

KEYWORD: Financial

DIGEST: Applicant is a retired soldier employed by a defense contractor. Applicant admitted six debts established by credit reports, but denied two. The two he denied are medical debts that should have been paid by the military health care system. Of the six he admitted, one is his mortgage which is current and being paid by automatic bank payment. Another, Applicant established has been paid and the lien released. Of the remaining four debts, Applicant presented no information that they are paid or being paid. He stated he would make arrangements to pay the debts. Applicant has not met his burden to establish a good faith effort to pay his debts. Clearance is denied.

CASENO: 06-22225.h1

DATE: 08/27/2007

DATE: August 27, 2007

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In Re:)	
)	
-----)	ISCR Case No. 06-22225
SSN: -----)	
)	
Applicant for Security Clearance)	
)	

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

APPEARANCES

FOR GOVERNMENT

Jeff A. Nagel, Esq., Department Counsel

FOR APPLICANT

Pro Se

SYNOPSIS

Applicant is a retired soldier employed by a defense contractor. Applicant admitted six debts established by credit reports, but denied two. The two he denied are medical debts that should have been paid by the military health care system. Of the six he admitted, one is his mortgage which is current and being paid by automatic bank payment. Another, Applicant established has been paid and the lien released. Of the remaining four debts, Applicant presented no information that they are paid or being paid. He stated he would make arrangements to pay the debts. Applicant has not met his burden to establish a good faith effort to pay his debts. Clearance is denied.

STATEMENT OF THE CASE

On March 23, 2007, 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 Adjudicative Guidelines promulgated by the President on December 29, 2005, and implemented by the Department of Defense on September 1, 2006. Applicant acknowledged receipt of the SOR on April 19, 2007. The SOR alleges security concerns under Guideline F (Financial Considerations), of the Directive.

Applicant answered the SOR in writing on May 24, 2007. He admitted six and denied two of the allegations under Guideline F, and provided an explanation for his delinquent debts. He elected to have the matter decided on the written record in lieu of a hearing.

Department Counsel submitted the Government's written case on June 15, 2007. Applicant received a complete file of relevant material (FORM) on June 27, 2007, and was provided the opportunity to file objections and submit material to refute, extenuate, or mitigate the disqualifying conditions. His response was due July 27, 2007. As of August 8, 2007, he had not responded. The case was assigned to me on August 13, 2007.

FINDINGS OF FACT

Applicant is a 39-year-old employee of a defense contractor. He previously served 20 years on active duty in the Army and recently retired as a sergeant first class (E-7). While on active duty, he completed a security clearance application on November 24, 2003.¹ Subsequent investigation revealed Applicant had eight delinquent debts.² Applicant admitted six of the eight debts, with explanation, but did not know about two debts.

Delinquent debts 1 (SOR 1.a) and 2 (SOR 1.f) are medical debts to the local hospital that have been placed for collection. Applicant was on active duty with the Army when the debts were

¹Item 4.

²Items 5 and 6.

incurred in May and October 2001. As such, Applicant and his family were covered by the military health care system and the bills should have been paid by them. Applicant has inquired about the military health care system paying the debts.³

Delinquent debt 3 (SOR 1.b) is a credit card debt to Capital One for \$863. Applicant thought he had paid the debt and stated he would settle it in the next 90 days. Delinquent debt 4 (SOR 1.c) is for a Military Star credit card in the amount of \$2,785. Applicant stated he made payment arrangements. Delinquent debt 5 (SOR 1.g) is to Bank of America on a car loan. Applicant acknowledged the debt and stated he required time to clear the debt. Delinquent debt 6 (SOR 1.h) is to MBNA bank on a credit card debt. Applicant acknowledged the debt and stated he would make payment arrangements.⁴

Delinquent debt 7 (SOR 1. d) is to Bank One on a car loan. This debt has been paid and the lien released.⁵ Delinquent debt 8 (SOR 1.e) is for the mortgage on Applicant's residence. Applicant stated his father was living in the house and was suppose to make the house payment. On his return from an overseas assignment, he learned his father had not made the payments.⁶ The mortgage is current and Applicant established an automatic payment plan for the mortgage.⁷

Applicant explained that his financial troubles started in 2001 when he was assigned to Germany and lost his housing allowance but still had a house payment. The family also lost income when his wife was injured on her job and received only workman's compensation, which was approximately \$1,500 less per month than her normal pay.⁸

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."⁹ Eligibility for a security clearance is predicated upon the applicant meeting the security guidelines contained in the Directive.¹⁰

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

³See, Item 3.

⁴*Id.*

⁵Item 3, Attachment 2.

⁶Item 4, response to question 38.

⁷Item 3, Attachment 1.

⁸Item 3 at 2.

⁹*Department of the Navy v. Egan*, 484 U.S. 518 (1988).

