

KEYWORD: Financial

DIGEST: Since receiving the SOR, Applicant has paid off a \$400.00 obligation on a delinquent credit card account and two delinquent medical bills of \$50.00 and \$54.00 , the latter of which he incurred in 1997. However, he has not resolved, or established that he does not owe, a state tax judgment of \$767.00 and two state tax liens of \$4,628.00 and \$1,171.00. Moreover, the record establishes that Applicant has a history of delinquent financial indebtedness extending back for more than 12 years and that he has not addressed his financial delinquencies until he needs a security clearance. Clearance is denied.

CASENO: 02-19110.h1

DATE: 03/16/2005

DATE: March 16, 2005

In Re:

SSN: -----

Applicant for Security Clearance

ISCR Case No. 02-19110

DECISION OF ADMINISTRATIVE JUDGE

ROGER E. WILLMETH

APPEARANCES

FOR GOVERNMENT

Kathryn Antigone Trowbridge, Department Counsel

FOR APPLICANT

Pro Se

SYNOPSIS

Since receiving the SOR, Applicant has paid off a \$400.00 obligation on a delinquent credit card account and two delinquent medical bills of \$50.00 and \$54.00 , the latter of which he incurred in 1997. However, he has not resolved, or established that he does not owe, a state tax judgment of \$767.00 and two state tax liens of \$4,628.00 and \$1,171.00. Moreover, the record establishes that Applicant has a history of delinquent financial indebtedness extending back for more than 12 years and that he has not addressed his financial delinquencies until he needs a security clearance. Clearance is denied.

STATEMENT OF THE CASE

On October 3, 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). 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 November 11, 2003, Applicant answered the SOR, included three attachments, 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 29, 2004. During the hearing, 12 Government exhibits (Govt Ex), two Applicant exhibits (Ap Ex), and the testimony of Applicant were received. 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 48-year-old systems engineer who has worked for his current employer, a defense contractor, since July 1999. He is married and has seven children. Applicant is a graduate of the United States Military Academy who served with the Army for 18 years. He is seeking a security clearance.

Applicant's supervisor describes him as "a key member" of his company's weapons simulation team that his supervisor credits for "cost savings to the government of millions of dollars each year." His supervisor also states that Applicant's "success and importance to this activity is reflected by the fact that we have seen fit to increase his salary by 29 percent in the last three years alone." (3)

On November 20, 1991, a federal tax lien in the amount of \$6,727.00 was filed against Applicant. On July 10, 1997, the tax lien was released.

On April 15, 1993, Applicant was interviewed by a special agent of the Defense Investigative Service (DIS) and provided a sworn statement. Applicant discussed his eight delinquent debts, totaling \$1,717.37.

In October 1995, a tax lien in the amount of \$1,017.00 was filed against Applicant by his state of residence. The lien was paid on December 1, 1997. In March 1999 the same state filed another tax lien against Applicant in the amount of \$6,476.00. The lien was paid on May 1, 2003.

On November 7, 1996, Applicant was interviewed by a special agent of the Defense Investigative Service (DIS) and provided a sworn statement. Applicant discussed his 10 delinquent debts, including the federal and state tax liens.

After his mother-in-law died in 1996, Applicant and his wife provided a home for his father-in-law and a disabled brother-in-law. The brother-in-law resided with them for approximately two years. Following the repossession of their home in 2002, Applicant and his wife placed his father-in-law in a nursing home.

In February 1997 Applicant incurred a \$54.00 bill from a radiologist he did not pay and that became delinquent. On October 31, 2003, Applicant paid the bill in full. (SOR ¶ 1.e).

In September 1997 Applicant incurred a \$468.00 charge from a pet clinic that he did not pay and that the creditor

transferred to a debt collector. To date, he has not paid the debt. (SOR ¶ 1.f).

In December 1999, Applicant opened a credit card account. By April 2001 he had a delinquent balance of \$400.00 that the creditor transferred to a debt collector. On October 31, 2003, Applicant paid the account in full. (SOR ¶ 1.c).

