

KEYWORD: Financial

DIGEST: Applicant has a history of financial delinquencies. His current unpaid debts total approximately \$75,000, including more than \$28,800 in delinquent federal taxes. Applicant has not received financial counseling, and he has no specific plans in place to resolve his debts. He admitted all but one of the 19 delinquencies alleged in the SOR. Applicant failed to mitigate Guideline F security concerns. Clearance is denied.

CASENO: 06-16468.h1

DATE: 05/29/2007

DATE: May 29, 2007

In Re:

SSN: -----

Applicant for Security Clearance

ISCR Case No. 06-16468

**DECISION OF ADMINISTRATIVE JUDGE
JOAN CATON ANTHONY**

APPEARANCES

FOR GOVERNMENT

Braden M. Murphy, Esq., Department Counsel

FOR APPLICANT

Pro Se

SYNOPSIS

Applicant has a history of financial delinquencies. His current unpaid debts total approximately \$75,000, including more than \$28,800 in delinquent federal taxes. Applicant has not received financial counseling, and he has no specific plans in place to resolve his debts. He admitted all but one of the 19 delinquencies alleged in the SOR. Applicant failed to mitigate Guideline F security concerns. 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. On October 26, 2006, under the applicable Executive Order¹ and Department of Defense (DoD) Directive (Directive),² DOHA issued a Statement of Reasons (SOR), detailing the basis for its decision—security concerns raised under Adjudicative Guideline F (Financial Considerations), promulgated December 29, 2005, and applicable in DoD adjudications of SORs issued as of September 1, 2006, and thereafter. With the SOR, DOHA provided Applicant with a copy of the Directive and the applicable Guidelines. Applicant answered the SOR in writing on November 7, 2006, and requested that his case be determined on the record in lieu of a hearing. The Government compiled its File of Relevant Material (FORM) on March 28, 2007. The FORM contained documents identified as Items 1 through 9. By letter dated March 28, 2007, a copy of the FORM was forwarded to Applicant, with instructions to submit any additional information and/or objections within 30 days of receipt. Applicant received the file on April 3, 2007. He filed additional information within the required time period. Department Counsel did not object to Applicant's submission. On May 2, 2007, the case was assigned to me for a decision. After a careful review of the record and Applicant's submission of additional information, I admitted his one-page submission as Applicant's Exhibit (Ex.) A.

FINDINGS OF FACT

_____ The SOR contains 19 allegations of disqualifying conduct under revised adjudicative Guideline F, Financial Considerations. (SOR ¶¶ 1.a. through 1.s.) Applicant admitted 18 allegations and denied one. While he denied he owed the debt alleged at ¶1.p., he stated he would pay it if he acquired the address of the creditor. (Item 3 at 5.) Applicant's admissions are admitted herein as findings of fact.

Applicant is 55 years old, married, and the father of two adult children. In 1970, Applicant enlisted in the U.S. Navy. He was granted a security clearance in 1970. He rose in the enlisted ranks and, by 1980, he had attained the rank of Chief Petty Officer (E-7). In 1980, Applicant was commissioned as an ensign. He served as a Naval officer until 1991, when he retired as a Lieutenant (0-3). (Item 4.)

¹Exec. Or. 10865, *Safeguarding Classified Information within Industry* (Feb. 20, 1960), as amended and modified.

²Department of Defense Directive 5220.6, *Defense Industrial Personnel Security Clearance Review Program* (Jan. 2, 1992), as amended and modified.

From 1991 to 2003, Applicant was employed as a technical instructor by a community college. He was unemployed from the end of December 2003 until July 2004. In June 2004, he moved to another state to take the job he currently holds. Since July 2004, he has been employed as an Engineer II by a defense contractor. (Item 2; Item 4.)

Applicant has a history of financial delinquencies. The SOR alleges Applicant owes and is responsible for the following debts: a federal tax lien of approximately \$28,895, entered against him in June 2003 for outstanding federal income tax owed for the years 1998 through 2000 (SOR ¶ 1.a.); ten accounts, totaling approximately \$27,039, in collection status (SOR ¶¶ 1.b., 1.c., 1.d., 1.f., 1.i., 1.j., 1.n., 1.p., 1.r., and 1.s.); and eight charged off accounts, totaling approximately \$19,818 (SOR ¶¶ 1.e., 1.g., 1.h., 1.k., 1.l., 1.m., 1.o., and 1.q.) In his answer to the SOR, Applicant admitted all debts, with the exception of a debt of \$237, alleged at ¶ 1.p. However, he also indicated that while he didn't remember the debt alleged at ¶ 1.p., he would make arrangements to pay it if he could acquire an address for the creditor. (Item 3 at 3, 5.)

Among Applicant's financial obligations are a voluntary repossession of an automobile, alleged at SOR ¶ 1.k., a debt of approximately \$5,765 in charged-off status. Applicant stated he did not know he was obliged to pay charged-off debts. (Item 3 at 4.) Applicant is also responsible for student loans of approximately \$14,500, taken out for the educations of his son and daughter (SOR ¶¶ 1.f., 1.i., and 1.j.). The student loans are paid by garnishments from his pay check. (Item 3 at 5; Item 6 at 2.)

