

KEYWORD: Financial

DIGEST: Security clearance concerns arose after Applicant filed several bankruptcies and was delinquent on two debts. Applicant experienced a period of unemployment as well as marital problems, which severely impacted his ability to remain current on his debts. He has since reconciled with his wife, stabilized his income, and has a solid two-year history of remaining current on his chapter 13 payment plan. Applicant has resolved past debts and demonstrated a track record committed to overcoming past financial problems. He has successfully mitigated security concerns pertaining to his financial situation. Clearance is granted.

CASENO: 03-12172.h1

DATE: 04/29/2005

DATE: April 29, 2005

In Re:

SSN: -----

Applicant for Security Clearance

ISCR Case No. 03-12172

DECISION OF ADMINISTRATIVE JUDGE

ROBERT J. TUIDER

APPEARANCES

FOR GOVERNMENT

Erin C. Hogan, Esq., Deputy Chief Department Counsel

FOR APPLICANT

H. Jeffrey Ziegler, Esq.

SYNOPSIS

Security clearance concerns arose after Applicant filed several bankruptcies and was delinquent on two debts. Applicant experienced a period of unemployment as well as marital problems, which severely impacted his ability to remain current on his debts. He has since reconciled with his wife, stabilized his income, and has a solid two-year history of remaining current on his chapter 13 payment plan. Applicant has resolved past debts and demonstrated a track record committed to overcoming past financial problems. He has successfully mitigated security concerns pertaining to his financial situation. Clearance is granted.

STATEMENT OF THE CASE

The Defense Office of Hearings and Appeals (DOHA) declined to grant or continue a security clearance for Applicant. On February 2, 2004, DOHA issued a Statement of Reasons (SOR) ⁽¹⁾ detailing the basis for its decision-security concerns raised under Guideline F (Financial Considerations) of the Directive. Applicant answered the SOR in writing on March 2, 2004, and elected to have a hearing before an administrative judge.

The case was assigned to a previous administrative judge on April 7, 2004, and on May 21, 2004, he issued a notice of hearing scheduling a hearing for June 17, 2004. On June 9, 2004, Counsel for Applicant entered a notice of appearance and requested a continuance due to a schedule conflict. On June 22, 2004, the previous administrative judge issued an amended notice of hearing rescheduling the case for July 14, 2004. On July 7, 2004, the case was reassigned to me due to the previous administrative judge going on emergency leave. The hearing was conducted as scheduled to consider whether it is clearly consistent with the national interest to grant or continue a security clearance for Applicant.

The government offered six documents, which were admitted without objection as Government Exhibits (GE) 1 through 6. The Applicant offered six documents, which were admitted without objection as Applicant Exhibits (AE) A through F. I left the record open after the hearing to afford Applicant the opportunity to submit additional documents. The Applicant submitted two additional documents, which were admitted without objection as AE G and AE H. DOHA

received the transcript on July 27, 2004.

FINDINGS OF FACT

Applicant's admissions to the SOR allegations are incorporated herein. In addition, after a thorough review of the pleadings, exhibits, and testimony, I make the following findings of fact:

Applicant is a 35-year-old married man, who has been married to his wife since February 2000. He was previously married to his current wife from October 1990 until they divorced in December 1999. However, he has since reconciled with his ex-wife and they have remarried. Applicant has three minor children, ages, twelve, ten, and six.

Since May 2001, Applicant has been employed by a defense contractor as a security officer. Applicant served in the Marine Corps from August 1987 to August 1991 and was honorably discharged as a Corporal, pay grade E-4. He held a security clearance while in the Marine Corps.

In August 2000, Applicant was granted a security clearance at the secret level while working for a previous employer. Applicant seeks an enhanced position with his present company, which requires a higher security clearance. With a higher security clearance, Applicant anticipates his salary will increase by \$15,000.00 to \$20,000.00 per year. In reviewing Applicant's security clearance application, financial considerations concerns arose, which are discussed below.

On June 24, 1997, a department store obtained a judgment against Applicant in the amount of \$820.00, SOR ¶ 1.e. This debt was discharged under chapter 7 on March 31, 1999. See below.

