

KEYWORD: Financial; Personal Conduct

DIGEST: Applicant owes a total of \$40,603.17 on seven delinquent consumer credit accounts. The indebtedness is due in part to a layoff and subsequent underemployment, but Financial Considerations persist where Applicant has made little, if any, effort to address these delinquencies. His failure to report all his debts on his security clearance application was not deliberate so the Personal Conduct concerns are mitigated. Clearance is denied.

CASENO: 02-23393.h1

DATE: 08/24/2004

DATE: August 24, 2004

In Re:

SSN: -----

Applicant for Security Clearance

ISCR Case No. 02-23393

DECISION OF ADMINISTRATIVE JUDGE

ELIZABETH M. MATCHINSKI

APPEARANCES

FOR GOVERNMENT

Catherine M. Engstrom, Esq., Department Counsel

James B. Norman, Esq., Department Counsel

FOR APPLICANT

Pro Se

SYNOPSIS

Applicant owes a total of \$40,603.17 on seven delinquent consumer credit accounts. The indebtedness is due in part to a layoff and subsequent underemployment, but Financial Considerations persist where Applicant has made little, if any, effort to address these delinquencies. His failure to report all his debts on his security clearance application was not deliberate so the Personal Conduct concerns are mitigated. Clearance is denied.

STATEMENT OF CASE

On July 31, 2003, the Defense Office of Hearings and Appeals (DOHA) issued a Statement of Reasons (SOR) to the Applicant which detailed reasons why DOHA could not make the preliminary affirmative finding under the Directive that it is clearly consistent with the national interest to grant or continue a security clearance for the Applicant. [\(1\)](#) DOHA recommended referral to an Administrative Judge to conduct proceedings and determine whether clearance should be granted, continued, denied, or revoked. The SOR was based on Financial Considerations (Guideline F) and Personal Conduct (Guideline E).

On September 3, 2003, Applicant filed his response to the SOR and requested a hearing before a DOHA Administrative Judge. The case was assigned to me on December 4, 2003, and pursuant to notice of December 9, 2003, a hearing was scheduled for January 15, 2004. Applicant did not show for the hearing due to unforeseen transportation difficulties. Pursuant to amended notice of February 17, 2004, the hearing was rescheduled for March 10, 2004.

At the hearing held as rescheduled, the Government submitted six exhibits and called Applicant as an adverse witness. On the Government's motion, the SOR was amended to reflect that Applicant had responded "Yes" rather than "No" to inquiries on his security clearance application concerning any financial delinquencies over 180 days within the last seven years, and any financial delinquencies currently over 90 days. Applicant's case consisted of one exhibit and his

testimony. A transcript of the hearing was received on March 19, 2004.

FINDINGS OF FACT

The SOR as amended alleges Financial Considerations concerns because of aggregate outstanding indebtedness of \$40,603.17 and Personal Conduct concerns due to Applicant's failure to list five of his seven delinquent accounts on his security clearance application (SF 86) completed in December 2000. Applicant admits the debts but denies intentional falsification of his SF 86. Applicant's admissions are accepted and incorporated as findings of fact. After a complete and thorough review of the evidence, I render the following additional findings:

Applicant is a 56-year-old Vietnam War veteran who has been employed as a sheet metal worker by a defense contractor since December 2000. He had previously worked for the defense firm as a welder from April 1977 to October 1996 when he was laid off due to economic considerations outside of his control.

Since his marriage to his current spouse in 1990, she has handled the family's finances with little input from Applicant. In October 1994, Applicant and his spouse financed the purchase of their residence through a mortgage loan of \$81,450, to be repaid at \$845 per month for 30 years.

In 1995/96, Applicant and his spouse stopped payment on several consumer credit card obligations. At least three credit card accounts became delinquent when Applicant was gainfully employed by the defense contractor. In October 1996, he was laid off. For the next six months, he collected \$290 per week. From June 1997 to June 1999, he worked as a janitor at an hourly wage of \$7 to \$8, which was substantially less than he had been making. With his spouse working, they had joint adjusted gross income of \$60,662 for 1997, but several accounts went unpaid and were placed for collection, as follows:

