

KEYWORD: Financial

DIGEST: Applicant is 37 years old, married, and works for a defense contractor. He has 24 delinquent debts from 1996 up to 2002. He is paying four of them, but the remaining 20 remain unpaid because Applicant denies he owes them, cannot remember the debt, or claims the debt is too old for the creditor to find in its records. Applicant failed to meet his burden of proof, and has not mitigated the financial considerations security concern. Clearance is denied.

CASENO: 03-23855.h1

DATE: 01/30/2006

DATE: January 30, 2006

In re:

SSN: -----

Applicant for Security Clearance

ISCR Case No. 03-23855

DECISION OF ADMINISTRATIVE JUDGE

PHILIP S. HOWE

APPEARANCES

FOR GOVERNMENT

FOR APPLICANT

Pro Se

SYNOPSIS

Applicant is 37 years old, married, and works for a defense contractor. He has 24 delinquent debts from 1996 up to 2002. He is paying four of them, but the remaining 20 remain unpaid because Applicant denies he owes them, cannot remember the debt, or claims the debt is too old for the creditor to find in its records. Applicant failed to meet his burden of proof, and has not mitigated the financial considerations security concern. Clearance is denied.

STATEMENT OF THE CASE

The Defense Office of Hearings and Appeals (DOHA) declined to grant or continue a security clearance for Applicant. On February 24, 2005, DOHA issued a Statement of Reasons⁽¹⁾ (SOR) detailing the basis for its decision-security concerns raised under Guideline F (Financial Considerations) of the Directive. Applicant answered the SOR in writing on May 13, 2005. Applicant requested his case be decided on the written record in lieu of a hearing.

On July 11, 2005, Department Counsel submitted the Department's written case. A complete copy of the file of relevant material (FORM) was provided to the Applicant. He was given the opportunity to file objections and submit material in refutation, extenuation, or mitigation. Applicant did not file a response to the FORM within the 30 day time allowed that expired on September 10, 2005. The case was assigned to me on October 18, 2005.

FINDINGS OF FACT

Applicant's admissions to the SOR allegations are incorporated here as findings of fact. After a complete and thorough review of the evidence in the record, and full consideration of that evidence, I make the following additional findings of fact:

Applicant is 36 years old, married, and works for a defense contractor. He incurred numerous delinquent debts dating back to 1996 and up to 2002. Applicant served in the military from 1988 to 1996, and claims most of his debts were incurred during that time. However, only four of the 24 delinquent debts date from 1996. (Items 2, 3, 6 and 7)

The only delinquent debt listed in the SOR that Applicant is paying on is the judgment listed at subparagraph 1.l to a collection agency for the hospitals listed in subparagraphs 1.f. and 1.m. The judgment was for \$3,174.89 entered on July 12, 2000. Applicant paid on it for a while, then defaulted, after which his wages were garnished, and the garnishment stopped when he changed employers. Now he is paying the creditor directly, and claims he owes only \$800. (Items 8, 9, 11, and 13)

Applicant has not paid he remaining delinquent debts listed in the SOR, either because he claims he cannot find the creditor, cannot remember the creditor, or has done nothing to pay the creditor. There are 17 debts under \$1,000 that total about \$4,600. The other debts total about \$30,000. Applicant presented no evidence of any sustained or verifiable efforts to pay these delinquent debts between 1996 and the present. The current delinquent debts are summarized as follows:

1.a. Medical center, \$459 from 1996	Denies debt, it remains unpaid
1.b. Physician bill, \$33 from 1996	Denies debt, claims he never heard of doctor
1.c. Emergency room bill, \$120 from 1996	Denies debt because he was on military duty
1.d. Bad check at store, \$56 from 1996	Admits, but claims account unrecoverable
1.e. Credit union, \$14,078 from 1997	Denies because account written off from an auto repossession
1.g. City debt for \$108 from 1998	Denies claiming he knows nothing about it; but the credit record shows he lived in that city after his military service
1.h. Collection for \$6,366 from 1998	Denies claiming he never heard of creditor
1.i. Radiologist bill for \$58 from 1998	Admits, but debt remains unpaid
1.j. Telephone company, \$985, 1999	Admits, but no evidence he paid it
1.k. Medical center, \$835, from 1999	Admits, but claims creditor has no records
1.n. Credit management, \$37 from 2000	Denies any knowledge of debt
1.o. Defense Accounting, \$331 in 2001	Denies, claims paid in 1996
1.p. Defense Accounting, \$248 in 2001	Denies, claims resolved in 1996

1.q. Hospital debt, \$205 from 2001	Denies, claims part of judgment in ¶ 1.1
1.r. Medical clinic, \$1,410 from 2001	Admits, claims was paying \$50/month, or it is old debt and records not found
1.s. Bank credit card, \$602, from 2002	Claims it was written off, so he does not have to pay it, debt still owed
1.t. Bank credit card, \$2,513 from 2002	Claims it was written off, so he does not have to pay it, debt still owed
1.u. Credit union, \$1,852 from 2002	Claims written off, so he does not have to pay it, debt from repossessed auto loan balance, debt still owed
1.v. Cable Television, \$187 from 2002	Denies it because he does not recognize it.
1.w. Finance company, \$1,033 from 2002	Admits it and claims he owes now \$560
1.x. Physician bill, \$130 form 2002	Admits it, but it is unpaid

These delinquent debts appear on one or more of the credit bureau reports dating from July 2002 to June 2005. (Items 3, 6, 8-13)

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 the national interest to do so." Exec. Or. 10865, *Safeguarding Classified Information with Industry*

§ 2 (Feb. 20, 1960). 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.