¹⁰Directive ¶ E2.2.1.

to classified information, and it lists the disqualifying conditions and mitigating conditions for each guideline. The adjudicative guidelines for this case are the guidelines promulgated by the President on December 29, 2005, and implemented by the Department of Defense on September 1, 2006. Each clearance decision must be fair, impartial, and a commonsense decision based on the relevant and material facts and circumstances, and the whole person concept.¹¹

The adjudicative process is an examination of a sufficient period of a person's life to make 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. 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 extent to which participation is voluntary; (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.¹²

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.¹³ 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.¹⁴ Thereafter, Applicant is responsible for presenting evidence to rebut, explain, extenuate, or mitigate facts.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."¹⁶ 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.¹⁷ "[T]he Directive presumes there is a nexus or rational connection between proven conduct under any of the

¹¹AG ¶ 2(a).

¹²*Id.*

¹³*See* Exec. Or. 10865 § 7.

¹⁴Directive ¶ E3.1.14.

¹⁵ISCR Case No. 01-20700 at 3 (App. Bd. Dec. 19, 2002); *see* Directive ¶ E3.1.15.

¹⁶ISCR Case No. 01-20700 at 3 (App. Bd. Dec. 19, 2002).

¹⁷ISCR Case No. 99-0597 (App. Bd. Dec 13, 2000).

criteria listed therein and an applicant's security suitability."¹⁸ "Any doubt as to whether access to classified information is clearly consistent with national security will be resolved in favor of the national security."¹⁹

Based upon a consideration of the evidence, I find the following adjudicative guideline most pertinent to the evaluation of the facts in this case:

Guideline F - Financial Considerations: A security concern exists because a 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 facts in evidence and the legal standards discussed above. I reach the following conclusions regarding the allegations in the SOR.

Applicant's delinquent debts from credit reports and admitted by Applicant brings the matter within Financial Considerations Disqualifying Conditions (FC DC) ¶ 19(a) (Inability or unwillingness to satisfy debts), and FC DC ¶ 19(c) (A history of not meeting financial obligations). Since Applicant admits six of the eight debts, I conclude the above disqualifying conditions have been established.

Appellant's answer to the SOR raises Financial Consideration Mitigating Conditions (FC 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 judgement), FC 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 circumstances), and FC MC 20(d) (The individual initiated a good-faith effort to repay overdue creditors or otherwise resolve debts). Applicant was not responsible for two of the debts (SOR 1. a and f) since the debts arose from medical treatment covered by the military health care system. He presented sufficient information that one of the debts (SOR 1.d) was paid in full and the lien released. Applicant presented sufficient information that his mortgage debt (SOR 1.e) is current and paid by automatic bank payment. He also presented sufficient information to establish that the

¹⁸ISCR Case No. 95-0611 at 2 (App. Bd. May 2, 1996) (quoting DISCR Case No. 92-1106 (App. Bd. Oct. 7, 1993))

¹⁹*Egan*, 484 U.S. at 531; see AG ¶ 2(b).

debt was accumulated when his father did not pay the mortgage as agreed.

The four remaining debts, (SOR, 1.b, 1.c, 1.g, and 1.h), were incurred after 2001 and still are unresolved. There is more than one debt so the accumulation of delinquent debts was frequent. While his circumstances changed when he was on an overseas assignment and his wife received only workman's compensation payments, there is no indication that these circumstances affected his ability to resolve and pay the four remaining debts. The family did receive some level of income from the workman's compensation that would permit some payments on these four debts. The debts are not

large or the accumulated amount substantial. Applicant presented no information to indicate that under similar circumstances, he would not again incur delinquent debts. Additionally, Applicant did not explain why the delinquent debts were accumulated so there is no indication the debts resulted from conditions beyond his control

Applicant stated he would make inquiries and pay these four debts in the future, but presented no proof of any inquiries or attempts to make payments. Behaving responsibly or irresponsibly in one aspect of life provides an indication of how a person may behave in other aspects of life. A person's relationship with his creditors is a private matter until evidence is uncovered demonstrating an inability or unwillingness to repay debts under agreed upon terms. Absent evidence of strong extenuating or mitigating circumstances, an applicant with a history of serious or recurring financial difficulties is in a situation of risk inconsistent with the holding of a security clearance. An applicant is not required to be debt free, but is required to manage his finances in such a way as to meet his financial obligations. An intention to pay debts in the future is not sufficient to establish a good-faith effort to pay the debts. Applicant admitted the four debts and took no action to pay or resolve them

I carefully considered all of the circumstances in light of the "whole person" concept. I conclude Applicant is not eligible for access to classified information. Applicant has shown an irresponsible attitude toward his debts. He presented insufficient information to explain the debts or mitigate the disqualifying conditions. He has failed to carry his burden to refute, extenuate, or mitigate four debts. I conclude Applicant has not mitigated the security concerns for financial considerations.

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.:	For Applicant
Subparagraph 1.b.:	Against Applicant
Subparagraph 1.c.:	Against Applicant
Subparagraph 1.d.:	For Applicant
Subparagraph 1.e.:	For Applicant
Subparagraph 1.f.:	For Applicant
Subparagraph 1.g.:	Against Applicant
Subparagraph 1.h.:	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 access to classified information for Applicant. Clearance is denied.

Thomas M. Crean
Administrative Judge