

KEYWORD: Financial

DIGEST: Applicant is a technician for a defense contractor. His debts were discharged in bankruptcy in December 2004. Thereafter, he accumulated 14 delinquent debts from tax liens, bank loans, utility bills, and student loans. He has not presented information to mitigate security concerns for financial considerations. Clearance is denied.

CASENO: 06-22108.h1

DATE: 05/31/2007

DATE: May 31, 2007

In Re:)	
)	
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SSN: -----)	ISCR Case No. 06-22108
)	
Applicant for Security Clearance)	
)	

**DECISION OF ADMINISTRATIVE JUDGE
THOMAS M. CREAN**

APPEARANCES

FOR GOVERNMENT

D. Michael Lyles, Esq., Department Counsel

FOR APPLICANT

Pro Se

SYNOPSIS

Applicant is a technician for a defense contractor. His debts were discharged in bankruptcy in December 2004. Thereafter, he accumulated 14 delinquent debts from tax liens, bank loans,

utility bills, and student loans. He has not presented information to mitigate security concerns for financial considerations. Clearance is denied.

STATEMENT OF THE CASE

On December 22, 2006, the Defense Office of Hearing and Appeals (DOHA) issued a Statement of Reasons (SOR) detailing the basis for its decision to deny a security clearance for Applicant. The action was taken under Executive Order 10865, *Safeguarding Classified Information within Industry* (February 20, 1990), as amended, and Department of Defense Directive 5220.6, *Defense Industrial Personnel Security Clearance Review Program* (January 2, 1992), as amended (Directive), using the Revised Adjudicative Guidelines (AG), issued by the President on December 29, 2005, and implemented by the Department of Defense on September 1, 2006. The revised guidelines were provided Applicant and he was aware that the case would be adjudicated under those guidelines. Applicant acknowledged receipt of the SOR on December 27, 2006. The SOR alleges security concerns under Guideline F (Financial Considerations) of the Directive.

Applicant answered the SOR in writing in an undated response. He admitted 11 and denied four of the allegations under Guideline F, and provided some explanation for his delinquent debts. He elected to have the matter decided on the written record in lieu of a hearing.¹

Department Counsel submitted the Government's written case on March 23, 2007. Applicant received a complete file of relevant material (FORM) on April 4, 2007, and was provided the opportunity to file objections and submit material to refute, extenuate, or mitigate the disqualifying conditions. On May 1, 2007, he responded with information similar to his response to the SOR. The case was assigned to me on May 14, 2007

FINDINGS OF FACT

Applicant is a 41-year-old technician for a defense contractor. He worked for defense contractors for approximately two years. He is divorced. Applicant submitted an electronic security clearance application on October 5, 2005.² Subsequent investigation shows Applicant had debts discharged in a Chapter 7 bankruptcy in 2004, and subsequently accumulated 14 delinquent debts, including a foreclosure.

Applicant admits he filed a Chapter 7 bankruptcy petition in August 2004, with assets of \$248,925, and liabilities of \$365,975. The debts were discharged in December 2004 (subparagraph

¹In response to the SOR, Applicant requested a decision without a hearing. *See*, Item 4. In response to the FORM, Applicant stated he requested a **hearing** (emphasis added) without a hearing. *See*, Item 2. I find Applicant has requested his case be decided on the written record.

²Item 1.

1.a.). Applicant admits to a delinquent debt on a home foreclosure of \$122,000 (subparagraph 1.o.). He states this debt was part of the bankruptcy but offers no information concerning the foreclosure or the bankruptcy. He presented no information to show the foreclosure was part of the bankruptcy action.³

Credit reports shows four tax liens totaling \$2,052 (subparagraphs 1.b., 1.c., 1.d., 1.e.) for failure to pay county taxes.⁴ Applicant admits these debts but notes the tax liens were caused by a divorce and business closure. He provides no information concerning the business closure and the divorce or how they affected his finances and ability to pay his taxes. He only notes he has “talked to IRS 12-2006, sending paper for me to sign showing business closure 12-2003.”⁵

Credit reports show six delinquent student loans totaling \$13,239 (subparagraphs 1.i., 1.j., 1.k., 1.l., 1.m., 1.n.).⁶ Applicant admits the student loans but notes that the loans are being paid commencing May 15, 2007. He provides no information to verify any payments made on his student loans.⁷

Applicant admits two debts (subparagraph 1.f. for \$199, and subparagraph 1.g. for \$853) but states they were paid in full in early 2007. He provided no additional documentation to show the debt was paid in full. Applicant admits one debt (subparagraph 1.h. for \$809) without explanation.

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.”⁸ Eligibility for a security clearance is predicated upon the applicant meeting the security guidelines contained in the Directive.⁹

The Directive sets out the adjudicative guidelines for making decisions on security clearances. Enclosure 2 of the Directive sets forth adjudicative guidelines for determining eligibility for access to classified information, and it lists the disqualifying conditions and mitigating conditions for each guideline. Each clearance decision must be fair, impartial, and a commonsense decision based on the relevant and material facts and circumstances, the whole person concept, and the factors listed in the Directive ¶ 6.3.1 through ¶ 6.3.6.

The adjudicative process is an examination of a sufficient period of a person’s life to make

³*Id.*

⁴Item 5.

⁵Item 4, Item 2.

⁶Item 5.

⁷Item 4; item 2.

⁸*Department of the Navy v. Egan*, 484 U.S. 518 (1988).

