

KEYWORD: Foreign Influence; Financial

DIGEST: As a result of several periods of unemployment, Applicant accumulated a child support arrearage of more than \$12,000. He negotiated a repayment plan, adhered to or exceeded it for more than five years, and paid the arrearage in full by the time of the hearing. He married a Bosnian woman while deployed to that country, but he divorced her in February 2005 and has no further obligations to her or relationship with her. He has refuted the factual basis for the security concern based on foreign influence and mitigated the concern based on financial considerations. Clearance is granted.

CASENO: 03-23262.h1

DATE: 04/28/2006

DATE: April 28, 2006

In re:

SSN: -----

Applicant for Security Clearance

ISCR Case No. 03-23262

DECISION OF ADMINISTRATIVE JUDGE

LEROY F. FOREMAN

APPEARANCES

FOR GOVERNMENT

Sabrina Redd, Esq., Department Counsel

FOR APPLICANT

Pro Se

SYNOPSIS

As a result of several periods of unemployment, Applicant accumulated a child support arrearage of more than \$12,000. He negotiated a repayment plan, adhered to or exceeded it for more than five years, and paid the arrearage in full by the time of the hearing. He married a Bosnian woman while deployed to that country, but he divorced her in February 2005 and has no further obligations to her or relationship with her. He has refuted the factual basis for the security concern based on foreign influence and mitigated the concern based on financial considerations. Clearance is granted.

STATEMENT OF THE CASE

On October 26, 2004, the Defense Office of Hearings and Appeals (DOHA) issued a Statement of Reasons (SOR) detailing the basis for its preliminary decision to deny Applicant a security clearance. The SOR alleges security concerns under Guidelines B (Foreign Influence) and F (Financial Considerations). Under Guideline B, it alleges Applicant's wife is a citizen of Bosnia residing with him in Kosovo. Under Guideline F, it alleges Applicant is indebted to his ex-spouse for a child support arrearage of \$12,644.96.

Applicant answered the SOR in writing on December 1, 2004, denied the allegation under Guideline B, admitted the child support arrearage under Guideline F, offered explanations, and requested a hearing. The case was assigned to me on September 9, 2005. Scheduling was delayed by Applicant's redeployment from Bosnia to Afghanistan and reassignments within Afghanistan. On March 30, 2006, DOHA issued a notice of hearing setting the case for hearing by

video teleconference on April 4, 2006, between the Washington Hearing Office in Arlington, Virginia, and Applicant's duty station in Kandahar, Afghanistan. The case was heard as scheduled. DOHA received the transcript (Tr.) on April 11, 2006.

FINDINGS OF FACT

Applicant's admissions in his answer to the SOR and at the hearing are incorporated into my findings of fact. I make the following findings:

Applicant is a 50-year-old operations and maintenance engineer for a defense contractor. He was deployed to Bosnia in July 2000, and reassigned to Afghanistan in March 2004. His supervisors regard him as honest, innovative, loyal, and dependable.⁽¹⁾

Applicant served in the Oregon Army National Guard for about 15 years, attaining the grade of Chief Warrant Officer (CW2). He received a security clearance in May 1990.

Applicant was married and divorced three times before deploying to Bosnia.⁽²⁾ As a result of periods of unemployment, he fell behind in child support payments to his first wife.⁽³⁾ He arranged with the state division of child support to make monthly payments of \$125, deducted directly from his pay.⁽⁴⁾ He made regular payments for more than five years, and he made additional payments when he was able. After he was deployed to Bosnia and then to Afghanistan, his pay increased significantly, to about \$120,000 per year. By December 2005, he reduced the arrearage to \$7,744.96. He made \$3,000 payments in January and February 2006. The arrearage was paid in full by the time of the hearing.⁽⁵⁾

While deployed to Bosnia, Applicant married a Bosnian woman working for a U.S. defense contractor. They were divorced on February 18, 2005.⁽⁶⁾ No children were born of the marriage, and Applicant has no obligations to or relationship with his ex-wife.⁽⁷⁾

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. The President has authorized the Secretary of Defense or his designee to grant applicants eligibility for access to classified information "only upon a finding that it is clearly consistent with the national interest to do so." Exec. Or. 10865, *Safeguarding Classified Information within Industry* § 2 (Feb. 20, 1960), as amended and modified. Eligibility for a security clearance is predicated upon the applicant meeting the security guidelines contained in the Directive. An applicant "has the ultimate burden of demonstrating that it is clearly consistent with the national interest to grant or continue his security clearance." ISCR Case No. 01-20700 at 3 (App. Bd. Dec. 19, 2002).

The Directive sets forth adjudicative guidelines for determining eligibility for access to classified information, and it lists the disqualifying conditions (DC) and mitigating conditions (MC) for each guideline. Each clearance decision must be a fair, impartial, and commonsense decision based on the relevant and material facts and circumstances, the whole person concept, and the factors listed in the Directive ¶¶ 6.3.1. through 6.3.6.

In evaluating an applicant's conduct, an administrative judge should consider: (1) the nature, extent, and seriousness of the conduct; (2) the circumstances surrounding the conduct, to include knowledgeable participation; (3) the frequency and recency of the conduct; (4) the applicant's age and maturity at the time of the conduct; (5) the voluntariness of participation; (6) the presence or absence of rehabilitation and other pertinent 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 ¶¶ E2.2.1.1. through E2.2.1.9.

