

KEYWORD: Financial

DIGEST: Applicant developed financial problems resulting from circumstances beyond his control. The statement of reasons alleged three debts. He successfully disputed two debts and paid the third. Applicant's evidence shows he is in control of his finances and is not overextended. Considering the record as a whole, including his 23 years of military service to his country, he has mitigated the financial considerations concern. Clearance is granted.

CASENO: 06-14904.h1

DATE: 09/26/2007

DATE: September 26, 2007

In re:)
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 -----) ISCR Case No. 06-14904
 SSN: -----)
)
 Applicant for Security Clearance)
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)

**DECISION OF ADMINISTRATIVE JUDGE
JUAN J. RIVERA**

APPEARANCES

FOR GOVERNMENT

Eric H. Borgstrom, Esq., Department Counsel

FOR APPLICANT

Pro Se

SYNOPSIS

Applicant developed financial problems resulting from circumstances beyond his control. The statement of reasons alleged three debts. He successfully disputed two debts and paid the third. Applicant's evidence shows he is in control of his finances and is not overextended. Considering the record as a whole, including his 23 years of military service to his country, he has mitigated the financial considerations concern. Clearance is granted.

STATEMENT OF THE CASE

On March 30, 2007, the Defense Office of Hearings and Appeals (DOHA) issued Applicant a Statement of Reasons (SOR) alleging facts and security concerns under Guideline F (Financial Considerations).¹ The SOR informed Applicant that, based on available information, DOHA adjudicators could not make a preliminary, affirmative finding that it is clearly consistent with the national interest to grant him access to classified information.²

On May 22, 2007, Applicant answered the SOR, denied all the allegations, and requested a decision without a hearing.³ On July 9, 2007, Department Counsel prepared a File of Relevant Material (FORM), which was mailed on July 24, 2007. Applicant received it on July 30, 2007. He answered the FORM on August 28, 2007, and submitted additional information for consideration within the 30-day period provided to him. The case was assigned to me on September 14, 2007.

FINDINGS OF FACT

After a thorough review of Applicant's answer to the SOR, his answer to the FORM, and the evidence, I make the following findings of facts.

Applicant is a 43-year-old senior production coordinator employed by a Department of Defense (DoD) contractor since July 2004.⁴ He enlisted in the U.S. Navy shortly after high school, and served approximately 22 years on active duty. In July 2004, he retired as an interior communications chief, pay grade E-7. The Navy characterized his service as honorable. His certificate of discharge from active duty (DD 214), shows Applicant received, in part, the following awards and decorations: Navy/Marine Corps Commendation Medal (2), Navy/Marine Corps Achievement Medal (2), Combat Action Ribbon (1), Armed Forces Expeditionary Medal (2), Sea Service Deployment Ribbon (3), Good Conduct Medal (6), Enlisted Surface Warfare Specialist, and two Flag Letters of Commendation (GE 10). While in the Navy, Applicant had access to classified information at the secret level.

Applicant married his wife in November 1989, and they have three daughters, ages 15, 13, and 10. He has been separated from his wife, on and off, since approximately 1999. They were separated from March 2002 to December 2003, and again in February 2005 to the hearing date.

¹ Government Exhibit (GE) 1.

² See Executive Order 10865, *Safeguarding Classified Information Within Industry* (Feb. 20, 1960, as amended), and Department of Defense Directive 5220.6, *Defense Industrial Personnel Security Clearance Review Program* (Jan. 2, 1992) (Directive), as amended. On August 30, 2006, the Under Secretary of Defense (Intelligence) published a memorandum directing application of revised adjudicative guidelines (AG) to all adjudications and other determinations made under the Directive in which the SOR was issued on or after September 1, 2006.

³ On June 4, 2007, Applicant submitted supplemental response to the SOR.

⁴ GE 4 (Office of Personnel Management Security Clearance Application (SF86), dated October 19, 2004), unless indicated otherwise, is the source for the facts in this paragraph.

Applicant's employment history reflects that in addition to his Naval duties, he also worked as a pizza delivery driver from February 1998 to January 2000, and from May 2001 to March 2003. He also worked as a computer technician from February 1999 to June 2000. He has been working for his current employer, a government contractor, since July 2004. There is no evidence he has ever mishandled or compromised classified information while in the Navy or at his current job.