On December 22, 1998, Applicant filed for chapter 7 bankruptcy protection. Assets listed were \$147,736.00 and liabilities listed were \$1,152,320.00. On March 31, 1999, his debts were discharged, SOR ¶ 1.d. AE H.

Applicant testified he filed for chapter 7 bankruptcy relief based on faulty legal advice. The large liability amount listed in his bankruptcy petition was primarily due to a \$1,000,000.00 judgment entered against him following an automobile

accident his then-girlfriend was involved in while driving his car. Tr. 18-20.

On July 21, 1999, Applicant filed for chapter 13 bankruptcy protection. Assets listed were \$138,736.00 and liabilities listed were \$130,000.00. The bankruptcy plan was confirmed on December 3, 1999, and Applicant was ordered to pay \$240.00 per month until further notice. On May 10, 2000, the bankruptcy was dismissed due to lack of payments, SOR ¶ 1.c. GE 5.

On September 21, 2000, Applicant filed for chapter 13 bankruptcy protection. Assets listed were \$132,490.00 and liabilities listed were \$138,594.00. The bankruptcy plan was confirmed on February 12, 2001, and Applicant was ordered to pay \$550.00 per month for 60 months. On January 30, 2002, the bankruptcy was dismissed due to lack of payments, SOR ¶ 1.b. GE 4.

In February 2002, Applicant filed for chapter 13 bankruptcy protection, SOR ¶ 1.a. He was ordered to pay \$907.00 per month. As of October 2, 2002, Applicant's plan obligated him to pay a minimum amount on his obligations established at \$54,420.00 and had already paid \$5,890.00, which reduced his balance owed to \$48,530.00. AE A. As of March 31, 2004, Applicant's monthly payments had increased to \$1,178.00. As of that date, his base amount had been adjusted to \$61,964.84, and had paid \$22,353.15, with a balance of \$39,611.69. Applicant has a two-year record of being current on his payments to the trustee. AE B.

Applicant contends the reason he initially sought bankruptcy protection was to prevent foreclosure on his house and to eliminate a million dollar judgment against him, and on the advice of counsel filed under chapter 7. Tr. 51. Subsequently realizing that filing under chapter 7 would not afford him the protection he needed to protect his house, he refiled under chapter 13. At the time he filed his first bankruptcy under chapter 7 and the next two filings under chapter 13, he was experiencing marital problems, went through a separation, and was divorced in 1999. Furthermore, he was unemployed from November 1999 to February 2000. Tr. 35-37. Before separating, his spouse had been contributing to their joint income. While separated, Applicant was required to pay child support. Despite his efforts to mend his financial house, he was not generating sufficient income to remain current on his payments to the trustee under his first two chapter 13 plans.

In approximately 2000, Applicant and his wife reconciled after having been separated since 1996/97 and divorce in 1999. Tr. 57. He then filed his third chapter 13 bankruptcy in February 2002, and submitted a record of payments reflecting that he has not missed a payment in two years. Additionally, between Applicant's full and part-time jobs and his wife's job, they are jointly earning approximately \$120,000.00 per year.

In March 2003, Applicant had a debt charged off owed to a phone company in the amount of \$1,572.00, SOR ¶ 1.f. This account was paid-in-full on May 26, 2004. AE F.

Applicant submitted a budget showing that he is living within his means and after paying his monthly bills has a surplus of \$635.00 remaining. AE G.

Applicant is a trusted and valued employee. He is viewed by his superiors and peers as being responsible, trustworthy and possessing integrity. AE B through E.

POLICIES

The Adjudicative Guidelines in the Directive are not a set of inflexible rules of procedure. Instead they are to be applied by administrative judges on a case-by-case basis with an eye toward making determinations that are clearly consistent with the interests of national security. In making overall common sense determinations, administrative judges must consider, assess, and analyze the evidence of record, both favorable and unfavorable, not only with respect to the relevant Adjudicative Guidelines, but in the context of factors set forth in section E 2.2.1. of the Directive. The government has the burden of proving any controverted fact(s) alleged in the SOR, and the facts must have a nexus to an Applicant's lack of security worthiness.

