

KEYWORD: Financial

DIGEST: Applicant was \$14,437.00 in arrears for child support payments and indebted to a collection agency in the amount of \$230.00 for medical expenses incurred by his older daughter. He paid the medical bills in full as soon as he was aware of them. His failure to pay child support was due in part to his resentment toward his ex-wife, whom he blamed for forcing him to relocate and abandon a good job. Applicant has been paying child support regularly for more than two years, has reduced the arrearage to \$9,889.00, and intends to pay it in full. He has obtained credit counseling to put his finances in order. He is receiving psychiatric counseling to deal with his resentment toward his ex-wife. Applicant has mitigated his previous record of not meeting financial obligations. Clearance is granted.

CASENO: 02-22592.h1

DATE: 09/24/2004

DATE: September 24, 2004

In Re:

SSN: -----

Applicant for Security Clearance

ISCR Case No. 02-22592

DECISION OF ADMINISTRATIVE JUDGE

LEROY F. FOREMAN

APPEARANCES

FOR GOVERNMENT

Stephanie Hess, Esq., Department Counsel

FOR APPLICANT

Pro Se

SYNOPSIS

Applicant was \$14,437.00 in arrears for child support payments and indebted to a collection agency in the amount of \$230.00 for medical expenses incurred by his older daughter. He paid the medical bills in full as soon as he was aware of them. His failure to pay child support was due in part to his resentment toward his ex-wife, whom he blamed for forcing him to relocate and abandon a good job. Applicant has been paying child support regularly for more than two years, has reduced the arrearage to \$9,889.00, and intends to pay it in full. He has obtained credit counseling to put his finances in order. He is receiving psychiatric counseling to deal with his resentment toward his ex-wife. Applicant has mitigated his previous record of not meeting financial obligations. Clearance is granted.

STATEMENT OF THE CASE

On October 1, 2003, the Defense Office of Hearings and Appeals (DOHA) issued a Statement of Reasons (SOR) detailing the basis for its decision to not grant a security clearance to Applicant. This action was taken under Executive Order 10865, *Safeguarding Classified Information within Industry* (Feb. 20, 1960), as amended and modified, and Department of Defense Directive 5220.6, *Defense Industrial Personnel Security Clearance Review Program* (Jan. 2, 1992), as amended and modified (Directive). The SOR alleges security concerns under Guideline F (Financial Considerations). It alleges that as of March 5, 2002, Applicant was more than \$25,000.00 in child support payments (para. 1.a) and indebted to a collection agency for approximately \$230.00 (para. 1.b).

Applicant answered the SOR on November 7, 2003. He admitted that his child support payments were delinquent, but he disputed the amount. He asserted that the collection agency debt had been paid in full. He requested a hearing. The case was assigned to me on August 4, 2004, and I conducted a hearing on August 27, 2004. I kept the record open for 15 days to allow Applicant to submit documentary evidence regarding his actions to resolve the debts alleged in the SOR. DOHA received the transcript (Tr.) of the hearing on September 8, 2004. Applicant's additional evidence was received by DOHA on September 9, 2004. With no objection from Department Counsel, Applicant's documents were marked as exhibits and incorporated into the record.

FINDINGS OF FACT

Applicant is a 46-year-old senior scientist for a government contractor. Government Exhibit 1, p. 1) He was laid off by his previous employer and was unemployed from September 1, 2001 until March 4, 2002, when he began working for his current employer. (Government Exhibit 1, p. 2; Government Exhibit 2, p. 1; Tr. 30)

Applicant was married on June 7, 1983. His two daughters, now 21 and 16 years old, were born during this marriage. In 1989, Applicant's wife and two daughters moved to another state. His wife informed him that "if [he] wanted to be a family with them, [he] would follow." (Tr. 40) Applicant quit his job and joined his family, but was unable to find another job. Applicant and his wife were divorced in September 1990.

Applicant moved to another state and found employment in June 1991. He remarried on August 22, 1998. (Government Exhibit 1, p. 3; Government Exhibit 2, p. 2) His current wife lives in another state and has not joined him due to the uncertainty of his ability to obtain a security clearance.