In his October 2004 security clearance application, Applicant disclosed that during the last seven years he had six debts over 180 days delinquent, and that he was currently over 90 days delinquent on two debts. The subsequent background investigation addressed Applicant's financial situation and included the review of his November 2004 credit bureau report (CBR), January and September 2006 CBRs, and his February 2007 CBR⁵. It also included the review of Applicant's 2006 response to DOHA interrogatories, and his January 2006 statement to a government investigator.⁶

The SOR alleged three delinquent/charged off accounts. Applicant's evidence established, and the government conceded, that SOR ¶¶ 1.a and 1.b were Applicant's wife's debts. She opened the accounts on her own, and included him as an authorized user, however, he never used the accounts. Applicant disputed both debts through the credit bureaus. He was cleared of financial responsibility on both accounts, and his name was removed from the accounts. Concerning SOR ¶ 1.c, Applicant admitted this delinquent debt. On May 22, 2007, Applicant made a loan to consolidate his debts, settled the debt for \$16,495, and paid it off.⁷

In late 2000, Applicant developed financial problems because of relocation expenses related to his permanent change of station from the west coast to the east coast of the United States, his wife's inability to find or keep employment at their new residence, and the expense of having to replace his car.⁸ Additionally, his spouse, who handled the household finances, developed an alcohol/drug problem. She became financially irresponsible spending without control and overcharged their credit card accounts. From March 2002 to December 2003, although separated from his wife, Applicant was the sole provider for his family. Additionally, he lived in a separate apartment, which created additional expenses he was not able to afford. Applicant and his spouse lived together from December 2003 to February 2005. They separated again because of her continued abuse of alcohol and drugs. As of January 2006, she has living in a west coast halfway house, receiving treatment for her alcohol and drug addiction.

Applicant did not file for bankruptcy protection because he believes it is his responsibility to satisfy his debts. He considers himself an honest, hardworking, and responsible individual. He believes that his ability to protect classified information cannot be affected by his financial delinquencies or his wife's alcohol and drug abuse problems. As of May 2007, Applicant was living separate from his wife, and was taking care of his three daughters. He also sought financial

⁵ GE 10, 9, 8, and 7, respectively.

⁶ GEs 5 and 11.

⁷ See creditor's letter of May 22, 2007, included with Applicant's response to the SOR.

⁸ GE 11, unless otherwise stated, is the source of the facts in this paragraph.

counseling from a consumer credit counseling agency in an effort to improve his finances and learn to avoid future financial problems.⁹

In his response to the FORM, Applicant included an August 2007 personal financial statement (PFS), which is consistent with the PFS he submitted in October 2006. It shows Applicant's net income is \$6,123; his monthly expenses (including debt payments) total \$5,269; and that he has a monthly net remainder of approximately \$854.

POLICIES

The Directive sets forth adjudicative guidelines (AG) which must be considered in evaluating an Applicant's eligibility for access to classified information. The administrative judge must take into account both disqualifying and mitigating conditions under each AG applicable to the facts and circumstances of the case. The guidelines are not viewed as inflexible ironclad rules of law. The presence or absence of a disqualifying or mitigating condition is not determinative of a conclusion for or against an Applicant. Each decision must reflect a fair and impartial common sense consideration of the factors listed in Section 6.3 of the Directive, and the whole person concept.¹⁰ Having considered the record evidence as a whole, I conclude Guideline F (Financial Considerations) is the applicable relevant AG.

BURDEN OF PROOF

The purpose of a security clearance decision is to determine whether it is clearly consistent with the national interest to grant or continue an applicant's eligibility for access to classified information.¹¹ A person who has access to classified information enters into a fiduciary relationship with the government based on trust and confidence. The government, therefore, has a compelling interest to ensure each applicant possesses the requisite judgement, reliability and trustworthiness of one who will protect the national interests as his or her own.

The government has the initial burden of proving controverted facts alleged in the SOR. To meet its burden, the government must establish by substantial evidence¹² a prima facie case that it

⁹ Applicant's answer to the SOR.

