

KEYWORD: Financial; Personal Conduct

DIGEST: Applicant had numerous delinquent debts, including a \$34,000.00 child support arrearage. He resolved most of the debts, including the child support. Applicant has mitigated the security concerns based on financial considerations and personal conduct. Clearance is granted.

CASENO: 02-23011.h1

DATE: 02/09/2005

DATE: February 9, 2005

In Re:

SSN: -----

Applicant for Security Clearance

ISCR Case No. 02-23011

DECISION OF ADMINISTRATIVE JUDGE

LEROY F. FOREMAN

APPEARANCES

FOR GOVERNMENT

Kathryn Antigone Trowbridge, Esq., Department Counsel

FOR APPLICANT

SYNOPSIS

Applicant had numerous delinquent debts, including a \$34,000.00 child support arrearage. He resolved most of the debts, including the child support. Applicant has mitigated the security concerns based on financial considerations and personal conduct. Clearance is granted.

STATEMENT OF THE CASE

On September 3, 2003, the Defense Office of Hearings and Appeals (DOHA) issued a Statement of Reasons (SOR) detailing the basis for its decision to deny Applicant a security clearance. 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 Guidelines F (Financial Considerations) and E (Personal Conduct). It alleges 10 delinquent debts, including a \$34,000.00 child support arrearage. Applicant answered the SOR in writing on November 7, 2003, admitted most of the debts, disputed the amount of child support arrearage, and requested a hearing. The case initially was assigned to another administrative judge, and it was reassigned to me on September 23, 2004, based on workload considerations. On the same day, DOHA issued a notice of hearing setting the case for October 21, 2004. The case was heard as scheduled. DOHA received the transcript (Tr.) on October 29, 2004.

FINDINGS OF FACT

Applicant's admissions in his answer to the SOR and at the hearing are incorporated into my findings of fact. I also make the following findings:

Applicant, a 39-year-old truck driver, and his current wife are owner-operators of an 18-wheeler truck and work for a defense contractor. Applicant has a high school (GED) education. He has never had a security clearance.

The following chart summarizes the debts alleged in the SOR. [\(1\)](#)

Debt	SOR	Amount	Date	Status
Signature Loan	¶ 1.a., 1.b.	\$9,282.00	3-97	Unpaid; collection barred
Check overdraft	¶ 1.c.	\$615.00	4-03	Unpaid
Medical	¶ 1.d.	\$519.00	5-02	Settled
Radiology	¶ 1.e.	\$497.00	12-02	Settled
Radiology	¶ 1.f.	\$196.00	12-02	Settled
Radiology	¶ 1.g.	\$208.00	11-02	Settled
Child Support	¶¶ 1.h., 2.a.	\$34,000.00	9-90	Resolved by court order
Charge account	¶ 1.i., 1.j.	\$1,726.00	10-99	Disputed; collection barred

Applicant was previously married in 1985, had two daughters, and was divorced in August 1990. His ex-wife was given custody of the children. Applicant was required to pay child support of \$150.00 per month and was given visitation rights. His ex-wife moved away and refused to let Applicant see or speak with his children. When Applicant executed his security clearance application (SF 86) in November 2001, he listed his children's address as "unknown." Applicant refused to pay the child support, hoping his action would trigger an intervention by the court and allow him to exercise his visitation rights.

In November 2003, Applicant's younger daughter, then 17 years old, began living with Applicant, because Applicant's ex-wife was suspected of being a drug addict. In March 2004, Applicant's divorce decree was amended to give him custody of his daughter and terminate Applicant's child-support obligation. Applicant was advised by his lawyer that the court order relieved him of any obligation to pay the child support arrearage.

In 1997, several of Applicant's pay checks were returned for insufficient funds after being deposited in his checking account. Applicant also had a signature loan at the same bank, and he fell about two months behind in his payments because of his worthless pay checks. The bank recovered about \$4,700.00 from Applicant's employer and covered the checks Applicant had written on his account.

The signature loan agreement had an acceleration clause that made the entire balance due within 10 days if Applicant missed a payment. Applicant asked the bank to waive the acceleration clause because his late payments were caused by the worthless pay checks. The local bank manager agreed, but the bank manager's superiors overruled him and demanded lump sum payment of the entire loan balance. In December 2001, Applicant told a Defense Security Service

(DSS) investigator, "Because of their treatment of me in this matter, which I had no control over, I have made no further payments to them." (Government Exhibit 2, p. 4)

Applicant had a checking account with another bank, with arrangements to automatically debit his account to pay bills. After Applicant withdrew his money and closed the account, the bank continued to automatically debit the account for several months, resulting in overdrafts of about \$615.00.

