

KEYWORD: Financial

DIGEST: Applicant owes five debts totaling approximately \$49,000. The available information is insufficient to mitigate or extenuate the financial considerations caused by her failure to pay her financial obligations. Clearance is denied.

CASENO: 02-21045.h1

DATE: 09/09/2004

DATE: September 9, 2004

In Re:

SSN: -----

Applicant for Security Clearance

CR Case No. 02-21045

DECISION OF ADMINISTRATIVE JUDGE

CLAUDE R. HEINY

APPEARANCES

FOR GOVERNMENT

FOR APPLICANT

Pro Se

SYNOPSIS

Applicant owes five debts totaling approximately \$49,000. The available information is insufficient to mitigate or extenuate the financial considerations caused by her failure to pay her financial obligations. Clearance is denied.

STATEMENT OF THE CASE

On June 18, 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. In an undated response the Applicant answered the SOR and elected to have his case decided on the written record in lieu of a hearing.

On February 17, 2004, the Applicant received a complete copy of the file of relevant material (FORM) dated January 26, 2004, and was given the opportunity to file objections and submit material in extenuation, mitigation, or refutation. The Applicant's response to the FORM was due on March 18, 2004. No response has been received. In the FORM, Department Counsel presented nine exhibits (Items). The Applicant submitted no exhibits. I was assigned the case on March 25, 2004.

FINDINGS OF FACT

The SOR alleges Financial Considerations. The Applicant admits to filing for bankruptcy protection and admits to the

five debts. 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 same, I make the following additional findings of fact.

The Applicant is 44-years-old, has worked for a defense contractor since July 1984, and is seeking to maintain a secret security clearance.

Applicant owes five debts totaling approximately \$49,300. A summary of the debts follows:

| | Creditor | Amount | Current Status |
|----|---------------------------------------|----------|-------------------------------|
| a. | Bank debt, charged off | \$1,368 | Unpaid. |
| b. | Bank debt, charged off. Land purchase | \$43,709 | Unpaid. |
| c. | Bank credit card debt, charged off | \$1,943 | Unpaid. |
| d. | Loan | \$1,198 | Unpaid. |
| e. | Debt | \$1,140 | Unpaid. |
| | | \$49,358 | Total debt listed in the SOR. |

In February 1983, Applicant and her husband sought bankruptcy protection under Chapter 7. They listed assets of approximately \$29,000 and liabilities of approximately \$42,000. The debts were discharged in August 1985. In 1990/1991, Applicant and her husband sought bankruptcy protection under Chapter 13. In May 1991, the Chapter 13 was converted to a Chapter 7. The debts were discharged in September 1991.

In August 1998, Applicant and her husband again sought bankruptcy protection under Chapter 7. They got behind on their debts due to "work being slow and reduced income." (Item 5) The nature of their work is unclear from the record. They listed assets of approximately \$224,000 and liabilities of approximately \$340,000. Their largest liabilities were claims for their land and mobile homes (\$197,547) and their vehicles (\$87,650). In December 1998, the debts were discharged. In June 2003, Applicant and her husband sought bankruptcy protection under Chapter 13. Their bankruptcy is still active.

As of December 2001, Applicant's and her husband's monthly income was \$7,100, their monthly expenses were \$6,401, leaving a net remainder of \$599.

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.

Considering the evidence as a whole, this Administrative Judge finds the following adjudicative guidelines to be most pertinent to this case:

Financial Considerations, Guideline F, 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.

Conditions that could raise a security concern and may be disqualifying include:

1. A history of not meeting financial obligations.
3. Inability or unwillingness to satisfy debts.

Conditions that could mitigate security concerns include:

None Apply.

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 Financial Considerations, Guideline F. 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 individual is not required to be debt free, but is required to manage her finances in such a way as to meet her financial obligations. The Applicant's financial history provides concern. Disqualifying conditions (DC) 1. (A history of not meeting financial obligations) and 3. (Inability or unwillingness to satisfy debts.) apply.

There is no indication of extravagant expenditure. Applicant admits owing the five debts totaling approximately \$49,000. Applicant has not documented that these debts were included in any of her bankruptcies. Applicant has filed for bankruptcy protection four times: in 1983, 1990/1991, 1998 and 2002. The only stated reason why Applicant had to file for bankruptcy protection was her statement that her 1998 bankruptcy was caused by work being slow and reduced income. (Item 5) Applicant provides no further information concerning the causes of the other bankruptcies nor does she indicate why she and her husband had to seek Chapter 13 protection in June 2002. Without more, her statement fails to establish her financial problems were caused by conditions beyond her control. Therefore, mitigating condition (MC) 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, does not apply.

None of the other mitigating conditions apply in the Applicant's favor. MC 1 (The behavior was not recent.) does not apply because the conduct is recent since the debts remain unpaid. MC 2 (It was an isolated incident.) does not apply because there are five debts. There was no showing Applicant has sought financial counseling to correct her credit. Additionally, the record does not establish Applicant's financial difficulties are under control. Just the opposite, Applicant's finances were in such a state that she and her spouse had to file for bankruptcy protection in June 2002 which is still active.

For MC 6 (The individual initiated a good-faith effort to repay overdue creditors or otherwise resolve debts.) to apply there must be an "ability" to repay the debts, the "desire" to repay, and evidence of a good faith effort to repay. A systematic, concrete method of handling her debts is needed, which is not present here. Because the disqualifying conditions apply and none of the mitigating conditions, I find against Applicant financial considerations.

I do not find against Applicant because she had to resort to bankruptcy protection in 1998. I find for her as to SOR subparagraph 1.g. The reasons for the other three bankruptcies is not provided in the record.

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.

The awarding of a security clearance is not a once in a life time occurrence, but is based on current disqualifying and mitigating conditions. Under the Applicant's current circumstances a clearance is not recommended, but should the Applicant be afforded an opportunity to reapply for a security clearance, in the future, she may well demonstrate persuasive evidence of her security worthiness. A clearance at this time is not warranted.

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.: AGAINST THE APPLICANT

Subparagraph 1.a.: Against the Applicant

Subparagraph 1.b.: Against the Applicant

Subparagraph 1.c.: Against the Applicant

Subparagraph 1.d.: Against the Applicant

Subparagraph 1.e.: Against the Applicant

Subparagraph 1.f.: Against the Applicant

Subparagraph 1.g.: For the Applicant

Subparagraph 1.h.: Against the Applicant

Subparagraph 1.i.: Against the Applicant

DECISION

In light of all 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 the Applicant. Clearance is denied.

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.