The adjudication process is based on the whole person concept. All available, reliable information about the person, past and present, is to be taken into account in reaching a decision as to whether a person is an acceptable security risk. Enclosure 2 of the Directive sets forth personnel security guidelines, as well as the disqualifying conditions (DC) and mitigating conditions (MC) under each guideline that must be carefully considered in making the overall common sense determination required.

In evaluating the security worthiness of an applicant, the administrative judge must also assess the adjudicative process factors listed in ¶ 6.3 of the Directive. Those assessments include: (1) the nature, extent, and seriousness of the conduct; (2) the circumstances surrounding the conduct, and the extent of knowledgeable participation; (3) how recent and frequent the behavior was; (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 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 (See Directive, Section E2.2.1. of Enclosure 2). Because each security case presents its own unique facts and circumstances, it should not be assumed that the factors exhaust the realm of human experience or that the factors apply equally in every case. Moreover, although adverse information concerning a single condition may not be sufficient for an unfavorable determination, the individual may be disqualified if available information reflects a recent or recurring pattern of questionable judgment, irresponsibility, or other behavior specified in the Guidelines.

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 that 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 that disqualify, or may disqualify, the applicant from being eligible for access to classified information. The Directive presumes a nexus or rational connection between proven conduct under any of the disqualifying conditions listed in the guidelines and an applicant's security suitability. *See* ISCR Case No. 95-0611 at 2 (App. Bd. ay 2, 1996). All that is required is proof of facts and circumstances that 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. ISCR Case No. 00-0277, 2001 DOHA LEXIS 335 at **6-8 (App. Bd. 2001). Once the Government has established a *prima facie* case by substantial evidence, the burden shifts to the applicant to rebut, explain, extenuate, or mitigate the facts. *See* Directive ¶ E3.1.15. An applicant "has the ultimate burden of demonstrating that is clearly consistent with the national interest to grant or continue his security clearance. ISCR Case No. 01-20700 at 3 (App. Bd. 2002). "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* Exec. Or. 12968 § 3.1(b).

Based upon a consideration of the evidence as a whole, I find the following adjudicative guidelines most pertinent to an evaluation of the facts of this case:

Guideline F:Financial Considerations: *The Concern*: An individual who is financially overextended is at risk of having to engage in illegal acts to generate funds. E2.A6.1.1

CONCLUSIONS

The Government established by substantial evidence and Applicant's admissions each of the allegations in the SOR. Disqualifying Conditions (DC) 1 (A history of not meeting financial obligations E2.A6.1.2.1) and DC 3 (Inability or unwillingness to satisfy debts E2.A6.1.2.3) apply. Applicant has a history of incurring delinquent debts, and then expending little or no effort to pay them.

There are no Mitigating Conditions (MC) that apply to these facts. Applicant has done nothing to pay the debts, in full or by installment payments, except for the judgment (subparagraphs 1.f, 1.l, and 1.m.) and the finance company debt in subparagraph 1.w. The information he provided in response to the SOR was sparse and unpersuasive. Since he completed his security clearance application in 2002 and was interviewed in June 2003 by the government investigator, he has not made any substantial efforts to research and pay these delinquent debts. He mistakenly thinks that because his truck was repossessed by the credit union he did not have to pay the loan balance. Then he compounds his error by thinking because the credit union writes off the debt he is absolved of the legal duty to pay it. Writing off a debt is an accounting procedure for a creditor, not a debt forgiveness. Throughout the FORM, Applicant displayed a lackadaisical effort to identify and pay these debts. He did little or nothing, and by doing so, has not met his burden of proof, nor mitigated the government's security concerns. Therefore, I conclude this financial considerations security concern against Applicant.

FORMAL FINDINGS

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

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: For 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: For Applicant
Subparagraph 1.m: For Applicant
Subparagraph 1.n: Against Applicant
Subparagraph 1.o: Against Applicant
Subparagraph 1.p: Against Applicant
Subparagraph 1.q: Against Applicant
Subparagraph 1.r: Against Applicant
Subparagraph 1.s: Against Applicant
Subparagraph 1.t: Against Applicant
Subparagraph 1.u: Against Applicant
Subparagraph 1.v: Against Applicant
Subparagraph 1.w: For Applicant
Subparagraph 1.x: 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 continue a security clearance for Applicant. Clearance is denied.

Philip S. Howe

Administrative Judge

1. Pursuant to Exec. Or. 10865, *Safeguarding Classified Information within Industry* (Feb. 20, 1960), as amended and modified, and Department of Defense Directive 5220.6, *Defense Industrial Personnel Security Clearance Review Program* (Jan. 2, 1992), as amended and modified (Directive).