In a financial statement dated September 19, 2006, Applicant reported a net monthly salary of approximately \$2,150. He also reported he received approximately \$1,906 in military retirement pay each month, resulting in a net monthly income of approximately \$4,056. Applicant listed \$2,333 in fixed monthly expenses. He reported wage garnishments of \$700 monthly to the Internal Revenue Service, \$412 to his state taxing authority, and \$334 to the holder of his children's education loans. When his living expenses and garnishments were subtracted from his monthly income, Applicant reported a net remainder of \$276. (Item. 6 at 2, 4, 14.)

In mitigation, Applicant attributed his financial delinquencies to his unemployment from December 2003 to July 2004, his expenses in moving his household to another state to take on his present job in July 2004, expenses he incurred in car repairs so he could drive his car on a military base where he was assigned to work, and his wife's health status, which prevents her from holding a job and contributing to the family income. Applicant claimed his moving expenses were approximately \$4,000 and his car repairs totaled approximately \$2,700 (Item 3 at 4.)

In his answer to the SOR, dated November 6, 2006, Applicant stated he would pay some of his debts in January and February of 2007. Additionally, he requested he be given a grace period of six months to a year "to get fully on top of [his] obligations." (Item 3 at 5.) Nothing in the record establishes that Applicant has received credit counseling or has a plan in place to pay his creditors.

In his response to the FORM, Applicant again requested more time to pay off his debts. He stated he had not made arrangements to pay his delinquencies because he was uncertain his job would continue. While he stated his son was paying the debt of approximately \$31 alleged at SOR ¶ 1.h., he provided no credible evidence to corroborate his statement. (Ex. A)

Applicant executed and signed a security clearance application (SF-86) on February 14, 2005. Under the general remarks section of the SF-86, Applicant wrote:

I was unemployed from 2003/12/31 until 2004/07/06. So I was unable to keep up with my financial obligations. I am planning to bring all my

accounts up to date now that I have a job, and continue to maintain current status on delinquent accounts that are outstanding.

(Item 4 at 9.)

POLICIES

“[No one has a ‘right’ to a security clearance.” *Department of the Navy v. Egan*, 484 U.S. 518, 528 (1988). 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.” *Id.* at 527. The President has restricted eligibility for access to classified information to United States citizens “whose personal and professional history affirmatively indicates loyalty to the United States, strength of character, trustworthiness, honesty, reliability, discretion, and sound judgment, as well as freedom from conflicting allegiances and potential for coercion, and willingness and ability to abide by regulations governing the use, handling, and protection of classified information.” Exec. Or. 12968, *Access to Classified Information* § 3.1(b) (Aug. 4, 1995). Eligibility for a security clearance is predicated upon the applicant meeting the security guidelines contained in the Directive.

By Memorandum dated August 30, 2006, the Under Secretary of Defense directed implementation of revised Adjudicative Guidelines for Determining Eligibility for Access to Classified Information (AG), promulgated December 29, 2005, and effective September 1, 2006, as modified. The revised AG replaced the guidelines published in Enclosure 2 to DoD Directive 5220.6 and Appendix 8 to DoD 5200.2-R and apply to all adjudications and other determinations in which a SOR had not been issued by September 1, 2006. Accordingly, since the SOR in this case was issued October 26, 2006, the revised AG apply.

The revised AG set forth personal security guidelines, as well as the disqualifying conditions (DC) and mitigating conditions (MC) under each guideline. In evaluating the security worthiness of an applicant, the administrative judge must also assess the adjudicative process factors listed in the Directive. The decision to deny an individual a security clearance is not necessarily a determination as to the loyalty of the applicant. *See* Exec. Or. 10865 § 7. 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.

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. *See Egan*, 484 U.S. at 531. The Directive presumes a nexus or rational connection between proven conduct under any of the disqualifying conditions listed in the guidelines and an applicant’s security suitability. *See* 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 rebut, explain, extenuate, or mitigate the facts. ISCR Case No. 01-20700 at 3 (App. Bd. Dec. 19, 2002); *see* Directive ¶ E3.1.15. An applicant “has the ultimate burden of demonstrating that it is clearly consistent with the national interest to grant or continue his security clearance.” ISCR Case No. 01-20700 at 3.

CONCLUSIONS

Guideline F—Financial Considerations

An applicant’s failure to live within his 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. *See* Guideline F, ¶ 18.

In the SOR, DOHA alleged Applicant was responsible for 19 delinquent debts in the amount of approximately \$75,000, which had not been satisfied. The allegations raised security concerns under two Guideline F disqualifying conditions, ¶¶ 19(a) and 19(c).³ Applicant admitted responsibility for the financial delinquencies and provided no credible evidence that he did not owe the one debt he denied.

