

KEYWORD: Financial

DIGEST: Applicant is a 54-year-old aircraft armaments technician working for a defense contractor. He has a history of financial problems attributed in part to excessive gambling. He stopped gambling four years ago. He failed to file his 1998-2001 federal income tax returns until late 2003. He owes federal taxes of almost \$3,800.00, plus interest and penalties, for 1998-2001. He paid his delinquent 1997 taxes in September 2003, and settled his account with one commercial lender. He has not satisfied almost \$30,000.00 in debts for credit card accounts, installment loans, and federal taxes. Clearance is denied.

CASENO: 03-07418.h1

DATE: 08/04/2004

DATE: August 4, 2004

In Re:

SSN: -----

Applicant for Security Clearance

ISCR Case No. 03-07418

DECISION OF ADMINISTRATIVE JUDGE

LEROY F. FOREMAN

APPEARANCES

FOR GOVERNMENT

Daniel F. Crowley, Esq., Department Counsel

FOR APPLICANT

Pro Se

SYNOPSIS

Applicant is a 54-year-old aircraft armaments technician working for a defense contractor. He has a history of financial problems attributed in part to excessive gambling. He stopped gambling four years ago. He failed to file his 1998-2001 federal income tax returns until late 2003. He owes federal taxes of almost \$3,800.00, plus interest and penalties, for 1998-2001. He paid his delinquent 1997 taxes in September 2003, and settled his account with one commercial lender. He has not satisfied almost \$30,000.00 in debts for credit card accounts, installment loans, and federal taxes. Clearance is denied.

STATEMENT OF THE CASE

On December 8, 2003, the Defense Office of Hearings and Appeals (DOHA) issued a Statement of Reasons (SOR) [\(1\)](#) detailing the basis for its decision to not grant a security clearance to Applicant. This action was taken under Executive Order 10865, *Safeguarding Classified Information within Industry* (Feb. 20, 1990), 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). The SOR alleges security concerns under Guideline F (Financial Considerations) of the Directive. It alleges that Applicant has past due debts on three installment loans (SOR, paras. 1.a, 1.d, and 1.e) and three credit card accounts (SOR paras. 1.b, 1.c, and 1.f). The SOR also alleges that a civil judgment against Applicant in favor of a creditor remains unsatisfied. (SOR, para. 1.g.) The SOR alleges that Applicant owes approximately \$851.33 in federal taxes for 1997 (SOR, para 1.h) and \$3,786.00 in federal taxes for tax years 1998 through 2001 (SOR para. 1.i). Finally, the SOR alleges that Applicant had not filed his 2001 federal tax return as of October 13, 2003 (SOR, para. 1.j)

Applicant answered the SOR in writing on February 9, 2004. He admitted the first six allegations (SOR, paras 1.a through 1.f) and submitted explanations. He explained that he had entered into a repayment agreement for one of the accounts in the SOR, paragraphs 1.a and 1.b, with only one payment remaining on the account. He disputed the allegations regarding the unsatisfied judgment (SOR, para 1.g) and the unpaid federal taxes for 1977 (SOR, para 1.h). He elected to have the case decided on the written record in lieu of a hearing.

Department Counsel (DC) submitted the Government's written case on May 27, 2004. Regarding the civil judgment (SOR, para. 1.g), DC agreed that Applicant's latest credit report (FORM, Item 9, p. 2) contains an entry reciting, "Settlement accepted on this account." DC agreed that the delinquent 1997 federal taxes (SOR, para. 1.h) were paid in September 2003. DC agreed that on or about October 9, 2003, applicant filed his overdue tax returns for 1998-2001 (SOR, para. 1.i). DC points out, however, that those tax returns reflect unpaid and overdue taxes of \$3,786.00.

A complete copy of the file of relevant material (FORM) was provided to Applicant, and he was afforded an opportunity to file objections and submit material to refute, extenuate, or mitigate the disqualifying conditions. Applicant received the FORM on June 16, 2004, and he responded on July 15, 2004. The case was assigned to me on July 27, 2004.

FINDINGS OF FACT

Applicant is a 54-year-old employee of a defense contractor, working as an aircraft armaments technician. (FORM, Item 4, p. 2) He is separated from his wife, and he voluntarily pays child support. (FORM, Item 7, p. 4, Interrogatory 7) He retired from the Air Force as a technical sergeant (E-6) after more than 20 years of service, and he receives retired pay. (FORM, Item 7, p. 11)

While working a second job as a bartender, Applicant began playing slot machines at his place of employment. His gambling losses contributed to his financial difficulties. He stopped playing the slot machines after he quit this second job in June 2000. (FORM, Item 4, p. 2; Item 7, p. 2)

Applicant is indebted to Creditor A in the amount of \$4,636.00 on an installment loan and \$2,726.00 on a credit card account. He is indebted to Creditor B in the amount of \$1,276.00 on a credit card account. He is indebted to Creditor C in the amounts of \$6,567.00 and \$4,095.00 on two installment loans. He is indebted to Creditor D in the amount of \$6,752.00 on a credit card account. (FORM, Item 5, pp. 5-7; Item 9, pp. 1-2)

Creditor E obtained a civil judgment against Applicant for \$1,392.00. (FORM, Item 5, p. 9) Applicant settled the account for an unknown amount. (FORM, Item 9, p. 2)

Applicant owed approximately \$851.33 in federal taxes for 1997. He paid this debt on or about September 23, 2003.

