

DATE: October 6, 2005

In Re:

SSN: -----

Applicant for Security Clearance

ISCR Case No. 02-28854

DECISION OF ADMINISTRATIVE JUDGE

PAUL J. MASON

APPEARANCES

FOR GOVERNMENT

Nichole Noel, Esq., Department Counsel

FOR APPLICANT

Pro Se

SYNOPSIS

Given the lack of believability of Applicant's explanations for initially incurring the financial difficulties, the 12-month period since his Chapter 7 discharge of almost \$24,000.00 in March 2004 represents insufficient time by itself to justify an affirmative finding that Applicant has made the necessary changes in his financial habits to warrant a security clearance. Clearance is denied.

STATEMENT OF CASE

On July 13, 2004, the Defense Office of Hearings and Appeals (DOHA), pursuant to Department of Defense Directive 5220.6, dated January 2, 1992, as reissued through Change 4 thereto, dated April 20, 1999, issued a Statement of Reasons (SOR) to the 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 referral to an Administrative Judge to conduct proceedings and determine whether clearance should be granted, continued, denied or revoked. On September 7, 2004, Applicant responded to the SOR and requested a hearing before an Administrative Judge.

The case was assigned to me on January 3, 2005. On March 2, 2005, this case was set for hearing on March 24, 2005. The Government submitted seven exhibits and Applicant submitted one exhibit. Testimony was taken from Applicant. The transcript (Tr.) was received on April 4, 2005.

RULINGS ON PROCEDURE

At the hearing before opening statements, the government moved to amend the SOR by adding the following allegation (1.f.):

On or about November 24, 2003, you filed a voluntary petition for Chapter 7 bankruptcy in the United States Bankruptcy Court for the Western District of Louisiana, Alexandria Division. Your listed assets totaled

approximately \$63,900.00. Your list of liabilities totaled approximately \$95,841.00. On or about arch 24, 2004, your dischargeable debts were discharged. (Tr. 9).

Applicant indicated he had no objection. Pursuant to E3.1.17. of the Directive, the motion was granted.

FINDINGS OF FACT

The SOR alleges under the financial considerations (FC) guideline that Applicant is legally responsible for four past due debts. Applicant admitted accounts described in subparagraphs 1.a. and 1.b. He claimed subparagraph 1.c. was the same debt as subparagraph 1.b. He denied subparagraph 1.d. claiming it was not his debt. In disputing subparagraph 1.e., Applicant noted his financial problems were resolved through a Chapter 7 discharge in bankruptcy in March 2004. Applicant is 46 years old and employed as a lead analyst by a defense contractor. He seeks a secret security clearance.

All four delinquent debts in the SOR are credit card accounts that became delinquent between 1998 and late 1999, and were turned over to collection agencies. According to a May 2002 credit bureau report (CBR, GE 4), Applicant was the primary account holder for the four accounts. (Tr. 33.) The total amount of the delinquent debt incurred on the four accounts as of September 2003 was \$23,769.00.

The origin of Applicant's financial difficulties is not apparent in the record. However, those problems triggered marital problems that became so difficult in 1996 and early 1997 that he and his wife separated in 1997. Applicant filed for divorce in July 1997. During bitter divorce proceedings, Applicant claimed his wife promised to pay the accounts identified in subparagraphs 1.a., 1.b., and 1.c. (Tr. 51), but the purported promise was never memorialized in the divorce documents filed in July 1999. (GE 5.)

From 1999 until he provided his sworn statement in July 2002, Applicant contended he thought his former wife had been paying the creditors pursuant to the liability settlement that was in the divorce decree. (GE 2; Tr. 21-22.) Further, he testified the listed creditors never contacted him during the period. He stated in the sworn statement he would begin repayment of the debts by July 31, 2002, if his investigation revealed he still owed the debts. While he claimed he launched an investigation in the fall of 2003, he provided no documentation to prove he took any action.

