

KEYWORD: Financial

DIGEST: Applicant mitigated security concerns arising from his failure to resolve delinquent debts by paying the majority of his debts and making regular and systematic payments on the one remaining debt. The record evidence is sufficient to mitigate or extenuate the negative security implications stemming from a debt of such magnitude. Clearance is granted.

CASENO: 03-21062.h1

DATE: 09/26/2005

DATE: September 26, 2005

In Re:

SSN: -----

Applicant for Security Clearance

ISCR Case No. 03-21062

DECISION OF ADMINISTRATIVE JUDGE

CLAUDE R. HEINY

APPEARANCES

FOR GOVERNMENT

FOR APPLICANT

Pro Se

SYNOPSIS

Applicant mitigated security concerns arising from his failure to resolve delinquent debts by paying the majority of his debts and making regular and systematic payments on the one remaining debt. The record evidence is sufficient to mitigate or extenuate the negative security implications stemming from a debt of such magnitude. Clearance is granted.

STATEMENT OF THE CASE

On August 10, 2004, the Defense Office of Hearings and Appeals (DOHA) issued a Statement of Reasons (SOR) to Applicant, stating that DOHA could not make the preliminary affirmative finding ⁽¹⁾ it is clearly consistent with the national interest to grant or continue a security clearance for Applicant. The SOR indicated security concerns were raised under Guideline F (Financial Considerations). DOHA recommended the case be referred to an administrative judge to determine whether a clearance should be granted, continued, denied, or revoked.

On August 26, 2004, Applicant answered the SOR and requested a hearing. On December 20, 2004, I was assigned the case. On January 6, 2005, a Notice of Hearing was issued scheduling the hearing which was held on January 25, 2005. The record was kept open to allow Applicant to submit additional documents. Numerous documents were received and admitted into the record. On February 2, 2005, DOHA received a copy of the transcript (Tr.).

FINDINGS OF FACT

In his response to the SOR, Applicant admits, with explanation, the 13 debts listed in the SOR. Those admissions are incorporated herein as findings of fact. After a thorough review of the entire record, I make the following additional findings of fact:

Applicant is a 42 year old software quality engineer, who has worked for a defense contractor since March 2002, and is seeking a security clearance. From April 2001 until March 2002, Applicant was unemployed. He had been working on a satellite communication program when the program was sold to another company. All personnel working on the project were laid off. While unemployed, he received \$200 a week unemployment compensation. Applicant had to move to another state to find employment. At his current job, Applicant is regarded by those who know him as a valued team player and a competent performer.

Applicant contacted a credit counseling service and received helpful and useful information. He learned he could handle the debts himself. Applicant maintains a budget and keeps track of all his financial records in a book he carries with him and consults daily. (Tr. 52, App Ex Q)

Applicant is actively paying the credit card debt listed in SOR subparagraph 1.a, by making \$170 monthly payments. As of May 27, 2005, the amount due was \$4,138.35 (App Ex CC) Applicant had some difficulty in attempting to pay his rental agreement, which was the debt listed in SOR subparagraph 1.m. The collection agency servicing the debt went out of business in early 2005. Applicant then contacted the music store where the original debt was incurred. The store agreed to accept a \$335.34 lump sum payment to settle the debt. (App Ex AA) On June 8, 2005, the final payment for this debt was posted to his account. (App Ex CC)

The SOR lists 13 debts totaling approximately \$ 13,000 owed to 13 creditors. A summary of those debts and their current status follows:

	Creditor	Amount Owed	Current Status
a.	bank credit card	\$5,120	Paying\$170 monthly. (App Ex A)
b.	family care debt	\$ 227	Paid. (App Ex B)
c.	healthcare debt emergency room service for a broken arm	\$ 750	Paid. (App Exs C and Z)
d.	doctor's bill	\$ 575	Paid. (App Exs D and Z)
e.	collection agency	\$ 654	Paid. (App Exs E and AA)
f.	credit card	\$ 577	Paid. (App Ex F)
g.	collection agency	\$1,054	Paid. (App Ex G)
h.	utility bill	\$ 93	Paid. (App Ex H)
i.	Physician's bill	\$ 710	Paid. (App Ex I)
j.	charged off account	\$ 896	Paid. Same debt as l. (App Ex J)

k.	charged off account	\$ 261	Paid. (App Ex K)
l.	collection agency	\$1,082	Paid. (App Ex L)
m	collection agency	\$ 835	Paid. (App Exs M and CC)
	Total debts listed in SOR	\$12,834	

As of January 1, 2005, his annual salary was \$76,236. His wife's monthly salary is \$2,000. Applicant and his wife have seven children, the oldest being 20. Applicant currently has a company credit card for travel expenses and his one remaining debt is a credit card. He is current on all his debts including his \$351 monthly vehicle payments and on his \$266 monthly student loan payments.

