

KEYWORD: Financial

DIGEST: Applicant, a 30-year-old employee of a defense contractor, works as a software specialist. Applicant was alleged to have ten delinquent debts totaling \$24,000.00. He admitted the existence of several delinquent debts as alleged but with explanation. He refused to pay others and denied several others that were paid but failed to offer evidence in support of his claims. Thus, he failed to mitigate most of the allegations. Clearance is denied.

CASENO: 03-19529.h1

DATE: 05/27/2005

DATE: May 27, 2005

In Re:

SSN: -----

Applicant for Security Clearance

ISCR Case No. 03-19529

DECISION OF ADMINISTRATIVE JUDGE

CHARLES D. ABLARD

APPEARANCES

FOR GOVERNMENT

FOR APPLICANT

Pro Se

SYNOPSIS

Applicant, a 30-year-old employee of a defense contractor, works as a software specialist. Applicant was alleged to have ten delinquent debts totaling \$24,000.00. He admitted the existence of several delinquent debts as alleged but with explanation. He refused to pay others and denied several others that were paid but failed to offer evidence in support of his claims. Thus, he failed to mitigate most of the allegations. Clearance is denied.

STATEMENT OF CASE

On August 31, 2004, the Defense Office of Hearings and Appeals (DOHA) pursuant to Executive Order 10865, *Safeguarding Classified Information Within Industry*, as amended and modified, and Department of Defense Directive 5220.6, *Defense Industrial Personnel Security Clearance Review Program* (Directive), dated January 2, 1992, as amended and modified, issued a Statement of Reasons (SOR) to 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 Applicant. DOHA recommended the case be referred to an administrative judge to determine whether a clearance should be granted, continued, denied, or revoked.

On September 24, 2004, Applicant, in a sworn written statement, responded to the allegations set forth in the SOR, and requested a hearing. The matter was assigned to another administrative judge on December 8, 2004 and re-assigned to me on February 1, 2005. A notice of hearing was issued on February 8, 2005, for a hearing held on February 28, 2005, at which time the Applicant and three witnesses testified. The Government introduced seven exhibits and the Applicant introduced two. All were admitted into evidence. The record was left open for 30 days for additional information to be submitted by Applicant but none was received. The transcript was received on March 10, 2005.

FINDINGS OF FACT

Applicant is a 30-year-old employee of a defense contractor working as a software specialist. Applicant was alleged to have ten delinquent debts totaling \$24,000.00. He admitted the existence of several delinquent debts as alleged but with explanation and denied several others that were paid. The admissions are incorporated herein as findings of fact. After a complete review of the evidence in the record and upon due consideration of the record, the following additional findings of fact are made:

The following is an analysis of each debt keyed to the paragraphs in the SOR:

- a. \$330.00-no action taken

- b. \$532.00-item a is subsumed in this claim for medical expenses. Some of it may have been paid but no documentation provided.

- c. \$19,426.00-repossession of a van for which he is unwilling to pay because it was a "lemon".

- d. \$621.00-medical claim paid by garnishment but the remaining amount is for attorney costs for the garnishment; no documentation provided.

- e. \$1,058.00-department store debt where creditor refused partial payment-no recent action.

- f. \$570.00-delinquent portion of a total debt of \$1680 to a military institution-paid total amount from his tax refund levied by the creditor.

g. \$165.00-Applicant has no recollection of the debt.

h. \$289.00-no effort to pay.

i. \$208.00-four medical expenses for daughter that he refuses to pay and believes should be covered by insurance.

j. \$481.00-four merchant accounts. Two paid in the amount of \$73.99 (Exh. 6)

Applicant served six years of Army active duty until he was injured in an accident that crushed his foot. He is married with four children ages four to eleven. Two are step children. One child is bi-polar and has had extensive medical expenses. He incurred \$10,000.00 in expenses for her of which \$8,000.00 is still owed. This amount is current and is not a part of the allegations in the SOR. Applicant also has had medical expenses that have been the cause of some of his financial problems. Applicant is well regarded in his work and for his responsibility as a parent and citizen.

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.

An evaluation of whether the applicant meets the security guidelines includes consideration of the following factors: (1) the nature, extent, and seriousness of the conduct; (2) the circumstances surrounding the conduct; (3) the frequency and recency of the conduct; (4) the individual's age and maturity at the time of the conduct; (5) the voluntariness of participation; (6) the presence or absence of rehabilitation and other 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. Security clearances are granted only when "it is clearly consistent with the national interest to do so." Executive Order No. 10865 § 2. *See* Executive Order No. 12968 § 3.1(b).

Initially, the Government must establish, by something less than a preponderance of the 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. The applicant then bears the burden of demonstrating that it is clearly consistent with the national interest to grant or continue the applicant's clearance. "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. "[S]ecurity clearance determinations should err, if they must, on the side of denials." *Egan*, 484 U.S. at 531. *See* Executive Order No. 12968 § 3.1(b)

CONCLUSIONS

Upon consideration of all the facts in evidence, and after application of all appropriate legal precepts, factors, and conditions above, I conclude the following with respect to all allegations set forth in the SOR:

Applicant's delinquent debts prompted the allegation of security concerns under Guideline F in that an individual who is financially overextended is at risk of having to engage in illegal acts to generate funds. (E2.A6.1.1.) Conditions that could raise a security concern and may be disqualifying include a history of not meeting financial obligations (E2.A6.1.2.1.) and evidence of inability or unwillingness to satisfy debts. (E2.A6.1.2.3.) Mitigating Conditions (MC) include the fact that the conditions that resulted in the behavior were largely beyond the person's control (E2.A6.1.3.3.) and the person has initiated a good faith effort to repay overdue creditors or otherwise resolve debts. (E2.A6.1.3.6.) Neither mitigating factors are applicable since the causes for the debts were overall not largely beyond his control although some such as the medical debts were. The debts have not been paid or resolved over the past several years. There is insufficient evidence to substantiate his several claims of payment of some of his creditors.

In all adjudications the protection of our national security is of paramount concern. Persons who have access to classified information have an overriding responsibility for the security concerns of the nation. The objective of the security clearance process is the fair-minded, commonsense assessment of a person's trustworthiness and fitness for access to classified information. The "whole person" concept recognizes that we should view a person by the totality of their acts and omissions. Each case must be judged on its own merits taking into consideration all relevant circumstances, and applying sound judgment, mature thinking, and careful analysis. While Applicant presented a persuasive case of an individual who has had some difficult times while fulfilling family and work responsibilities, his failure to offer proof on most of the allegations both at the hearing and in the post hearing period precludes a finding in his favor.

After considering all the evidence in its totality and as an integrated whole to focus on the whole person of Applicant, I conclude that he is not eligible for access to classified information.

FORMAL FINDINGS

Formal findings as required by the Directive (Par. E3.1.25) are as follows:

Paragraph 1. Guideline F: AGAINST APPLICANT

Subparagraph 1.a.: For Applicant

Subparagraph 1.b.: Against Applicant

Subparagraph 1.c.: Against Applicant

Subparagraph 1.d.: For Applicant

Subparagraph 1.e.: Against Applicant

Subparagraph 1.f.: For Applicant

Subparagraph 1.g.: Against Applicant

Subparagraph 1.h.: Against Applicant

Subparagraph 1.i.: Against Applicant

Subparagraph 1.j.: Against Applicant

DECISION

In light of all of the circumstances presented by the record in this case, it is not clearly consistent with the national interest to grant or renew a security clearance for Applicant. Clearance is denied.

Charles D. Ablard
Administrative Judge