

KEYWORD: Financial

DIGEST: Applicant had five dependents and was "trying to live the American dream by buying whatever [he] wanted" using credit cards, but was only earning \$10 an hour. Applicant failed to mitigate the financial considerations security concerns raised by his delinquent debts. Clearance is denied.

CASENO: 03-02519.h1

DATE: 07/27/2004

DATE: July 27, 2004

In re:

SSN: -----

Applicant for Security Clearance

ISCR Case No. 03-02519

DECISION OF ADMINISTRATIVE JUDGE

JAMES A. YOUNG

APPEARANCES

FOR GOVERNMENT

Jennifer I. Campbell, Esq., Department Counsel

FOR APPLICANT

SYNOPSIS

Applicant had five dependents and was "trying to live the American dream by buying whatever [he] wanted" using credit cards, but was only earning \$10 an hour. Applicant failed to mitigate the financial considerations security concerns raised by his delinquent debts. 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 25 November 2003, 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 29 December 2003 and elected to have a hearing before an administrative judge. The case was assigned to me on 8 arch 2004. On 24 May 2004, I convened a hearing to consider whether it is clearly consistent with the national interest to grant or continue a security clearance for Applicant. DOHA received the hearing transcript (Tr.) on 4 June 2004.

FINDINGS OF FACT

Applicant is a 37-year-old computer hardware and software technician for a defense contractor working at a military installation. He graduated from college in 1985. In 1995, he married a woman who was bearing his child. Tr. 28. She brought two other children into the marriage. Applicant was only earning \$9 an hour at the time, later raised to \$10 an hour, but was still "trying to live the American dream buying whatever [he] wanted; often using credit cards." Ex. 2 at 1; Tr. 28. In May 1998, a son was born to the couple. Applicant now had six mouths to feed. At the time of the hearing, Applicant was divorcing his wife.

In 1999, Applicant purchased a house. The mortgage payments, not including property taxes, exceeded his ability to pay

by about \$100 a month. A check for \$920 for property taxes bounced and, because he "needed the money for other things," Applicant did not contact the county about the taxes. He eventually received two additional bills for taxes in 2000 and 2001, making the total owed \$3,236. He never paid the tax debt. Ex. 2 at 2. In October 2002, he set up a budget.

The chart below summarizes the current status of the debts alleged in the SOR.

¶	Nature and Amount Alleged	Status	Record
1.a	Bank debt \$125	Admits. Not paid	Ans.
1.b	Collection for Credit card debt \$3,749	Unpaid; now > \$4,238	Ex. 6 at 3
1.c	Delinq acct for doctor \$300	Unpaid; \$280	Ex. 6 at 4
1.d	Foreclosure debt \$6,439	Unpaid	Ex. 6 at 4

Applicant asserts his monthly income now exceeds his expenses by \$210 a month. Ex. E. But Applicant has other outstanding debts besides those alleged in the SOR, including a \$3,600 educational loan.

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 restricted eligibility for access to classified information to United States citizens "whose personal and professional history affirmatively indicates loyalty to the United States, strength of character, trustworthiness, honesty, reliability, discretion, and sound judgment, as well as freedom from conflicting allegiances and potential for coercion, and willingness and ability to abide by regulations governing the use, handling, and protection of classified information." Exec. Or. 12968, *Access to Classified Information* § 3.1(b) (Aug. 4, 1995). Eligibility for a security clearance is predicated upon the applicant meeting the security guidelines contained in the Directive.

Enclosure 2 of the Directive sets forth personnel security guidelines, as well as the disqualifying conditions (DC) and mitigating conditions (MC) under each guideline. 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. 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. *See Egan*, 484 U.S. at 531. 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. May 2, 1996).

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 (App. Bd. Dec. 19, 2002); *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.

CONCLUSIONS

In the SOR, DOHA alleged Applicant had delinquent debts the creditors had turned over to collection agencies (¶¶ 1.a and 1.b), a delinquent debt to a physician (¶ 1.c), a debt resulting from the foreclosure on his house (¶ 1.d), and he is not in a financial position to make payments on his delinquent debts (¶ 1.e). An applicant who is financially overextended is at risk of having to engage in illegal acts to generate funds. Directive ¶ E2.A6.1.1.

The Government established by substantial evidence and Applicant's admissions each of the allegations in the SOR. Applicant has a history of not meeting his financial obligations (DC E2.A6.1.2.1.) and is unable or unwilling to satisfy his debts (DC E2.A6.1.2.3.). The cause of his debts, by his own admission, is living beyond his means. Applicant was unable to prove that he had paid any of the delinquent debts alleged in the SOR, that he had formal plans to pay these debts, that he is in a financial condition to pay these debts, or that he is actively seeking a resolution of these debts. None of the mitigating conditions apply. I find 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

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.

James A. Young

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).