¹⁰ AG ¶ 2(a). "... The adjudication process is the careful weighing of a number of variables known as the whole person concept. Available, reliable information about the person, past and present, favorable and unfavorable, should be considered in reaching a determination. . . ." The whole person concept includes the consideration of "the nature, extent, and seriousness of the conduct; the circumstances surrounding the conduct, to include knowledgeable participation; the frequency and recency of the conduct; the individual's age and maturity at the time of the conduct; the extent to which participation is voluntary; the presence or absence of rehabilitation and other permanent behavioral changes; the motivation for the conduct; the potential for pressure, coercion, exploitation, or duress; and the likelihood of continuation or recurrence. . ."

¹¹ See *Department of the Navy v. Egan*, 484 U.S. 518, 531 (1988).

¹² ISCR Case No. 98-0761, at 2 (App. Bd. Dec. 27, 1999)(Substantial evidence is more than a scintilla, but less than a preponderance of the evidence); ISCR Case No. 02-12199, at 3 (App. Bd. Apr. 3, 2006)(Substantial evidence is such relevant evidence as a reasonable mind might accept as adequate to support a conclusion in light of all the contrary

is not clearly consistent with the national interest for the applicant to have access to classified information. The responsibility then shifts to the applicant to refute, extenuate or mitigate the government's case. Because no one has a right to a security clearance, the applicant carries a heavy burden of persuasion.¹³ The "clearly consistent with the national interest" standard compels resolution of any reasonable doubt about an applicant's suitability for access to classified information in favor of protecting national security.¹⁴

CONCLUSIONS

Under Guideline F (Financial Considerations), the government's concern is that an Applicant's 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. AG ¶ 18.

The government established its case by showing Applicant became delinquent on the debt alleged in ¶ 1.c around May 2003. He failed to resolve this debt until May 2007, when he used a debt consolidation loan to pay the debt. Financial Considerations Disqualifying Condition AG ¶ 19(a): *inability or unwillingness to satisfy debts*; and AG ¶ 19(c): *a history of not meeting financial obligations*, apply in this case.

Applicant's evidence established facts that I considered as circumstances beyond his control contributing to his financial problems, i.e., his family relocation, his periods of separation from his wife and the ultimate loss of his marriage, his retirement from the military, having a new job, and the financial problems caused by his wife's spending habits because of her alcohol/drug related problems. Financial Considerations Mitigating Condition AG ¶ 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*, applies.

Applicant provided a reasonable explanation concerning the cause of his debts and why it took him so long to resolve his delinquent debt. He paid off his delinquent debt in May 2007, after receipt of the SOR, but before receipt of the FORM. Arguably, he could have shown more responsibility by resolving his debt sooner. Notwithstanding those factors militating against approval of his clearance, and considering the evidence as a whole, his favorable information is sufficient to establish that he is a responsible person, that he is not financially overextended, and that his financial problems are under control. AG ¶ 20(c): *. . . there are clear indications that the problem is being resolved or is under control*, applies.

evidence in the record); Directive, ¶ E3.1.32.1.

¹³ *Egan, supra* n.11, at 528, 531.

¹⁴ *See Id.*; AG ¶ 2(b).

I have carefully weighed all evidence, and I applied the disqualifying and mitigating conditions as listed under the applicable adjudicative guidelines. I specifically considered Applicant's answers to the SOR and the FORM, his 23 years of military service to his country, and that there is no evidence that he ever mishandled or caused the compromise of classified information.

Applicant's DD 214 shows he did well in the Navy. He earned awards and decorations and held positions of leadership and responsibility reserved for those who distinguish themselves for their dedication, trustworthiness, judgment, and good performance of duty. His financial problems seem to be the result of those circumstances beyond his control previously discussed. His income adequately covers his monthly expenses, leaving him with a net remainder of approximately \$850 a month. He is by no means debt free, but his financial problems appear to be under control. In light of his strong, past good behavior and dedicated duty performance in the Navy, I believe Applicant will continue his financial recovery and the likelihood of recurrence is remote. Considering all available information, and the whole person concept, I find Applicant has mitigated the Financial Considerations security concern.

FORMAL FINDINGS

Formal findings regarding each SOR allegation as required by Directive Section E3.1.25 are as follows:

Paragraph 1, Financial Considerations
Subparagraphs 1.a-1.c

FOR APPLICANT
For Applicant

DECISION

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

Juan J. Rivera
Administrative Judge