POLICIES

The Directive sets forth adjudicative guidelines to be considered when evaluating a person's eligibility to hold a security clearance. Disqualifying Conditions (DC) and Mitigating Conditions (MC) are set forth for each applicable guideline. Additionally, each decision must be a fair and impartial commonsense decision based upon the relevant and material facts and circumstances, the whole person concept, and the factors listed in Section 6.3 of the Directive. The adjudicative guidelines are to be applied by administrative judges on a case-by-case basis with an eye toward making determinations that are clearly consistent with the interests of national security. The presence or absence of a particular condition or factor for or against clearance is not determinative of a conclusion for or against an applicant. However, the adjudicative guidelines should be followed whenever a case can be measured against this policy guidance. Considering the evidence as a whole, I conclude the relevant guideline to be applied here is Guideline F (Financial Considerations).

BURDEN OF PROOF

The sole purpose of a security clearance decision is to decide if it is clearly consistent with the national interest to grant or continue a security clearance for an applicant. Initially, the Government must establish, by substantial evidence, that conditions exist in the personal or professional history of the applicant which disqualify, or may disqualify, an applicant from being eligible for access to classified information. The burden of proof in a security clearance case is something less than a preponderance of evidence, although the government is required to present substantial evidence to meet its burden of proof. Substantial evidence is more than a scintilla, but less than a preponderance of the evidence. All that is required is proof of facts and circumstances which indicate an applicant is at risk for mishandling classified information, or that an applicant does not demonstrate the high degree of judgment, reliability, or trustworthiness required of persons handling classified information. Additionally, the government must prove controverted facts alleged in the SOR. Once the government has met its burden, the burden shifts to an applicant to present evidence to refute, extenuate or mitigate government's case. Additionally, an applicant has the ultimate burden of persuasion to obtain a favorable clearance

decision.

As noted by the United States Supreme Court in *Department of Navy v. Egan*, 484 U.S. 518, 528 (1988), "no one has a 'right' to a security clearance." 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 judgement, reliability and trustworthiness of one who will protect the national interests. The "clearly consistent with the national interest" standard compels resolution of any reasonable doubt about an applicant's suitability for access to classified information to be resolved in favor of protecting national security. Security clearance determinations should err, if they must, on the side of denials.

CONCLUSIONS

A person's relationship with his creditors is a private matter until evidence is uncovered demonstrating an inability or unwillingness to repay debts under agreed upon terms. Absent evidence of strong extenuating or mitigating circumstances, an applicant with a history of serious or recurring financial difficulties is in a position of risk that is inconsistent with the holding of a security clearance. Under Guideline F, an Applicant is not required to be debt free, but is required to manage his finances so as to meet his financial obligations. An applicant who is financially overextended is at risk of having to engage in illegal acts to generate funds. Directive, E.2.A.6.1.1.

The Government has satisfied its initial burden of proof under Guideline F (Financial Considerations). Applicant admitted he owed 13 debts totaling approximately \$13,000. Disqualifying Conditions (DC) 1 (E2.A6.1.2.1. *A history of not meeting financial obligations*) and 3 (E2.A6.1.2.3. *Inability or unwillingness to satisfy debts*) apply.

From April 2001 until March 2002, Applicant was unemployed. Mitigating Condition (MC) 3 (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)*) applies. After getting his current job, Applicant began repaying past due debts. He has paid 12 of the 13 debts and is making regular and systematic \$170 monthly payments on the sole remaining debt. MC 6 (E2.A6.1.3.6. *The individual initiated a good-faith effort to repay overdue creditors or otherwise resolve debts*) applies to this remaining debt. I find for Applicant as to financial considerations.

In reaching my conclusions I have also considered: the nature, extent, and seriousness of the conduct; Applicant's age and maturity at the time of the conduct; the circumstances surrounding the conduct; Applicant's voluntary and knowledgeable participation; the motivation for the conduct; the frequency and recency of the conduct; presence or absence of rehabilitation; potential for pressure, coercion, exploitation, or duress; and the probability that the circumstance or conduct will continue or recur in the future.

FORMAL FINDINGS

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

Paragraph 1 Financial Considerations: FOR THE APPLICANT

Subparagraph 1.a.: For the Applicant

Subparagraph 1.b.: For the Applicant

Subparagraph 1.c.: For the Applicant

Subparagraph 1.d.: For the Applicant

Subparagraph 1.e.: For the Applicant

Subparagraph 1.f.: For the Applicant

Subparagraph 1.g.: For the Applicant

Subparagraph 1.h.: For the Applicant

Subparagraph 1.i.: For the Applicant

Subparagraph 1.j.: For the Applicant

Subparagraph 1.k.: For the Applicant

Subparagraph 1.l.: For the Applicant

Subparagraph 1.m.: For the Applicant

DECISION

In light of all the circumstances presented by the record in this case, it is clearly consistent with the national interest to grant or continue a security clearance for Applicant. Clearance is granted.

Claude R. Heiny
Administrative Judge

1. Required by Executive Order 10865, *Safeguarding Classified Information Within Industry*, as amended, and Department of Defense Directive 5220.6, *Defense Industrial Personnel Security Clearance Review Program* (Directive), dated January 2, 1992, as amended.
2. ISCR Case No. 93-1390 (January 27, 1995) at 7-8; Directive, Enclosure 3, E3.1.15