

KEYWORD: Financial; Personal Conduct

DIGEST: Applicant has 19 delinquent debts alleged in the Statement of Reasons (SOR). He mitigated a number of them, and has made attempts to pay the others. Several debts alleged are actually the same debt listed by different collectors on the credit report. Applicant's presentation at the hearing and his documentary evidence show clearly that he is confused about the extent of his debts and whether they are past due more than 180 days. Applicant did not mitigate all of the financial considerations security concern, and also did not mitigate the personal conduct security concern. Clearance is denied.

CASENO: 02-17720.h1

DATE: 07/20/2004

DATE: July 20, 2004

In re:

SSN: -----

Applicant for Security Clearance

ISCR Case No. 02-17720

DECISION OF ADMINISTRATIVE JUDGE

PHILIP S. HOWE

APPEARANCES

FOR GOVERNMENT

Marc Curry, Esq., Department Counsel

FOR APPLICANT

Pro Se

SYNOPSIS

Applicant has 19 delinquent debts alleged in the Statement of Reasons (SOR). He mitigated

a number of them, and has made attempts to pay the others. Several debts alleged are actually the same debt listed by different collectors on the credit report. Applicant's presentation at the hearing and his documentary evidence show clearly that he is confused about the extent of his debts and whether they are past due more than 180 days. Applicant did not mitigate all of the financial considerations security concern, and also did not mitigate the personal conduct security concern. Clearance is denied.

STATEMENT OF THE CASE

On August 8, 2003, the Defense Office of Hearings and Appeals (DOHA), under Executive Order 10865, *Safeguarding Classified Information Within Industry*, dated February 20, 1960, 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. The SOR detailed reasons under Guideline F (Financial Considerations), and Guideline E (Personal Conduct) 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, and recommended referral to an Administrative Judge to conduct proceedings and determine whether clearance should be granted, continued, denied, or revoked.

On September 9, 2003, Applicant submitted an extensive statement on the allegations, which was found to be non-responsive as required by the Directive. Applicant then submitted a signed and sworn Answer dated November 5, 2003. He requested a hearing. This case was assigned to me on January 12, 2004. A Notice of Hearing was issued on January 20, 2004, setting the hearing for February 5, 2004. I convened the hearing to consider whether it is clearly consistent with the national interest to grant Applicant's security clearance. The Government presented four exhibits which were admitted into evidence. Applicant submitted 14 exhibits at the hearing, and 10 additional exhibits subsequent to the hearing, to which the Government had no objection⁽¹⁾. I received the transcript of the hearing on February 24, 2004.

PROCEDURAL RULINGS

The Government moved to amend subparagraph 1.b. to delete the initial language, and substitute new wording specifying one creditor as being owed \$592.00. Applicant did not object, and the motion was granted.

FINDINGS OF FACT

Applicant admitted the SOR allegations in subparagraphs 1.c., 1.g., 1.h., and 1.l. through 1.s. Applicant denied subparagraphs 1.a., 1.b., 1.d. through 1.f., 1.i. through 1.k. 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 the same, I make the following additional findings of fact:

Applicant is a 49-year-old machine tool worker at a defense contractor's plant. He is married, with one son from his first marriage and has adopted his present wife's children. He works at the same plant as he has for 25 years. His annual income is about \$39,000. (Tr. 15, 102, 104 to 106; Exhibit 1).

Applicant neglected the payment of 19 debts, with the earliest being incurred in 1996 . Applicant's financial problems were caused by his inability to manage his money properly, medical costs for various treatments for himself and family members, and his 1989 divorce. The SOR allegations and the evidence introduced at the hearing are summarized in the following table: (Tr. 112 to 122

