

KEYWORD: Financial

DIGEST: Applicant is a 33-year-old employee working for a defense contractor. He had alleged debts listed in the statement of reasons (SOR) totaling approximately \$25,000. His debt problems resulted in part from his wife's medical emergencies and periods of unemployment. He is not able to pay his debts due to his low paying position. He has no plan in place to resolve the debt. Applicant has not mitigated security concerns arising under financial considerations. Clearance is denied.

CASENO: 06-20788.h1

DATE: 07/30/2007

DATE: July 30, 2007

_____)	
In re:)	
)	
-----)	ISCR Case No. 06-20788
SSN: -----)	
)	
Applicant for Security Clearance)	
_____)	

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

APPEARANCES

FOR GOVERNMENT

Daniel F. Crowley, Esq., Department Counsel

FOR APPLICANT

Pro se

SYNOPSIS

Applicant is a 33-year-old employee working for a defense contractor. He had alleged debts listed in the statement of reasons (SOR) totaling approximately \$25,000. His debt problems resulted in part from his wife's medical emergencies and periods of unemployment. He is not able to pay his debts due to his low paying position. He has no plan in place to resolve the debt. Applicant has not mitigated security concerns arising under financial considerations. Clearance is denied.

STATEMENT OF THE CASE

On October 17, 2005, Applicant applied for a security clearance and submitted a Security Clearance Application (SF 86). On February 15, 2007, 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 May 4, 2007, and elected to have a hearing before an administrative judge. The case was assigned to me on June 18, 2007. I scheduled a hearing for July 9, 2007.

The hearing was convened as scheduled on July 9, 2007 to consider whether it is clearly consistent with the national interest to grant or continue a security clearance for Applicant. Government Exhibits (GE 1-5) were admitted into the record without objection. Applicant did not submit any exhibits. Applicant testified in his own behalf, as reflected in the hearing transcript (Tr.) received on July 18, 2007. At Applicant's request, I kept the record open until July 23, 2007 for Applicant to submit additional information. He did not submit any information.

FINDINGS OF FACT

Applicant's admissions to the allegations in subparagraphs 1.a, 1.d, 1.e, 1.f, 1.h, and 1.i in the SOR, ¶ 1. are incorporated herein. He denied allegations in subparagraphs 1. b, 1.c, and 1.g because he could not obtain any information about the accounts.¹ In addition, after a thorough and careful review of the evidence and exhibits, I make the following findings of fact:

Applicant is a 33-year-old who works for a defense contractor. He is married, and has one child.² Applicant earned a high school diploma in 1991.³ He submitted an application for a security clearance on October 17, 2005.

After his 1991 graduation from high school, Applicant worked as a welder and truck driver for various companies. In 1998-1999, he had a period of unemployment for six months. He has been

¹Applicant's response to the SOR, dated May 5, 2007.

² Government Ex. 1 (Security Clearance Application, dated October 17, 2005).

³*Id.*

with his current position since October 2005 when he completed an application for a security clearance.⁴

In 1993, Applicant had an accident on the job. He had many medical bills that were not covered by his insurance.⁵ In 1994, he purchased a vehicle but could not stay current on the payments. He acknowledged that in that time period, he was "running wild" and spending or "blowing his money" and not being attentive to his financial situation.⁶

In 1996, Applicant married. His wife has multiple sclerosis (MS) and does not work. He and his wife lived with his mother on her property. His mother became ill in 1998, and Applicant could not make the mortgage payments on the house. The foreclosure resulted in a debt of \$21,547.⁷

Five debts are unpaid medical accounts. Applicant does not have any knowledge about the accounts. He tried to call about the medical bills, but has not received any information. He also has a judgment in the amount of \$169 for propane gas.⁸

In 2000, Applicant's wife purchased a computer on a credit card. They could not continue to pay on the account. This resulted in a charged off debt in the amount of \$1,494.⁹

Applicant earns approximately \$1,782 net a month.¹⁰ He lives within his means and has not acquired any new significant debt. He accepts responsibility for paying his debts. He has no credit cards. However, his net monthly remainder after expenses is \$15.28. He recently received a raise and his monthly net remainder will increase. He and his wife are now living in her grandmother's house and do not pay rent.¹¹ He has a car loan and he is struggling to make the last payments.