After his divorce, Applicant was ordered to pay \$230.00 per month for child support. He made those payments directly to his ex-wife until the summer of 1992, when his two daughters began to live with him. His younger daughter stayed with him for five months and his older daughter stayed until the summer of 1993. In the summer of 1993, Applicant resumed making child support payments directly to his ex-wife. (Government Exhibit 2, p. 2; Applicant's Exhibits D and F) From 1994 through 1997, Applicant made child support payments to the court. (Applicant's Exhibit F) When Applicant changed jobs in January 1998, he began making payments directly to his ex-wife pursuant to a mutual agreement. (Government Exhibit 2, p. 3) In September 1999, the court increased the child support payments from \$230.00 per month to \$600.00.

Starting in October 1999, Applicant's older daughter became a disciplinary problem, running away from home and committing criminal offenses. Applicant's older daughter began living with him because her parents believed that Applicant could better control her. Applicant and his ex-wife executed a written agreement that he would have full custody and responsibility for support of their older daughter, and his ex-wife would have full custody and responsibility for support of their younger daughter. (Government Exhibit 2, pp. 3-4; Applicant's Exhibit H)

On April 1, 2000, Applicant's older daughter was arrested for shoplifting. In May 2000 she was ordered to complete a diversion program. In February 2001 she was sentenced to confinement for 45 days in a juvenile facility for failure to complete the diversion program. She was then placed in foster care where she remained until she was 18 years old. (Government Exhibit 2, pp. 3, 6-7) On December 15, 2001, the older daughter was declared emancipated and the custody order was amended. (Applicant's Exhibit I)

Court records reflect that Applicant owed \$14,437.93 in delinquent child support payments as of March 31, 2003. (Government Exhibit 4) His current pay is being garnished to collect the arrearage and make current child support payments on behalf of his younger daughter. Under the terms of the garnishment, \$132.00 is collected from his pay every two weeks. (Tr. 39) As of August 27, 2004, the child support arrearage had been reduced to \$9,889.00. (Government Exhibit 6, p. 1)

Applicant's older daughter, an insulin-dependent diabetic, incurred medical expenses for emergency medical treatment caused by her failure to take insulin and follow her diet plan. The medical bills became delinquent and were turned over to a collection agency in July 2001. Applicant took action to resolve the debts as soon as he learned about them. (Government Exhibit 2, pp. 4-5; Government Exhibit 3, p. 4; Tr. 37-38) The debts were paid in full. (Applicant's Exhibit A, p. 4, and Exhibit G)

Applicant currently earns approximately \$65,000.00 per year, and his wife earns approximately \$20,000.00 per year. (Tr. 32-33) As of April 17, 2002, Applicant and his wife had net monthly income of \$4,933.88, expenses of \$2,055.00, debt payments of \$300.00, and a net remainder of \$2,578.88. (Government Exhibit 2, p. 9)

Applicant is receiving credit counseling. (Tr. 28) For the past 18 months, he has been receiving psychiatric counseling to deal with the resentment he felt toward his ex-wife for causing him to leave his career behind and "basically losing everything we had." At first, he saw the psychiatrist twice a month, but he now sees him twice a year. (Tr. 45-47)

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.

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 (DC) and mitigating conditions (MC) 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 the Directive ¶ 6.3.1 through ¶ 6.3.6.

In evaluating an applicant's conduct, an administrative judge should consider: (1) the nature, extent, and seriousness of the conduct; (2) the circumstances surrounding the conduct, to include knowledgeable participation; (3) the frequency and recency of the conduct; (4) the applicant's age and maturity at the time of the conduct; (5) the voluntariness of participation; (6) the presence or absence of rehabilitation and other pertinent behavioral changes; (7) the motivation for the conduct; (8) the potential for pressure, coercion, exploitation, or duress; and (9) the likelihood of continuation or recurrence. Directive ¶¶ E2.2.1.1 through E2.2.1.9.

