

KEYWORD: Financial

DIGEST: Applicant's financial problems continue to raise security concerns over his failure to resolve \$34,000 in debt owed to ten creditors. The record evidence is insufficient to mitigate or extenuate the negative security implications stemming from a debt of such magnitude. Clearance is denied.

CASENO: 03-22024.h1

DATE: 09/23/2005

DATE: September 23, 2005

In Re:

SSN: -----

Applicant for Security Clearance

ISCR Case No. 03-22024

DECISION OF ADMINISTRATIVE JUDGE

CLAUDE R. HEINY

APPEARANCES

FOR GOVERNMENT

Robert E. Coacher, Department Counsel

FOR APPLICANT

Pro Se

SYNOPSIS

Applicant's financial problems continue to raise security concerns over his failure to resolve \$34,000 in debt owed to ten creditors. The record evidence is insufficient to mitigate or extenuate the negative security implications stemming from a debt of such magnitude. Clearance is denied.

STATEMENT OF THE CASE

On November 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. 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 December 3, 2004, Applicant answered the SOR and requested a hearing. On January 10, 2005, I was assigned the case. On March 11, 2005, a Notice of Hearing was issued scheduling the hearing which was held on March 30, 2005. The record was kept open to allow Applicant to submit additional documents. Several documents were received and admitted into the record as Applicant's Exhibit (App Ex) D. On April 8, 2005, DOHA received a copy of the transcript (Tr.).

FINDINGS OF FACT

In his response to the SOR, Applicant admits owing seven of the 13 debts listed in the SOR.

That admission is 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 51 year old logistics specialist who has worked for a defense contractor since October 1989, and is seeking to maintain a security clearance. Applicant's duty performance has been regarded as exemplary. His supervisors described him as a competent performer and a valued team player. (App Ex A)

Prior to 1996, Applicant had no financial delinquencies. In December 1997, his mother died and in 1997 his dog died. He was emotionally distraught and spent a lot of time and money visiting bars and clubs. (Gov Ex 2 at 3.) He allowed his bills to go unpaid. In 1997 and 1998, he received grief counseling and sought the services of a debt consolidation agency. The agency recommended he file for bankruptcy protection. He read books about resolving credit problems. After studying his options, Applicant declined to file for bankruptcy protection.

During 1998, Applicant paid three debtors and decided not to pay his other debtor then or in the future. It was his intent to have them removed from his credit report after seven years. Applicant asserts four of the debts (SOR paragraphs 1.d, 1.e, 1.g and 1.l) are more than seven years old. He provided no documentation supporting this assertion. As of May 2003, he had \$500 per month in disposable income. In 1998, he stopped getting telephone calls from the creditors. In 2001, mail from his past due creditors tapered off.

In August 2000, he separated from his second wife. They were divorced in early 2001.

In May 2003, Applicant was interviewed by a Defense Security Service (DSS) special agent and asked about his finances. At that time, he agreed ten debts were his.

In December 2004, Applicant responded to the SOR and indicated that for seven of the listed debts, "Payment plan is in work." At the hearing, no evidence of a repayment plan was presented. Following the hearing, Applicant sought the services of a debt management company. Two of the debts (\$3,917, SOR paragraph 1.f and \$4,924.84, SOR paragraph 1.h) were included in the plan which requires Applicant to pay \$217 per month for 48 months. No documentation of payment to the company or from the company to creditors was provided.

Applicant's August 2004 credit report (Gov Ex 4) lists three charged-off accounts (\$547, SOR paragraph 1.b; \$9,556, SOR paragraph 1.c; \$3,135, SOR 1.g) and five collection accounts (\$2,962, SOR paragraph 1.d; \$4,414, SOR paragraph

1.e; \$3,917, SOR paragraph 1.f; \$4,747, SOR paragraph 1.h; \$1,981, SOR paragraph 1.k). In his May 2003 sworn statement, Applicant admits owing the creditors in SOR 1.a, 1.c, 1.i, 1.l, and 1.m. Applicant's August 2004 credit report indicates the debts owed in 1.a and 1.m had been transferred or sold. A summary of the 13 debts listed in the SOR follows:

