

KEYWORD: Financial

DIGEST: Applicant is a field engineer for a federal contractor, and has worked for federal contractors in a variety of positions since at least 1998. He neglected to pay numerous debts following several moves, accumulating over \$23,000.00 in delinquent debts. Applicant failed to mitigate the security concerns arising from his history of financial difficulties. Clearance is denied.

CASENO: 06-23246.h1

DATE: 07/27/2007

DATE: July 27, 2007

In re:)	
)	
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SSN: -----)	ISCR Case No. 06-23246
)	
Applicant for Security Clearance)	
)	

**DECISION OF ADMINISTRATIVE JUDGE
MICHAEL J. BRESLIN**

APPEARANCES

FOR GOVERNMENT

Nichol L. Noel, Esq., Department Counsel

FOR APPLICANT

Pro Se

SYNOPSIS

Applicant is a field engineer for a federal contractor, and has worked for federal contractors in a variety of positions since at least 1998. He neglected to pay numerous debts following several

moves, accumulating over \$23,000.00 in delinquent debts. Applicant failed to mitigate the security concerns arising from his history of financial difficulties. Clearance is denied.

STATEMENT OF THE CASE

On December 2, 2005, Applicant submitted an application for a security clearance. The Defense Office of Hearings and Appeals (DOHA) declined to grant or continue a security clearance for Applicant under Executive Order 10865, *Safeguarding Classified Information Within Industry* (Feb. 20, 1960), as amended; Department of Defense Directive 5220.6, *Defense Industrial Personnel Security Clearance Review Program* (Jan. 2, 1992) (the “Directive”), as amended; and the new adjudicative guidelines (AG) promulgated by the President on December 29, 2005, and implemented by the Department of Defense on September 1, 2006. On February 2, 2007, DOHA issued a Statement of Reasons (SOR) detailing the basis for its decision: security concerns raised under the Directive, Guideline F, Financial Considerations.

Applicant answered the SOR in writing on February 27, 2007. He elected to have the matter decided without a hearing.

Department Counsel submitted the government’s case in a File of Relevant Material (FORM) dated April 19, 2007. On April 20, 2007, Department Counsel mailed a complete copy of the FORM to Applicant, along with notice of his opportunity to file objections and submit material to refute, extenuate, or mitigate the potentially disqualifying conditions. Applicant received the FORM on May 7, 2007. Applicant did not submit any additional matter for consideration within 30 days. The case was assigned to me on July 19, 2007.

FINDINGS OF FACT

Applicant denied the allegations in paragraphs 1.c, 1.h, and 1.m, but admitted the remaining factual allegations in the SOR, with explanations. (Item 2.) Those admissions are incorporated herein as findings of fact. He denied that the debts are sufficient to raise security concerns. After a complete and thorough review of the evidence in the record, I make the following additional findings of fact.

Applicant is 35 years old. (Item 4 at 1.) He is a field engineer for a defense contractor currently working overseas. (*Id.* at 2.)

He has worked for federal contractors in a variety of positions requiring security clearances. (Item 4 at 2-3, 8.) Between 1998 and 2003, Appellant worked for a defense contractor in his home state. (Item 4 at 2-3.) He then moved to another position with the company in another state, where he worked from August 2003 until August 2004, when he moved to his present position overseas. (*Id.*) During this period, he also worked temporarily at other locations.

In December 2005, Applicant completed an SF 86, Security Clearance Application. (Item 4.) He reported an outstanding delinquency for his company credit card. (Item 4 at 9.) Thereafter, security investigators obtained a credit bureau report dated March 16, 2006. (Item 8.) The credit bureau report indicated Applicant had 14 delinquent debts totaling more than \$23,000.00, including a judgment for unpaid utility services and a state tax lien.

On February 2, 2007, DOHA issued a Statement of Reasons, listing 13 debts reported as delinquent. (Item 1.) Applicant's response addressed each allegation in order. He admitted each of the allegations, with explanations, except paragraphs 1.c, 1.h, and 1.m. (Item 2.) He indicated he moved from his home state in 2003, and lived in several locations since that time, including overseas. He stated many of the delinquent accounts were unpaid final bills for utilities and services, which had gone "unnoticed" because of his many moves. He stated creditors had not attempted to collect on these debts. He never provided a change of address notice to his creditors because his new addresses were not established for months after each move.

Applicant resolved the debt listed in paragraph 1.e, his employer-issued credit card, and provided a letter indicating it was settled for less than the asserted balance. (Answer to SOR, at 4.) He stated he was disputing the allegation in paragraphs 1.c, 1.h, and 1.m, but provided no documentation of this dispute.

With regard to the remaining debts, he stated he contacted the creditors to arrange repayment agreements. However, he provided no evidence of any completed agreements, nor did he provide proof of any payments toward such agreements.