In 1999, Applicant used his savings for he and his wife to start their own business, manufacturing and selling rubber stamps. He became licensed to sell products in three other states. In September 2002 one of those states obtained a civil judgment against Applicant in the amount of \$767.00 for unpaid taxes (SOR ¶ 1.a). He has not paid or other wise settled the judgment. On October 16, 2001, another of those states filed a tax lien against him in the amount of \$4,628.00 that he has not paid (SOR ¶ 1.b). On November 26, 2001, the third state filed a tax lien against him in the amount of \$1,171.00 that he has not paid (SOR ¶ 1.g).

On April 27, 2001, Applicant and his wife filed a bankruptcy petition under chapter 13 of the bankruptcy code. On January 16, 2002, the bankruptcy court dismissed their case. Following the dismissal, Applicant's home was repossessed.

In August 2001 Applicant incurred a medical bill of \$50.00 he did not pay and that became delinquent. On October 31, 2003, Applicant paid the bill in full. (SOR ¶ 1.d).

On May 16, 2002, Applicant was interviewed by a special agent of the Defense Security Service (DSS) and provided a sworn statement. Applicant discussed his delinquent debts, including two of the state tax liabilities, his bankruptcy, and his unsuccessful business. He acknowledged the \$468.00 debt to a pet clinic was for a pet health care plan he agreed to but never utilized. Applicant further stated he would contact the clinic and "make arrangements to pay off this debt."

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

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 more than a decade. He incurred a federal tax lien of \$6,727.00 in 1991. Two years later, he had eight delinquent debts, totaling \$1,717.37. Applicant incurred a tax lien of \$1,017.00 from his state of residence in 1995 and another one in the amount of \$6,476.00 four years later. He incurred two of the debts addressed by the SOR as far back as 1997, including one that

remains unpaid and unresolved. As recently as 2001-2002, Applicant incurred a state tax judgment and two state tax liens totaling \$6,566.00.

Conditions that could mitigate security concerns under Guideline F include ¶ E2.A6.1.3.6 (Mitigating Condition 6), *the individual initiated a good-faith effort to repay overdue creditors or otherwise resolve debts*. Following his receipt of the SOR, Applicant paid two small delinquent medical bills (SOR ¶ 1.d, e) as well as his delinquent balance on a credit card account (SOR ¶ 1.c). However, he has not paid or otherwise resolved a state tax judgment against him in the amount of \$767.00 and two state tax liens in the amounts of \$4,628.00 and \$1,171.00 (SOR ¶ 1.a, b, g). Applicant contends that he does not owe the debts to these states because his business did not generate the sales he projected in them. Although that may be true, Applicant has not met his burden of providing corroborating evidence to substantiate his contention. This is of particular concern because Applicant has a history of not meeting his financial obligations. There is no evidence that the state taxing authorities have agreed that Applicant is not liable for the taxes and these delinquent debts remain part of his financial record. Although Applicant does not believe he should be held liable for pet insurance he was not able to utilize, this does not relieve him of his responsibility when there is no showing the pet clinic was not able and willing to perform the contract (SOR ¶ 1.f).

Conditions that could mitigate security concerns under Guideline F also 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)*. Although Applicant may have undertaken a business that failed, the record is not sufficient to excuse his financial delinquencies based on itigating Condition 3. The record evidences that he incurred tax liens and other delinquent debts 6-8 years before he started the business in 1999. Applicant also testified he provided a home for his father-in-law and brother-in-law after his mother-in-law died in 1996 but here again that occurred 3-5 years before he was having financial difficulties.

The record reflects that Applicant seeks to resolve his financial problems when he is faced with a need for a security clearance. He confirmed this in his own testimony: "one of the driving factors for my financial history has been security clearances and the push to - okay, let's try to take care of things so I can keep my job and keep feeding my family."⁽⁴⁾ Although Applicant is a valued employee and a citizen who has honorable served his country, these factors do not excuse his history of delinquent indebtedness and the concerns that it raises. Such a history of excessive indebtedness or recurring financial difficulties places the security eligibility of an applicant into question. ISCR Case No. 00-0104 (March 21, 2001) at p. 4. Accordingly, I find against Applicant.

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: Against Applicant

Subparagraph 1.b: Against Applicant

Subparagraph 1.c: For Applicant

Subparagraph 1.d: For Applicant

Subparagraph 1.e: For Applicant

Subparagraph 1.f: Against Applicant

Subparagraph 1.g: Against Applicant

DECISION

In light of the evidence of record in this case, it is 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. Ap Ex A.
4. Tr 38.