Applicant repeatedly stated in his answer and at the hearing that the subparagraph 1.d. debt was not his responsibility because he never owned a credit card machine or credit dispensing device. Even though he knew the procedure for officially disputing debts with the credit agencies (Tr. 36), he discharged the 1.d. debt in his November 2003 bankruptcy anyway. (Tr. 35.) Applicant's Personal Financial Statement (PFS) of July 1, 2002 (subparagraph 1.e.), shows that after payment of monthly expenses, Applicant had a monthly net remainder of \$960.00.

At the hearing, Applicant provided additional information about the debts he thought belonged to his wife. First, he recalled that he never examined the contents of the divorce decree before he signed the document in July 1999 because he thought the SOR debt liability was included in the decree. (Tr. 22) However, later in his testimony, he stated he was so angry over the length of the divorce action and his attorney's request for \$1,500.00 (that Applicant did not pay) to defend against an increase in child support (Tr. 23; 50) that he signed the divorce decree without reading it. He stated, "I was mad. I said, fine. Fine. Just - let's get it over with. I did not - that's why in the SOR I admit to the debts, because I did - I failed to go back and look. I failed to read it. I feel it is my fault." (Tr. 50.)

Applicant contends he filed a Chapter 7 bankruptcy petition in November 2003 after he was unable to negotiate any kind of payment plan with the creditors. He included all the SOR debts and all his other debts that were not delinquent. Based on his belief that if he lost his security clearance, he would lose his job, Applicant did not want to be in a position where he still had delinquent bills if he lost his security clearance. (Tr. 40.) In March 2004, Applicant was discharged from approximately \$35,841.00 in delinquent debt owed to 13 creditors, including the four debts identified in the SOR. As noted earlier in this paragraph, the monetary difference between the SOR debt-total and the amount actually discharged is due to Applicant including all debts in his bankruptcy.

Since his discharge in March 2004, Applicant testified he is current on all his bills, including his mortgage. His child support is also current. He has about \$18,000.00 in his retirement savings account. (Tr. 41.)

Applicant's character evidence includes three statements from his friends and supervisor. A fellow member from a veteran's organization considers Applicant a good recruiter. A friend who practices law believes Applicant is a dependable and responsible person. A deputy in Applicant's department has found Applicant to be indispensable to the overall preparation of soldiers for conflict. The division chief has observed enough of Applicant's work product to conclude he deserves a promotion. Applicant received a certificate and two awards for first-class job performance.

Having weighed the entire record, I am not persuaded that Applicant believed in good-faith that the divorce decree contained the requisite language requiring his former wife to pay the SOR debts. Relying only on a verbal agreement concerning such a substantial sum of liability, the reasonable person would have made every effort to formalize this oral agreement into the divorce documents to achieve some repose in his future financial affairs. Yet, Applicant supposedly did not read the divorce papers thinking his wife's liability had been included in the papers. On the contrary, I believe Applicant knew when he did not pay the \$1,500.00, then signed the divorce documents that his former wife's liability for the SOR debts was not to be included in the divorce paperwork.

POLICIES

Enclosure 2 of the Directive sets forth guidelines containing disqualifying conditions (DC) and mitigating conditions (MC) that should be given binding consideration in making security clearance determinations. These conditions must be considered in every case along with the general factors of the whole person concept. However, the conditions are not automatically determinative of the decision in any case nor can they supersede the Administrative Judge's reliance on his own common sense.

Burden of Proof

Initially, the government must establish, by substantial evidence, that conditions exist in the personal or professional history of the applicant which disqualifies, or may disqualify, the applicant from being eligible for access to classified information. *See Egan*, 484 U.S. at 531 "[T]he Directive presumes there is a nexus or rational connection between proven conduct under any of the Criteria listed therein and an applicant's security suitability." ISCR Case No. 95-0611 at 2 (App. Bd. May 2, 1996) (quoting DISCR Case No. 92-1106 (App. Bd. Oct. 7, 1993)).

Once the government establishes a disqualifying condition by substantial evidence, the burden shifts to the applicant to rebut, explain, extenuate, or mitigate the facts. "[S]ecurity clearance determinations should err, if they must, on the side of denials." *Egan*, 481 U.S. at 531; *see* Directive E2.2.2.

