

KEYWORD: Financial; Personal Conduct

DIGEST: Applicant, with more than \$13,000.00 in delinquent financial obligations, assumed financial responsibility for his fiancée in July 2001. His fiancée has two children, is unemployed, and has serious health problems. While Applicant appears sincere in his stated intentions to pay off his delinquent debts, he has not made any progress in the 18 months since he was first questioned about his finances, and he is unlikely to make progress in the foreseeable future given the extent of his other financial responsibilities. Clearance is denied.

CASENO: 02-03627.h1

DATE: 09/30/2002

DATE: September 30, 2002

In Re:

SSN: -----

Applicant for Security Clearance

ISCR Case No. 02-03627

DECISION OF ADMINISTRATIVE JUDGE

JOHN R. ERCK

APPEARANCES

FOR GOVERNMENT

Jonathan A. Beyer, Department Counsel

FOR APPLICANT

Pro Se

SYNOPSIS

Applicant, with more than \$13,000.00 in delinquent financial obligations, assumed financial responsibility for his fiancée in July 2001. His fiancée has two children, is unemployed, and has serious health problems. While Applicant appears sincere in his stated intentions to pay off his delinquent debts, he has not made any progress in the 18 months since he was first questioned about his finances, and he is unlikely to make progress in the foreseeable future given the extent of his other financial responsibilities. Clearance is denied.

STATEMENT OF THE CASE

On April 5, 2002, the Defense Office of Hearings and Appeals (DOHA), pursuant to Executive Order 10865, "*Safeguarding Classified Information Within Industry*," dated 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, issued a Statement of Reasons, (SOR) to Applicant which detailed reasons why DOHA could not make the preliminary finding under the Directive that it is clearly consistent with the national interest to grant a security clearance for Applicant and recommended referral to an Administrative Judge to determine whether a security clearance should be granted, denied or continued.

Applicant answered the SOR on April 26, 2002, and stated he wanted his case decided without a hearing. Applicant received the File of Relevant Material (FORM) consisting of seven items on June 11, 2002. He submitted his response on July 11, 2002. The case was assigned to this Administrative Judge on July 31, 2002.

FINDINGS OF FACT

In his answer to the SOR, Applicant admitted, with explanation, all allegations under Guideline F, but denied the allegation under Guideline E--that he had intentionally withheld information about his delinquent debts in response to questions on the SF 86 (*Security Clearance Application*). I accept his admissions, and after a complete and thorough review of the evidence of record, and upon due consideration of the same, I make the following findings of fact:

Applicant is a veteran of the U.S. military (October 1992 - October 1996) who will be 30 years old in October 2002. After being discharged from active duty in October 1996, he served in the reserves until July 2000. He was granted a secret security clearance in November 1992.

Applicant began to experience financial problems after he was discharged from military service. He was working for his father at a rate of remuneration that was lower than his military earnings, and was unable to make payments to Creditor A for the computer equipment he had purchased while on active duty. That obligation (\$2,318.11) became delinquent in October 1999 and remains in a delinquent status. Applicant incurred additional debt to finance his education at a trade school. He ultimately incurred education-related indebtedness of \$8,094.13 to Creditor B--which became delinquent in late 2000. At about the same time, Applicant became delinquent on other obligations: an indebtedness of \$472.00 to Creditor C, a bank, incurred on a credit card; an indebtedness of \$78.00 to Creditor D for medical care; and an indebtedness of \$2,150.00 to Creditor E, a collection agency (the purpose for which this indebtedness was incurred is not disclosed).

In February 2001, Applicant established a repayment plan with Consumer Credit Counseling Services (CCCS) under which he agreed to pay \$248.00 monthly for distribution to his creditors. He made monthly payments to this plan until June 2001 when he moved in with his fiancée and began to support her and her two children⁽¹⁾ (Item 5). She was unemployed because of health problems⁽²⁾ (Item 5). Applicant's monthly income was not adequate, or only barely adequate, to the task of keeping food on the table and a roof over his new family. They were living in a "crime ridden neighborhood" and getting by using "cash till payday" services. Under these circumstances, he was unable to make any payments to CCCS for the repayment of his delinquent debts. In his second signed, sworn statement to the Defense Security Service (DSS) in November 2001, Applicant reported his cohabitant "landed a new job approximately two weeks ago, and our financial situation is looking good" (Item 6). There is no evidence Applicant was able to make any payments on his delinquent debts in the succeeding months.

When Applicant completed the SF 86 (*Security Clearance Application*) in February 2001, he answered "no" to question 38 which asked if he had "been over 180 days delinquent on any debt(s) ...in the last 7 years." In his answer to the SOR, Applicant stated his belief that he answered "no" to question 38 because he "misunderstood the question." He was under the impression "that (his) debts were being handled and being brought up to date" because of his participation in CCCS (Item 2).

In July 2002, in response to the FORM, Applicant reported that he had met with a credit counseling service and was working with them to establish a debt consolidation plan. In his response, he listed all of his delinquent accounts and reported balances (for two accounts) that were larger than the balances alleged in the SOR. He also stated that the he negotiated with Creditor A and they had agreed on a pay-off balance of \$1,800.00. Although he did not know at the time he submitted his response if his consolidation plan would be approved, he stated he was "seriously determined to continue with arrangements" for the resolution of his debts (See Applicant's response to the FORM).

The only evidence of Applicant's duty performance is his statement that he enjoys a "good reputation" with his current employer (Item 5).

