

KEYWORD: Financial; Personal Conduct

DIGEST: Applicant has failed to mitigate four of the seven delinquent debts addressed by the SOR. These outstanding debts amount to \$2,511.00 but he includes no allowance to pay any of them on his most recent personal financial statement, which reflects a monthly net remainder of \$24.00. Applicant has also failed to mitigate his failure to disclose the largest of these debts, \$1,782.00, on his security clearance application. Clearance is denied.

CASENO: 02-15662.h1

DATE: 03/31/2005

DATE: March 31, 2005

In Re:

SSN: -----

Applicant for Security Clearance

ISCR Case No. 02-15662

DECISION OF ADMINISTRATIVE JUDGE

ROGER E. WILLMETH

APPEARANCES

FOR GOVERNMENT

Kathryn Antigone Trowbridge, Department Counsel

FOR APPLICANT

Pro Se

SYNOPSIS

Applicant has failed to mitigate four of the seven delinquent debts addressed by the SOR. These outstanding debts amount to \$2,511.00 but he includes no allowance to pay any of them on his most recent personal financial statement, which reflects a monthly net remainder of \$24.00. Applicant has also failed to mitigate his failure to disclose the largest of these debts, \$1,782.00, on his security clearance application. Clearance is denied.

STATEMENT OF THE CASE

On August 25, 2003, the Defense Office of Hearings and Appeals (DOHA), pursuant to the applicable Executive Order [\(1\)](#) and Department of Defense Directive, [\(2\)](#) issued a Statement Reasons (SOR) to Applicant. The SOR details security concerns under Guideline F (Financial Considerations) and Guideline E (Personal Conduct). The SOR states that DOHA was unable to find that it is clearly consistent with the national interest to grant him access to classified information and recommends that his case be submitted to an Administrative Judge.

On October 24, 2003, Applicant answered the SOR and requested a hearing. The case was assigned to me on April 7, 2004. A notice of hearing was issued on April 7, 2004, and the hearing was held on April 30, 2004. During the hearing, four Government exhibits (Govt Ex), four Applicant exhibits (Ap Ex), and the testimony of Applicant were received. Without objection by Department Counsel, I allowed Applicant to submit two additional exhibits (Ap Ex E and Ap Ex F), which he provided on May 13, 2004. The transcript (Tr) was received on May 18, 2004.

FINDINGS OF FACT

Having thoroughly considered the evidence in the record, I make the following findings of fact:

Applicant is a 38-year-old production planning specialist employed by a defense contractor. He is a valued and respected employee of his company and is seeking a security clearance.

In February 1997, Applicant opened a credit card account with a bank. By January 1999 he had incurred a \$1,782.00 balance that he did not pay and that the bank charged off as a bad debt and transferred to a debt collector. There is nothing in the record to establish that the debt was paid or otherwise settled or explain the reason it has been deleted from Applicant's credit report (SOR ¶ 1.d).

In September 1999, Applicant incurred a \$236.00 bill from a healthcare provider that he did not pay. In April 2000, the healthcare provider transferred it to a debt collector (SOR ¶ 1.a).

Applicant was laid off by his employer on November 27, 1999. He obtained a position with another employer on January 4, 2000. [\(3\)](#)

On April 6, 2000, Applicant executed a security clearance application (SF 86). In response to question 38, [\(4\)](#) he answered, "no" (SOR ¶ 2.a).

In response to question 39-[\(5\)](#) on the same SF 86, Applicant answered, "no." He failed to disclose his delinquent debts addressed by SOR ¶ 1.a and 1.d (SOR ¶ 2.b).

In September 2000, Applicant opened a credit card account with a bank. By August 2001 he had incurred a \$1,681.00 balance that he did not pay and that the bank charged off as a bad debt and transferred to a debt collector. On April 23, 2003, Applicant paid \$986.62 to settle the debt (SOR ¶ 1.c).

In August 2001, Applicant opened a credit account. He had incurred a \$213.00 balance that he did not pay and that the creditor transferred to a debt collector. There is nothing in the record to establish that the debt was paid or otherwise settled or explain the reason it has been deleted from Applicant's credit report (SOR ¶ 1.e).

In November 2001, Applicant incurred a \$96.00 obligation to a county court that he did not pay. In January 2002, the county court transferred it to a debt collector. There is evidence of record to indicate the obligation was satisfied (SOR ¶ 1.b).

