

KEYWORD: Financial

DIGEST: Applicant failed to mitigate financial concerns arising from delinquent debts in excess of \$13,000.00 arising while he was in the Air Force between 1997 and 2001. He was in a debt consolidation program in 2002 but withdrew from it when creditors expressed dissatisfaction. He recently filed for Chapter 7 bankruptcy. Clearance is denied.

CASENO: 03-19754.h1

DATE: 10/12/2005

DATE: October 12, 2005

In Re:

SSN: -----

Applicant for Security Clearance

ISCR Case No. 03-19754

DECISION OF ADMINISTRATIVE JUDGE

CHARLES D. ABLARD

APPEARANCES

FOR GOVERNMENT

Peregrine D. Russell-Hunter, Department Counsel

FOR APPLICANT

Pro Se

SYNOPSIS

Applicant failed to mitigate financial concerns arising from delinquent debts in excess of \$13,000.00 arising while he was in the Air Force between 1997 and 2001. He was in a debt consolidation program in 2002 but withdrew from it when creditors expressed dissatisfaction. He recently filed for Chapter 7 bankruptcy. Clearance is denied.

STATEMENT OF CASE

On December 17, 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 January 25, 2005, Applicant responded to the SOR allegations, and requested a hearing. The matter was assigned to me on June 20, 2005. A notice of hearing was issued on August 10, 2005, for a hearing on August 30, 2005, and held that day. The government offered nine exhibits in evidence and all were accepted. Applicant offered none. The record was left open until September 16, 2005, for submission of evidence but none was received. The transcript was received on August 30, 2005.

FINDINGS OF FACT

Applicant admitted all twelve of the SOR allegations. After a complete review of the record, I make the following additional findings of fact:

Applicant is a 27-year-old employee of a defense contractor working in computer maintenance for air defense, a skill he learned while on active duty with the Air Force between 1997 and 2001. He incurred several debts cited in the SOR totaling a little over \$13,000.00. Most of the debts were incurred while on active duty when he was providing support for two brothers and a girlfriend. Applicant has not made payment on these debts and did not have adequate records for them as they had been sold several times to collection agencies.

Applicant was in credit counseling in 2002 and had consolidated his debts. He withdrew from the program when, after making several payments, he received letters from some of the creditors stating that their share of the payments were insufficient to resolve their claims. He filed for Chapter 7 bankruptcy in May, 2005, and an initial hearing was held June 23, 2005, in bankruptcy court. He is awaiting further information and a ruling from the court.

His largest delinquent debt for \$5,075.00 is for an auto repossession that has not been paid. He had purchased an expensive foreign car on which he could not make payments. The second largest debt is for medical expenses while he was in the Air Force in the amount of \$2,998.00 that he believes should have been paid by Tricare. The other eleven debts are for lesser amounts and include credit cards, telephone charges, and claims by a landlord. He had intended to pay them but no payments were made.

Applicant was recently married and has one small child and a second is expected. His annual salary is \$52,000.00.

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 it is clearly consistent with the national interest to grant or continue a security 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 adjudicative factors, 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) might include the fact that the conditions that resulted in the behavior were largely beyond the person's control (E2.A6.1.3.3.), or the person has initiated a good faith effort to repay overdue creditors or otherwise

resolve debts. (E2.A6.1.3.6.). Although he incurred some of debts because he was helping family members, there is no showing that the matter was beyond his control. He abandoned his debt consolidation program without any apparent effort to modify it or work out other consolidation procedures. No mitigating conditions are applicable.

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 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. Applicant has undertaken bankruptcy in an effort to write a clean slate but too late to overcome the fact that the debts were delinquent, and that he failed to work any of them out over the past years since they became delinquent.

After considering all the evidence in its totality, and as an integrated whole to focus on the whole person of Applicant, I conclude that a security clearance should not be granted. Clearance is denied.

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.: Against Applicant

Subparagraph 1.b.: Against Applicant

Subparagraph 1.c.: Against Applicant

Subparagraph 1.d.: Against Applicant

Subparagraph 1.e.: Against Applicant

Subparagraph 1.f.: Against Applicant

Subparagraph 1.g.: Against Applicant

Subparagraph 1.h.: Against Applicant

Subparagraph 1.i.: Against Applicant

Subparagraph 1.j.: Against Applicant

Subparagraph 1.k.: Against Applicant

Subparagraph 1.l.: Against Applicant

Subparagraph 1.m.: 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