Debt	Delinquency History	Repayment status
Line of credit, past due balance \$3,807 (SOR 1.a.)	Account opened July 1994, cancelled November 1995 with \$3,807 past due	No payments
Credit card debt \$7,198 (SOR 1.b.)	Account opened August 1996 with Applicant as authorized user, \$7,198 unpaid balance written off August 1996	No payments
MasterCard debt \$10,952 (SOR	Account opened April 1994, \$10,952 unpaid balance written off in August 1996	

1.c.)		No payments
VISA credit card debt \$4,455 (SOR 1.d. and 1.e.)	Account opened February 1994, charged off \$4,455 in bad debt in September 1996; \$5,732 placed for collection in July 1999	No payments, balance \$6,952
Department store charge card debt \$1,551 (SOR 1.f.)	Account opened September 1987, as of August 1995 \$1,551 charged off to profit and loss, in collection as of August 2000	No payments, balance \$1,641
Credit card debt in collection \$5,688.17 (SOR 1.g.)	\$3,808 balance placed for collection, \$4,493 owed as of June 1999, increased to \$5,688.17 with interest	No payments
Department store charge \$4,160 past due balance (not alleged, listed on SF 86)	Account opened February 1993, current as of February 2001 with balance \$3,050, as of January 2002 120 days past due, reported as closed, charge off balance as of June 2003	As of March 2002, reported he was making \$55 to \$60 monthly payments on balance of \$3,000; no proof of payments made

Aware he had outstanding debts but not of the extent of their indebtedness, Applicant had his spouse continue to handle their accounts. In June 1999, Applicant was notified by the Internal Revenue Service that he owed back taxes of \$6,919.17 for tax year 1996 based on a substitute return filed. Applicant was unable to produce a return for that year, and could not afford to hire a lawyer to fight the assessment. On being notified by the IRS that his wages were going to be garnished to recover the debt, Applicant arranged to make payments of \$250 per month. With the interception of subsequent tax refunds and payments, the outstanding balance had been reduced to \$2,576.85 as of mid-May 2003.

In December 2000, Applicant was recalled to work for the defense contractor after several years working as a janitor and more recently as a dishwasher. Needing a security clearance, he completed a Questionnaire for National Security Positions (SF 86) on December 3, 2000, disclosing two delinquent debts: a \$2,500 store credit card debt that he indicated was satisfied in October 2000, and his MasterCard debt, delinquent by report about \$8,000. Since his spouse was not around when he filled out the form, he listed only those delinquent accounts that he could confirm by the bills available to him. An electronic version of the security questionnaire was prepared containing the same financial information on January 13, 2001.

A Defense Security Service (DSS) check of Applicant's credit on April 26, 2001, revealed delinquent accounts not previously disclosed by Applicant, including those debts alleged in SOR subparagraphs 1.a., 1.b., 1.d., 1.f., and 1.g. On March 19, 2002, Applicant was interviewed about the debts. Applicant did not dispute his reported indebtedness, attributing it to his layoff from his defense-related job in October 1996. He indicated an inability to make payments on any of the debts until about a month or two ago when his spouse began to make \$10 or \$20 per month payments on

some debts (the debts alleged in SOR subparagraphs 1.a., 1.d., 1.f., and 1.g., and a gasoline debt subsequently paid off). He added that his spouse had paid \$200 on his credit card on which he owed about \$7,200 (SOR subparagraph 1.b.), and she was making \$55 to \$60 monthly payments on the department store credit card balance of about \$3,000. Applicant executed a personal financial statement on which he reported a monthly net remainder of \$2,865.

As of March 2004, Applicant was supporting two of his daughters who attend college. With college and unexpected expenses, he estimates he has about \$100 or \$200 left each month after payment of expenses. His spouse has been making no payments on those debts alleged in the SOR and he has not contacted any of his creditors. Neither he nor his spouse has any active credit cards. He intends to seek assistance from a credit counselor to resolve his debts but has not taken any action in that regard other than discussing with his spouse within the past two weeks the need to contact a credit counselor. Applicant's spouse continues to handle their finances and he is unaware of how much she spends.

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.

Enclosure 2 of the Directive sets forth personal security guidelines, as well as the disqualifying conditions (DC) and mitigating conditions (MC) under each guideline. In evaluating the security worthiness of an applicant, the administrative judge must also assess the adjudicative process factors listed in ¶ 6.3 of the Directive. 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, conditions in the personal or professional history of the applicant that disqualify, or may disqualify, the applicant from being eligible for access to classified information. *See Egan*, 484 U.S. at 531. The Directive presumes a nexus or rational connection between proven conduct under any of the disqualifying conditions listed in the guidelines and an applicant's security suitability. *See* ISCR Case No. 95-0611 at 2 (App. Bd. May 2, 1996).

