

KEYWORD: Financial

DIGEST: Applicant is 58 years old, retired from the Navy and works as a dispatcher for a federal contractor. Applicant has more than \$33,000 in delinquent debts. He stated the debts were due to underemployment and for medical expenses. The debts date as far back as 2000. He has not contacted any of the creditors, has not attempted to resolve any of the debts and he does not intend on repaying any of them. He failed to mitigate security concerns under Guideline F, financial considerations. Clearance is denied.

CASENO: 06-22758.h1

DATE: 05/31/2007

DATE: May 31, 2007

In re:)	
)	
-----)	
SSN: -----)	ISCR Case No. 06-22758
)	
Applicant for Security Clearance)	
)	

**DECISION OF ADMINISTRATIVE JUDGE
CAROL G. RICCIARDELLO**

APPEARANCES

FOR GOVERNMENT

Julie R. Edmunds, Esq., Department Counsel

FOR APPLICANT

Pro Se

SYNOPSIS

Applicant is 58 years old, retired from the Navy and works as a dispatcher for a federal contractor. Applicant has more than \$33,000 in delinquent debts. He stated the debts were due to underemployment and for medical expenses. The debts date as far back as 2000. He has not contacted any of the creditors, has not attempted to resolve any of the debts and he does not intend on repaying any of them. He failed to mitigate security concerns under Guideline F, financial considerations. 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. DOHA issued a Statement of Reasons (SOR) on January 10, 2007 detailing the basis for its preliminary decision—security concerns raised under Guideline F (financial considerations). This action was taken under Executive Order 10865, *Safeguarding Classified Information within Industry* (Feb. 20, 1960), as amended and modified, Department of Defense Directive 5220.6, *Defense Industrial Personnel Security Clearance Review Program* (Jan. 2, 1992), as amended and modified (Directive), and the revised adjudicative guidelines approved by the President on December 29, 2005, and implemented effective September 1, 2006 (Guidelines). Applicant answered the SOR in writing on February 9, 2007 and elected to have a hearing before an administrative judge. The case was assigned to me on April 13, 2007. With the consent of the parties, I convened a hearing on May 16, 2007, to consider whether it is clearly consistent with the national interest to grant or continue a security clearance for Applicant. The Government offered three exhibits for admission in the record, marked as GE 1-3. The exhibits were admitted into evidence without objections. Applicant testified on her behalf and offered one exhibit for admission into the record, marked as AE A. It was admitted into evidence without objection. DOHA received the hearing transcript (Tr.) on May 25, 2007.

FINDINGS OF FACT

Applicant's admissions to the allegations in the SOR are incorporated herein. In addition, after a thorough and careful review of the pleadings, exhibits, and testimony, I make the following findings of fact.

Applicant is 58 years old and has worked for a federal contractor since 2004 as a security guard and was recently promoted to supervisor dispatcher. Applicant joined the Navy out of high school and served twenty-three years, retiring honorably as an E-7 in 1990. He was married to his first wife for 31 years. She died in 2001. He remarried in 2003. Both he and his wife have grown children.

Applicant admitted he owes all of the debts alleged in the SOR.¹ The debts total more than \$33,000. Applicant provided a written statement that explained:

¹TR. 20.

A large portion, if not all of the indebtedness and referrals to collections stem from three events; the death of my first wife of thirty-one years, loss of a high paying job, followed by two low paying hourly jobs, [m]edical expenses, and funeral costs, relating to my first wife, personnel (sic) medical cost, and the reposition (sic) of two vehicles did cause me to fall behind. My house was also foreclosed on which was the results of the loan company applying all payments of escrow to the house payment with nothing being paid to the county for land taxes.²

Applicant could not identify which of the debts listed in the SOR were for medical expenses.³ He admitted the debt in SOR 1.b is likely a credit card debt.⁴ The debts in SOR 1.g and 1.h are car repossessions.⁵ He stated the debt in SOR 1.g was for a 1989 vehicle, bought in 1990 and was charged off in the amount of \$3,101 in 2002.⁶ The vehicle in SOR 1.h was for a 1988 vehicle bought in 1991, and was charged of in August 2002 for \$14,599.⁷ It is unclear as to why Applicant owed so much money on vehicles that had been purchased 17 and 16 years ago respectively.