At some time before October 1999, Applicant purchased a set of tires for his SUV that were defective. Applicant and his wife had an accident when one of the new tires blew out. The other three tires developed bulges. The tire manufacturer was involved in a nation-wide recall after several rollover accidents were attributed to defective tires. When the seller refused to replace the tires, Applicant refused to pay the account. Applicant kept the defective tires for several years, hoping to reach a settlement, but to no avail.

In May 2002, Applicant was involved in a motorcycle accident. He was hospitalized for three days and suffered a collapsed lung, but had no medical insurance. He negotiated a settlement with the hospital that included the radiology bills. The hospital bill reflects that Applicant's account was charged to "charity" and has a zero balance. [\(2\)](#)

Applicant's lawyer has advised him that, under the law of the jurisdiction where the debts were incurred, legal action to collect a debt is barred after four years. The lawyer further advised Applicant not to pay the barred debts, because a voluntary payment would revive the debt.

Applicant's employer was purchased by a new owner in November 1997, and Applicant has had no further problems with worthless pay checks. Applicant married his current wife in April 1998, and she has taken over the financial management of the trucking operation.

During the past five years, Applicant's financial situation has improved significantly. He and his wife have a gross income of between \$130,000.00 and \$160,000.00 per year, and their net income after business expenses is about half that amount. The payments on one 18-wheeler truck, his personal automobile, and a signature loan are current. A second 18-wheeler truck is paid for and is leased by another trucker on a lease-purchase contract. Applicant and his wife have about \$5,200.00 in savings and have established a maintenance reserve fund of about \$4,400.00 to cover any unexpected truck repairs. Applicant's mobile home is fully paid for. He does not have a credit card. His current employer, friends, and associates regard him as a hard-working, honest, and dependable person.

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

Guideline F (Financial Considerations)

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. Two disqualifying conditions (DC) under Guideline F could raise a security concern and may be disqualifying in this case. DC 1 applies where an applicant has a history of not meeting his or her financial obligations. Directive ¶ E2.A6.1.2.1. DC 3 applies where an applicant has exhibited inability or unwillingness to satisfy debts. Directive ¶ E2.A6.1.2.3.

Applicant admitted several of the debts. He also admitted he refused to pay off the signature loan when the bank would not compromise. Thus, I conclude DC 1 and DC 3 are established.

Security concerns based on financial problems can be mitigated by showing Applicant's behavior was not recent (MC 1). Directive ¶ E2.A6.1.3.1. MC 1 is not established by the fact that Applicant's delinquent debts are old, because his failure to pay them is a continuing course of conduct. ISCR Case No. 01-3695, 2002 DOHA LEXIS 453 at *7 (App. Bd. Oct. 16, 2002).

Security concerns arising from financial problems can be mitigated by showing they are the result of conditions beyond the person's control (MC 3). Directive ¶ E2.A6.1.3.4. The record shows Applicant's initial delinquent payments on the signature loan were caused by his employer's conduct in issuing worthless pay checks. His medical bills were the result of a motorcycle accident. The child-support issue arose because Applicant's ex-wife refused to honor his visitation rights. The overdraft was due to bank error. I conclude MC 3 is established for these debts.

Security concerns also may be mitigated by showing a good-faith effort to resolve debts (MC 6). Directive ¶ E2.A6.1.3.6. The concept of good faith "requires a showing that a person acts in a way that shows reasonableness, prudence, honesty, and adherence to duty or obligation." ISCR Case No. 99-9020, *supra* at *5, quoting ISCR Case No. 99-0201, 1999 WL 1442346 at *4 (App. Bd. Oct. 12, 1999). Applicant has been able to resolve or compromise all the debts except the signature loan, the charge account involving defective tires, and the overdraft. He attempted to settle

the signature loan and charge account but was unsuccessful. I conclude MC 6 is established for these two debts.

In his answer to the SOR, Applicant stated he intended to settle the \$615.00 debt arising from the bank overdrafts, but he had not done so at the time of the hearing. I am satisfied this unresolved debt, in the context of Applicant's overall financial situation and attempts to address his debts, does not raise significant security concerns.

