

KEYWORD: Financial; Personal Conduct

DIGEST: Applicant incurred 20 delinquent debts over several years. He did not repay or otherwise resolve these debts. He failed to disclose his delinquent debts on his security clearance application, and told the government investigator he allowed his debts to become delinquent and did not tell his creditors of his new address each time he moved. He filed for Chapter 13 bankruptcy protection on the hearing day. Applicant did not mitigate the financial considerations security concern or the personal conduct security concern. Clearance is denied.

CASENO: 02-17869.h1

DATE: 09/03/2004

DATE: September 3, 2004

In re:

SSN: -----

Applicant for Security Clearance

ISCR Case No. 02-17869

DECISION OF ADMINISTRATIVE JUDGE

PHILIP S. HOWE

APPEARANCES

FOR GOVERNMENT

Pamela C. Benson, Esq., Department Counsel

Lynette Andresen, Esq., Department Counsel

FOR APPLICANT

Rebecca Barthelemy Smith, Esq.

SYNOPSIS

Applicant incurred 20 delinquent debts over several years. He did not repay or otherwise resolve these debts. He failed to disclose his delinquent debts on his security clearance application, and told the government investigator he allowed his debts to become delinquent and did not tell his creditors of his new address each time he moved. He filed for Chapter 13 bankruptcy protection on the hearing day. Applicant did not mitigate the financial considerations security concern or the personal conduct security concern. Clearance is denied.

STATEMENT OF THE CASE

On October 21, 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 determine whether a clearance should be granted, continued, denied, or revoked.

In a signed and sworn statement, dated November 12, 2003, Applicant responded to the SOR allegations. He requested a hearing. This case was assigned to me January 27, 2004. A Notice of Hearing was issued February 3, 2004, setting the hearing for February 19, 2004. Applicant requested a continuance because he had just hired an attorney who needed to prepare for the hearing. I granted the continuance, and the second notice of hearing issued on March 12, 2004, setting the hearing date for April 6, 2004. On that date, I convened the hearing to consider whether it is clearly consistent with the national interest to grant Applicant's security clearance. The Government presented five exhibits which were admitted into evidence. Applicant submitted four exhibits at the hearing, and submitted another four exhibits after the hearing. I received the transcript on April 14, 2004.

FINDINGS OF FACT

Applicant admitted all the SOR allegations. 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 military retiree. He works as a computer technician for a defense contractor. He is married to his second wife, by whom he has two children. Applicant also has a child by his first wife, and supports his second wife's two children from her first marriage. His first marriage started in 1981 and ended in divorce in 2000. (Tr. 15, 16, 41; Exhibits 1 at 1 and 3, 2 at 2, and E)

Applicant incurred a number of debts during the course of his first marriage, and particularly since 1995. He allowed some of those debts to become delinquent, while paying other debts. In his sworn statement to an investigator in December 2001, he admitted allowing debts to become delinquent, and not notifying his creditors when he moved. Applicant also stated that he was going to contact his creditors and resolve these debts. His testimony at the hearing revealed he did not make those contacts, but waited for bills to be sent to him. His personal financial statement submitted in 2001 showed a net remainder monthly of \$1869 because he was not paying his debts. Instead, Applicant spent his income on purchases for himself and his family. (Exhibit 2 at 5 to 8; Tr. 47, 52 to 54, 62 to 68)

Applicant's debts and their disposition as shown by Exhibit C, the record, and her Answer, are as follows:

SOR ALLEGATION	NATURE OF DEBT AND CURRENT AMOUNT	CURRENT STATUS
1.a. credit union	Loan, \$2,228 judgment	Wages garnished; Tr. 21, 45, 47, 48, Exhibit A, Answer; Assigned to Applicant by divorce decree Exhibit E at 17. Admits he owes at least \$517.
1.b. same credit union	Loan, judgment	Tr. 24, 45, 47, 48, Answer, still owed, no documentation to show paid.
1.c. attorney's fees	Judgment \$966	Tr. 25, Answer, still owed, no documentation to show paid.
1.d. investment company	rent owed, \$8,880 judgment	Tr. 26, 50, still owed, included in Chapter 13 bankruptcy Exhibit D at 11 to 14, Answer
1.e. medical diagnostic company debt	\$249	Tr. 27, Answer, still owed.

