

KEYWORD: Financial

DIGEST: Applicant has a history of financial instability and has been financially overextended for several years. While he was able to show he had paid two of his debts, his continuing financial problems raise serious security concerns. Clearance is denied.

CASENO: 02-19625.h1

DATE: 03/23/2005

DATE: March 23, 2005

In Re:

SSN: -----

Applicant for Security Clearance

ISCR Case No. 02-19625

DECISION OF ADMINISTRATIVE JUDGE

JOAN CATON ANTHONY

APPEARANCES

FOR GOVERNMENT

Marc E. Curry, Esq., Department Counsel

FOR APPLICANT

Pro Se

SYNOPSIS

Applicant has a history of financial instability and has been financially overextended for several years. While he was able to show he had paid two of his debts, his continuing financial problems raise serious security concerns. Clearance is denied.

STATEMENT OF THE CASE

The Defense Office of Hearings and Appeals (DOHA) declined to grant or continue a security clearance for Applicant. On October 15, 2003, under the applicable Executive Order⁽¹⁾ and Department of Defense Directive,⁽²⁾ DOHA issued a Statement of Reasons (SOR) detailing the basis for its decision-security concerns raised under Guideline F (Financial Considerations) of the Directive. Applicant answered the SOR in writing on November 14, 2003, and requested his case be determined on the record in lieu of a hearing. The Government compiled its File of Relevant Material (FORM) on January 20, 2004. The FORM contained documents identified as Items 1 through 7. By letter dated January 26, 2004, a copy of the FORM was forwarded to Applicant, with instructions to submit any additional information and/or objections within 30 days of receipt. Applicant received the FORM on February 2, 2004 and his response was due arch 3, 2004. Applicant submitted a response to the FORM dated February 21, 2004. The case was assigned to a DOHA administrative judge on March 10, 2004, and transferred to another DOHA administrative judge thereafter. On February 18, 2005, the case was transferred to me for a decision. The transfer occurred because of caseload considerations.

FINDINGS OF FACT

The SOR contains twelve allegations of disqualifying conduct charged under Guideline F, Financial Considerations. In his answer to the SOR, Applicant admitted all twelve allegations. His admissions are incorporated as findings of fact.

Applicant is a 43-year-old analysis supervisor employed by a defense contractor. He enlisted in the United States Navy in 1990 and served until 1995. He has worked for the same employer since 1995 and was first granted a security clearance in 1990. Applicant and his wife have been separated since January 2000. They have two children, ages seventeen and fifteen. He provides his wife \$800 a month in support payments. He was diagnosed with diabetes in July 2001. (Item 3, at 3.) His father died in August 2000 and his mother in June 2002, causing him grief.

Applicant has a history of financial problems and admitted an on-going pattern of financial instability. He owed \$1,262 on ten debts in collection status. As of August 27, 2003, he had an unpaid civil judgment of approximately \$1,375. As of March 2002, he had not paid his federal income tax for 2000. He sought the services of a credit counseling firm in May 2001 but decided not to engage in credit counseling because he found the credit counseling firm's fees too expensive.

In his answer to the SOR, Applicant stated he would pay the debts alleged at ¶¶ 1.a., 1.b., 1.d., 1.f., 1.g., 1.h., and 1.i. by February 15, 2004. In his February 21, 2004 response to the FORM, Applicant admitted he had not paid those debts. Instead, he provided evidence that in January 2004 he had paid in full the \$1,375 civil judgment. He also provided evidence that in December 2003 he paid a debt of \$996 not alleged in the SOR. He paid his federal income tax for the year 2000 on November 5, 2003.

Applicant provided a signed, sworn statement to a special agent of the Defense Security Service on January 25, 2002. Included with the signed, sworn statement was Applicant's personal financial statement indicating a total net monthly income of \$2754 and a net remainder after monthly expenses of \$338. The personal financial statement indicated Applicant was not paying down eight overdue and collection accounts but was current on a monthly car payment of \$606.

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.

Enclosure 2 of the Directive sets forth personal security guidelines, as well as the disqualifying conditions (DC) and mitigating conditions (MC) under each guideline. In evaluating the security worthiness of an applicant, the administrative judge must also assess the adjudicative process 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, 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).

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 (App. Bd. Dec. 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.

CONCLUSIONS

Guideline F-Financial Considerations

The Government's concern under Guideline F, Financial Considerations, is that individuals who are financially overextended and unable or unwilling to pay their just debts may try to generate funds by engaging in illegal acts. Applicant has a history of not meeting his financial obligations, and this financial history suggests an inability or unwillingness to satisfy his debts, conditions which raise security concerns under subparagraphs E2.A6.1.2.1. and

E2.A6.1.2.3. of Guideline F. DOHA's Appeal Board has concluded that "[a] person who is unwilling to fulfill his legal obligations does not demonstrate the high degree of good judgment and reliability required of persons granted access to classified information." ISCR Case No. 98-0810 at 4 (App. Bd. June 8, 2000).