In October 2002, Applicant opened a credit account and incurred a \$302.00 balance. He did not pay the obligation and the creditor transferred to a debt collector. There is no evidence of record that the delinquent debt has been paid or otherwise settled (SOR ¶ 1.f).

In December 2002, Applicant opened a credit account and incurred a \$214.00 balance. He did not pay the obligation and the creditor transferred it to a debt collector. There is no evidence of record that the delinquent debt has been paid or otherwise settled (SOR ¶ 1.g).

On March 8, 2002, Applicant was interviewed by a special agent of the Defense Security Service (DSS) and provided a sworn statement. His discussion of his financial problems included the delinquent debts addressed by SOR ¶ 1.a and 1.d.

On May 9, 2003, Applicant answered financial interrogatories and provided a personal financial statement. His personal financial statement reflected a monthly balance of zero after deducting expenses of \$1,254.00 and debts of \$2,128.00 from his net salary of \$3,382.00. Applicant's personal financial statement included no payment of the delinquent debts addressed by the SOR . On May 13, 2004, Applicant provided a personal financial statement that reflects a monthly balance of \$24.00 after deducting expenses of \$1,875.00 and debts of \$1,745.00 from his net salary of \$3,644.00. None of the debts are those addressed by the SOR (SOR ¶ 1.h).

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 (February 20, 1960). Eligibility for a security clearance is predicated upon the applicant meeting the security guidelines contained in the Directive.

The Directive sets out the adjudicative guidelines for making decisions on security clearances. Enclosure 2 of the Directive sets forth adjudicative guidelines for determining eligibility for access to classified information, and it lists the disqualifying conditions and mitigating conditions for each guideline. Each clearance decision must be a fair, impartial, and commonsense decision based on the relevant and material facts and circumstances, the whole person concept, and the 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.

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. "[T]he Directive presumes there is a nexus or rational connection between proven conduct under any of the conditions listed in the Directive's guidelines and the applicant's security worthiness. *See* ISCR Case No. 95-0611 at 2 (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. ISCR Case No. 01-20700 at 3 (December 19, 2002); *see* Directive ¶ E3.1.15. 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. Any doubt as to whether access to classified information is clearly consistent with national security will be resolved in favor of national security. Directive ¶ E2.2.2.

CONCLUSIONS

Guideline F: Financial Considerations

The concern under Guideline F is that an individual who is financially overextended is at risk of having to engage in illegal acts to generate funds. The Directive ¶ 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 (Disqualifying Condition 1). They also include *an inability or unwillingness to satisfy debts*, ¶ E2.A6.1.2.3 (Disqualifying Condition 3).

The record establishes both Disqualifying Condition 1 and Disqualifying Condition 3. Applicant has a history of not meeting financial obligations as well as his inability or unwillingness to satisfy debts for several years. Between January

1999 and December 2002, he incurred seven delinquent debts, totaling \$4,524, that he could not or would not pay.

Conditions that could mitigate security concerns under Guideline F include ¶ E2.A6.1.3.3 (Mitigating Condition 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)*. Applicant was laid off for more than a month at the end of 1999. However, this loss of employment is too brief to explain or mitigate the current extent of his unresolved delinquent indebtedness.

Conditions that could mitigate security concerns under Guideline F also include ¶ E2.A6.1.3.6 (Mitigating Condition 6), *the individual initiated a good-faith effort to repay overdue creditors or otherwise resolve debts*. Applicant resolved the delinquent debt addressed by SOR ¶ 1.c by payment of a settlement. There is also a court record in evidence that indicates the debt addressed by SOR ¶ 1.b has been satisfied. It also appears from the record that the debt addressed by SOR ¶ 1.a no longer appears on Applicant's credit report because it was satisfied by his health insurance. Therefore, I find in favor of Applicant with regard to SOR ¶ 1.a, 1.b, and 1.c.

Applicant stated that the debts addressed by SOR ¶ 1.f and g are, "inaccurate," but he has provided no evidence to corroborate that fact. Moreover, these delinquent obligations are still listed on the latest credit report he provided. Therefore, I find against Applicant with regard to SOR ¶ 1.f and 1.g.

Although the debts addressed by SOR ¶ 1.d and 1.e have been deleted from Applicant's latest credit report, he has provided no corroboration of payment or other evidence to explain the deletion. Therefore, I also find against Applicant with regard to SOR ¶ 1.d and 1.e.

