

KEYWORD: Financial

DIGEST: Applicant is a 27-year-old employee working for a defense contractor. He had fourteen alleged debts listed in the statement of reasons (SOR) totaling approximately \$24,000. He now has three outstanding debts totaling \$10,000, and started a debt repayment plan. His debt problems resulted from his wife's medical emergencies and periods of unemployment. For the last two years he has shown his financial responsibility by not generating any new delinquent debt. Applicant has mitigated security concerns arising under financial considerations. Clearance is granted.

CASNO: 06-19060.h1

DATE: 06/30/2007

DATE: June 30, 2007

In re:)	
)	
)	
-----)	ISCR Case No. 06-19060
SSN: -----)	
)	
Applicant for Security Clearance)	
)	

**DECISION OF ADMINISTRATIVE JUDGE
NOREEN A. LYNCH**

APPEARANCES

FOR GOVERNMENT

John B. Glendon, Esq., Department Counsel

FOR APPLICANT

Pro se

SYNOPSIS

Applicant is a 27-year-old employee working for a defense contractor. He had fourteen alleged debts listed in the statement of reasons (SOR) totaling approximately \$24,000. He now has three outstanding debts totaling \$10,000, and started a debt repayment plan. His debt problems resulted from his wife's medical emergencies and periods of unemployment. For the last two years he has shown his financial responsibility by not generating any new delinquent debt. Applicant has mitigated security concerns arising under financial considerations. Clearance is granted.

STATEMENT OF THE CASE

On December 21, 2005, Applicant applied for a security clearance and submitted a Security Clearance Application (SF 86). On November 9, 2006, the Defense Office of Hearings and Appeals (DOHA) issued a Statement of Reasons (SOR) to him, pursuant to Executive Order 10865, *Safeguarding Classified Information Within Industry*, February 20, 1960, as amended and modified, and Department of Defense Directive 5220.6, *Defense Industrial Personnel Security Clearance Review Program* (Directive), dated January 2, 1992, as amended and modified. The SOR detailed reasons why, under Guideline F (Financial Considerations) of the revised Adjudicative Guidelines issued on December 29, 2005, and implemented by the Department of Defense, effective September 1, 2006, DOHA could not make the preliminary affirmative finding under the Directive that it is clearly consistent with the national interest to continue a security clearance for Applicant. The revised guidelines were provided to Applicant when the SOR was issued. Applicant answered the SOR on January 16, 2007, and elected to have a hearing before an administrative judge. The case was assigned to me on May 28, 2007. I scheduled a hearing for June 12, 2007.

The hearing was convened as scheduled on June 12, 2007 to consider whether it is clearly consistent with the national interest to grant or continue a security clearance for Applicant. Three Government exhibits (Ex. 1-4) were admitted into the record without objection. Applicant's three exhibits (Ex. A-C) were admitted into the record without objection. Applicant testified in his own behalf, as reflected in the hearing transcript (Tr.) received on June 21, 2007. At Applicant's request, I kept the record open until June 26, 2007 for Applicant to submit additional information. He timely sent bank statements and a debt management plan which are marked AE D and E for the record and admitted without objection.

FINDINGS OF FACT

Applicant's admissions to the allegations in subparagraphs 1.e, 1.f, 1.g, 1.h, 1.k, 1.l, 1.m, in the SOR, ¶ 1. are incorporated herein. He denied allegations in subparagraphs 1.a, 1. b, 1.c, 1.d, 1.i,

1.j, and 1.n because he paid the debts.¹ In addition, after a thorough and careful review of the evidence and exhibits, I make the following findings of fact:

Applicant is a 27-year-old who works for a defense contractor. He is married, and has five children.² Applicant earned a high school diploma in 1997 and attends college courses.³ He submitted an application for a security clearance on December 21, 2005.

After graduation from high school, Applicant started employment with a defense contractor. He stayed with the company until August 2002 when he was laid off. He found new employment and remained with that company until January 2003. After two months of unemployment, he found employment with another contractor. Unfortunately that job only lasted a few months. Applicant then

¹Applicant's response to the SOR, dated January 16, 2007.

² Government Ex. 1 (Security Clearance Application, dated December 21, 2005).

³*Id.*

attempted to join the United States Air Force. However, the military advised him he had too many children.⁴ He completed an application for a security clearance on December 21, 2005.

When Applicant married in October 2000, his financial problems had already started. He was evicted from an apartment in July 2000 due to a neighbor's complaint. As a result of the unpaid rent, a judgment in the amount of \$925 was entered against him.⁵ Shortly thereafter, his car was repossessed, but he did not understand the consequences. He believed the dealer would hold the car

⁴Tr. 41.