Applicant did not file income tax returns for tax years 1998 - 2001 until on or after October 9, 2003. Applicant's belated tax returns for these years show that he owes approximately \$3,786.00 in federal taxes, plus penalties and interest. (FORM, Item 7, p. 4, Interrogatory 6 and attached tax returns)

Applicant's net monthly income is approximately \$3,114.00. His monthly expenses, including \$1,700.00 in child support, are approximately \$2,989.00, leaving about \$125.00 per month for repayment of his debts. (FORM, Item 7, p. 6)

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.

The Directive sets out the adjudicative guidelines for making decisions on security clearances. Enclosure 2 of 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 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, 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. "[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 (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 (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

Under Guideline F (Financial Considerations), "[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. Applicant admits he owes the debts alleged in SOR, paras. 1.a - 1.f, and 1.i. In his latest financial statement, Applicant reported a net monthly income of \$3,114.00 and monthly expenses of \$2,989.00, including \$1,700 in child support, but not including payments on any of the debts listed in the SOR. (FORM, Item 7, p. 6) Based on these figures, Applicant has approximately \$125.00 per month to repay his debts to creditors and his federal taxes. I conclude that Applicant is financially overextended within the meaning of Guideline F.

Four disqualifying conditions (DC) under Guideline F 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 2 applies where an applicant has engaged in income tax evasion. Directive ¶ E2.A6.1.2.2. DC 3 applies where an applicant has exhibited inability or unwillingness to satisfy debts. Directive ¶ E2.A6.1.2.3. DC 5 applies where an applicant's financial problems are linked to gambling. Directive ¶ E2.A6.1.2.5.

DC 1: History of Not Meeting Financial Obligations. According to Applicant's statement to a Defense Security Service (DSS) investigator, his financial problems began in October 1996. He purchased a house and a new vehicle. His girlfriend "liked purchasing items with or without [his] permission." He began playing video slot machines. He fell

behind on his credit card payments and late fees until he was deeply in debt. (FORM, Item 6, page 1) As of October 18, 2002, six accounts with three creditors were past due and had been written off as bad debts. (FORM, Item 5, pp. 5-7) These debts remain unsatisfied. (FORM, Item 9, pp. 1-2) In addition, Applicant admits that he owes federal taxes for the tax years 1998 through 2001. I conclude that DC 1 has been established.

DC 2: Income Tax Evasion. Applicant did not pay the taxes due for 1997 or file his tax returns for 1998-2001 until on or about October 9, 2003, well after DSS investigators had begun examining his financial situation to determine whether his security clearance should be continued. Applicant is a mature adult who has been employed and subject to federal income taxes for most of his adult life. He has offered no explanation or excuse for his failure to file timely tax returns. The only explanation suggested by the evidence is that Applicant avoided filing his returns because he could not afford to pay his taxes. I conclude that DC 2 has been established.

DC 3: Inability or Unwillingness to Satisfy Debts. Applicant has made some efforts to satisfy his debts. He settled his account with Creditor D, listed in SOR, para. 1.g. He belatedly paid the federal taxes due for 1997. He satisfied one other government debt not listed in the SOR. Based on these actions as well as his most recent financial statement, I conclude that Applicant has not exhibited an unwillingness to pay his debts, but he has shown that he is unable to do so. Thus, I conclude that DC 3 has been established.

DC 5: Gambling. Applicant admits that his financial problems were caused in part by excessive gambling. (FORM, Item 4, p. 2; Item 7, p. 2) Based on Applicant's admission, I conclude that DC 5 has been established.

Two mitigating conditions (MC) are relevant in this case. MC 3 applies when the conditions that resulted in the behavior were largely beyond the applicant's control. Directive ¶ E2.A6.1.3.3. MC 6 applies when an applicant has initiated a good-faith effort to pay his debts or otherwise resolve them. Directive ¶ E2.A6.1.3.6. Based on the evidence, I conclude that none of the other mitigating conditions set out in the Directive are applicable to this case.

MC 3: Conditions Beyond Applicant's Control. In his statement to a DSS investigator, Applicant states that the credit card account with Creditor B was his ex-girlfriend's account, and she used him as a co-signor. (FORM, Item 6, p. 2) Applicant's statement is not supported by his credit report, which reflects that the account was Applicant's individual account. (FORM, Item 5, page 5) Applicant has submitted no evidence showing that his ex-girlfriend used his credit card without permission. I conclude that Applicant has not established MC 3 with respect to the indebtedness alleged in SOR, para. 1.c.

MC 6: Good-Faith Efforts. Although Applicant made good-faith efforts to settle certain debts and was successful with respect to those debts, there is no evidence that he made efforts to settle the remaining debts. Thus, I conclude that Applicant has not established MC 6 with respect to the debts alleged in SOR, paras. 1.a-1.f, or the unpaid federal income taxes alleged in SOR, para. 1.i.

FORMAL FINDINGS

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

Paragraph 1. Guideline F: AGAINST APPLICANT

Subparagraphs 1.a-1.f: Against Applicant

Subparagraphs 1.g and 1.h: For Applicant

Subparagraph 1.i: Against Applicant

Subparagraph 1.j: For 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.

LeRoy F. Foreman

Administrative Judge

1. The SOR incorrectly transposed Applicant's first and middle names.