Through Applicant’s admissions and the record evidence, the Government established that Applicant had a history of not meeting his financial obligations and was unable or unwilling to satisfy his debts as specified in Guideline F, ¶¶ 19(a) and 19(c).

Several conditions could mitigate the security concerns raised by Applicant’s remaining financial delinquencies. Unresolved financial delinquency might be resolved if it 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. (Guideline F, ¶ 20(a)) Additionally, unresolved financial delinquency might be mitigated if the conditions that resulted in the financial problem were largely beyond the person’s control, such as loss of employment, a business downturn, unexpected medical emergency, or a death, divorce, or separation, and the individual acted responsibly under the circumstances. (Guideline F, ¶ 20(b)) Still other mitigating circumstances that might be applicable include evidence 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 (Guideline F, ¶ 20(c)) or the individual has initiated a good-faith effort to repay overdue creditors or otherwise resolve debts (Guideline F, ¶ 20(d)).

Applicant’s acknowledged financial delinquencies are numerous, long-standing, and continue to the present day. Applicant has failed to follow through on an assertion he made in February 2005 that he would pay his debts and achieve financial stability. His financial delinquencies remain unresolved, suggesting that the circumstances that caused these delinquencies might occur in the future. Accordingly, ¶ 20(a) does not apply as a mitigating condition. While Applicant’s six-month

³ Guideline F, ¶ 19(a) reads: “Inability or unwillingness to satisfy debts.” Guideline F, ¶ 19(c) reads: “A history of not meeting financial obligations.”

experience of unemployment in late 2003 and early 2004 and his wife's illnesses were unfortunate, these events do not of themselves establish that Applicant's unresolved financial delinquencies were largely beyond his control or that he acted reasonably under the circumstances. Nothing in the record suggests Applicant contacted his creditors or otherwise gave them notice of his reduced financial circumstances resulting from his job loss and his wife illness. Nothing in the record suggests Applicant offered his creditors a plan to meet his obligations responsibly while in reduced circumstances. Accordingly, I conclude ¶ 20(b) does not apply in mitigation under the facts of this case.

The record does not show that Applicant sought financial counseling or that he was able on his own to resolve or bring his financial delinquencies under control. Accordingly, I conclude that ¶ 20(c) is inapplicable. Applicant failed to provide evidence he had initiated a good-faith effort to pay overdue creditors or otherwise resolve his debts. He did not submit evidence that he is timely meeting his financial obligations. Instead, he requested more time and made promises to resolve his financial problems in the future. Applicant made the same request on his SF-86 in February 2005. At that time, he stated he would bring his financial plans in order. However, he failed to take any action as promised in the past two years.

Applicant's promises to pay his creditors in the future were not persuasive. Promises to take actions in the future are not a substitute for a documented track record of remedial actions. ISCR Case No. 98-0188 at 3 (April 29, 1999.) In determining an individual's security worthiness, the Government cannot rely on the possibility that an applicant might resolve his or her outstanding debts at some future date. ISCR Case No. 98-0614 at 5 (App. Bd. Jul. 12, 1999). Accordingly, I find ¶ 20(d) does not apply in mitigation in this case.

Whole Person Analysis

The revised AG and the Directive require that the adjudicative process in a security clearance case not only assess conduct under the adjudicative guidelines, but it must also reflect a careful weighing of a number of variables known as the whole person concept. The factors to be considered in a whole person analysis include 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 pertinent behavioral changes; the motivation for the conduct; the potential for pressure, coercion, exploitation, or duress; and, the likelihood for continuation or recurrence.

Applicant is a mature adult who has a history of financial over-extension. He held a security clearance for many years as an enlisted man and as a Naval officer, and he was familiar with the Government's concern that failure to meet one's financial obligations can raise questions about an individual's reliability, trustworthiness, and ability to protect classified information.

Applicant's history of not meeting his financial obligations and his inability to pay his debts raises a security concern because it suggests a lack of good faith. Since he has not sought consumer credit counseling or assistance in learning how to manage his finances, Applicant has failed to demonstrate his delinquencies will not continue to be security concerns in the future. He has made

promises to put his financial situation in order, but he has made no progress in the past two years in doing so.

In all adjudications, the protection of our national security is the paramount concern. Security clearance decisions are not intended to assign guilt or to impose further punishment for past transgressions. Rather, the objective of the security clearance process is the fair-minded, common sense assessment of a person's trustworthiness and fitness for access to classified information. Indeed, the "whole person" concept recognizes we should view a person by the totality of his or her acts and omissions, including all disqualifying and mitigating conduct. Having done so, I conclude Applicant should not be entrusted with a security clearance. In reaching my decision, I have considered the evidence as a whole, including the appropriate factors and guidelines in Department of Defense Directive, 5220.6., as amended. I conclude that Applicant failed to mitigate security concerns under Guideline F (Financial Considerations).

FORMAL FINDINGS

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

Paragraph 1.: Guideline F: AGAINST APPLICANT

Subparagraphs 1.a. through 1.s.: Against Applicant

DECISION

In light of all of 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.

Joan Caton Anthony
Administrative Judge