1.f. same	\$107	Tr. 28, Answer, thought his medical insurance would pay. Still owed.
1.g. grocery store	\$292	Tr. 28, Answer, denies knowledge and obligation, still owed.
1.h. gas company	\$212	Tr. 28 to 29, Answer, says paid but no documentation.
1.i. bank credit card	\$4,932	Tr. 29, Answer, thinks is part of ¶1.r of SOR, repossessed car, included in bankruptcy as credit card debt, Exhibit D at 11 to 14.
1.j. department store debt	\$304	Tr. 29, 30, Answer, says not know about it, but included in bankruptcy at Exhibit D at 11 to 14.
1.k. jewelry store	\$1,713	Tr. 30, 45, 47, 50 to 52, 57, Answer, wedding rings for first marriage, says was paying, assigned by divorce decree (Exhibit E at 17), included in bankruptcy, Exhibit D at 11 to 14
1.l. same credit union	\$3,000	Tr. 24, 25, Answer, Applicant thinks part of ¶1.a. and 1.b., still owes.
1.m. consumer electronics store	\$4,003	Tr. 30, 31, Answer, Applicant thinks this computer purchase was paid for by time of divorce. Still owes.
1.n. U.S. Dept. of Education	Loan, \$1,020	Tr. 31, 32, Answer, Applicant thought it was only \$400, making payroll deductions for at least 6 months, included in bankruptcy Exhibit D at 11 to 14.
1.o. same	Loan, \$730	Tr. 32, Answer, Applicant still owes and included in bankruptcy.
1.p. same	Loan, \$2,373	Tr. 32, 33, Answer, same result
1.q. hospital bill	\$4,611 for ill wife	Tr. 33, 34, Answer, Applicant thought his insurance paid for it, he never received any bills for it. Still owes.
1.r. bank	\$7,321, repossessed car	Tr. 34, Answer, car assigned to wife in divorce free and clear (Exhibit E at 14), included in bankruptcy (Exhibit D at 11).
1.s. bank	\$8,270	Answer, Applicant did not testify about this debt, included in bankruptcy (Exhibit D at 11 to 14.
1.t. mortgage company	\$67,666.26	Tr. 34, 35, 44, Answer, Applicant allowed home to go into foreclosure by not paying mortgage because he lived with his new wife, and renters were not paying regularly Exhibit G. Included in bankruptcy.

Applicant filed his Chapter 13 bankruptcy at 11:19 a.m. on the morning of the hearing. Applicant had his investigative interview in December 2001, stated he would pay his debts, but took no action to do so. Applicant's bankruptcy includes other debts than those listed on the SOR, but only nine SOR debts are listed on the bankruptcy Schedule F. When he received the notice of hearing, he requested a continuance, received it, but did nothing to repay his debts until the morning of the hearing. Applicant has a 48 month Chapter 13 bankruptcy plan to pay 50% of his debts and makes monthly payments of \$544 to the trustee. Applicant asked at the hearing for a chance to pay his debts that total nearly \$100,000 in the SOR, but only \$49,956 in the bankruptcy. Applicant takes the position he was not aware of many of his debts until December 2001 when he read the credit report shown him by the investigator. By November 2002, Applicant had four judgments against him. (Tr. 18, 37 to 40, 47, 82; Exhibits 2 at 5 to 9, D, F)

Applicant answered with denials security clearance application (SCA) Questions 38 (delinquent debts over 180 days in the past seven years) and 39 (delinquent debts over 90 days), while actually having several debts exceeding those time standards, including subparagraphs 1.a. 1.j. to 1.q. and 1.s. and 1.t. (Exhibit 1 at 7 to 8; Exhibit 2 at 5 and 6; Tr. 18, 36, 56, 64 to 68)

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 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." Exec. Or. 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.