⁵Tr. 26.

for him until he could pay.⁶ His wife had a child in January 2000 from a prior relationship and another child was born in 2001. In order to save money, Applicant moved them into his grandmother's house.⁷ He attempted to assume the mortgage after his grandmother died, but unfortunately that property was foreclosed in August 2001. His wife had another child the next year and her relatives lived with them. Applicant attempted to support his wife's relatives.

In October 2002, Applicant and his wife broke the lease on their apartment and a debt of \$3000 was the result. At the same time, his wife had medical problems due to several miscarriages. Applicant took some time from work to attend to his wife. Due to more unemployment, Applicant's debt continued to plague him.⁸ In March 2003, he was again evicted from another property due to his unemployment. He worked at low paying jobs, but in 2004, he and his wife were again evicted from a home, and a judgment in the amount of \$2,901 was the result. At that time he and his wife had five children.⁹ They were living pay check to pay check. He incurred bills for utilities, credit card debt and other living expenses that he could not pay.

Applicant attempted to supplement his limited income with overtime and jobs on the road during these years. Through a wage garnishment, he paid a judgment in 2002.¹⁰ He paid some debts in 2006-2007 due to extra income from being overseas six months. Three of those months he spent in Iraq. With his extra income, he paid most of the debts in the SOR.¹¹ He sought financial counseling from his brother who has expertise in the banking industry. He was advised to contact creditors and collection agencies, and disputed the debt in l.h. However, he was also advised to improve his credit score by paying debts rather than consolidating them.¹² Applicant's remaining debts from the SOR are allegations 1. k, 1. l, and 1. m. These debts total approximately \$10,000.¹³

Applicant earns approximately \$4,000 net a month.¹⁴ Today, Applicant lives more within his means and has not acquired any significant debt other than his home mortgage and car loan. His credit bureau reports confirm his paid accounts.¹⁵ He is current on his mortgage and his car loan. His credit rating is improving. He is financially more stable. After his monthly expenses, he has

⁶Tr. 64.

⁷Tr. 70.

⁸Tr. 44.

⁹Tr. 40.

¹⁰Applicant's receipt in file, dated 2002.

¹¹AE D (Bank Statements).

¹²AE B (Letter dated June 11, 2007).

¹³AE D (Debt Management Plan dated June 2007).

¹⁴Tr.106.

¹⁵AE C (Applicant's credit report, dated June 11, 2007).

approximately \$1,300 net monthly remainder.¹⁶ His only delinquent debts are the three accounts noted above. He accepts responsibility for paying those debts. He accepted another overseas assignment that will generate sufficient income to allow him to make monthly payments. He signed an agreement in June 2007 with a debt management company to allow direct payments on the remaining accounts in the SOR. Applicant is receiving debt management counseling in accordance with this agreement. He has a structured payment plan.¹⁷

Applicant is highly recommended by his employer. He is rated as a highly motivated, dependable, dedicated individual who strives to make improvements for himself as well as his peers. His three years of employment are unblemished. He has excellent potential and opportunity for advancement in the defense industry.¹⁸

POLICIES

The revised Adjudicative Guidelines (AG) set forth set forth both disqualifying conditions and mitigating conditions applicable to each specific guideline. Additionally, each security clearance decision must be a fair and impartial commonsense decision based on the relevant and material facts and circumstances, the whole-person concept, along with the factors listed in the Directive. Specifically these are: (1) the nature, extent and seriousness of the conduct and surrounding circumstances; (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. Although the presence or absence of a particular condition or factor for or against clearance is not outcome determinative, the adjudicative guidelines should be followed whenever a case can be measured against this policy guidance.

The sole purpose of a security clearance determination is to decide if it is clearly consistent with the national interest to grant or continue a security clearance for an applicant.¹⁹ The government has the burden of proving controverted facts.²⁰ The burden of proof is something less than a preponderance of evidence.²¹ Once the government has met its burden, the burden shifts to an applicant to present evidence of refutation, extenuation, or mitigation to overcome the case against

¹⁶AE B *supra*, at note 12.

¹⁷AE D *supra*, at note 13.

¹⁸ Letter from manager in file, dated June 2007.

¹⁹ ISCR Case No. 96-0277 at 2 (App. Bd. Jul 11, 1997).

²⁰ ISCR Case No. 97-0016 at 3 (App. Bd. Dec 31, 1997); Directive, Enclosure 3, ¶ E3.1.14.

