

KEYWORD: Financial; Personal Conduct

DIGEST: Applicant, a 45-year-old employee of a federal contractor did sustain financial reversals due to poor real estate investments, compounded by his employer's plant closing and his subsequent transfer to another state. His financial statement indicates an ability to repay old debts, maintain current expenses, with a surplus each month. As the record contains no evidence that the debts are or are not being repaid, he has not successfully mitigated concerns over his security eligibility and suitability. A personal conduct issue was resolved in his favor. Clearance is denied.

CASENO: 03-19692.h1

DATE: 03/31/2005

DATE: March 31, 2005

In Re:

SSN: -----

Applicant for Security Clearance

ISCR Case No. 03-19692

DECISION OF ADMINISTRATIVE JUDGE

CHRISTOPHER GRAHAM

APPEARANCES

FOR GOVERNMENT

FOR APPLICANT

Pro Se

SYNOPSIS

Applicant, a 45-year-old employee of a federal contractor did sustain financial reversals due to poor real estate investments, compounded by his employer's plant closing and his subsequent transfer to another state. His financial statement indicates an ability to repay old debts, maintain current expenses, with a surplus each month. As the record contains no evidence that the debts are or are not being repaid, he has not successfully mitigated concerns over his security eligibility and suitability. A personal conduct issue was resolved in his favor. Clearance is denied.

STATEMENT OF THE CASE

On May 24, 2004, the Defense Office of Hearings and Appeals (DOHA), pursuant to Executive Order 10865, *Safeguarding Classified Information Within Industry*, dated February 20, 1960, 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. The SOR alleged facts under Guideline F (financial considerations) and Guideline E (personal conduct) 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 Applicant's security clearance, and recommended referral to an administrative judge to determine whether a clearance should be granted, continued, denied or revoked. The SOR detailed financial instability and falsely answering a security clearance application as the reasons why DOHA could not find that it is clearly in the national interest to grant or continue a security clearance.

In a sworn written statement, dated July 6, 2004, Applicant responded to the allegations in the SOR. Department Counsel submitted a file of relevant material (FORM) in support of the Government's preliminary decision, a copy of which was received by Applicant on January 14, 2005. Applicant was afforded the opportunity to file objections and submit material in refutation, extenuation, or mitigation by February 13, 2005. Applicant declined to submit a response to the FORM. The case was assigned to me on March 17, 2005.

FINDINGS OF FACT

Applicant has admitted to five of eight of the SOR allegations pertaining to financial matters under Guideline F (subparagraphs 1.a. through 1.g.), and Guideline E (subparagraph 2.a.). Those admissions are incorporated herein as findings of fact. After a complete and thorough review of the evidence in the record, I make the following additional findings of fact:

Applicant is a married 45-year-old employee of a federal contractor seeking to obtain a security clearance.⁽¹⁾ He was employed by this contractor in 1982, and has had a security clearance since December 1982.⁽²⁾ He has a history of unpaid debts going back to 1996.⁽³⁾ The following chart sets forth each unpaid debt alleged in the SOR, the type, amount and the current status.

SOR ¶	DELINQUENT	TYPE DEBT	AMOUNT	CURRENT STATUS ⁽⁴⁾
1.a.	December 1999	credit card	\$ 2,978.17	Unpaid
1.b.	September 1999	collection account	\$ 888.00	Disputed
1.c.	November 1996	repossession deficiency	\$ 5,845.00	Unpaid
1.d.	March 1999	collection account	\$ 3,323.00	Disputed
1.e.	September 2001	collection account	\$ 21.00	Unpaid
1.f.	November 2002	collection account	\$ 191.00	Paid
1.g.	July 2000	collection account	\$ 376.00	Unpaid

Applicant disputes the debts in subparagraph 1.b., d., and f. The rest are unpaid. The debt in 1.b. is disputed as Applicant denies having ever attended this trade school, but he supplied no proof. He denied the debt in 1.d but again has not provided any rebuttal. He claims there is documentation to prove he paid 1.f. but has provided no documents.