	Creditor	Amount	Current Status
a	collection agency for department store debt	\$8,832	Unpaid. Balance asserts to be \$5,007. (See Answer to SOR)
b	collection agency	\$547	Settled and paid. (See App Ex C)
c	collection agency for furniture store debt	\$5,611	Unpaid. Applicant asserts the balance is \$3,135. (See Answer to SOR)
d	collection agency for credit card debt	\$2,962	Unpaid.
e	collection agency for credit card debt	\$4,414	Unpaid. Applicant asserts the balance may be incorrect. (See Answer to SOR)
f	collection agency	\$3,917	Part of a repayment program. (App Ex D) No evidence payment has been made to plan.
g	collection agency	\$3,135	Unpaid.
h	collection agency	\$4,747	Part of a repayment program. (App Ex D) No evidence payment has been made to plan.
i	collection agency for cable TV equipment.	\$222	Denied. No evidence of current debt.
j	telephone debt		Applicant had been paying \$50 per month on this debt. Paid in full in October 2000.
k	store debt	\$1,981	Unpaid.
l	electronic superstore debt	\$2,974	Unpaid.
m	closed department store debt	\$1,799	Applicant admits the debt, but indicates the amount may not be correct. (See Answer to SOR)
		\$41,141	Total debt alleged in SOR.

As of March 30, 2005, Applicant's credit score is listed as "good" (App Ex C). Applicant asserts the fair market value of his home is \$110,00 to \$115,000, on which he owes \$92,000. Applicant asserts he has \$50,000 in his 401(k) retirement program. His take home pay prior to expenses is \$3,200 per month.

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 the government's case. Additionally, an applicant has the ultimate burden of persuasion to obtain a favorable clearance decision. [\(2\)](#)

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

The Government has satisfied its initial burden of proof under Guideline F, Financial Considerations. 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. 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.

Applicant admits owing nine debts totaling approximately \$31,763 and admitted in his May 2003 sworn statement to owing another creditor \$1,981. The ten debts total approximately \$34,000. 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.

In the late 1990s, Applicant experienced two losses which caused him to be emotionally distraught. He spent time and money visiting bars and allowed his bills to go unpaid. In 1998, he made the decision to pay three debtors and not pay his other debtor then or in the future. It was his intent to have them removed from his credit report after seven years. Applicant has paid one debt (\$547, SOR paragraph 1.b) and there is no evidence he owes two other debts (\$222, SOR paragraph 1.i; SOR paragraph 1.j). I find for Applicant as to these three debts.

None of the Mitigating Conditions (MC) apply in the Applicant's favor to the remaining ten debts. MC 1 (E2.A6.1.2.1 *The behavior was not recent*) does not apply because the conduct is recent since the debts remain unpaid. MC 2 (E2.A6.1.2.2 *It was an isolated incident*) does not apply because there are ten debts. There was no showing the debts were caused by factors beyond Applicant's control. In early 2001, Applicant divorced his second wife. However, he failed to substantiate the impact of the divorce on his finances. He has been employed with the same company for 15 years. As of May 2003, Applicant had \$500 per month of disposable income. There is no showing he paid his past due debts with this income.

Although Applicant has read books about finances and twice sought the services of a debt consolidation firm, once in the late 1990s and again following the hearing, there has been no showing Applicant's financial difficulties are under control. Therefore, MC4 (E2.A6.1.3.4 *The person has received or is receiving counseling for the problem and there are clear indications that the problem is being resolved or is under control*) does not apply.

For MC 6 (E2.A6.1.2.6 *The individual initiated a good-faith effort to repay overdue creditors or otherwise resolve debts*) to apply there must be an "ability" to repay the debts, the "desire" to repay, and evidence of a good-faith effort to repay. A systematic, concrete method of handling his debts is needed, which is not present here. Following the hearing, Applicant did seek the services of a credit consolidation firm. However, there is no evidence Applicant ever sent the firm any payment nor is there evidence of the firm making payment to a creditor. Seeking the services of the firm is not equivalent to a demonstrated track record of financial reform and rehabilitation.

Because the debts remain unpaid and there is no showing of payments have been made in accord with the debt management agreement on the two debts included in it, I find against 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 Guideline F (Financial Considerations): AGAINST FOR THE APPLICANT

Subparagraph 1.a.: Against the Applicant

Subparagraph 1.b.: For the Applicant

Subparagraph 1.c.: Against the Applicant

Subparagraph 1.d.: Against the Applicant

Subparagraph 1.e.: Against the Applicant

Subparagraph 1.f.: Against the Applicant

Subparagraph 1.g.: Against the Applicant

Subparagraph 1.h.: Against the Applicant

Subparagraph 1.i.: For the Applicant

Subparagraph 1.j.: For the Applicant

Subparagraph 1.k.: Against the Applicant

Subparagraph 1.l.: Against the Applicant

Subparagraph 1.m.: Against the Applicant

Subparagraph 1.n.: Against 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 a security clearance for Applicant. Clearance is denied.

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 pp. 7-8; Directive, Enclosure 3, Item E3.1.15.