²¹ *Department of the Navy v. Egan*, 484 U.S. 518, 531 (1988).

him.²² Additionally, an applicant has the ultimate burden of persuasion to obtain a favorable clearance decision.²³

No one has a right to a security clearance²⁴ and “the clearly consistent standard indicates that security clearance determinations should err, if they must, on the side of denials.”²⁵ Any reasonable doubt about whether an applicant should be allowed access to sensitive information must be resolved

²² ISCR Case No. 94-1075 at 3-4 (App. Bd. Aug 10, 1995); Directive, Enclosure 3, ¶ E3.1.15.

²³ ISCR Case No. 93-1390 at 7-8 (App. Bd. Jan 27, 1995); Directive, Enclosure 3, ¶ E3.1.15.

²⁴ *Egan*, 484 U.S. 518, at 531.

²⁵ *Id.*

in favor of protecting such sensitive information.²⁶ The decision to deny an individual a security clearance is not necessarily a determination as to the loyalty of an applicant.²⁷ 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 security clearance.

CONCLUSIONS

I have carefully considered all the facts in evidence and the legal standards. Based upon consideration of the evidence, I find Guideline F of the revised AG most pertinent to the evaluation of the facts in this case. That guideline reads in pertinent part:

Guideline F - Financial Considerations. *The Concern: 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.*²⁸

In this matter, the government provided substantial evidence that Applicant accrued fourteen delinquent debts since 2000. He still owes approximately \$10,000 in debt. Consequently, Financial Considerations Disqualifying Condition (FC DC), AG ¶ 19(a), (*inability or unwillingness to satisfy debts*) and FC DC, ¶ 19(c), (*a history of not meeting financial obligations*) apply.

With the government's case established, the burden shifts to Applicant to present evidence of refutation, extenuation, or mitigation to overcome the case against him. Applicant suffered with unemployment on a number of occasions. His wife had some difficulty with her pregnancies and therefore she had some medical problems. Applicant was the sole support for his wife and five children. His unemployment caused him to get behind in his bills some time ago. He attempted to save by moving into his grandmother's house. Therefore, FC MC, AG ¶ 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*) applies.

Applicant received financial counseling and paid a judgment through a wage garnishment. He contacted his creditors and paid what he could. He paid many of his debts in January 2007 when he had extra money from his work overseas. He is now situated to pay the remaining three debts. FC MC, AG ¶ 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*) and FC MC, AG ¶ 20(d) (*the individual initiated a good-faith effort to repay overdue creditors or otherwise resolve debts*) apply.

The issue before me is not whether Applicant is still legally liable for any or all of his outstanding debts, but whether he has presented sufficient evidence of extenuation, mitigation or

²⁶ *Id.*; Directive, Enclosure 2, ¶ E2.2.2.

²⁷ Executive Order 10865 § 7.

²⁸ AG ¶ 18.

changed circumstances to warrant a favorable security clearance decision. His remaining unpaid debt does not constitute a security risk. He has a professional position with a good income and stands ready to proceed with his repayment plan.

Whole Person

I have considered both the record and Applicant in light of the “whole person” concept. He is an earnest, young man who is supporting a wife and five children. He assumed many responsibilities at any early age. He worked diligently in his field in the defense contractor industry but suffered periods of unemployment. He persevered to support his family through the times of medical emergencies and periods of unemployment. He attempted to join the military to stabilize his situation. His testimony at the hearing was candid and straightforward. At the hearing he acknowledged the financial delinquencies would be considered a negative. He is open, honest and has not hidden the situation. His financial circumstances have improved. The potential for pressure, coercion, exploitation, or duress is low. He is current on his financial obligations, and has a very positive employment history since 2004. Changes resulting from counseling and greater awareness of financial responsibilities will result in a continuously improving trend of financial circumstances.

In sum, the likelihood of new debt problems is low. Applicant's financial case shows his willingness to utilize his repayment plan to resolve his delinquent debts. However, three SOR debts remain unpaid and not resolved. After weighing the disqualifying and mitigating conditions, and all the facts and circumstances, in the context of the whole person, I conclude he has mitigated the security concerns pertaining to financial considerations. Clearance is granted.

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 (Financial Considerations):	FOR APPLICANT
Subparagraph 1.a.	For Applicant
Subparagraph 1.b.	For Applicant
Subparagraph 1.c.	For Applicant
Subparagraph 1.d.	For Applicant
Subparagraph 1.e.	For Applicant
Subparagraph 1.f.	For Applicant
Subparagraph 1.g.	For Applicant
Subparagraph 1.h.	For Applicant
Subparagraph 1.i.	For Applicant
Subparagraph 1.j.	For Applicant
Subparagraph 1.k.	For Applicant
Subparagraph 1.l.	For Applicant
Subparagraph 1.m.	For Applicant
Subparagraph 1.n.	For Applicant

DECISION

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

Noreen A. Lynch.
Administrative Judge