Most of Applicant's financial difficulties can be traced to his employer's plant closing in 1998. He had purchased a new home and leased his former residence. After the lease agreement collapsed, he then put the former residence up for sale, but it took five months to sell. In the meantime, he was transferred to another state by his employer where he rented

housing. He ultimately lost his newer home in foreclosure. He had filed a Chapter 13 Bankruptcy before he was transferred and was supposed to have had wage withholdings paid to the Bankruptcy Trustee but he never paid those withholdings and the case was dismissed. He later filed for Chapter 13 again after he had relocated and was making payments with wage withholdings. In July 2000, his truck was stolen. In November 2000, he voluntarily ended his wage withholding⁽⁵⁾ which resulted in dismissal of his bankruptcy case in September 2001.⁽⁶⁾ He filed his security clearance applications in 2002. In March 2003, he sought advice from a debt consolidation firm.⁽⁷⁾ In his statement of June 18, 2003,⁽⁸⁾ Applicant gave assurances that these debts would be paid or that arrangements for payment schedules would be forthcoming. Applicant has not submitted any evidence that this has occurred. He made no response to the FORM. His financial statement indicates an ability to repay old debts, maintain current expenses, with a surplus of about \$500.00 per month.⁽⁹⁾

In answer to Standard Form 86, *Question 38. Your Financial Delinquencies - 180 Days. In the last 7 years, have you ever been over 180 days delinquent on any debts?*, his answer was "No".⁽¹⁰⁾ In answer to question 43, the general comments section, he said, "Sections 38 and 39 are unsure."⁽¹¹⁾

POLICIES

"[No] one has a 'right' to a security clearance."⁽¹²⁾ 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."⁽¹³⁾ 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 coercion, and willingness and ability to abide by regulations governing use, handling, and protection of classified information."⁽¹⁴⁾ Eligibility for a security clearance may be adjudicated using the security guidelines contained in the Directive.

Enclosure 2 of the Directive sets forth personnel 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 factors listed in ¶ 6.3 of the Directive: nature and seriousness of the conduct and surrounding circumstances; frequency and recency of the conduct; age of the Applicant; motivation of the applicant, and the extent to which the conduct was negligent, wilful, voluntary, or undertaken with knowledge of the consequences involved; absence or presence of rehabilitation; and probability that the circumstances or conduct will continue or recur in the future.

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.⁽¹⁵⁾

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.⁽¹⁶⁾

Once the Government establishes a disqualifying condition, the burden shifts to the applicant to rebut, explain, extenuate, or mitigate the facts.⁽¹⁷⁾ An applicant "has the ultimate burden of demonstrating that it is clearly consistent with the national interest to grant or continue his security clearance."⁽¹⁸⁾ A person who has access to classified information enters into a fiduciary relationship with the Government based on trust and confidence. The Government, therefore, has a compelling interest in ensuring each Applicant possesses the requisite judgment, reliability and trustworthiness of one who will protect the national interests as his or his 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.⁽¹⁹⁾ Decisions under this Directive include, by necessity, consideration of the possible risk an applicant may deliberately or inadvertently fail to protect or safeguard classified information. Such decisions entail a certain degree of legally permissible extrapolation as to potential, rather than actual, risk of compromise of classified information.

Applicant's allegiance, loyalty, and patriotism are not at issue in these proceedings. Section 7 of Executive Order 10865 specifically provides industrial security decisions shall be "in terms of the national interest and shall in no sense be a determination as to the loyalty of the applicant concerned." Security clearance decisions cover many characteristics of an applicant other than allegiance, loyalty, and patriotism.

Having considered the SOR allegations and having reviewed the record evidence as a whole, I conclude the relevant adjudicative guidelines to be applied here are those conditions listed under Guideline F (financial considerations) (FC), Directive, ¶ E2.A6.1.1. *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 criminal acts;* and Guideline E (personal conduct) (PC), Directive, ¶ E2.A5.1.1. *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.*

CONCLUSIONS

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

The Government has established its case under Guideline F. As indicated above, Applicant's financial situation deteriorated beginning in 1996. He attempted Chapter 13 bankruptcy on two different occasions with both cases being dismissed for failure to implement or continue wage withholdings. Only after he commenced his security clearance renewal did he attempt to work with his creditors by contacting a debt consolidation company nearly two and one-half years after he stopped his wage assignments in bankruptcy. Though his answers and statements indicate an intent to pay debts, Applicant has not provided any documentation that he has paid his creditors. He offered no response to the FORM. Failure to pay outstanding financial obligations gives rise to Financial Considerations Disqualifying Condition (FC DC) E2.A6.1.2.1. (*A history of not meeting financial obligations*); and FC DC E2A6.1.2.3. (*Inability or unwillingness to satisfy debts*).