The decision to deny an individual a security clearance is not necessarily a determination as to the loyalty of the applicant. *See* Exec. Or. 10865 § 7. It is merely an indication the applicant has not met the strict guidelines the President and the Secretary of Defense have established for issuing a clearance.

Initially, the government must establish, by substantial evidence, conditions 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. "[T]he Directive presumes there is a nexus or rational connection between proven conduct under any of the Criteria listed therein and an applicant's security suitability." ISCR Case No. 95-0611 at 2 (App. Bd. May 2, 1996) (quoting DISCR Case No. 92-1106 (App. Bd. Oct. 7, 1993)).

Once the government establishes a disqualifying condition by substantial evidence, the burden shifts to the applicant to rebut, explain, extenuate, or mitigate the facts. ISCR Case No. 01-20700 at 3; *see* Directive ¶ E3.1.15. An applicant "has the ultimate burden of demonstrating that it is clearly consistent with the national interest to grant or continue his security clearance." ISCR Case No. 01-20700 at 3 (App. Bd. Dec. 19, 2002). "[S]ecurity clearance determinations

should err, if they must, on the side of denials." *Egan*, 484 U.S. at 531; *see* Directive ¶ E2.2.2.

CONCLUSIONS

Guideline B (Foreign Influence)

A security risk may exist when an applicant's immediate family, or other persons to whom he or she may be bound by affection, influence, or obligation, are not citizens of the U.S. or may be subject to duress. These situations could create the potential for foreign influence that could result in the compromise of classified information. Directive ¶ E2.A2.1.1. A disqualifying condition (DC 1) may arise when "[a]n immediate family member [spouse, father, mother, sons, daughters, brothers, sisters], or a person to whom the individual has close ties of affection or obligation, is a citizen of, or resident or present in, a foreign country." Directive ¶ E2.A2.1.2.1. When the SOR was issued, DC 1 was applicable because Applicant's wife was a Bosnian citizen residing with him in Kosovo, Bosnia. The evidence of his divorce and lack of obligations to or contact with his ex-wife refutes the allegation under this guideline.

Guideline F (Financial Considerations)

Under this guideline, "[a]n individual who is financially overextended is at risk of having to engage in illegal acts to generate funds." Directive ¶ E2.A6.1.1. A person who fails or refuses to pay long-standing debts or is financially irresponsible may also be irresponsible or careless in his or her duty to protect classified information. Two disqualifying conditions (DC) under this guideline could raise a security concern and may be disqualifying in this case. DC 1 applies where an applicant has a history of not meeting his or her financial obligations. Directive ¶ E2.A6.1.2.1. DC 3 applies where an applicant has exhibited inability or unwillingness to satisfy debts. Directive ¶ E2.A6.1.2.3. Applicant's child support arrearage and his inability to pay it until recently establish DC 1 and DC 3.

Since the government produced substantial evidence to establish DC 1 and DC 3, the burden shifted to Applicant to produce evidence to rebut, explain, extenuate, or mitigate the facts. Directive ¶ E3.1.15. Applicant has the burden of proving a mitigating condition, and the burden of disproving it is never shifted to the government. *See* ISCR Case No. 02-31154 at 5 (App. Bd. Sep. 22, 2005).

A security concern based on financial problems can be mitigated by showing the delinquent debts were not recent (MC 1) or an isolated incident (MC 2). Directive ¶ E2.A6.1.3.1., E2.A6.1.3.2. Applicant's child support arrearage persisted for many years and was only recently resolved. I conclude MC 1 and MC 2 are not established.

Security concerns arising from financial problems can be mitigated by showing they are the result of conditions beyond the person's control (MC 3). Directive ¶ E2.A6.1.3.3. Even if Applicant's financial difficulties initially arose due to circumstances outside his control, it is appropriate to consider whether he acted in a reasonable manner when dealing with his financial difficulties. ISCR Case No. 02-02116 at 4 (App. Bd. Sep. 25, 2003).

Applicant's periodic unemployment was a condition beyond his control. He acted reasonably by contacting the division of child support, negotiating a payment plan he could afford, making additional payments when he was able, and paying off the arrearage after he began earning substantially more money. I conclude C 3 is established.

A security concern arising from financial problems also can be mitigated by showing a good-faith effort to resolve debts (MC 6). Directive ¶ E2.A6.1.3.6. The concept of good faith "requires a showing that a person acts in a way that shows reasonableness, prudence, honesty, and adherence to duty or obligation." ISCR Case No. 99-0201, 1999 WL 1442346 at *4 (App. Bd. Oct. 12, 1999). Evidence of past irresponsibility is not mitigated by payment of debts only under pressure of qualifying for a security clearance.

Applicant established and adhered to a repayment plan for his child support arrearage long before it became a security issue. He accelerated the repayment when his income increased. I conclude MC 6 is established.

After considering the disqualifying and mitigating conditions and evaluating all the evidence in the context of the whole person, I conclude Applicant has mitigated the security concern based on financial considerations.

FORMAL FINDINGS

The following are my findings as to each allegation in the SOR:

Paragraph 1. Guideline B (Foreign Influence): FOR APPLICANT

Subparagraph 1.a.: For Applicant

Paragraph 2. Guideline F (Financial): FOR APPLICANT

Subparagraph 2.a.: For 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 Applicant a security clearance. Clearance is granted.

LeRoy F. Foreman
Administrative Judge

1. Applicant's Exhibit (AX) E at 2, 4.
2. Government Exhibit (GX) 1 at 4.
3. Tr. 30-32.
4. Answer to SOR.
5. AX A-F.
6. AX G.
7. Tr. 26-27.