SOR	CREDITOR AND AMOUNT	CURRENT STATUS	RECORD
1.a.	physician, \$347, though Applicant thinks the amount is \$149.	Denies	Ex. 3, 4 at 9 and 10, and O; Tr. 94
1.b.	OBGYN medical bills, \$592	Denies, and appears to have paid all but \$386.14.	Exhibits 4 at 9, L, M, and R; Tr. 7, 20, 21, 91 to 93.
1.c.	unpaid bills, \$1,944	Admits, and says it is the same debt as or is included in 1.p, and 1.s. Garnishment is paying \$50 monthly on these debts.	Exhibits A and Q; Tr. 25, 99
1.d.	department store, \$1,151	Denies, because it is paid, and the Government agrees.	Exhibits 3 at 2, S; Tr. 22, 81, 87
1.e.	budget company, \$560	Denies, and it is paid in full. The Government agrees.	Exhibit J; Answer; Tr. 10
1.f.	cash advance company, \$398	Denies. It is paid in full. The Government agrees.	Exhibits 2 at 7, 3 at 2, C; Tr. 22, 52, 53

1.g.	finance company \$1,504	Admits, and says it is the same as 1.h. Unclear if paid.	Tr. 86, 87
1.h.	finance company, \$1,291	Admits, same as 1.g. Unclear if paid.	Tr. 86, 87
1.i.	audit company, \$904	Denies. Paid all but \$386.14.	Exhibits L, M, and R; Answer; Tr. 7, 10
1.j.	television sales, \$148	Denies. Paid August 25, 2003; Government agrees.	Tr. 10; Exhibit R
1.k.	bank foreclosure, \$12,542	Denies, belongs to former wife under divorce decree. The Government agrees.	Exhibit I; Tr. 10, 41, 69
1.l.	optical company, \$93	Admits. Paid \$113.34 on February 6, 2004. Government agrees. Debt started in August 1998.	Exhibit U; Tr. 84
1.m.	collection company, \$139	Admits	Tr. 83
1.n.	audit company, \$226	Admits, but says is paid. Debts started in 1996 and 1997.	Exhibits L, M, and R; Tr. 7, 82
1.o.	cell phone company, \$298	Admits. Applicant says is paying, but no documents. Owed since August 1998	Tr. 82
1.p.	credit card company, \$3,614	Admits. Applicant says this debt is the same as 1.c. and 1.s.	Exhibit Q; Tr. 77 to 81, 99
1.q.	commercial credit, \$6,230	Admits. Applicant says he is paying \$50 monthly.	Exhibit V; Tr. 69
1.r.	bank debts, \$4,000	Admits, but says it was paid before his divorce, but former wife threw out paperwork proof of payment.	Exhibit W; Tr. 60
1.s.	wage garnishments, \$9,662.55	Admits. Applicant says this debt is the same as 1.c. and 1.p. Applicant says he is paying \$50 monthly through garnishment, and has overpaid this creditor.	Exhibit Q; Tr. 59, 99

Applicant's debts total about \$40,000 as alleged in the SOR. While these debts were delinquent, Applicant purchased a 2002 sports utility vehicle for \$30,000, on which he is paying \$775 monthly and regularly. Upon completion of the installment payment contract in three years, Applicant will have paid nearly \$46,000 for this vehicle. This vehicle is the only auto Applicant owns, and he does most of the driving for his family. (Tr. 108, 109, 139, 147)

Applicant talked to two attorneys in the past three years on how to resolve and pay his debts, including discussing bankruptcy, but no action was taken at that time. Applicant consulted also with a debt payment service, and has an intention of hiring that firm to get his debts paid. He saw their advertisement on television and contacted them about helping him. He is negotiating with them about helping him resolve his debts. Applicant thinks his delinquent debt situation is good because he only has six debts remaining to be paid by his calculations. (Tr. 41, 126, 133 to 136, 141)

Throughout the hearing Applicant displayed a lack of knowledge about to what creditor he owed what sum of money. He seemed uncertain and confused about his debt history, what debts had been paid, and in what amount. Applicant does not have a firm grasp of his financial situation and does not manage his money well. Applicant thought garnishment meant the bills were being paid. (Tr. 8, 9, 59, 61, 69 to 71, 101, 146)

Applicant did not disclose the existence of these debts on his security clearance application (SCA). He answered "No" to question 38 regarding delinquent debts over 180 days past due, when the debts listed in Paragraph 1 of the SOR are all over 180 days delinquent. Applicant also answered Question 39 regarding delinquent debts over 90 days past due as "No", again failing to disclose the delinquent debts set forth in Paragraph 1 of the SOR. Applicant's evident lack of factual knowledge about the extent and current status of his debts at the hearing made it impossible for him to fully answer these two questions on the SCA. (Answer; Exhibits 1 and V)