⁹Directive ¶ E2.2.1.

an affirmative determination that the person is eligible for a security clearance. An administrative judge must apply the “whole person concept,” and consider and carefully weigh the available, reliable information about the person.¹⁰ An administrative judge should consider: (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 applicant’s age and maturity at the time of the conduct; (5) the voluntariness of participation; (6) the presence or absence of rehabilitation and other pertinent behavioral changes; (7) the motivation for the conduct; (8) the potential for pressure, coercion, exploitation, or duress; and (9) the likelihood of continuation of recurrence.¹¹

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 necessarily a determination as to the loyalty of the applicant.¹² 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 present evidence to establish controverted facts in the SOR that disqualify or may disqualify the Applicant from being eligible for access to classified information.¹³ Thereafter, Applicant is responsible for presenting evidence to rebut, explain, extenuate, or mitigate facts.¹⁴ An applicant “has the ultimate burden of demonstrating that it is clearly consistent with the national interest to grant or continue his security clearance.”¹⁵ The government is under no duty to present evidence to disprove any Adjudicative Guideline mitigating condition, and an Administrative Judge cannot assume or infer that any particular mitigating condition is applicable merely because the government does not present evidence to disprove that particular mitigating condition.¹⁶ “[T]he Directive presumes there is a nexus or rational connection between proven conduct under any of the criteria listed therein and an applicant’s security suitability.”¹⁷ “Any doubt as to whether access to classified information is clearly consistent with national security will be resolved in favor of the national security.”¹⁸

Based upon a consideration of the evidence, I find the following adjudicative guideline most

¹⁰*Id.*

¹¹Directive ¶¶ E2.2.1.1 through E2.2.1.9.

¹²*See* Exec. Or. 10865 § 7.

¹³Directive ¶ E3.1.14.

¹⁴ISCR Case No. 01-20700 at 3 (App. Bd. Dec. 19, 2002); *see* Directive ¶ E3.1.15.

¹⁵ISCR Case No. 01-20700 at 3 (App. Bd. Dec. 19, 2002).

¹⁶ISCR Case No. 99-0597 (App. Bd. Dec 13, 2000).

¹⁷ISCR Case No. 95-0611 at 2 (App. Bd. May 2, 1996) (quoting DISCR Case No. 92-1106 (App. Bd. Oct. 7, 1993))

¹⁸*Egan*, 484 U.S. at 531; *see* Directive ¶ E2.2.2.

pertinent to the evaluation of the facts in this case:

Guideline F - 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.

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

CONCLUSIONS

I carefully considered all of the factors in evidence and the legal standards discussed above. I reach the following conclusions regarding the allegations in the SOR.

Applicant's delinquent debts verified by credit reports and admitted, in part, by Applicant brings the matter within Financial Considerations Disqualifying Conditions (DC) ¶ 19(a) *Inability or unwillingness to satisfy debts*, DC ¶ 19(b) *indebtedness caused by frivolous or irresponsible spending and the absence of any evidence of willingness or intent to pay the debt or establish a realistic plan to pay the debt*, DC ¶ 19(c) *a history of not meeting financial obligations*, and DC ¶ 19(e) *consistent spending beyond one's means which may be indicated by excessive indebtedness, significant negative cash flow, high debt-to-income ratio, and/or other financial analysis*. Bankruptcy is a legal and permissible means of resolving indebtedness. However, the circumstances leading to the bankruptcy and an individual's financial actions after the bankruptcy must be examined to determine the individual's suitability and eligibility for access to classified information. Applicant provided little explanation how or why each delinquent debt was accumulated. The debts were accumulated because he was spending more than he had the ability to pay. While he states he contacted the tax authority and is paying his student loans, he has not established a realistic plan to pay his debts. He has excessive indebtedness starting with his bankruptcy in 2004 followed by more delinquent indebtedness. He has excessive indebtedness and high debt in relation to his cash flow as indicated by the high asset to liability ratio in his bankruptcy and subsequent delinquent debt after the bankruptcy discharge. I conclude the above disqualifying conditions have been established.

Applicant's debts include tax liens, student loans, utility debts, and bank loans. Most are still outstanding. Since there is a variety of debts, which are still current, and there is no indication the debts would not recur Financial Consideration Mitigating Condition (MC) ¶ 20(a) *The behavior 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* does not apply. There is no indication Applicant received counseling concerning his finances so MC ¶ 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* also does not apply.

As noted above, once the government presents information to raise a security concern, Applicant has the burden to present information to rebut, refute, explain, or mitigate the security

concerns. Applicant stated his tax liens were caused by divorce and a business closure raising Financial Consideration Mitigating Conditions (MC) ¶ 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 circumstance.* However, he presented no information concerning the business closure or how or why the divorce or business closure affected his ability to responsibly pay his obligations. Likewise, he raised MC 20(d) *the individual initiated a good-faith effort to repay overdue creditors or otherwise resolve debt* when he stated he paid two debts in full and was making payments on his student loans. He presented no information to verify any payments of the debts or the student loans. His statements alone, without any proof or documentation, is not sufficient to rebut, refute, explain, or mitigate the information presented by the government in the allegations. I find Applicant has not met his burden to mitigate the security concerns for financial considerations.

I carefully considered all of the circumstances in light of the “whole person” concept. I conclude Applicant is not eligible for a position of public trust.

FORMAL FINDINGS

Formal findings for or against Applicant on the allegations 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. thru 1.o.:

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 security to grant or continue a security clearance for Applicant. Clearance is denied.

Thomas M. Crean
Administrative Judge