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 Criteria listed therein and an applicant's security suitability." ISCR Case No. 95-0611 at 2 (App. Bd. 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 (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 (App. Bd. Dec. 19, 2002). "[S]ecurity clearance determinations should err, if they must, on the side of denials." *Egan*, 484 U.S. at 531; *see* Directive ¶ E2.2.2.

CONCLUSIONS

Under Guideline F (Financial Considerations), "[a]n individual who is financially overextended is at risk of having to engage in illegal acts to generate funds." Directive ¶ E2.A6.1.1 A history of not meeting financial obligations could raise security concerns and may be a disqualifying condition (DC 1). Directive ¶ E2.A6.1.2.1. Based on the official records showing Applicant's arrearage in child support payments and his admission that he made no child support payments while he was unemployed, DC 1 is established.

DC 3 applies where an applicant has exhibited inability or unwillingness to satisfy debts. Directive ¶ E2.A6.1.2.3. Applicant's testimony during the hearing establishes that his ability to make child support payments was diminished during his unemployment and that his attitude toward his ex-wife contributed to his failure to pay child support. Based on Applicant's financial statement, current household income, I conclude that Applicant is not financially overextended and is able to meet his financial obligations. However, because he admitted that at certain times he was unwilling to pay child support because of his feelings of resentment toward his ex-wife, I conclude that DC 3 is established.

A mitigating condition (MC 3) applies when the conditions that resulted in the behavior were largely beyond the applicant's control. Directive ¶ E2.A6.1.3.3. The evidence establishes that the medical bills referred to a collection agency were incurred by Applicant's older daughter as a result of medical emergencies and her irresponsible behavior. As soon as Applicant learned about the bills, he resolved them. I conclude that MC 3 is established with respect to the collection agency's account for delinquent medical bills.

With respect to the child support payments, Applicant's ability to make to make timely payments was reduced when he was laid off from his job, a circumstance beyond his control. However, he failed to resolve the arrearage when his financial situation improved. Accordingly, I conclude that MC 3 does not apply to the child support arrearage. *See* ISCR Case No. 02-02116 at 4 (App. Bd. Sep 25, 2003); 2003 WL 22706198 (D.I.S.C.R.).

MC 4 applies when an applicant "has received or is receiving counseling for the problem and there are clear indications that the problem is being resolved or is under control." Directive ¶ E2.A6.1.3.4. MC 6 applies when an applicant has initiated a good-faith effort to pay his debts or otherwise resolve them. Directive ¶ E2.A6.1.3.6. Applicant is receiving credit counseling. He paid the delinquent medical bills as soon as he was aware of them, and he appears to have his finances under control. Recognizing that the delinquent child support payments were partially attributable to his resentment toward his ex-wife, Appellant has been undergoing psychiatric counseling for 18 months. He has changed his attitude and recognizes his obligation to pay the arrearage as well as current child support payments. He testified that he would pay the child support even in the absence of the garnishment. (Tr. 41) He has made biweekly child support payments for over two years. Between March 31, 2003 and August 27, 2004, he substantially reduced the child support arrearage from \$14,437.93 to \$9,889.00. I conclude that MC 4 and MC 6 are established.

The conduct involved in this case is serious. Willful refusal to pay child support involves a violation of parental responsibilities. As such, it is more serious than refusal to pay a commercial debt. The conduct is fairly recent, having ended about two and a half years ago.

On the other hand, Applicant has recognized the need to change his attitude and his behavior. He has taken positive and apparently successful steps to put his past resentments aside and discharge his financial and parental obligations. He has a rewarding job and is highly regarded by his supervisor. His finances are in order. Having heard Applicant's testimony and observed his demeanor, I find him credible and sincere. Based on this record, the likelihood that Applicant will fail

to discharge his future financial and parental responsibilities is minimal. I conclude that Applicant has mitigated the security concerns raised by the conduct alleged in the SOR.

FORMAL FINDINGS

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

Paragraph 1, Guideline F: FOR APPLICANT

Subparagraph 1.a.: For Applicant

Subparagraph 1.b.: For 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 a security clearance to Applicant. Clearance is granted.

LeRoy F. Foreman

Administrative Judge