

KEYWORD: Financial

DIGEST: Applicant mitigated security concerns regarding delinquent debts by settling several large debts and discharging the remainder in Chapter 7 bankruptcy. Also mitigated were concerns for failure to fully report delinquent debts and liens since he reported the largest debt and one lien. Many of the financial problems arose as a result of health concerns of Applicant when he was diagnosed as HIV-AIDS and he withdrew from family and work for three years. His situation changed in 2000. He is now responsible, fully employed, and financially secure. Clearance is granted.

CASENO: 03-24537.h1

DATE: 02/08/2006

DATE: February 8, 2006

In Re:

SSN: -----

Applicant for Security Clearance

ISCR Case No. 03-24537

DECISION OF ADMINISTRATIVE JUDGE

CHARLES D. ABLARD

APPEARANCES

FOR GOVERNMENT

Jason Perry, Esq., Department Counsel

Eric H. Borgstrom, Esq. , Department Counsel

FOR APPLICANT

Pro Se

SYNOPSIS

Applicant mitigated security concerns regarding delinquent debts by settling several large debts and discharging the remainder in Chapter 7 bankruptcy. Also mitigated were concerns for failure to fully report delinquent debts and liens since he reported the largest debt and one lien. Many of the financial problems arose as a result of health concerns of Applicant when he was diagnosed as HIV-AIDS and he withdrew from family and work for three years. His situation changed in 2000. He is now responsible, fully employed, and financially secure. Clearance is granted.

STATEMENT OF CASE

On December 28, 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.

On January 21, 2005, Applicant responded to the SOR allegations, and requested a hearing. The matter was assigned to me on March 21, 2005. A notice of hearing was issued on May 13, 2005, for a hearing on June 22, 2005, and held that day. The government offered nine exhibits in evidence and the Applicant offered 34. All were accepted in evidence. The transcript was received on July 5, 2005. The hearing record was left open for 60 days for information concerning Applicant's bankruptcy proceeding. The period was extended several times at the request of Applicant and without objection from the government. The last documents were received on January 9, 2006.

FINDINGS OF FACT

Applicant admitted all SOR allegations relating to delinquent debts except those relating to child support but offered evidence in mitigation at the hearing and documentation in the post-hearing phase. He denied all allegations relating to falsification of answers on his SF 86. After a complete review of the record, I make the following additional findings of fact:

Applicant is a 42-year-old employee of a defense contractor as a senior network engineer since 2000 working in a Defense Department office. He served on active duty with Navy in the nuclear program for five years between 1982 and 1987. He incurred a large number of debts during the period 1987 to 2000 that included a number of back tax claims resulting in liens. In 1997 he was diagnosed with HIV-AIDS as a result of heterosexual contact with a girlfriend (App. Exhs. 22-25). His reaction to this was to resign his job and move to Texas where he lived for three years and did not maintain contact with friends or family. He worked part-time in the post office in a low paying job making only \$5,000.00 a year or receiving unemployment compensation. He lost contact with creditors and had no known mailing address. In 2000 he returned to his home when his school age daughter decided she wanted to live with him rather than her mother.

He has taken significant steps since 2000 and most aggressively since May, 2004, after being motivated by an inspirational minister, to resolve a large number of the debts including his back federal and state tax debts (App. Exh. 34). The federal tax debts (SOR ¶ 1.a., b.,c., and d.) totaling \$18,000.00 were settled by the IRS on May 19, 2005 (App. Exh. 3), and the state tax deficiency of \$12,000.00 is being paid at an agreed amount of \$400.00 per month in payroll deductions and is now reduced to \$8,000.00 as shown in a statement of April 14, 2005 (App. Exh. 4) (SOR ¶ 1.a.-1.e.).

Applicant owed \$7,000.00 in delinquent child support payments over a period of years (SOR ¶ 1.u. w., and x.). This was resolved in 2003 through a payroll deduction of \$350.00 per month which he continues to pay (App. Exh. 6). Since his daughter now lives with him, he now is receiving child support payments of \$350.00 per month from his former wife (App. Exh. 7).

Applicant filed for Chapter 7 bankruptcy protection on May 13, 2005, for 21 debts of varying size ranging from \$140.00 to nearly \$8,000.00 totaling over \$30,000.00 (SOR ¶ 1.f.-1.t., 1.y., 1.z, 1.aa, 1.bb. and 1.cc.). Some of these debts were on his credit reports but to creditors in locations about which he was unaware. He was the victim of an identity theft that has been reported to relevant authorities and some may reported debts may have been as a result of that. After appropriate notice and hearings, he was discharged from bankruptcy by order of the court on December 20, 2005 (App.

Applicant has reduced his living expenses recently by \$550.00 per month by living in a more modest apartment. He owns a 2004 automobile on which he is making regular payments. He has turned his life around and is receiving medical attention. He has four credit cards which are current in payments. His current credit report is favorable.