Financial Considerations

The security concern of this guideline is that delinquent debts can induce or pressure a person to violate the law or security regulations.

CONCLUSIONS

Applicant's four overdue debts totaling almost \$24,000.00, which have been delinquent since 1999, raise security concerns under financial considerations (FC) disqualifying condition (DC) E2.A6.1.2.1. (*a history of not meeting financial obligations*). His misleading statements about the debts being his wife's responsibility, and his failure to act on the debts until November 2003 when he said he was going to act by the end of July 2002, justify the application of FC DC E2.A6.1.2.3. (*inability or unwillingness to satisfy debts*) to the circumstances of this case.

There are potentially five mitigating conditions (MC) under FC that may apply in this case. FC MC E2.A6.1.3.1. (*the behavior was not recent*) applies to those circumstances demonstrating that the underlying behavior leading to the indebtedness was not recent. FC MC E2.A6.1.3.2. (*it was an isolated incident*) may apply when the underlying behavior results in only a few debts becoming delinquent. Neither of the above two mitigating conditions has much probative value under the circumstances of this case. While the debts became delinquent about six years ago, Applicant's failure to pay them until he filed his Chapter 7 bankruptcy in November 2003 constitutes a continuing course of adverse conduct that affords Applicant no mitigation under either FC MC E2.A6.1.3.1. or FC C E2.A6.1.3.2. *See* ISCR Case No. 01-3695 (App. Bd. Oct. 16, 2002)

FC MC E2.A6.1.3.3. (*the conditions that resulted in the behavior were largely beyond the person's control*) does not apply even though a divorce was involved. I conclude Applicant knew during the divorce proceedings in July 1999 when he did not pay the extra \$1,500.00 that the listed debts were not included in the divorce documents. Hence, there were no unforeseen events that hindered Applicant from taking action on debts before November 2003 when he filed bankruptcy.

Because there is no evidence of financial counseling, I am unable to apply FC MC E2.A6.1.3.4. (*the person has received or is receiving counseling for the problem and there are clear indications that the problem is being resolved or is under control*) even though there is some evidence of Applicant's financial difficulties being resolved. The above MC requires sufficient evidence on both elements of the condition. Applicant's Chapter 7 discharge of his debts in March 2004 provides very little insight into whether he has the financial skills to maintain control over his financial practices to prevent instances of future irresponsibility.

FC MC E2.A6.1.3.6. (*the individual initiated a good-faith effort to repay overdue creditors or otherwise resolve debts*) refers to a sincere attempt to repay past due debts under the bankruptcy laws, or a private debt consolidation plan, or via direct repayment efforts. Though Applicant claimed he would address his debts as early as the end of July 2002, he did not. While he claims he tried to negotiate a settlement or repayment plan with the creditors in the fall of 2003, he furnished no documentary support. In sum, there is no documented evidence demonstrating a good-faith effort to repay creditors.

Applicant's resolution of his past due debts through a Chapter 7 bankruptcy in March 2004 entitles Applicant to a fresh start with his financial affairs. However, resolving delinquent debts under Chapter 7 does not carry the same mitigating weight as a sustained track record of financial responsibility (following the discharge) that could justify an affirmative finding that Applicant has favorably changed his financial habits. Applicant's character evidence weighs in his favor but provides negligible insight into why he waited so long to resolve his indebtedness. Applicant's suspect credibility and lack of evidence of improved financial habits defeats his case in mitigation under the FC guideline and the general factors of the whole person concept.

FORMAL FINDINGS

Formal Findings required by Paragraph 25 of Enclosure 3 are:

Paragraph 1 (Financial Considerations, Guideline F): AGAINST THE APPLICANT.

subparagraph a: Against the Applicant.

subparagraph b: Against the Applicant.

subparagraph c: Against the Applicant.

subparagraph d: Against the Applicant.

subparagraph e: Against the Applicant.

subparagraph f: Against 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 or continue a security clearance for Applicant.

Paul J. Mason

Administrative Judge