Although Applicant's pay has increased since he provided a personal financial statement in 2003, his more recent personal financial statement only provides a monthly net remainder of \$24.00 after payment of his debts and expenses. Moreover, he has no allowance for satisfaction of any of the debts addressed by the SOR.. Under these circumstances, I find against Applicant with regard to SOR ¶ 1.h.

Guideline E: Personal Conduct

The concern under Guideline E is 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. ¶ E2.A5.1.1. Conditions that could raise a security concern and may be disqualifying under Guideline E include ¶ E2.A5.1.2.2 (Disqualifying Condition 2). Disqualifying Condition 2

addresses the deliberate omission, concealment, or falsification of relevant and material facts from any personnel security questionnaire, personal history statement, or similar form used to conduct investigations, determine employment, qualifications, award benefits or status, determine security clearance eligibility or trustworthiness, or award fiduciary responsibilities.

The record fails to demonstrate Applicant falsified his SF 86 by not disclosing the delinquent debts addressed by SOR ¶ 1.a, 1.b, and 1.f in response to question 38. The record indicates that he did not open the accounts that resulted in the delinquent debts addressed by SOR ¶ 1.b and 1.f until November 2001 and October 2002, respectively. This is substantially after Applicant submitted his SF 86 on April 6, 2000. Although the debt addressed by SOR ¶ 1.a arose in September 1999, it does not appear from the record that the debt was transferred to a debt collector until after Applicant submitted his SF 86. Moreover, it appears that he had an expectation of his health insurance covering this obligation. Therefore, I find in Applicant's favor with regard to SOR ¶ 2a..

To a degree, the same is true with respect to the allegation that Applicant falsified the same SF 86 by not disclosing the delinquent debts addressed by SOR ¶ 1.a, 1.b, 1.c, 1.e, 1.f, and 1.g in response to question 39. Applicant had not yet even opened five of these accounts (SOR ¶ 1.b, 1.c, 1.e, 1.f and 1.g) and, as previously discussed, had an expectation a sixth was covered by his health insurance (SOR ¶ 1.a). However, the remaining debt addressed by the SOR, 1.d, became delinquent in January 1999. Although Applicant told the DSS investigator he paid the account in February 2000, this bad debt continued to be listed on his credit report in 2003 and he has not submitted corroboration of payment. Therefore, Disqualifying Condition 2 is supported with respect to SOR ¶ 1.d.

Applicant's only explanation for not disclosing any delinquent debts on his SF 86 is because he did not review his credit report. He overlooks the fact that routine attempts to collect the debt by the creditor and debt collector should have brought the matter to his attention without the need for a credit report. Once the record supports a disqualifying condition, an applicant has the burden of mitigating it. Applicant's explanation fails to satisfy his burden. Therefore, I find against Applicant with regard to SOR ¶ 2.b.

FORMAL FINDINGS

Formal findings, as required by section E3.1.25 of Enclosure 3 of the Directive, are as follows:

Paragraph 1. Guideline F: AGAINST APPLICANT

Subparagraph 1.a: For Applicant

Subparagraph 1.b: For Applicant

Subparagraph 1.c: For Applicant

Subparagraph 1.d: Against Applicant

Subparagraph 1.e: Against Applicant

Subparagraph 1.f: Against Applicant

Subparagraph 1.g: Against Applicant

Subparagraph 1.h: Against Applicant

Paragraph 2. Guideline E: AGAINST APPLICANT

Subparagraph 2.a: For Applicant

Subparagraph 2.b: Against Applicant

DECISION

In light of the evidence of record in this case, it is not clearly consistent with the national interest to grant or continue a security clearance for Applicant.

Signed

Roger E. Willmeth

Administrative Judge

1. Executive Order 10865, *Safeguarding Classified Information Within Industry*, dated February 20, 1960, as amended.
2. Department of Defense Directive 5220.6, *Defense Industrial Personnel Security Clearance Review Program* (Directive), dated January 2, 1992, as amended and modified.
3. In his statement to the DSS, Applicant indicated the period of his unemployment began in October 1999. Govt Ex 2.

However, his SF 86, dated April 6, 2000, provides the specific dates above. Govt Ex 1.

4. "In the last 7 years, have you been over 180 days delinquent on any debt(s)?"

5. "Are you currently over 90 days delinquent on any debt(s)?"