On June 23, 2007, Applicant's mother died suddenly. He is in the process of paying funeral expenses. He is the beneficiary of her life insurance policy. If there is any money left after paying funeral expenses, he will pay some of the smaller debts.¹²

POLICIES

⁴Tr. 23.

⁵Tr. 26.

⁶Tr. 25.

⁷Tr. 27.

⁸GE 4 (Financial Interrogatory and attachments dated January 2007).

⁹Tr. 34.

¹⁰Tr. 31.

¹¹Tr. 48.

¹²Tr. 41.

The revised Adjudicative Guidelines (AG) 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.¹³ The government has the burden of proving controverted facts.¹⁴ The burden of proof is something less than a preponderance of evidence.¹⁵ 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 him.¹⁶ Additionally, an applicant has the ultimate burden of persuasion to obtain a favorable clearance decision.¹⁷

No one has a right to a security clearance¹⁸ and “the clearly consistent standard indicates that security clearance determinations should err, if they must, on the side of denials.”¹⁹ Any reasonable doubt about whether an applicant should be allowed access to sensitive information must be resolved in favor of protecting such sensitive information.²⁰ The decision to deny an individual a security clearance is not necessarily a determination as to the loyalty of an applicant.²¹ 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.

¹³ ISCR Case No. 96-0277 at 2 (App. Bd. Jul 11, 1997).

¹⁴ ISCR Case No. 97-0016 at 3 (App. Bd. Dec 31, 1997); Directive, Enclosure 3, ¶ E3.1.14.

¹⁵ *Department of the Navy v. Egan*, 484 U.S. 518, 531 (1988).

¹⁶ ISCR Case No. 94-1075 at 3-4 (App. Bd. Aug 10, 1995); Directive, Enclosure 3, ¶ E3.1.15.

¹⁷ ISCR Case No. 93-1390 at 7-8 (App. Bd. Jan 27, 1995); Directive, Enclosure 3, ¶ E3.1.15.

¹⁸ *Egan*, 484 U.S. 518, at 531.

¹⁹ *Id.*

²⁰ *Id.*; Directive, Enclosure 2, ¶ E2.2.2.

²¹ Executive Order 10865 § 7.

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.*²²

In this matter, the government provided substantial evidence that Applicant accrued eight delinquent debts since 2000. He still owes approximately \$25,000 in debt. Consequently, Financial Considerations Disqualifying Condition (FC DC), AG ¶ 19(a), (*inability or unwillingness to satisfy debts*) and FC DC, AG ¶ 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. His wife has muscular dystrophy and therefore she had some medical problems. Applicant is the sole support for his wife and his son. His unemployment caused him to get behind in his bills some time ago. He attempted to save money by moving into his mother's house. However, he acknowledged that he was wild in his youth and did not spend money wisely. He admits he did not act responsibly to pay his debts. 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 in part.

Applicant has not received any financial counseling. He has no plan in place to pay his 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*) do not apply.

The issue 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 changed circumstances to warrant a favorable security clearance decision. Applicant acknowledged his debts at the hearing and his present inability to pay them. Despite his good intentions and his hope that if he receives money from his mother's life insurance policy, he still owes \$25,000 in delinquent debt and has no financial plan or real ability to pay the debt. He has not contacted creditors in a consistent manner in an attempt to resolve the matter.

Whole Person

²² AG ¶ 18.

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 with medical problems. His mother died very recently and he has accumulated debt from when he was young. He was very candid at the hearing and would like to pay his debts, but to date has been unable to establish a sound financial track record.

In sum, the likelihood of new debt problems is high. Applicant demonstrated his willingness to use any inheritance money to pay some of his smaller debts, but a promise to pay in the future is not sufficient to mitigate his financial condition. 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 not mitigated the security concerns pertaining to financial considerations. Clearance is denied.

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): 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
Subparagraph 1.i.	Against Applicant

DECISION

In light of all of the circumstances in this case, it is not clearly consistent with the national interest to grant a security clearance for Applicant. Clearance is denied.

Noreen A. Lynch.
Administrative Judge