Applicant has not contacted any of the creditors.⁸ He does not know what most of the debts are for and has not done any research to obtain information about them.⁹ He admitted he has done nothing regarding these debts. He has not made any attempt to repay even the smallest debt in SOR 1.k of \$47.¹⁰ In Applicant's written statement he explained: "The obligations are mine and I have always prided myself in my ability to pay my obligations, however at this stage of my life, closing in on retirement; I feel that I can never meet the payment requirements that would favorably erase this problem."¹¹

After Applicant's wife died he received social security disability payments that she had been owed.¹² In January 2002 he held a job where he earned \$40,000.¹³ He lost this job and was unemployed for approximately two months. He then worked as a security guard and was paid \$9.00

²AE A; Tr. 21-24.

³Tr. 45.

⁴Tr. 44.

⁵Tr. 26-28

⁶*Id.*

⁷*Id.*

⁸Tr. 46.

⁹Tr. 28-29.

¹⁰Tr. 43.

¹¹AE A.

¹²Tr. 30-31.

¹³Tr. 32.

an hour. He left this job when he was hired by his present employer in 2004. He now earns approximately \$1,900 a month after deductions.¹⁴ He receives approximately \$1,300 net pay in military retirement pay.¹⁵ His wife earns approximately \$2,300 monthly in her job.¹⁶ Their total take home pay after deductions is \$5,500. Applicant estimated their monthly expenses to be approximately \$3,266, leaving them a remainder of \$2,234. He has no idea where the remainder of the money is either spent or placed. He stated they had no savings and he had no idea how much money was in their joint checking account.¹⁷ He stated his wife handles all of the bills.¹⁸ Applicant's wife is aware that he has delinquent debts, but he has not told her specifically what he owes or discussed with her paying the debts.¹⁹ Applicant had no explanation for why he has not given his wife a copy of his old debts to be paid.²⁰ Applicant intends on retiring at age 62. He did not provide an explanation for why he has not repaid any of his delinquent debts, except that he does not handle the family finances.²¹ He does not intend to repay them.

POLICIES

“[N]o one has a ‘right’ to a security clearance.”²² 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.”²³ The President has authorized the Secretary of Defense or his designee to grant applicants eligibility for access to classified information “only upon a finding that it is clearly consistent with the national interest to do so.”²⁴ An applicant “has the ultimate burden of demonstrating that it is clearly consistent with the national interest to grant or continue his security clearance.”²⁵ “The clearly consistent standard indicates that security clearance determinations should

¹⁴Tr. 33

¹⁵Tr. 34.

¹⁶Tr. 33

¹⁷Tr. 40.

¹⁸Tr. 42.

¹⁹Tr.41-42.

²⁰Tr. 42.

²¹Tr. 43.

²²*Department of the Navy v. Egan*, 484 U.S. 518, 528 (1988).

²³*Id.* at 527.

²⁴Exec. Or. 10865, *Safeguarding Classified Information within Industry* § 2 (Feb. 20, 1960).

²⁵ISCR Case No. 01-20700 at 3 (App. Bd. Dec. 19, 2002).

err, if they must, on the side of denials.”²⁶ Any reasonable doubt about whether an applicant should be allowed access to sensitive information must be resolved in favor of protecting such sensitive information.²⁷ The decision to deny an individual a security clearance is not necessarily a determination as to the loyalty of an applicant.²⁸ 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.²⁹

Initially, the government must establish, by substantial evidence, conditions in the personal or professional history of the applicant which disqualify, or may disqualify, the applicant from being eligible for access to classified information.³⁰ “Substantial evidence” is “more than a scintilla but less than a preponderance.”³¹ The Guidelines presume a nexus or rational connection between proven conduct under any of the criteria listed therein and an applicant’s security suitability.³²

Once the government establishes a disqualifying condition by substantial evidence, the burden shifts to the applicant to rebut, explain, extenuate, or mitigate the facts.³³ An applicant “as the ultimate burden of demonstrating that it is clearly consistent with the national interest to grant or continue his security clearance.”³⁴ “[S]ecurity clearance determinations should err, if they must, on the side of denial.”³⁵

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 is set forth and discussed in the conclusions below.

