

KEYWORD: Financial

DIGEST: Applicant mitigated the security concerns raised by his adverse financial history by demonstrating 1) that his financial difficulties were due to circumstances beyond his control, 2) that he had dealt responsibly with his creditors as his means permitted, 3) that the four debts alleged in the SOR were actually two debts reported on his credit report as both delinquent and reduced to judgment, and 4) that he had begun to deal with his delinquent accounts well before the SOR was issued. Clearance granted.

CASENO: 02-22363.h1

DATE: 03/29/2005

DATE: March 29, 2005

In Re:

SSN: -----

Applicant for Security Clearance

ISCR Case No. 02-22363

DECISION OF ADMINISTRATIVE JUDGE

JOHN GRATTAN METZ, JR.

APPEARANCES

FOR GOVERNMENT

Daniel F. Crowley, Esquire, Department Counsel

Marc Curry, Esquire, Department Counsel

FOR APPLICANT

Pro Se

SYNOPSIS

Applicant mitigated the security concerns raised by his adverse financial history by demonstrating 1) that his financial difficulties were due to circumstances beyond his control, 2) that he had dealt responsibly with his creditors as his means permitted, 3) that the four debts alleged in the SOR were actually two debts reported on his credit report as both delinquent and reduced to judgment, and 4) that he had begun to deal with his delinquent accounts well before the SOR was issued. Clearance granted.

STATEMENT OF THE CASE

Applicant challenges the 3 October 2003 Defense Office of Hearings and Appeals (DOHA) Statement of Reasons (SOR) recommending denial or revocation of his clearance because of financial considerations. [\(1\)](#) Applicant answered the SOR on 7 November 2003 and requested a hearing. DOHA assigned the case to me 29 April 2004 and I convened a hearing on 24 June 2004. DOHA received the transcript 7 July 2004.

FINDINGS OF FACT

Applicant--a 47-year-old executive driver for a defense contractor since March 2001--seeks reinstatement of the access to classified information he had between March 1987 and October 1997. He admitted being discharged in bankruptcy in July 1994 (1.e.), but denied the four debts alleged in the SOR (1.a.-1.d.).

Applicant first experienced financial difficulties in March 1994 when he divorced his first wife. Because she was a student and only worked part time, she handled the marital finances; however, the accounts were all in Applicant's name. Because she handled the accounts, Applicant was unaware of the substantial debt she had run up. With their divorce, Applicant was responsible for the debts, but unable to keep up with them. He filed a chapter 7 bankruptcy petition and received a discharge of approximately \$40,000.00 in July 1994. Nevertheless, he reaffirmed two substantial debts (G.E. 7) that he subsequently paid off.

Applicant next experienced financial difficulties after he was terminated from his \$60,000.00-per-year job as a government law enforcement officer in October 1997. (2) He was unemployed for awhile and then underemployed, as he the only job he could find paid just \$25,000.00 per year. He became delinquent on a number of accounts and two credit cards he had with the same bank (1.a. and 1.b.) were reduced to judgment (1.d. and 1.c., respectively) and later charged off. (3)

Applicant obtained his current job in February 2001 and later remarried. With his improved cash flow and his wife working two jobs to help with the bills, Applicant began addressing his delinquent accounts (G.E. 2, 5, and 6). When Applicant responded to DOHA interrogatories in May 2003 (G.E. 3) about the status of ten delinquent accounts, (4) he had paid off three delinquent accounts and requested payoff information from the other creditors. He also provided a credit report confirming the paid accounts and documenting a number of other accounts paid off and closed at his request. Initially, Applicant had no response from the creditor alleged in the SOR. When he finally connected with the creditor, he was offered a lump-sum settlement opportunity that allowed him to satisfy the two accounts by paying 53% of the judgment amount (1.c./1.b.) on one account and 72% of the judgment amount (1.d./1.a.) on the other (Tr. 45). The most recent credit report (G.E. 8) confirms the satisfaction of these debts. The credit report also documents that the creditor opened a third credit card account for Applicant in December 2003 to allow him to rebuild his credit rating. That account was current for the five months reported on the credit report.

