

KEYWORD: Financial; Personal Conduct

DIGEST: Applicant owes six debts totaling approximately \$15,000. When he completed his SF 86 he failed to list his delinquencies. The record evidence fails to establish he falsified his SF 86, but unresolved indebtedness of such magnitude has very negative security implications. Clearance is denied.

CASENO: 02-11953.h1

DATE: 08/31/2004

DATE: August 31, 2004

In Re:

SSN: -----

Applicant for Security Clearance

ISCR Case No. 02-11953

DECISION OF ADMINISTRATIVE JUDGE

CLAUDE R. HEINY

APPEARANCES

FOR GOVERNMENT

Jennifer I. Campbell, Department Counsel

FOR APPLICANT

SYNOPSIS

Applicant owes six debts totaling approximately \$15,000. When he completed his SF 86 he failed to list his delinquencies. The record evidence fails to establish he falsified his SF 86, but unresolved indebtedness of such magnitude has very negative security implications. Clearance is denied.

STATEMENT OF THE CASE

On November 7, 2003, the Defense Office of Hearings and Appeals (DOHA) issued a Statement of Reasons (SOR) to Applicant stating that DOHA could not make the preliminary affirmative finding ⁽¹⁾ it is clearly consistent with the national interest to grant or continue a security clearance for Applicant. On December 8, 2003, the Applicant answered the SOR and elected to have his case decided on the written record in lieu of a hearing.

On February 18, 2004, the Applicant received a complete copy of the file of relevant material (FORM) dated January 26, 2004, and was given the opportunity to file objections and submit material in extenuation, mitigation, or refutation. The Applicant's response to the FORM was due on March 23, 2004. No response has been received. In the FORM, Department Counsel presented 10 Government Exhibits (Gov. Ex.) The Applicant submitted no exhibits. I was assigned the case on March 25, 2004.

FINDINGS OF FACT

The SOR alleges Financial Considerations and Personal Conduct. The Applicant admits owing the five debts listed in the SOR, but denies any falsification. . Those admissions are incorporated herein as findings of fact. After a complete and thorough review of the evidence in the record, and upon due consideration of same, I make the following additional findings of fact.

The Applicant is 41 years old, has worked for a defense contractor since March 1999, and is seeking to obtain a security clearance.

In June 1998, Applicant's wife left him, taking their children. In February 1999, their divorce was final. In August 1998, he lost his job with the school system. From September 1998 through November 1998, he actively sought employment. In November or December 1998, he obtained a job making \$500 per month less than his previous job.

Applicant allowed six accounts to become delinquent on which he owes approximately \$15,000 in total. A summary of the debts follows:

	Creditor	Amount	Current Status
a.	Bank debt, three accounts charged off	\$ 10,364	Unpaid. See August 2003 credit report. (Gov ex 8)
b.	Cell phone bill	\$361	Unpaid. Applicant was required to make additional payment when he failed to give notification at the expiration of his contract.
c.	Communication debt	\$37	Unpaid.
d.	Credit Management	\$2,892	Unpaid. See August 2003 credit report. (Gov ex 8)
e.	Collection company	\$1,000	Unpaid. See August 2003 credit report. (Gov ex 8)
f.	Gasoline company	\$352	Unpaid.
		\$15,006	Total debt listed in the SOR.

Applicant's June 2001 credit report (Gov Ex 9) lists five bad debts, the debts listed in SOR paragraphs 1.a. and 1.f., and an additional credit card debt. The report also lists three debts as being 120 days or more past due.

In April 2001, Applicant completed a Security Clearance Application SF 86. He answered "no" to questions 38 and 39, which respectively asked if he had been more than 180 days delinquent on any debt during the prior seven years or was currently 90 days delinquent. When he completed his SF 86, he was unaware he had been more than 180 days past due on any debt or that he was currently 90 days past due on any obligation.

In a January 2002 sworn statement, Applicant stated his financial difficulties resulted from his divorce and employment situation. He had a net remainder- monthly income in excess of monthly expenses- of \$174. At that time, he had made no attempt to contact his creditors to arrange repayment of his debts. As of August 2003, his net monthly remainder was \$459. Applicant's August 2003 credit report indicates he is current on his automobile loan and on a credit card debt, but was past due on his child support.

POLICIES

The Adjudicative Guidelines in 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 determinations that are clearly consistent with the interests of national security. In making 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 in the context of factors set forth in section E 2.2.1. of the Directive. The government has the burden of proving any controverted fact(s) alleged in the SOR, and the facts must have a nexus to an Applicant's lack of security worthiness.

The adjudication process is based on the whole person concept. All available, reliable information about the person, past and present, is to be taken into account in reaching a decision as to whether a person is an acceptable security risk. Although the presence or absence of a particular condition for or against clearance is not determinative, the specific adjudicative guidelines should be followed whenever a case can be measured against this policy guidance.

Considering the evidence as a whole, this Administrative Judge finds the following adjudicative guidelines to be most pertinent to this case:

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. Unexplained affluence is often linked to proceeds from financially profitable criminal acts.

Conditions that could raise a security concern and may be disqualifying include:

1. A history of not meeting financial obligations. (E2.A6.1.2.1.)
3. Inability or unwillingness to satisfy debts. (E2.A6.1.2.3.)

