⁵ On February 21, 1992, he and his wife filed for bankruptcy under Chapter 7. Their debts were discharged on June 10, 1992.⁶

On June 15, 1998, Applicant filed for Chapter 13 bankruptcy. His bankruptcy case was discharged on November 15, 2001.⁷

On July 30, 2002, Applicant filed for Chapter 13 bankruptcy. His total assets were \$85,900. His total liabilities were \$100,361. On March 18, 2003, the Chapter 13 was dismissed due to Applicant's failure to make payments towards his Chapter 13 payment plan.⁸

On June 30, 2003, Applicant filed for Chapter 13 bankruptcy. His total assets were \$105,239. His total liabilities were \$85,320. On April 14, 2004, the Chapter 13 was dismissed due to Applicant's failure to make payments towards his Chapter 13 payment plan.⁹

² Item 3.

³ Item 2.

⁴ Item 3; questions 8 and 11; Item 4, question 9.

⁵ Item 7 at 1.

⁶ Items 10 and 11.

⁷ Items 12 and 13.

⁸ Item 15, 16, and 17.

⁹ Items 18, 19, and 20.

On July 21, 2004, Applicant's home was foreclosed. His automobile was also repossessed in 2004.¹⁰ An August 6, 2006, credit report also lists a \$111 utility account that was placed for collection in July 2004.¹¹

Schedule I of Applicant's most recent bankruptcy listed his total combined monthly income as \$2,770. His wife does not work. His total monthly expenses were \$2,040, leaving \$730 left over after expenses.¹² In his answer to the SOR, Applicant did not provide an update of his current financial situation. He did admit that his wife spends approximately \$140 to \$240 per week gambling.¹³ This is approximately \$560 to \$960 per month.

POLICIES

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.”¹⁴ In Executive Order 10865, *Safeguarding Classified Information Within Industry* (Feb. 20, 1960), the President set out guidelines and procedures for safeguarding classified information within the executive branch.

To be eligible for a security clearance, an applicant must meet the security guidelines contained in the Directive. The revised Adjudicative Guidelines, approved by the President on December 29, 2005 and implemented by the Department of Defense, effective September 1, 2006, sets forth personnel security guidelines, as well as the disqualifying conditions and mitigating conditions under each guideline. The adjudicative guideline at issue in this case is:

Guideline F - Financial Considerations: 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.¹⁵

¹⁰ Item 2.

¹¹ Item 8.

¹² Item 19.

¹³ Item 2.

¹⁴ *Department of the Navy v. Egan*, 484 U.S. 518, 527 (1988).

¹⁵ Revised AG, dated August 2006, ¶ 18.

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

“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.”¹⁶ An administrative judge must apply the “whole person concept,” and consider and carefully weigh the available, reliable information about the person. An administrative judge 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.¹⁷

Initially, the Government must present evidence to establish controverted facts in the SOR that disqualify or may disqualify the applicant from being eligible for access to classified information.¹⁸ Thereafter, the applicant is responsible for presenting evidence to rebut, explain, extenuate, or mitigate the facts admitted by the applicant or proven by Department Counsel. The applicant has the ultimate burden of persuasion as to obtaining a favorable clearance decision.¹⁹ “Any doubt concerning personnel being considered for access to classified information will be resolved in favor of the national security.”²⁰

A person granted access to classified information enters into a special relationship with the government. The government must be able to repose a high degree of trust and confidence in those individuals to whom it grants access to classified information. The decision to deny an individual a security clearance is not a determination as to the loyalty of the applicant. It is merely an indication that the applicant has not met the strict guidelines the President has established for issuing a clearance.

CONCLUSIONS

I have carefully considered all the facts in evidence and the legal standards. The government has established a prima facie case for disqualification under Guideline F.

Guideline F - Financial Considerations

¹⁶ Revised AG, dated August 2006, ¶ 2(a).

¹⁷ *Id.*

¹⁸ Directive ¶ E3.1.14.

¹⁹ Directive ¶ E3.1.15.

²⁰ Revised AG, dated August 2006, ¶ 2(b).

Applicant's poor financial history raises a security concern. He has encountered financial problems since retiring from the military. He received a bankruptcy discharge under Chapter 7 in June 1992. In November 2001, he received a bankruptcy discharge on November 15, 2001. Eight months later he filed another Chapter 13 bankruptcy. His case was dismissed in March 2003 for his failure to make payments. He refiled a Chapter 13 bankruptcy in June 2003. His case was dismissed on April 14, 2004, for failure to make payments on his payment plan. 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 to Applicant's case.

FC DC 19(f) (*financial problems that are linked to drug abuse, alcoholism, gambling problems, or other issues of security concern*) applies with regards to Applicant's spouse's gambling habits. Applicant admits that his spouse spends approximately \$140 to \$240 a week on gambling. After his monthly expenses, Applicant and his wife have \$730 left over each month. If \$560 to \$960 is spent towards gambling each month, very little is left to apply towards bills or if the greater amount is spent, Applicant and his wife spend more than they earn each month. His wife's gambling habits have an adverse impact on their household finances. For this reason, FC DC 19(f) applies.

The financial considerations concern can be mitigated. I find that none of the mitigating conditions apply. Since 1992, Applicant has filed for bankruptcy on four occasions. His debts were discharged in relation to his 1992 bankruptcy and his 1998 bankruptcy. His most recent bankruptcy filings under Chapter 13, were dismissed due to his failure to make payments towards his Chapter 13 plan. Applicant provided no evidence of financial counseling. He provided no explanation or plan as to how he intends to make sure his debts are in control in the future. His wife gambles a significant amount of money relative to their household income. This raises a concern that Applicant will be unable to pay his debts in the future should an unforeseen circumstance arise. Applicant's financial history indicates a propensity to file for bankruptcy protection rather than attempting to resolve his financial issues.

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. I find Applicant has failed to mitigate the security concerns raised by the financial considerations concern. 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.

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:	AGAINST APPLICANT
	Subparagraph 1.a.	Against Applicant
	Subparagraph 1.b.	Against Applicant
	Subparagraph 1.c.	Against Applicant
	Subparagraph 1.d.	Against Applicant
	Subparagraph 1.e.	Against Applicant

_____	Subparagraph 1.f.	Against Applicant
	Subparagraph 1.g.	Against Applicant
	Subparagraph 1.h.	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.

Erin C. Hogan
Administrative Judge