

KEYWORD: Financial

DIGEST: Applicant is a 51-year-old employee of a defense contractor who incurred over \$22,000.00 in delinquent debts. He admitted the six debts existed but offered proof of payment of only the three smallest debts. He disputed the allegation that his monthly expenses exceeded his income. The largest debt was for back child support in the amount of over \$20,000.00. He acknowledged the debt and the reason for it but offered no evidence of payment or a payment plan. Clearance is denied.

CASENO: 02-28532.h1

DATE: 08/13/2004

DATE: August 13, 2004

In Re:

SSN: -----

Applicant for Security Clearance

ISCR Case No. 02-28532

DECISION OF ADMINISTRATIVE JUDGE

CHARLES D. ABLARD

APPEARANCES

FOR GOVERNMENT

Lynette Andresen, Esq., Department Counsel

FOR APPLICANT

Pro Se

SYNOPSIS

Applicant is a 51-year-old employee of a defense contractor who incurred over \$22,000.00 in delinquent debts. He admitted the six debts existed but offered proof of payment of only the three smallest debts. He disputed the allegation that his monthly expenses exceeded his income. The largest debt was for back child support in the amount of over \$20,000.00. He acknowledged the debt and the reason for it but offered no evidence of payment or a payment plan. Clearance is denied.

STATEMENT OF CASE

On September 30, 2003, the Defense Office of Hearings and Appeals (DOHA), pursuant to Executive Order 10865, *Safeguarding Classified Information Within Industry*, 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 affirmative finding under the Directive that it is clearly consistent with the national interest to grant or continue a security clearance for Applicant. DOHA recommended the case be referred to an administrative judge to determine whether a clearance should be granted, continued, denied, or revoked.

In a sworn written statement dated November 10, 2003, Applicant responded to the allegations set forth in the SOR, and elected to have his case decided on the written record in lieu of a hearing. Department Counsel submitted the Government's written case on April 12, 2004. A complete copy of the file of relevant material (FORM) was provided to the Applicant, and he was afforded an opportunity to file objections and submit material in refutation, extenuation, or mitigation. Applicant submitted no additional information and the case was assigned to me on June 8, 2004.

FINDINGS OF FACT

After a complete and thorough review of the information in the record, and upon due consideration of same, I make the following additional findings of fact:

Applicant is a 51-year-old owner-operator of a truck for a defense contractor who incurred over \$22,000.00 in delinquent debts at the time the SOR was prepared. He offered evidence of payment of the three smallest debts (Subparagraphs l.b., c, and e) even though he questioned one of them.

Two other debts were for hospitalization that he questioned but was trying to resolve. He disputed the allegation that his monthly expenses exceeded his income. The largest debt was for back child support in the amount of over \$20,000.00.

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.

An evaluation of whether the applicant meets the security guidelines includes consideration of the following factors: (1) the nature, extent, and seriousness of the conduct; (2) the circumstances surrounding the conduct; (3) the frequency and recency of the conduct; (4) the individual's age and maturity at the time of the conduct; (5) the voluntariness of participation; (6) the presence or absence

of rehabilitation and other 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. Directive, ¶ E2.2.1. Security clearances are granted only when "it is clearly consistent with the national interest to do so." Executive Order

Initially, the Government must establish, by something less than a preponderance of the evidence, that conditions exist in the personal or professional history of the applicant which disqualify, or may disqualify, the applicant from being eligible for access to classified information *See Egan*, 484 U.S. at 531. The applicant then bears the burden of demonstrating that it is clearly consistent with the national interest to grant or continue the applicant's clearance. "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. "[S]ecurity clearance determinations should err, if they must, on the side of denials." *Egan*, 484 U.S. at 531. *See* Executive Order No. 12968 § 3.1(b)

CONCLUSIONS

Upon consideration of all the facts in evidence, and after application of all appropriate legal precepts, factors, and conditions above, I conclude the following with respect to all allegations set forth in the SOR.

Applicant's delinquent debts prompted the allegation in the SOR of violation of Guideline F in that an individual who is financially overextended is at risk of having to engage in illegal acts

to generate funds. (E2.A6.1.1.) Conditions that could raise a security concern and may be disqualifying include a history of not meeting financial obligations (E2.A6.1.2.1.) and evidence of

inability or unwillingness to satisfy debts. (E2.A6.1.2.3.) Mitigating Conditions (MC) might include the fact that the person has initiated a good faith effort to repay overdue creditors or otherwise resolve debts (E2.A6.1.3.6.) and that the conditions resulting in the problems were largely beyond the person's control such as divorce. (E2.A6.1.3.3.)

Applicant stated in his answer that he was attempting to resolve the outstanding delinquent debts but offered no evidence, except for three smallest debts, either with the answer or when he had an opportunity to respond to the FORM six months later. He stated that the child support debt was caused by a divorce and that he would begin to pay this debt in monthly payments beginning in March 2004 but no evidence was offered to prove the fact.

As to his expenses exceeding his income, Applicant stated that his income had increased as a result of a business restructuring but offered no evidence to support the statement. He has failed to offer sufficient evidence to rebut the allegations and the evidence the government has submitted to support them.

While Applicant offers an argument that he may be attempting to resolve his past financial problems, he offers insufficient evidence to mitigate the fact that he has had a history of financial delinquencies that disqualify him at this time from having a security clearance. I find that none of the mitigating conditions are applicable.

In all adjudications the protection of our national security is of paramount concern. Persons who have access to classified information have an overriding responsibility for the security concerns of the nation. The objective of the security clearance process is the fair-minded, commonsense assessment of a person's trustworthiness and fitness for access to classified information.

After considering all the evidence in its totality and as an integrated whole to focus on the whole person of Applicant, I conclude that it is not clearly consistent with the national interest to grant clearance to Applicant.

FORMAL FINDINGS

Formal findings as required by the Directive (Par. E3.1.25) are as follows:

Paragraph 1. Guideline F: AGAINST APPLICANT

Subparagraph 1.a.: Against Applicant

Subparagraph 1.b.: For Applicant

Subparagraph 1.c.: For Applicant

Subparagraph 1.d.: Against Applicant

Subparagraph 1.e.: For Applicant

Subparagraph 1.f.: Against Applicant

Subparagraph 1.g.: Against Applicant

DECISION

After full consideration of all the facts and documents 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.

Charles D. Ablard

Administrative Judge