After the conclusion of the hearing, and during the period granted Applicant to compile his disconnected pile of papers into a coherent response to the SOR allegations, coordinating them with the specific allegations of Paragraph 1, Applicant failed to return eight of the 12 exhibits, and

submitted other documents, which were marked as exhibits O through V. The Government had no objection to the marking and admission of the additional post-hearing exhibits. (Tr. 49)

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 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 judgement, 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." Exec. Or. 12968, *Access to Classified Information* § 3.1(b) (Aug. 4, 1995). Eligibility for a security clearance is predicted upon the applicant meeting the security guidelines contained in the Directive.

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. Enclosure 2 to the Directive sets forth adjudicative guidelines that must be carefully considered according to the pertinent Guideline in making the overall common sense determination required.

Each adjudicative decision must also include an assessment of: (1) the nature, extent, and seriousness of the conduct; (2) the circumstances surrounding the conduct, and the extent of knowledgeable participation; (3) how recent and frequent the behavior was; (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 pertinent 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 (See Directive, Section E2.2.1. of Enclosure 2). Because each security case presents its own unique facts and circumstances, it should not be assumed that the factors exhaust the realm of human experience or that the factors apply equally in every case. Moreover, although adverse information concerning a single condition may not be sufficient for an unfavorable determination, the individual may be disqualified if available information reflects a recent or recurring pattern of questionable judgment, irresponsibility, or other behavior specified in the Guidelines.

Based upon a consideration of the evidence as a whole, I find the following adjudicative guidelines most pertinent to an evaluation of the facts of this case:

Guideline F: Financial Considerations

(A) 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.

(B) 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

(C) Conditions that could mitigate security concerns include:

(6) The individual is making a good faith effort to pay his debts. E2.A6.1.3.6

Guideline E - Personal Conduct:

(A) 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. The following will normally result in an unfavorable clearance action or administrative termination of further processing for clearance eligibility:

(B) Conditions that could raise a security concern and may be disqualifying also include:

(2) The deliberate omission, concealment, falsification or misrepresentation 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; E2.A5.1.2.2

(C) Conditions that could mitigate security concerns include:

None

Under Executive Order 10865, as amended, and the Directive, a decision to grant or continue an applicant's clearance may be made only upon an affirmative finding that to do so is clearly consistent with the national interest. In reaching the fair and impartial overall common sense determination required, I draw those inferences and conclusions which have a reasonable and logical basis in the evidence of record.

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 each allegation set forth in the SOR:

Considering Guideline F (Financial Considerations), I find Disqualifying Conditions (DC) 1 and 3 apply. Applicant does not have the income to pay all these debts at one time or in a short period of time, or over a period of time. His income is about \$39,000 annually. With debts exceeding \$40,000, plus the normal living expenses of daily life, Applicant could not repay those debts in less than at least five years. He aggravated his financial ability to repay these delinquent debts by purchasing a \$30,000 automobile, and paying a high interest rate because of his bad credit rating that made his monthly payments \$775. While Applicant has made numerous attempts to repay his debts, and has repaid several of them, there are delinquent debts remaining unpaid, and they are listed in subparagraphs 1.a., 1.g., 1.h., 1.i., 1.m., and 1.o. of the SOR.