The fact that in 1998, Applicant's employer closed the plant where he was working and transferred him to another state might be argued was a situation largely beyond his control. This could bring his case within the Financial Considerations Mitigating Condition (FC MC) E2A6.1.3.3. (*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)*). But the move compounded an already existing situation of poor investments in real estate.

Also, in spite of an increasing debt obligation, Applicant has not made a good-faith effort to gradually pay down his debts. He did not continue his wage earner Chapter 13 bankruptcy cases which would have resolved his debts. While he has sought debt consolidation counsel, the record does not reflect what benefits or progress, if any, have been made as a result of this advice. His actions do not rise to the level necessary to satisfy FC MC E2A6.1.3.6. (*The individual initiated a good-faith effort to repay overdue creditors or otherwise resolve debts*). I characterize Applicant's attitude toward his finances as not showing a good faith-effort to resolve his indebtedness. I conclude SOR allegations 1.a., b., c., d., e., f. and g. against Applicant.

The Government also alleged that Applicant falsely answered a question on his security clearance application which comes under Guideline E, Personal Conduct Disqualifying Condition (PC DC) E2.A5.1.2.2. (*the deliberate omission, concealment, or falsification of relevant material facts from any personnel security questionnaire, personal history statement, or similar form used to conduct investigations, determine employment qualifications, award benefits or status, determine security clearance eligibility or trustworthiness, or award fiduciary responsibilities*). Applicant rebutted the allegation by adding in block 43 of the SF 86 the words, "Sections 38 and 39 are unsure." By making this caveat, Applicant was stating that he was not confident his answer to question 38 was correct. The evidence shows that Applicant had debts that were more than 180 days old. The disqualifying condition talks of a "deliberate" omission or falsification. That would require a knowledge that his answer was false. If he is not sure in his own mind, and so stated in the comments section (question 43), then I cannot find as a matter of law that he violated PC DC E2.A5.1.2.2. Therefore, I conclude SOR allegation 2.a. in Applicant's favor.

FORMAL FINDINGS

Formal findings For or Against Applicant on the allegations set forth in the SOR, as required by ¶ E3.1.25 of Enclosure 3 of the Directive, are:

Paragraph 1. Guideline F: AGAINST THE APPLICANT

Subparagraph 1.a. - 1.f. Against the Applicant

Paragraph 2. Guideline E: FOR THE APPLICANT

Subparagraph 2.a. 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 Applicant's security clearance. Clearance is denied.

Christopher Graham

Administrative Judge

1. Item 4 (*Applicant's Application for National Security Clearance SF86 dated July 30, 2002*) at 1-3.
2. Item 5 (*Applicant's Application for National Security Clearance SF86 dated July 16, 2002*) at 10.
3. Item 3 (*Applicant's Answer dated July 6, 2004*) at 1-2.

4. *Id.*

5. Item 9 (*Documents from Applicant's U. S. Bankruptcy Court file 2000-2001*) at 8.

6. *Id.*, at 21.

7. Items 4 and 5, *supra*.

8. Item 6.

9. Item 10 (*Applicant's Reply to January 23, 2004, Financial Interrogatories, dated March 25, 2004*) at 5.

10. Item 5, *supra*, at 11.

11. *Id.* at 12; Item 4, *supra*, at 6.

12. See *Department of the Navy v. Egan*, 484 U.S. 518, 528 (1998).

13. *Id.*, at 527.

14. Exec. Or. 12968, *Access to Classified Information* § 3.1(b) (Aug. 4, 1995).

15. *Egan, supra*, at 531.

16. See *ISCR Case No. 95-0611* at 2 (App. Bd. May 2, 1996).

17. See *ISCR Case No. 01-20700* at 3 (App. Bd. Dec. 19, 2002).

18. *Id.*, at 3.

19. See *Egan*; Directive ¶ E2.2.2.