

KEYWORD: Financial

DIGEST: Applicant, a 35-year-old employee of a defense contractor, failed to mitigate financial considerations security concerns relating to delinquent debts. He still has over \$11,000.00 in such debts even though he has reduced his total indebtedness from \$28,000.00 over the past three years. Clearance is denied.

CASENO: 03-19925.h1

DATE: 01/31/2006

DATE: January 31, 2006

In Re:

SSN: -----

Applicant for Security Clearance

ISCR Case No. 03-19925

DECISION OF ADMINISTRATIVE JUDGE

CHARLES D. ABLARD

APPEARANCES

FOR GOVERNMENT

Kathryn A. Trowbridge, Esq., Department Counsel

FOR APPLICANT

Pro Se

SYNOPSIS

Applicant, a 35-year-old employee of a defense contractor, failed to mitigate financial considerations security concerns relating to delinquent debts. He still has over \$11,000.00 in such debts even though he has reduced his total indebtedness from \$28,000.00 over the past three years. 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.

In a sworn written statement dated February 9, 2005, Applicant responded to the allegations set forth in the SOR, and elected to have his case decided on the written record in lieu of a hearing. Department Counsel submitted the Government's written case on August 12, 2005. A complete copy of the file of relevant material (FORM) was provided to the Applicant, and he was afforded an opportunity to file objections and submit material in refutation, extenuation, or mitigation. Applicant submitted additional information on October 24, 2005, and the case was assigned to me on November 28, 2005.

FINDINGS OF FACT

Applicant is a 34-year-old employee of a defense contractor. He admitted all but one of the allegations concerning financial considerations and that one is in dispute.. After a complete and thorough review of the information in the record, and upon due consideration of same, I make the following additional findings of fact:

Applicant admitted having delinquent debts exceeding \$28,000.00. He accumulated these debts over an extended period of time, attributing some of them to spending habits of his former wife. He offered extensive explanatory information about the allegations and the origins of the debts. He stated an intent to pay all except one for \$102.00 (SOR ¶ 1.g.), which he denies, and one that is in negotiation for over \$4,750.00 (SOR ¶ 1.d.). The supplemental information supplied after receipt of the FORM was equally extensive pointing out that since the issuance of the SOR over a year ago, and in the two years before, he had paid significant amounts on many of the debts and had fully paid some of them. While evidence was offered about the full payment of some of the debts, the evidence was sparse as to the state of current payments on the remaining large debts.

Applicant admitted that he still owes \$4,384.00 (SOR ¶ 1.a.), \$5,700.00 (SOR ¶ 1.h.), and \$1,546.00 (SOR ¶ 1.i.) even though he is paying something on all of them and has reduced the total debt. Thus, he still has delinquent debts of over \$11,000.00.

Applicant submitted character references from 19 persons with whom he has had personal and professional relationships. He has changed his living patterns and has not accumulated any further debts for several years.

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 allegations in the SOR 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 person has initiated a good-faith effort to repay overdue creditors or otherwise resolve debts (E2.A6.1.3.6.), and that the conditions resulting in the problems were largely beyond the person's control (E2.A6.1.3.3.). While significant improvements in his financial situation has occurred, the Applicant still has delinquent debts of over \$11,000.00 and has offered little specific proof of his ability or progress in paying them except his assertions in his supplemental statement.

Since this matter was submitted on the record with no opportunity to confront Applicant regarding these assertions, it is difficult to appraise the accuracy of his statements. However, I have accepted his assertions and conclude only on the

basis of his admissions in his most recent supplemental submission. While Applicant has made significant progress in reducing his delinquent debts, he still has a large amount owing and it is premature to grant clearance at this time.

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.

After considering all the evidence in its totality and as an integrated whole to focus on the whole person of Applicant, I conclude that it is not clearly consistent with the national interest to grant clearance to Applicant.

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

DECISION

After full consideration of all the facts and documents 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.

Charles D. Ablard

Administrative Judge