Applicant failed to fully report his delinquent debts and tax liens at Questions 38, 39, and 36 of his SF 86. He did report his second largest single debt on the first question and his state tax lien but not his federal liens on the last.

Applicant is well regarded by his employer (App. Exhs. 28-32), loves his work, and believes he is making a contribution to the defense community. His salary is now almost \$100,000.00 per annum. His daughter is living with him while attending high school. He is a responsible proud parent. His medical condition is under control, and he is able to work effectively in his employment (App. Exhs. 22-26).

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 it is clearly consistent with the national interest to grant or continue a security 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 adjudicative factors, I conclude the following with respect to all allegations set forth in the SOR:

Applicant's delinquent debts prompted the allegation of security concerns 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 conditions that resulted in the behavior were largely beyond the person's control (E2.A6.1.3.3.) and the person has initiated a good faith effort to repay overdue creditors or otherwise resolve debts. (E2.A6.1.3.6.)

Applicant's financial situation was unsatisfactory before his HIV diagnosis in 1997. However, it deteriorated significantly thereafter until he returned to care for his daughter in 2000. While his reaction to the diagnosis was extreme, it was understandable. Since his return in 2000, he has worked to resolve the tax issues and has done so successfully. His action to file for bankruptcy was a reasonable step in view of the lack of information he had about the creditors, and difficulty in contacting them because of the age of the debts. Mitigating conditions are applicable.

Applicant's failure to report the debts and liens for taxes on his November 5, 2001, SF 86 at Questions 38, 39, and 36 raises security concerns under Guideline E that might indicate questionable judgment, unreliability, and unwillingness to comply with rules and regulations and could indicate that the person may not properly safeguard classified information (E2.A5.1.1.). Mitigating conditions do not specifically apply to Applicant's case but he did report in his response to Question 38 relating to 180-day delinquencies his largest debt of \$3,000.00. He knew that he probably had others but this was the only one that he regarded as significant. He did not report any 90-day delinquent debts since he assumed that such debts would have been at least 180 days old since he had only returned to his home in the past year from his three years of virtual unemployment. On Question 36 relating to tax liens, he listed the \$5,000.00 Maryland tax lien but not the federal liens. Thus, he did list significant debts and acknowledged that liens had been issued against him for taxes. In view of his financial situation at that time, he revealed sufficient information to indicate that he was making

an honest effort to reveal his financial problems.

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.

The "whole person" concept recognizes we should view a person by the totality of their acts and omissions. Each case must be judged on its own merits taking into consideration all relevant circumstances, and applying sound judgment, mature thinking, and careful analysis. Applicant has a good job, is functioning as a good citizen and responsible parent, and has faced up to his financial and medical problems over the past two years. While it might have been done earlier, his actions beginning six months before the SOR was issued have been heroic in working to resolve the issues in a systematic and thorough manner. He has successfully undertaken to pay or resolve the delinquent debts, and revealed enough of them on his SF 86 for me to conclude that he was trying to be candid about the state of his finances at the time of filing.

After considering all the evidence in its totality, and as an integrated whole to focus on the whole person of Applicant, I conclude a security clearance should be granted.

FORMAL FINDINGS

Formal findings as required by the Directive (Par. E3.1.25) are as follows:

Paragraph 1. Guideline F: FOR APPLICANT

Subparagraph 1.a.: For Applicant

Subparagraph 1.b.: For Applicant

Subparagraph 1.c.: For Applicant

Subparagraph 1.d.: For Applicant

Subparagraph 1.e.: For Applicant
Subparagraph 1.f.: For Applicant
Subparagraph 1.g.: For Applicant
Subparagraph 1.h.: For Applicant
Subparagraph 1.i.: For Applicant
Subparagraph 1.j.: For Applicant
Subparagraph 1.k.: For Applicant
Subparagraph 1.l.: For Applicant
Subparagraph 1.m.: For Applicant
Subparagraph 1.n.: For Applicant
Subparagraph 1.o.: For Applicant
Subparagraph 1.p.: For Applicant
Subparagraph 1.q.: For Applicant
Subparagraph 1.r.: For Applicant
Subparagraph 1.s.: For Applicant

Subparagraph 1.t.: For Applicant
Subparagraph 1.u.: For Applicant
Subparagraph 1.v.: For Applicant
Subparagraph 1.w.: For Applicant
Subparagraph 1.x.: For Applicant
Subparagraph 1.y.: For Applicant
Subparagraph 1.z.: For Applicant
Subparagraph 1.aa.: For Applicant
Subparagraph 1.bb.: For Applicant
Subparagraph 1.cc.: For Applicant

Paragraph 2. Guideline E: FOR APPLICANT

Subparagraph 2.a.: For Applicant

Subparagraph 2.b.: For Applicant

Subparagraph 2.c.: For Applicant

DECISION

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

Charles D. Ablard

Administrative Judge