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.

Considering the evidence as a whole, the following adjudicative guidelines are the most pertinent to this case:

Guideline F

Financial Considerations

E2.A6.1.1. 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 acts.

E2.A6.1.2. Conditions that could raise a security concern and may be disqualifying include:

E2.A6.1.2.1. A history of not meeting financial obligations;

E2.A6.1.2.3. Inability or unwillingness to satisfy debts.

E2.A6.1.3. Conditions that could mitigate security concerns include:

E2.A6.1.3.3. 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);

Guideline E

Personal Conduct

E2.A5.1.1. The Concern: Conduct involving questionable judgment, untrustworthiness, unreliability, lack of candor, dishonesty, or unwillingness to comply with rules and regulations could indicate that the person may not properly safeguard classified information.

E2.A5.1.2. Conditions that could raise a security concern and may be disqualifying also include:

None applicable.

CONCLUSIONS

Having considered the evidence of record in light of the appropriate legal precepts and adjudicative guidelines, and having assessed the credibility of Applicant, I conclude the following with respect to Guidelines F and E:

Under Guideline F, the security eligibility of an applicant is placed into question when the applicant is shown to have a history of excessive indebtedness, recurring financial difficulties, or a history of not meeting his financial obligations. The Government must consider whether individuals granted access to classified information are because of financial irresponsibility in a position where they may be more susceptible to mishandling or compromising classified information. Applicant has a history of financial delinquencies which predate his layoff from his defense contractor employment in October 1996. The record reflects that most of his outstanding debts were charged off due to nonpayment even before he lost his job. It may well be that Applicant took on a greater mortgage than he could afford, but it is not accurate to attribute the incurring of the delinquencies solely to his job loss. Even though his spouse handled the finances, he bears a responsibility for ensuring that their obligations were being repaid timely. His failure to do so raises serious doubts for his judgment, reliability, and trustworthiness. Disqualifying conditions E2.A6.1.2.1., *A history of not meeting financial obligations*, and E2.A6.1.2.3. *Inability or unwillingness to satisfy debts* apply in this case.

Apart from payment of a gasoline credit card account after collection, Applicant has made little effort to resolve his outstanding delinquencies, which total about \$40,000. His inaction after returning to his employment with a defense contractor bears negative implications for his security worthiness. The fact that he has been making payments to the IRS does not relieve him of his obligation to repay his consumer credit debts. Despite his intent, and apparently some discussion with his spouse, to seek the assistance of a consumer credit counselor, Applicant has not taken even the initial step of contacting a consumer credit counseling service. He remains largely unaware of his spouse's spending habits. While Applicant is not required to be debt free, his persistent financial problems preclude me from concluding

that it is clearly consistent with the national interest to grant or continue his access to classified information. SOR subparagraphs 1.a., 1.b., 1.c., 1.d., 1.e. (updated balance of 1.d.), 1.f., 1.g. and 1.h. are resolved against him.

The Government's case under Guideline E, as amended, is based on alleged falsification of his security clearance application for failure to list all of his debts. While security significant Personal Conduct concerns are raised where an applicant has not been completely candid with the Government about matter relevant and material to his or her personnel security application and investigation (*See* DC E2.A5.1.2.2.), I am persuaded Applicant did not deliberately conceal his debts from the Government. Applicant responded affirmatively to the inquiries posed regarding financial delinquencies and listed \$10,500 in debt, although he reported the \$2,500 debt had been satisfied. Unaware of the extent of his indebtedness, and with his spouse not available, Applicant listed the debts he could confirm by billing notices. Since his omission of debts was not an act of intentional falsification, a favorable finding is returned as to SOR subparagraph 2.a. as amended.

FORMAL FINDINGS

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

Paragraph 1. Guideline F: 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.: Against the Applicant

Subparagraph 1.h.: Against the Applicant

Paragraph 2. Guideline E: FOR THE APPLICANT

Subparagraph 2.a. (as amended): For 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 Applicant. Clearance is denied.

Elizabeth M. Matchinski

Administrative Judge

1.