POLICIES

The Adjudicative Guidelines of the Directive are not a set of inflexible rules of procedure. Instead, they are to be applied by Administrative Judges on a case by case basis with an eye toward making decisions with reasonable consistency which are clearly consistent with the interests of national security. In making these overall common sense determinations, Administrative Judges must consider, assess, and analyze the evidence of record, both favorable and unfavorable, not only with respect to the relevant Adjudicative Guidelines, but also in the context of the factors set forth in Section 6.3 of the Directive. In that vein, the Government has the burden of proving any controverted facts alleged in the SOR, it must also demonstrate the facts proven have a nexus to Applicant's lack of security worthiness.

The following Adjudicative Guidelines are deemed applicable in the instant matter:

FINANCIAL CONSIDERATIONS

(Guideline F)

The Concern: 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 include:

E2.A6.1.2.1. A history of not meeting financial obligations;

E2.A6.1.2.3. Inability or unwilling to satisfy debts:

Conditions that could mitigate security concerns include:

E2.A6.1.3.3. 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);

PERSONAL CONDUCT

(Guideline E)

The Concern: Conduct involving questionable judgment, untrustworthiness, unreliability, lack of candor, dishonesty, or unwillingness to comply with rules and regulations could indicate that the person may not properly safeguard classified information.

This Guideline was not found substantiated by the evidence.

Burden of Proof

The Government has the burden of proving any controverted facts alleged in the Statement of Reasons. If the Government established its case, the burden of persuasion shifts to Applicant to establish his security suitability through evidence which refutes, mitigates, or extenuates the disqualifying conduct and demonstrates it is clearly consistent with the national interest to grant or continue his security clearance.

A person who seeks access to classified information enters a fiduciary relationship with the Government predicated upon trust and confidence. Where the facts proven by the Government raise doubt about an applicant's judgment, reliability, or trustworthiness, the applicant has a heavy burden of persuasion to demonstrate he is nonetheless security worthy. As noted by the United States Supreme Court in *Department of Navy v. Egan*, 484 U.S. 518, 531 (1988), "the clearly consistent standard indicates security clearance determinations should err, if they must, on the side of denials." As this Administrative Judge understands the Court's rationale, doubts are to be resolved against an applicant.

CONCLUSION

Having considered the record evidence in accordance with appropriate legal precepts and factors, this Administrative Judge concludes the Government has established its case with regard to Guidelines F and E. In reaching my decision, I have considered the evidence as a whole, including each of the factors enumerated in Section 6.3, as well as those referred to in Section E2.2 dealing with Adjudicative Process.

A security concern is raised by Applicant's failure to satisfy his financial obligations according to the terms originally agreed upon. An individual who is financially overextended is at risk of having to engage in illegal acts to generate funds.

The SOR alleges Applicant is behind in paying financial obligations totaling more than \$13,000.00. In his response to the FORM, Applicant indicated his delinquent debt is more than \$14,000.00, and provides assurances he is working on a debt consolidation plan. While Applicant had repeatedly stated his intentions to pay off his delinquent accounts, he has not made any progress toward that end in the time his finances have been under scrutiny by the DSS. And it is doubtful Applicant can summon the resources to address his delinquent obligations given the extent of his domestic responsibilities. More than 15 months ago, Applicant assumed financial responsibility for a woman with serious health problems, and her two children. He deserves applause and accolades for being a good Samaritan and true humanitarian, but these attributes are not sufficient to overcome the security concern raised by his delinquent debts. In spite of Applicant's repeated and sincere statements that he intends to pay off his delinquent debts, it is unrealistic to believe he will make any progress toward that end in the foreseeable future in view of his other financial responsibilities. Guideline F is concluded against Applicant.

A security concern is raised by Applicant's failure to disclose his delinquent financial obligations on the SF 86 he completed in February 2001. If deliberate, his failure to provide complete and truthful answers to the questions suggest dishonesty and a lack of candor that could indicate he may not properly safeguard classified information.

Applicant has explained he answered "no" to question 38 on the SF 86 because he misunderstood the question. Had he

understood the question, he would have known the correct answer was "yes" given the extent of his delinquent financial obligations. I find Applicant's answer credible. An individual who provides information (as this Applicant has in his response to the FORM) indicating his delinquent financial obligations are actually greater than alleged in the SOR, is not someone who intends to cheat or mislead the Government. Guideline E is concluded for Applicant.

FORMAL FINDINGS

Formal findings as required by Section 3, Paragraph 7, of Enclosure 1 of the Directive are hereby rendered as follows:

Paragraph 1. (Guideline F) AGAINST THE APPLICANT

Subparagraph 1.a. Against the Applicant

Subparagraph 1.b. Against the Applicant

Subparagraph 1.c. Against the Applicant

Subparagraph 1.d. Against the Applicant

Subparagraph 1.f For the Applicant

Paragraph 2. (Guideline E) FOR THE APPLICANT

Subparagraph 2.a. For the Applicant

DECISION

In light of all the circumstances presented by the record in this case, it is not clearly consistent with the national interest

to grant Applicant's security clearance.

John R. Erck

Administrative Judge

1. In his first, signed sworn statement to DSS (Item 5), Applicant stated his fiancée had two children. Later in his answer to the SOR, he stated his fiancée "had three children to care for." (Item 2)
2. According to information Applicant provided in his answer to the SOR, his fiancée has been treated for ovarian cancer (Item 2).