CONCLUSIONS

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

²⁶*Id.*

²⁷*Id.*; Directive, Enclosure 2, ¶ E2.2.2.

²⁸Executive Order 10865 § 7.

²⁹*See* Exec. Or. 10865 § 7.

³⁰*See Egan*, 484 U.S. at 531.

³¹*See v. Washington Metro. Area Transit Auth.*, 36 F.3rd 375, 380 (4th Cir. 1994).

³²*See* ISCR Case No. 95-0611 at 2 (App. Bd. May 2, 1996)

³³*See* Directive ¶ E3.1.15.

³⁴ISCR Case No. 01-207000 at 3 (App. Bd. Dec. 19, 2002).

³⁵*Egan*, 484 U.S. at 531; *see* Guidelines ¶ 2(b).

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

Financial Considerations are a security concern because 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. Compulsive gambling is a concern as it may lead to financial crimes including espionage. Affluence that cannot be explained by known sources of income is also a security concern. It may indicate proceeds from financially profitable criminal acts.

Based on all the evidence, Financial Considerations Disqualifying Condition (FC DC) 19(a) (*inability or unwillingness to satisfy debts*) and FC DC 19(c) (*a history of not meeting financial obligations*), apply in this case. Applicant has many debts that have been delinquent for years with no action toward resolving them and he does not intend on paying them.

I have considered all the Financial Considerations Mitigating Conditions (FC MC), and especially considered 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 judgment*), and 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*). Applicant's debts are recent and unpaid and he unequivocally does not intend on paying them. This attitude casts doubt on his reliability and good judgment. Therefore, FC MC 20(a) does not apply.

Applicant stated the debts were incurred due to medical expenses related to his deceased wife. She died in 2001 and he has had six years to resolve them and has not. Although he stated they were medical debts he could not identify any of the medical debts, had not contacted any of the creditors and acknowledged some debts were for other things. I find even if a portion of the debts were for medical expenses Applicant has not acted responsibly under the circumstances and has no intention of resolving any of the debts. Consequently, I find FC MC 20(b) does not apply.

Whole Person Analysis

In all adjudications, the protection of our national security is the paramount concern. The objective of the security-clearance process is the fair-minded, commonsense assessment of a person's life to make an affirmative determination that the person is eligible for a security clearance. Indeed, the adjudicative process is a careful weighing of a number of variables in considering the "whole person" concept. It recognizes that we should view a person by the totality of their acts, omissions, motivations and other variables. Each case must be adjudged on its own merits, taking into consideration all relevant circumstances, and applying sound judgment, mature thinking, and careful analysis.

In addition to considering the specific disqualifying and mitigating conditions under each guideline, I have also considered the adjudicative process factors listed in ¶ 2a (1)-(9) of the Directive to be considered in evaluating a person's eligibility to hold a security clearance. Specifically these are: (1) the nature, extent and seriousness of the conduct; (2) the circumstances and 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 was 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 Guidelines should be followed whenever a case can be measured against this policy guidance.

I considered the whole person in evaluating the case. I considered Applicant's credibility, demeanor and responsiveness when testifying. Applicant acknowledges his debts, concurs that he owes the debts, but has no intention of paying them, despite having the resources to begin paying some of them.

After weighing the disqualifying and mitigating conditions under Guideline F and evaluating all the evidence in the context of the whole person, I conclude Applicant has not mitigated the security concerns based on financial considerations. Accordingly, I conclude he has not carried his burden of showing that it is clearly consistent with the national interest to grant him a security clearance.

FORMAL FINDINGS

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

Paragraph 1. Guideline F:	AGAINST APPLICANT
Subparagraph 1.a-n:	Against Applicant

DECISION

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

Carol G. Ricciardello
Administrative Judge