Applicant reports he and his wife are current on their accounts. In June 2003, he estimated he had \$32,000.00 in assets. (5) His two employment references (A.E. B and C) consider him an exemplary employee who should be granted his clearance. Neither seems aware of his financial issues.

POLICIES

The Directive, Enclosure 2 lists adjudicative guidelines to be considered in evaluating an Applicant's suitability for access to classified information. Administrative Judges must assess both disqualifying and mitigating conditions under each adjudicative issue fairly raised by the facts and circumstances presented. Each decision must also reflect a fair and impartial common sense consideration of the factors listed in Section 6.3. of the Directive. The presence or absence of a disqualifying or mitigating condition is not determinative for or against Applicant. However, specific adjudicative guidelines should be followed whenever a case can be measured against them, as they represent policy guidance governing the grant or denial of access to classified information. Considering the SOR allegations and the evidence as a

whole, the relevant, applicable, adjudicative guideline is Guideline F (Financial Considerations).

BURDEN OF PROOF

Security clearance decisions resolve whether it is clearly consistent with the national interest to grant or continue an Applicant's security clearance. The government must prove, by something less than a preponderance of the evidence, controverted facts alleged in the SOR. If it does so, it establishes a *prima facie* case against access to classified information. Applicant must then refute, extenuate, or mitigate the government's case. Because no one has a right to a security clearance, the Applicant bears a heavy burden of persuasion.

Persons with access to classified information enter into a fiduciary relationship with the government based on trust and confidence. Therefore, the government has a compelling interest in ensuring each Applicant possesses the requisite judgement, reliability, and trustworthiness of those who must protect national interests as their own. The "clearly consistent with the national interest" standard compels resolution of any reasonable doubt about an Applicant's suitability for access in favor of the government. [\(6\)](#)

CONCLUSIONS

The Government established a guideline F case, but the Applicant mitigated the security concerns. First, he demonstrated that his financial problems were largely due to circumstances beyond his control. Second, he demonstrated that the four debts alleged in the SOR were actually two debts later reduced to judgment but appearing as four debts on his credit reports. Third, he demonstrated a consistent record of attempting to address his delinquent accounts as soon as his financial situation permitted and not waiting until he received the SOR to address his debts. Finally, he appeared at hearing with the alleged debts satisfied and having reestablished his financial footing. I conclude that Applicant is unlikely to experience financial difficulties in the future. Accordingly, I resolve Guideline F for Applicant.

FORMAL FINDINGS

Paragraph 1. Guideline F: FOR THE APPLICANT

Subparagraph a: For the Applicant

Subparagraph b: For the Applicant

Subparagraph c: For the Applicant

Subparagraph d: For the Applicant

Subparagraph 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 Applicant.

John G. Metz, Jr.

Administrative Judge

1. Required by Executive Order 10865 and Department of Defense Directive 5220.6, as amended (Directive).
2. In February 1993, Applicant was involved in a shooting incident while in an off-duty status. Although the shooting was found to be justified, the incident traumatized Applicant and, despite receiving counseling, became increasingly cautious on the job, drawing his weapon in inappropriate circumstances. He was ultimately removed from his position.
3. Although none of the credit reports (G.E. 3, 4, and 8) or the judgment records (G.E. 9) contain account numbers, I am satisfied that the two judgments correspond to the two credit cards Applicant defaulted on. The creditor's November 2003 facsimile to Applicant documents Applicant's satisfaction of two credit card judgments associated with specific account numbers that correspond exactly with the delinquent accounts reported in G.E. 3 and 4). G.E. 9 reports the two judgments paid in December 2003 and G.E. 8 confirms two credit cards issued by this creditor as settled and paid.
4. Actually eight accounts as Applicant contended that the two delinquent credit cards corresponded to the two judgments.
5. A \$10,000.00 401K account, a \$5,000.00 savings account, \$9,000.00 equity in a time-share, and a paid-off car worth \$8,000.00 (G.E. 3).
6. *See, Department of the Navy v. Egan*, 484 U.S. 518 (1988).