In the SOR, DOHA alleged that Applicant had was indebted to a medical provider creditor for approximately \$50, and the delinquent debt, in collection status, had not been paid as of August 27, 2003 (¶ 1.a.); that he was indebted to a medical provider for approximately \$92, and the delinquent debt, in collection status, had not been paid as of August 27, 2003 (¶ 1.b.); that he was indebted to a hospital for approximately \$376, and the delinquent debt, in collection status, had not been paid as of August 27, 2003 (¶ 1.c.); that he was indebted to a creditor for approximately \$36, and the delinquent debt, in collection status, had not been paid as of August 27, 2003 (¶ 1.d); that he was indebted to a medical provider creditor for approximately \$192, and the delinquent debt, in collection status, had not been paid as of August 27, 2003 (¶ 1.e.); that he was indebted to a medical provider creditor for approximately \$50, and the delinquent debt, in collection status, had not been paid as of August 27, 2003 (¶1.f.); that he was indebted to a medical provider for approximately \$95, and the delinquent debt, in collection status, had not been paid as of August 27, 2003 (¶ 1.g.); that he was indebted to a medical provider creditor for approximately \$50, and the delinquent debt, in collection status, had not been paid as of August 27, 2003 (¶ 1.h.); that he was indebted to a medical provider creditor for approximately \$29, and the delinquent debt, in collection status, had not been paid as of August 27, 2003 (¶ 1.i.); that he was indebted to a medical provider creditor for approximately \$292, and the delinquent account, in collection status, had not been paid as of August 27, 2003 (¶ 1.j); that he was indebted for approximately \$1,375 to a bank on a civil judgment, and the delinquent debt had not been satisfied as of August 27, 2003 (¶ 1.k.); and that as of March 12, 2002, for the tax year 2000, he owed between four and five thousand dollars in federal taxes but had not filed a federal tax return for the year 2000, which was due April 15, 2001 (¶ 1.1.) An applicant who is financially overextended is at risk of having to engage in illegal acts to generate funds. Directive ¶ E2.A6.1.1.

Applicant admitted the financial obligations identified in allegations at ¶¶ 1.a. through 1.1. of the SOR. The Government has established, through the FORM and Applicant's admissions, a *prima facie* case that Applicant is financially overextended. Applicant provided no persuasive evidence to rebut the financial concerns specified in the SOR and identified as disqualifying conditions under ¶¶ E2.A6.1.2.1. and E2.A6.1.2.3. of Guideline F.

We turn to a review of the several conditions that could mitigate the security concerns raised by Applicant's financial delinquencies. Applicant's acknowledged delinquencies involve long-standing debts which continue to be unsatisfied to this day. Thus, neither mitigating condition E2.A.6.1.3.1. nor mitigating condition E2.A6.1.3.2. applies. If a person's financial delinquencies were largely caused by conditions beyond his control, then mitigating condition E2.A6.1.3.3 might apply. While Applicant is separated from his wife, suffers from diabetes, and has lost both of his parents, these circumstances, while unfortunate, do not explain or mitigate his long-standing financial difficulties. (*See* Item 3.) Thus, mitigating condition E2.A6.1.3.3. does not apply.

The record evidence does not establish that Applicant has sought counseling for his financial problems. To his credit, he satisfied the civil judgment against him in 2004, paid another delinquent debt not alleged in the SOR in 2004, and paid his 2000 federal income taxes in November 2003. While he provided some evidence he had contacted or attempted to contact his creditors, he failed to demonstrate he had followed through on payment schedules he had committed to. Thus, neither mitigating condition E2.A6.1.3.4. nor E2.A6.1.3.6. applies to the facts of Applicant's case. Accordingly, the allegations in ¶¶ 1.a. through 1.1. of the SOR are concluded against the Applicant.

In all adjudications, the protection of our national security is the paramount concern. Security clearance decisions are not intended to assign guilt or to impose further punishment for past transgressions. Rather, the objective of the security clearance process is the fair-minded, common sense assessment of a person's trustworthiness and fitness for access to classified information. Indeed, the "whole person" concept recognizes we should view a person by the totality of his or her acts and omissions, including all disqualifying and mitigating conduct. Having done so, I conclude Applicant should not be entrusted with a security clearance. In reaching my decision, I have considered the evidence as a whole, including the appropriate factors and guidelines in Department of Defense Directive, 5220.6, as amended.

FORMAL FINDINGS

The following are my conclusions as to each allegation in the SOR:

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

DECISION

In light of all of 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 Applicant. Clearance is denied.

Joan Caton Anthony

Administrative Judge

1. Exec. Or. 10865, *Safeguarding Classified Information within Industry* (Feb. 20, 1960), as amended and modified.
2. Department of Defense Directive 5220.6, *Defense Industrial Personnel Security Clearance Review Program* (Jan. 2, 1992), as amended and modified.