I find no Mitigating Conditions (MC) apply to this case. The only MC which might have applied was MC 6, but that MC requires a "good-faith" effort to repay debts or resolve them. The DOHA Appeals Board, in various decisions, has opined that "the concept of good-faith 'requires a showing that a person acts in a way that shows reasonableness, prudence, honesty, and adherence to duty or obligation'" (ISCR Case No. 02-07138 (December 9, 2003), citing ISCR Case No. 99-9020 (June 4, 2001)). Applicant has made a some effort at various times to repay his delinquent debts, but it is not and was not a systematic approach which would qualify for the application of MC 6. He managed to repay six debts (subparagraphs 1.d., 1.e., 1.f., 1.j., 1.k., and 1.l. Other, larger delinquent debts remain unpaid for many years. His explanations of his debts at the hearing was confusing as to what amount is owed to which creditor, and what the current status of the debt was. While he owes many debts, he takes it upon himself to pay debts incurred by family members, for example, his adopted son who has not contributed any money to repay the phone bill in subparagraph 1.o. Some of the debts arose from his divorce situation in 1989, but those were mitigated. Applicant considered garnishment of his pay a repayment of debt method, but it is not a voluntary method. He also believes he has paid \$12,000 on a debt of about \$3,000 through that garnishment. In efforts to rid himself of this debt burden, Applicant talked to two attorneys seeking legal advice on reducing and paying his debts, and considered bankruptcy. He also is talking to a debt resolution company about helping him alleviate this debt problem. He never made a decision to avail himself of any of the available advice and legal methods to pay his debts in a structured and timely fashion. Applicant has only exerted periodically haphazard attempts to resolve his delinquent debt problem, and needs to apply more effort. The crowning touch to Applicant's efforts to repay his delinquent debts was his purchase of a \$30,000 automobile on which he pays \$775 monthly due to his bad credit rating. He could have done nicely with a good quality used car, or a cheaper new car. That \$775 monthly would have paid a lot of debts rapidly. He can make those payments regularly, but he cannot pay his

other debts on time. After looking at all the evidence, and considering Applicant's confusing and confused presentation at the hearing, the lengthy duration of the debts and the amounts outstanding, and Applicant's failure to return eight exhibits as ordered, I conclude that Applicant has not made good-faith efforts to repay his debts. Applicant has not met his burden of proof. Therefore, I conclude Guideline F against Applicant.

With respect to Guideline E, I conclude the Government proved its case. The totality of Applicant's delinquent debt situation is not disclosed in the SCA in Question 38 (debts over 180 days delinquent in the past seven years) and Question 39 (debts over 90 days delinquent). Applicant disclosed two large debts, which were later included in the SOR, being subparagraph 1.c. and its allied subparagraphs, and subparagraph 1.r. Applicant also disclosed the garnishments in 1999. Applicant completed the SCA in 2001, and seven years previous would be 1994. During that time period Applicant was making payments periodically on some of his debts. Yet there were many others which were unpaid for more than 180 days, and the Government clearly proved the long list of those debts.

As regards mitigating conditions, Applicant disclosed the two judgments against him, and he made further disclosures in response to Question 43 about his debts. From Applicant's presentation at the hearing, it is clearly evident to me that he did not know at the hearing what debts were delinquent for what length of time, but he did know he had debts. He also knew many were delinquent longer than 180 days. He failed to disclose any of those debts, or answer Questions 38 and 39 with a "yes" and provide the information subsequently. He could be specific about his judgments, and if he could remember them, he could remember other debts. I do not apply any MC to this case under this guideline. Consequently, I find Against Applicant on Guideline E.

FORMAL FINDINGS

Formal Findings as required by Section E3.1.25 of Enclosure 3 of the Directive are hereby rendered as follows:

Paragraph 1 Guideline F: Against Applicant

Subparagraph 1.a.: Against Applicant

Subparagraph 1.b.: Against Applicant

Subparagraph 1.c.: Against Applicant

Subparagraph 1.d.: For Applicant

Subparagraph 1.e.: For Applicant

Subparagraph 1.f.: For Applicant

Subparagraph 1.g.: Against Applicant

Subparagraph 1.h.: Against Applicant

Subparagraph 1.i.: Against Applicant

Subparagraph 1.j.: For Applicant

Subparagraph 1.k.: For Applicant

Subparagraph 1.l.: For Applicant

Subparagraph 1.m.: Against Applicant

Subparagraph 1.n.: Against Applicant

Subparagraph 1.o.: Against Applicant

Subparagraph 1.p.: Against Applicant

Subparagraph 1.q.: Against Applicant

Subparagraph 1.r.: Against Applicant

Subparagraph 1.s.: Against Applicant

Paragraph 2 Guideline E: Against Applicant

Subparagraph 2.a.: Against Applicant

Subparagraph 2.b.: Against Applicant

DECISION

In light of all the circumstances and facts 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.

Philip S. Howe

Administrative Judge

1. Applicant took back his only copies of the first 12 exhibits to match them to the SOR allegations. He returned four of them with the additional exhibits, but he has not responded to requests for the remaining eight. They are not in the file, consequently.