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." *Department of the Navy v. Egan*, 484 U.S. 518, 527 (1988). In Executive Order 10865, *Safeguarding Classified Information Within Industry* (Feb. 20, 1960), the President set out guidelines and procedures for safeguarding classified information within the executive branch.

To be eligible for a security clearance, an applicant must meet the security guidelines contained in the Directive. Enclosure 2 of the Directive sets forth personnel security guidelines, as well as the disqualifying conditions and mitigating conditions under each guideline. Conditions that could raise a security concern and may be disqualifying, as well as those which could mitigate security concerns pertaining to this adjudicative guideline, are set forth and discussed in the conclusions below.

"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." (AG, ¶ 2.) An administrative judge must apply the "whole person concept," and consider and carefully weigh the available, reliable information about the person. (*Id.*) An administrative judge should consider the following factors: (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 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 pertinent 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. (*Id.*)

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. (Directive, ¶ E3.1.14.) Thereafter, the applicant is responsible for presenting evidence to rebut, explain, extenuate, or mitigate the facts. (Directive, ¶ E3.1.15.) An applicant “has the ultimate burden of demonstrating that it is clearly consistent with the national interest to grant or continue his security clearance.” ISCR Case No. 01-20700 at 3 (App. Bd. Dec. 19, 2002). “Any doubt as to whether access to classified information is clearly consistent with national security will be resolved in favor of the national security.” (Directive, ¶ E2.2.2.)

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 a determination as to the loyalty of the applicant. (Exec. Ord. 10865, § 7.) It is merely an indication that the applicant has not met the strict guidelines the President has established for issuing a clearance.

CONCLUSIONS

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

Guideline F, Financial Considerations

The security concern relating to the guideline for Financial Considerations is set out in ¶ 18 of the new adjudicative guidelines.

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.

The guideline notes several conditions that could raise security concerns. Under ¶ 19(a), an “inability or unwillingness to satisfy debts” is potentially disqualifying. Similarly, under ¶ 19(c), “a history of not meeting financial obligations” may raise security concerns. Appellant has been delinquent on many accounts for many years, and has not shown that he is presently able to resolve these debts. The evidence raises these potentially disqualifying conditions.

The guideline also includes several conditions that could mitigate security concerns arising from financial difficulties. Paragraph 20(a) may apply where “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.” The behavior in question is the non-payment of debts. Most of the listed debts remain unresolved, therefore the behavior is recent. Moreover, it involves numerous debts arising at different times from divers areas. The available evidence indicates a pattern of leaving unpaid debts when moving to a new location,

and Appellant provided no information to suggest this is unlikely to recur. I conclude this potentially mitigating condition does not apply.

Under ¶ 20(b), it may be mitigating where “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.” Appellant’s financial problems arose because he failed to pay his bills when he moved from one location to the next. This was not a circumstance beyond his control; therefore, I find this mitigating condition does not apply.

Evidence that “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” is potentially mitigating under ¶ 20(c). Similarly, ¶ 20(d) applies where the evidence shows “the individual initiated a good-faith effort to repay overdue creditors or otherwise resolve debts.” Appellant provided no evidence that he has obtained financial counseling. He indicated his intention to negotiate repayment agreements; however, in the absence of more substantial evidence, I cannot find his financial problems are under control or that he has made a good faith effort to resolve these debts. These potentially mitigating conditions do not apply.

Paragraph 20(e) provides that it may be mitigating where “the individual has a reasonable basis to dispute the legitimacy of the past-due debt which is the cause of the problem and provides documented proof to substantiate the basis of the dispute or provides evidence of actions to resolve the issue.” Appellant asserted he intends to dispute three of the listed debts, but provided no proof supporting the basis of his dispute, or evidence of actions taken to resolve the issues. I find this mitigating condition does not apply.

Whole Person Concept

I considered carefully all the potentially disqualifying and mitigating conditions in this case in light of the “whole person” concept, keeping in mind that any doubt as to whether access to classified information is clearly consistent with national security must be resolved in favor of the national security. The documentary evidence and Applicant’s admissions reveal serious, recurring financial difficulties, extending over many years. Unfortunately, Applicant provided little information about his background, character, or record of service, other than his employment with a federal contractor for several years. Other than evidence of the repayment of one bill, he provided no information demonstrating rehabilitation of his financial condition or other pertinent behavioral changes. He has not provided information from which I could assess the likelihood of a continuation of these financial concerns. Considering all the evidence, I conclude Applicant has not met his burden of demonstrating that it is clearly consistent with the national interest to grant him a security clearance.

FORMAL FINDINGS

My conclusions as to each allegation in the SOR are:

Paragraph 1, Guideline F: AGAINST APPLICANT

Subparagraph 1.a-m: 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 interest to grant or continue a security clearance for Applicant. Clearance is denied.

Michael J. Breslin
Administrative Judge