

KEYWORD: Financial

DIGEST: Applicant owed four debts totaling approximately \$12,000. He has paid three of the debts and is making monthly payments on the remaining debt. The record evidence is sufficient to mitigate or extenuate the negative security implications stemming from Applicant's finances. Clearance is granted.

CASENO: 02-20459.h1

DATE: 02/15/2005

DATE: February 15, 2005

In Re:

SSN: -----

Applicant for Security Clearance

ISCR Case No. 02-20459

DECISION OF ADMINISTRATIVE JUDGE

CLAUDE R. HEINY

APPEARANCES

FOR GOVERNMENT

Edward W. Loughran, Esquire, Department Counsel

FOR APPLICANT

SYNOPSIS

Applicant owed four debts totaling approximately \$12,000. He has paid three of the debts and is making monthly payments on the remaining debt. The record evidence is sufficient to mitigate or extenuate the negative security implications stemming from Applicant's finances. Clearance is granted.

STATEMENT OF THE CASE

On December 4, 2003, the Defense Office of Hearings and Appeals (DOHA) issued a Statement of Reasons (SOR) to Applicant, stating that DOHA could not make the preliminary affirmative finding ⁽¹⁾ it is clearly consistent with the national interest to grant or continue a security clearance for Applicant. On February 6, 2004, Applicant's answer to the SOR and request for a hearing was received. On September 1, 2004, I was assigned the case. On September 1, 2004, a Notice of Hearing was issued scheduling the hearing which was held on September 22, 2004. The transcript (tr.) of the hearing was received on September 30, 2004. The record was kept open to allow Applicant to submit additional documents, which were received on October 13, 2005. Department Counsel having no objection, the documents were admitted into evidence.

FINDINGS OF FACT

The SOR alleges Financial Considerations. The Applicant admits owing four debts and being declined a debt consolidation loan. Those admissions are incorporated herein as findings of fact. After a thorough review of the whole record, I make the following additional findings of fact:

The Applicant is 36 years old, has worked for a defense contractor since June 1999, and is seeking to maintain a secret security clearance. The SOR alleges Applicant owed four debts totaling approximately \$ 12,000. A summary of those

debts follows:

| | Creditor | Amount | Current Status |
|-----|---------------------------|----------|--|
| 1a | credit card | \$4,685 | Making \$125.07 monthly payments. (App Exs A, M) Current balance \$3,754.09. |
| 1b. | military credit card | \$1,925 | Paid (App Ex E) |
| 1c | auto store credit card | \$1,196 | Paid (App Ex N) |
| 1d | department store | \$4,443 | Account Settled. Balance 0.(App Exs G and N) |
| | Total debt alleged in SOR | \$12,249 | |

In August 2003, Applicant applied for a debt consolidation loan, but was turned down due to past delinquencies, garnishment, and current credit obligations.

In 1998, Applicant's finances became worse when he was overseas in an unaccompanied status. His wife was handling their finances, but did a poor job. Applicant acknowledges he should have taken care of their finances. Also, in 1998, Applicant retired from the Army. Following retirement, the only job he could get paid minimum wages. His wife was unable to work due to medical problems. He has now paid three of the debts he accrued as a result of his income reduction and is making monthly payments on the remaining debt.

POLICIES

The Adjudicative Guidelines in the Directive are not a set of inflexible rules of procedure. Instead they are to be applied by Administrative Judges on a case-by-case basis with an eye toward making determinations that are clearly consistent with the interests of national security. In making overall common sense determinations, Administrative Judges must consider, assess, and analyze the evidence of record, both favorable and unfavorable, not only with respect to the relevant Adjudicative Guidelines, but in the context of factors set forth in section E 2.2.1. of the Directive. The government has the burden of proving any controverted fact(s) alleged in the SOR, and the facts must have a nexus to an Applicant's lack of security worthiness.

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. Although the presence or absence of a particular condition for or against clearance is not determinative, the specific

adjudicative guidelines should be followed whenever a case can be measured against this policy guidance.

BURDEN OF PROOF

As noted by the United States Supreme Court in *Department of Navy v. Egan*, 484 U.S. 518, 528 (1988), "no one has a 'right' to a security clearance." 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." Executive Order 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.

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. All that is required is proof of facts and circumstances which 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. Where the facts proven by the Government raise doubts about an applicant's judgment, reliability or trustworthiness, then the applicant has the ultimate burden of establishing his security suitability with substantial evidence in explanation, mitigation, extenuation, or refutation, sufficient to demonstrate that despite the existence of guideline conduct, it is clearly consistent with the national interest to grant or continue his security clearance.

Security clearances are granted only when "it is clearly consistent with the national interest to do so." *See* Executive Orders 10865 § 2 and 12968 § 3.1(b). "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 "The clearly consistent standard indicates that security clearance determinations should err, if they must, on the side of denials." *See Egan*, 484 U.S. at 531. Doubts are to be resolved against the applicant.

CONCLUSIONS

The Government has satisfied its initial burden of proof under Guideline F, (Financial Considerations). A person's relationship with his creditors is a private matter until evidence is uncovered demonstrating an inability or unwillingness

to repay debts under agreed upon terms. Absent evidence of strong extenuating or mitigating circumstances, an applicant with a history of serious or recurring financial difficulties is in a position of risk that is inconsistent with the holding of a security clearance. Under Guideline F, an Applicant is not required to be debt free, but is required to manage his finances so as to meet his financial obligations.

The Applicant owed four debts totaling approximately \$12,000. Disqualifying Condition (DC) 1. (E2.A6.1.2.1. A history of not meeting financial obligations.) and DC 3. (E2.A6.1.2.3. Inability or unwillingness to satisfy debts.) apply.

Applicant has paid three of the debts (SOR paragraphs 2b, 2.c, and 2.d) and is making \$125 monthly payments on the remaining debt (SOR paragraph 1.a), which now has a balance of \$3,754.09. Mitigating Conditions (MC) 6. (E2.A6.1.3.6. The individual initiated a good-faith effort to repay overdue creditors or otherwise resolve debts.) applies.

In August 2003, Applicant was denied a consolidation loan due to the status of his finances at that time. Despite this setback, he has been able to make significant progress in satisfying his debts. I find for Applicant as to financial considerations.

In reaching my conclusions I have also considered: the nature, extent, and seriousness of the conduct; the Applicant's age and maturity at the time of the conduct; the circumstances surrounding the conduct; the Applicant's voluntary and knowledgeable participation; the motivation for the conduct; the frequency and recency of the conduct; presence or absence of rehabilitation; potential for pressure, coercion, exploitation, or duress; and the probability that the circumstance or conduct will continue or recur in the future.

FORMAL FINDINGS

Formal Findings as required by Section 3., Paragraph 7., of Enclosure 1 of the Directive are hereby rendered as follows:

Paragraph 1 Financial Considerations: FOR THE APPLICANT

Subparagraph 1.a.: For the Applicant

Subparagraph 1.b.: For the Applicant

Subparagraph 1.c.: For the Applicant

Subparagraph 1.d.: For the Applicant

Subparagraph 1.e.: For the Applicant

DECISION

In light of all the circumstances presented by the record in this case, it is clearly consistent with the national interest to grant or continue a security clearance for the Applicant. Clearance is granted.

Claude R. Heiny

Administrative Judge

1. Required by Executive Order 10865, as amended, and Department of Defense Directive 5220.6 (Directive), dated January 2, 1992, as amended.