Under the law of the jurisdiction where the debts were incurred, a debt is legally unenforceable if the creditor does not bring suit within four years after the case of action accrues. Two of Applicant's unresolved debts, the signature loan and the charge account, appear to be legally unenforceable under this statute of limitations. In accordance with the Fair Credit Reporting Act, the signature loan soon will be deleted from Applicant's credit history. ⁽³⁾ The legal bar to enforcement does not mitigate DC 1 and DC 3. In this regard, it is similar to a discharge in bankruptcy. *See* ISCR Case No. 99-9020, 2001 WL 1044524 at *9 n. 12 (App. Bd. Jun. 4, 2001). However, it is relevant because it reduces Applicant's vulnerability to coercion and temptation to engage in illegal conduct to generate funds. Because these debts are not legally enforceable, Applicant is not financially overextended or vulnerable to coercion.

An administrative judge is not limited to mitigating conditions listed in adjudicative guidelines when deciding whether an applicant has demonstrated extenuation, mitigation, or changed circumstances. ISCR Case No. 99-0452 at 7 (App. Bd. Mar. 21, 2000). Applicant's financial situation has changed dramatically over the past five years. He is financially secure and gainfully employed. He has received legal advice about his financial obligations and has been judicially relieved of his child support obligation, including the arrearage. He has demonstrated honesty and good faith.

A security clearance decision "must be an overall common sense determination." Directive ¶ E2.2.3. Applicant is unable to pay off the signature loan in one lump sum, as demanded by the bank. Now that legal action to collect the loan is barred by law, it makes no fiscal sense for Applicant to obtain another loan to pay off the signature loan. "[A] security clearance adjudication is not a proceeding aimed at collecting an applicant's personal debts." Instead, it is focused on "evaluation of an applicant's judgment, reliability, and trustworthiness." ISCR Case No. 01-09691 at 3 (App. Bd. Mar. 27, 2003). After weighing all the applicable disqualifying conditions and mitigating conditions, applying the whole-person concept, and using a common-sense approach, I am satisfied the security concerns raised by Applicant's financial history are mitigated.

Guideline E (Personal Conduct)

Conduct involving questionable judgment, untrustworthiness, unreliability, lack of candor, dishonesty, or unwillingness to comply with rules and regulations could indicate the applicant may not properly safeguard classified information. Directive ¶ E2.A5.1.1. Security concerns can be raised by personal conduct that makes an applicant vulnerable to coercion, exploitation, or duress (DC 4), or by a pattern of rule violations (DC 5). Directive ¶¶ E2.A5.1.2.4., E2.A5.1.2.5. Applicant's child support arrearage and violation of the court decree ordering him to pay child support

establish DC 4 and DC 5.

The court order relieving Applicant of any liability for child support is a mitigating condition because it removed his vulnerability to coercion, exploitation, or duress. Directive ¶ E2.A5.1.3.5. His disobedience of the court decree requiring child support payments did not reflect contempt for the court, but rather was an unsophisticated effort to force court action and protect his visitation rights. He eventually prevailed by obtaining a modification of the court order and forgiveness of the arrearage. Any security concerns based on child support arrearage under Guideline E are mitigated.

FORMAL FINDINGS

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

Paragraph 1. Guideline F (Financial Considerations): FOR APPLICANT

Subparagraph 1.a.: For Applicant

Subparagraph 1.b.: For Applicant

Subparagraph 1.c.: For Applicant

Subparagraph 1.d.: For Applicant

Subparagraph 1.e.: For Applicant

Subparagraph 1.f.: For Applicant

Subparagraph 1.g.: For Applicant

Subparagraph 1.h.: For Applicant

Subparagraph 1.i.: For Applicant

Subparagraph 1.j.: For Applicant

Paragraph 2. Guideline E (Personal Conduct) FOR APPLICANT

Subparagraph 2.a.: 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

1. The debts are consolidated where they appear to be duplicates or overlapping.
2. I kept the record open to permit Applicant to submit documentary evidence that the medical expenses had been settled. The hospital bill has been incorporated in the record as Applicant's Exhibit B.
3. The Fair Credit Reporting Act, 15 U.S.C. § 1681c, prohibits, with certain exceptions not applicable to this case, a credit reporting agency from reporting "accounts placed for collection or charged to profit and loss which antedate the report by more than seven years."