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.

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, conditions in the personal or professional history of the applicant that disqualify, or may disqualify, the applicant from being eligible for access to classified information.

See Egan, 484 U.S. at 531. The Directive presumes a nexus or rational connection between proven conduct under any of the disqualifying conditions listed in the guidelines and an applicant's security suitability. *See* ISCR Case No. 95-0611 at 2 (App. Bd. May 2, 1996). All that is required is proof of facts and circumstances that 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. ISCR Case No. 00-0277, 2001 DOHA LEXIS 335 at **6-8 (App. Bd. 2001). Once the Government has established a *prima facie* case by substantial evidence, the burden shifts to the applicant to rebut, explain, extenuate, or mitigate the facts. *See* Directive ¶ E3.1.15. An applicant "has the ultimate burden of demonstrating that is clearly consistent with the national interest to grant or continue his security clearance. ISCR Case No. 01-20700 at 3 (App. Bd. 2002). "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* Exec. Or. 12968 § 3.1(b).

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:

None

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:

Refusal to provide full, frank and truthful answers to lawful questions of investigators, security officials or other official representatives in connection with a personal security or trustworthiness determination.

(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.

(5) A pattern of dishonesty. E2.A5.1.2.5.

(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.

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 conclude Disqualifying Conditions (DC) 1 (history of not meeting financial obligations) and DC 3 (an inability to satisfy debts) apply here. Applicant has not paid his debts for several years, at least the delinquent debts listed in the SOR. The bankruptcy filing shows other debts Applicant seeks to pay under the Chapter 13 plan. Applicant also professes ignorance of many debts, and provided varying testimony about his repayment efforts on the credit union, jewelry store, and mortgage debt, to list but three such debts. Applicant moved twice and never contacted his creditors, testifies he never got bills that he could pay or use to contact these creditors after the December 2001 investigative interview, provided no documentation concerning debts he asserts were paid, and did nothing about satisfying these debts even after the SOR was sent to him in October 2003. Applicant incurred large debts, kept buying "nice stuff to have and stuff for the family" (as he admits), and rarely paid off any debt.

There are no Mitigating Conditions (MC) applicable here. Applicant never made a good-faith effort to repay these debts. Garnishment and judgments were used by some of his creditors to obtain payment. Applicant at the last hour before the hearing filed Chapter 13 bankruptcy on only part of the debts listed in the SOR. I conclude that Applicant has not mitigated the Financial Considerations security concerns, and hold against Applicant under Guideline F.

With respect to Guideline E, I conclude the Government proved its case. Applicant did not reveal all of his outstanding debts. Applicant knew these debts were delinquent, he should have disclosed them on the security clearance application, but failed to do so. DC 2 (the deliberate omission or concealment of relevant and material facts from any personal security questionnaire) applies. Also, DC 5 (a pattern of dishonesty) applies because Applicant established such a pattern because he has not repaid his debts as he said he would do, and by falsifying his SCA.

There are no MC to apply here under these facts. I find Applicant deliberately failed to disclose the totality of his debts, or even that he had any that were delinquent. Applicant may not have known about the judgments by February 22, 2001, when he completed his SCA, but he knew about the garnishments for the credit union that were made because he was so late on paying bills. He also knew he had not paid his mortgage regularly for whatever reason. He knew he borrowed money or used credit cards, and owed that money even if the creditors could not find him because he moved and did not notify them of his new address. Furthermore, Applicant admitted he allowed his debts to become delinquent and that is why his personal financial statement in 2001 showed a net remainder of \$1869 monthly. Therefore, I conclude Guideline E against the Applicant.**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.: Against Applicant

Subparagraph 1.e.: Against Applicant

Subparagraph 1.f.: Against Applicant

Subparagraph 1.g.: Against Applicant

Subparagraph 1.h.: Against Applicant

Subparagraph 1.i.: Against Applicant

Subparagraph 1.j.: Against Applicant

Subparagraph 1.k.: Against Applicant

Subparagraph 1.l.: Against 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

Subparagraph 1.t.: 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