Conditions that could mitigate security concerns include:

None Apply

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. Conditions that could raise a security concern and may be disqualifying include:

None Apply

BURDEN OF PROOF

As noted by the United States Supreme Court in *Department of Navy v. Egan*, 484 U.S. 518, 528 (1988), "no one has a 'right' to a security clearance." 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 restricted eligibility for access to classified information to "United States citizens . . . whose personal and professional history affirmatively indicates loyalty to the United States, strength of character, trustworthiness, honesty, reliability, discretion, and sound judgment, as well as freedom from conflicting allegiances and potential for coercion, and willingness and ability to abide by regulations governing the use, handling, and protection of classified information." Executive Order 12968, *Access to Classified Information* § 3.1(b) (Aug. 4, 1995). Eligibility for a security clearance is predicated upon the applicant meeting the security guidelines contained in the Directive.

Initially, the Government must establish, by substantial 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. All that is required is proof of facts and circumstances which indicate an applicant is at risk for mishandling classified information, or that an applicant does not demonstrate the high degree of judgment, reliability, or trustworthiness required of persons handling classified information. Where the facts proven by the Government raise doubts about an applicant's judgment, reliability or trustworthiness, then the applicant has the ultimate burden of establishing his security suitability with substantial evidence in explanation, mitigation, extenuation, or refutation, sufficient to demonstrate that despite the existence of guideline conduct, it is clearly consistent with the national interest to grant or continue his security clearance.

Security clearances are granted only when "it is clearly consistent with the national interest to do so." *See* Executive Orders 10865 § 2 and 12968 § 3.1(b). "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 "The clearly consistent standard indicates that security clearance determinations should err, if they must, on the side of denials." *See Egan*, 484 U.S. at 531. Doubts are to be resolved against the applicant.

CONCLUSIONS

The Government has satisfied its initial burden of proof under Guideline F, Financial Considerations. A person's relationship with his creditors is a private matter until evidence is uncovered demonstrating an inability or unwillingness to repay debts under agreed upon terms. Absent evidence of strong extenuating or mitigating circumstances, an applicant with a history of serious or recurring financial difficulties is in a position of risk that is inconsistent with the holding of a security clearance. Under Guideline F, an applicant is not required to be debt free, but is required to manage his finances in such a way as to meet his financial obligations.

Applicant owes six delinquent debts totaling approximately \$15,000. Disqualifying Conditions (DC) 1. (A history of not meeting financial obligations.) and 3. (Inability or unwillingness to satisfy debts.) apply.

Applicant has been aware the government was concerned with this finances as of January 2002 when he was interviewed by the Defense Security Service. Applicant has failed to provide documentation he has paid the six debts. It is noted even the three debts which are relatively small (1.c \$37, 1.f. \$352, and 1.b. \$361) have not been paid.

Applicant was unemployed in 1998 and was divorced in February 1999. The record fails to show how these events impacted on his financial ability to repay his debts. While unemployment and divorce are circumstances outside of a person's control which could negatively influence an individual's financial situation, without supporting documentation the impact cannot be assumed to be sufficient for Mitigating Condition 3 ⁽²⁾ to apply.

None of the other mitigating conditions apply. The six debts remain unpaid so the financial problems are recent. MC 1 (The behavior was not recent.) does not apply. The extent of the indebtedness (six delinquent accounts) precludes favorable consideration of MC 2 (It was an isolated incident.). There has been no showing the type of financial counseling, if any, Applicant has received, nor is there any documentation to establish clear indications that the problem is being resolved or is under control, so MC 5 is not satisfied. For MC 6 (The individual initiated a good-faith effort to repay overdue creditors or otherwise resolve debts.) to apply there must be an "ability" to repay the debts, the "desire" to repay, and evidence of a good faith effort to repay. A systematic, concrete method of handling his debts is needed, which Applicant has failed to show. Without proof of payment or good-faith repayment plan, I find against Applicant on Financial Considerations.

Under Guideline E, Personal Conduct, the security eligibility of an applicant is placed into question when that applicant is shown to have been involved in personal conduct that creates doubt about the person's judgment, reliability, and trustworthiness. The record fails to establish applicant's answers to questions 38 and 39 were knowingly incorrect.

Deliberate omission, concealment, or falsification of a material fact in any written document or oral statement to the Government when applying for a security clearance is certainly of security concern. But every inaccurate statement is not a falsification. A falsification must be material and is deliberate only if it is done knowingly and willfully.

Applicant's June 2001 credit report, lists three bad debts charged off as of September 1998 and two other debts charged off at some undisclosed date. The report lists three accounts as being more than 120 days past due. The report does not list any debts as being as many as 180 days past due. Applicant has denied intentional falsification and states he was unaware he had ever been more than 180 days past due on any account or was currently 90 days past due. The Government has provided insufficient evidence to establish he knew the delinquency of his debts at the time he completed his SF 86. I find his actions did not constitute deliberate and willful falsification. Accordingly, Personal Conduct is found for Applicant.

In reaching my conclusions, I have also considered: the nature, extent, and seriousness of the conduct; the Applicant's age and maturity at the time of the conduct; the circumstances surrounding the conduct; the Applicant's voluntary and knowledgeable participation; the motivation for the conduct; the frequency and recency of the conduct; presence or absence of rehabilitation; potential for pressure, coercion, exploitation, or duress; and the probability that the circumstance or conduct will continue or recur in the future.

FORMAL FINDINGS

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

Paragraph 1 Financial Considerations: 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.e.: Against the Applicant

Subparagraph 1.f.: Against the Applicant

Paragraph 2 Personal Conduct: FOR THE APPLICANT

Subparagraph 2.a.: For the Applicant

Subparagraph 2.b.: 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 or continue a security clearance for the Applicant. Clearance is denied.

Claude R. Heiny

Administrative Judge

1. Required by Executive Order 10865, as amended, and Department of Defense Directive 5220.6 (Directive), dated January 2, 1992, as amended.
2. MC 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).