

KEYWORD: Financial

DIGEST: Applicant became financially overextended during his final years in the U.S. Army. His wife handled the family finances while he was away performing his military duties. She failed to pay on their debts and eventually divorced Applicant. He received credit counseling and entered a payment plan with a credit counseling service and has a record of making payments. Applicant mitigated the financial security concerns raised by his financial condition. Clearance is granted.

CASENO: 02-07857.h2

DATE: 04/08/2005

DATE: April 8, 2005

In re:

SSN: -----

Applicant for Security Clearance

ISCR Case No. 02-07857

REMAND DECISION OF ADMINISTRATIVE JUDGE

JAMES A. YOUNG

APPEARANCES

FOR GOVERNMENT

Marc E. Curry, Esq., Department Counsel

FOR APPLICANT

Pro Se

SYNOPSIS

Applicant became financially overextended during his final years in the U.S. Army. His wife handled the family finances while he was away performing his military duties. She failed to pay on their debts and eventually divorced Applicant. He received credit counseling and entered a payment plan with a credit counseling service and has a record of making payments. Applicant mitigated the financial security concerns raised by his financial condition. Clearance is granted.

STATEMENT OF THE CASE

The Defense Office of Hearings and Appeals (DOHA) declined to grant or continue a security clearance for Applicant. On 5 January 2004, DOHA issued a Statement of Reasons⁽¹⁾ (SOR) detailing the basis for its decision—security concerns raised under Guideline F (Financial Considerations) of the Directive. Applicant answered the SOR in writing on 3 February 2004 and elected to have the case decided on the written record in lieu of a hearing. Department Counsel submitted the Government's written case on 16 September 2004. A complete copy of the file of relevant material (FORM) was provided to Applicant, who was afforded an opportunity to file objections and submit material to refute, extenuate, or mitigate the disqualifying conditions. Applicant received the FORM on 26 October 2004. On 23 November 2004, the Applicant's response was sent from the Department's paralegal to the Department Counsel. He offered no objection to the materials. Nevertheless, the case file was assigned to me on 30 November 2004 by letter indicating Applicant had not submitted a response to the FORM. The materials Applicant submitted were not in the case file.

In a decision dated 17 December 2004, I denied Applicant a security clearance. Applicant appealed. On 6 April 2005, the Appeal Board remanded the case for consideration of the Applicant's response. The Board's opinion states Applicant submitted a certified mail receipt showing a member of the DOHA administrative staff signed for a package from Applicant on 17 November 2004.

FINDINGS OF FACT

Applicant is a 49-year-old instructor for a defense contractor. Applicant served 22 years in the U.S. Army, retiring in the grade of E-7 in 1999. He was granted a security clearance in 1990.

Applicant became financially overextended toward the end of his Army career when he was performing temporary duty away from his family. His wife (2) failed to make the necessary payments on accounts due. Applicant was co-signer for his son's automobile. The son failed to make all his payments and was then involved in an accident that damaged the vehicle. As Applicant's son failed to make payments on his insurance, the vehicle was not covered. The car has since been repossessed by the creditor.

Applicant admits charged off debts of more than \$17,500, an unpaid judgment of more than \$5,000, a debt in collection status of more than \$7,400, and another delinquent debt of more than \$8,9000. Answer. Applicant signed an agreement with a credit counseling service (CCS) that requires he pay \$699 a month to pay towards his bad debts. After the first two months, Applicant began paying \$1,699 per month to CCS

The following chart captures the status of debts alleged in the SOR as of the November 2004 when he submitted his response to the FORM:

¶	Nature and Amt	Status	Record
1.a	Involuntary car repo-\$8,974	CCS-balance of \$7,217	Item A at 7
1.b	Charged off credit card-\$3,742	CCS-paid	Item A at 7
1.c	Charged off credit card-\$8,368	Disputed	CBR
1.d	Charged off credit card-\$9,181	CCS-balance \$834	Item A at 7
1.e	Collection Acct-credit card-\$7,456	CCS-paid	Item A at 7
1.f	Judgment \$5,064	CCS-balance\$3,303	Item A at 7

POLICIES

"[N]o one has a 'right' to a security clearance." *Department of the Navy v. Egan*, 484 U.S. 518, 528 (1988). 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." *Id.* at 527. 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." Exec. Or. 10865, *Safeguarding Classified Information within Industry* § 2 (Feb. 20, 1960). Eligibility for a security clearance is predicated upon the applicant meeting the security guidelines contained in the Directive. 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.

Enclosure 2 of the Directive sets forth personnel security guidelines, as well as the disqualifying conditions (DC) and mitigating conditions (MC) under each guideline. In evaluating the security worthiness of an applicant, the administrative judge must also assess the adjudicative process factors listed in ¶ 6.3 of the Directive. The decision to deny an individual a security clearance is not necessarily a determination as to the loyalty of the applicant. *See* Exec. Or. 10865 § 7. 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.

CONCLUSIONS

In the SOR, DOHA alleged Applicant had a delinquent debt of \$8,974 resulting from an involuntary repossession (¶ 1.a), delinquent debts totaling more than \$21,000 that had been charged off (¶¶ 1.b-1.d), a delinquent debt of more than \$7,400 that had been turned over for collection (¶ 1.e), and a delinquent judgment for \$5,064 (¶ 1.f). Applicant admitted each of the delinquent debts except for a charged off debt of \$8,368 alleged in ¶ 1.c. An applicant who is financially overextended is at risk of having to engage in illegal acts to generate funds. Directive ¶ E2.A6.1.1.

The evidence established Applicant has a history of not meeting his financial obligations (DC E2.A6.1.2.1.) and was unable or unwilling to satisfy his debts (DC E2.A6.1.2.3.). On the other hand, at least some of the debts appear to have resulted from conditions beyond his control-Applicant's wife controlled the family finances while he was away performing military duty and the couple eventually divorced. MC E2.A6.1.3.3. Applicant received counseling for his problem and appears to be resolving all of his debts (MC E2.A6.1.3.4), except ¶ 1.c through a good-faith effort to pay them off (MC E2.A6.1.3.6) with the help of the credit counseling service. After agreeing to pay \$699 each month, Applicant has been paying \$1,699 per month to CCS to pay off the debts.

Applicant disputed the one remaining debt (¶ 1.c). He claims it is his wife's debt. The only evidence in the file is that Applicant disputed this debt. The results of that dispute are unknown. Nevertheless, after considering all of the evidence in this case, including the adjudicative process factors (Directive ¶ E2.2.1), I find for Applicant.

FORMAL FINDINGS

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

Paragraph 1. Guideline F: FOR APPLICANT

Subparagraph 1.a: For Applicant

Subparagraph 1.b: For Applicant

Subparagraph 1.c: For Applicant

Subparagraph 1.d: For Applicant

Subparagraph 1.e: For Applicant

Subparagraph 1.f: For Applicant

DECISION

In light of all of all the circumstances presented in this case, it is clearly consistent with the national interest to grant or continue a security clearance for Applicant. Clearance is granted.

James A. Young

Administrative Judge

1. Pursuant to Exec. Or. 10865, *Safeguarding Classified Information within Industry* (Feb. 20, 1960), as amended and modified, and Department of Defense Directive 5220.6, *Defense Industrial Personnel Security Clearance Review Program* (Jan. 2, 1992), as amended and modified (Directive).

2. Applicant and his wife divorced in July 2003.