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. Although the presence or absence of a particular condition for or against clearance is not determinative, the specific adjudicative guidelines should be followed whenever a case can be measured against this policy guidance.

BURDEN OF PROOF

As noted by the United States Supreme Court in *Department of Navy v. Egan*, 484 U.S. 518, 528 (1988), "no one has a 'right' to a security clearance." 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." Executive Order 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.

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. All that is required is proof of facts and circumstances which 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. Where the facts proven by the Government raise doubts about an applicant's judgment, reliability or trustworthiness, then the applicant has the ultimate burden of establishing his security suitability with substantial evidence in explanation, mitigation, extenuation, or refutation, sufficient to demonstrate that despite the existence of guideline conduct, it is clearly consistent with the national interest to grant or continue his security clearance.

Security clearances are granted only when "it is clearly consistent with the national interest to do so." *See* Executive Orders 10865 § 2 and 12968 § 3.1(b). "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 "The clearly consistent standard indicates that security clearance determinations should err, if they must, on the side of denials." *See Egan*, 484 U.S. at 531. Doubts are to be resolved against the applicant.

CONCLUSIONS

Guideline F - Financial Considerations

In the SOR, DOHA alleged Applicant had filed one chapter 7 bankruptcy and three chapter 13 bankruptcies in a four-year period and had two delinquent debts (¶¶ 1.a. through 1.f). *The Concern*: An individual 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 its case under Guideline F by Applicant's admissions and evidence submitted. However, it was further established that one of Applicant's delinquent debts (¶ 1.e.) had been discharged by chapter 7 bankruptcy (¶ 1.a.) thus reducing the number of delinquent debts owed by Applicant from two to one. His inability to satisfy his outstanding financial obligations gives rise to Financial Considerations Disqualifying Conditions (FC DC) E2.A6.1.2.1. (*A history of not meeting financial obligations*); and FC DC E2.A6.1.2.3. (*inability or unwillingness to satisfy debts*).

As first blush, Applicant's having a history of filing four bankruptcies in a four-year period shows a pattern of financial

irresponsibility. However, the first bankruptcy Applicant filed under chapter 7 in December 1998 did not offer Applicant the primary relief he sought - protection of his family home. From his testimony, he believed he would not prevent foreclosure which prompted him to file under chapter 13 in 1999 and again in 2000. Both of those bankruptcy petitions were dismissed for failure to make payments. Unfortunately, during this time, he was unable to cure his fundamental problem, that being a shortage of disposable income due in part to marital problems, a separation, and unemployment. However, Applicant was able to reconcile with his wife, and secure full and part-time employment. His wife is also employed. After stabilizing his personal and professional life, Applicant filed a petition for bankruptcy under chapter 13 in 2002. He has remained current in his payments to the trustee for two years.

The two delinquent debts alleged in the SOR have been resolved. The \$820.00 debt to the department store, SOR ¶ 1.e., was discharged in 1999 under the chapter 7 bankruptcy discharge. The \$1,572.00 debt to the telephone company was paid-in-full in May 2004.

Applicant and his wife jointly earn approximately \$120,000.00 per year and after paying all of their monthly bills have a remainder of \$635.00. The evidence supports the notion that once Applicant had the financial means to meet his debts, he did so.

These facts trigger Financial Considerations Mitigating Conditions (FC MC) E2.A6.1.3.3. *(the conditions that resulted in the behavior were largely beyond the person's control (e.g. loss of employment, a business downturn, unexpected medical emergency, or a death, divorce of separation); and FC MC E2.A6.1.3.6 (the individual initiated a good-faith effort to repay overdue creditors or otherwise resolve debts).* Applicant was able to recover from a series of rather unfortunate events that would have been difficult for most individuals to overcome.

Based on the totality of the circumstances to include his documented actions coupled with his credible testimony, I find for Applicant on SOR ¶ 1.

FORMAL FINDINGS

Formal findings regarding each SOR allegation as required by Directive Section E3.1.25 are as follows:

Paragraph 1. Guideline F: FOR APPLICANT

Subparagraph 1.a.-1.f: 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 continue a security clearance for Applicant. Clearance is granted.

Robert J. Tuidor

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.