

KEYWORD: Financial Considerations

DIGEST: Applicant is a married 35-year-old employee of a federal contractor, employed as a field engineer. He had significant unpaid debts. Prior to deploying to Iraq in 2003, he filed a Chapter 7 bankruptcy and sought financial counseling. All delinquent debts were paid or discharged in bankruptcy. His current financial statement shows adequate income to pay outstanding debts with a comfortable surplus each month. He successfully mitigated the security concerns for financial considerations. Clearance is granted.

CASE NO: 03-12196

DATE: 05/31/2006

DATE: May 31, 2006

In re:

SSN: -----

Applicant for Security Clearance

ISCR Case No. 03-12196

DECISION OF ADMINISTRATIVE JUDGE

CHRISTOPHER GRAHAM

APPEARANCES

FOR GOVERNMENT

FOR APPLICANT

Pro Se

SYNOPSIS

Applicant is a married 35-year-old employee of a federal contractor, employed as a field engineer. He had significant unpaid debts. Prior to deploying to Iraq in 2003, he filed a Chapter 7 bankruptcy and sought financial counseling. All delinquent debts were paid or discharged in bankruptcy. His current financial statement shows adequate income to pay outstanding debts with a comfortable surplus each month. He successfully mitigated the security concerns for financial considerations. Clearance is granted.

STATEMENT OF THE CASE

On August 3, 2005, the Defense Office of Hearings and Appeals (DOHA) issued a Statement of Reasons (SOR) to Applicant pursuant to Executive Order 10865, *Safeguarding Classified Information Within Industry*, dated February 20, 1960, 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. The SOR alleged reasons under Guidelines F (financial considerations) 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 Applicant's security clearance.

In a written statement dated August 18, 2005, Applicant responded to the allegations in the SOR and requested a hearing. The case was assigned to me on September 27, 2005. Notice of Hearing was issued September 30, 2005, scheduling the hearing for October 26, 2005. The hearing was held as scheduled. The transcript (Tr.) was received November 9, 2005. At the hearing the government introduced five exhibits, the Applicant offered four exhibits, and the Applicant gave testimony.

FINDINGS OF FACT

Applicant admitted the allegations in the SOR except subparagraphs 1.g., 1.h., 1.m., 1.u., and 1.bb. denied the allegations in the SOR. I make the following findings of fact:

Applicant is a 35-year-old employee of a federal contractor, employed as a field engineer.⁽¹⁾ He has held a security clearance from at least April 1994.⁽²⁾ He is married and has two children and two step-children.⁽³⁾ He completed nearly two years of college and is planning to complete his education in nursing.⁽⁴⁾ He served in the U.S. Army for nine years, receiving an honorable discharge in 1999.⁽⁵⁾ In August 2003, he joined the Army Reserve. He is a sergeant (E-6), trained as a rotary wing helicopter power train repair supervisor. He served in Haiti and in Operation Iraqi Freedom.⁽⁶⁾ He served in Iraq from November 2003 until April 2005.⁽⁷⁾

SOR paragraphs 1.a. through 1.r. listed unpaid debts totaling \$14,498.00 as of February 12, 2004. All but one medical debt (anesthesia, \$948.00 and medical center, \$63.00) were general living expenses. Five debts were in excess of \$600.00: 1.h. collection account, \$633.00; 1.k. anesthesia, \$948.00; 1.o. credit card, \$4,025.00; 1.q. department store, \$1,711.00; and 1.r. credit card, \$4,619.00. Applicant filed bankruptcy in December 2003. All but the debts listed in paragraphs 1.m. (telephone, \$99.00) and 1.n. (collection account, \$195.00) were discharged in bankruptcy on March 29, 2004.⁽⁸⁾ The debts stated in paragraphs 1.m. and 1.n. were paid on October 25, 2005.⁽⁹⁾

The financial delinquencies that led to the bankruptcy began during a previous marriage, while Applicant was on active duty. During the marriage, from 1996 until late 1998, his unit was in field training most of each month. He depended on his wife to pay bills but she did not. He was re-assigned posts, and the parties lived apart much of the time. During this time sequence, he was given a new duty assignment which required him to move almost one thousand miles between Army posts. His wife would buy cell phones and not pay for them, and they both ran up credit card debts. They incurred medical bills. He filed for divorce but his wife refused to sign the papers and dragged the process out over a period of months. After his remarriage, his finances were improving, he was paying off debts, but in late 2001, he lost his job. Subsequent to his job loss, a son was born, he had no medical insurance, and those medical bills further deepened his debt. He was unemployed four months before finding employment with his current employer.⁽¹⁰⁾ He worked with a DSS investigator to clear up matters prior to his deployment, was told that he should not worry, and that his case would be put on hold until he returned.⁽¹¹⁾

In November 2003, he was activated for extended duty in Iraq. In an effort to resolve debts, in December 2003, he and his wife filed a Chapter 7 petition in bankruptcy. They received a discharge on March 29, 2004. The SOR was dated April 12, 2004. Because of his deployment he did not receive the SOR and respond until April 27, 2005. A personal

financial statement prepared by Appellant in October 2005, showed sufficient income to pay outstanding debts, with a surplus over \$1200.00 per month.⁽¹²⁾ He and his wife have one credit card and operate on a cash basis.⁽¹³⁾ They used credit counseling services, their bankruptcy attorney, his unit financial counselor while in Iraq, their church, and his father-in-law, an attorney.⁽¹⁴⁾ All current debt obligations are timely paid.⁽¹⁵⁾

POLICIES

"[No] one has a 'right' to a security clearance."⁽¹⁶⁾ 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."⁽¹⁷⁾ 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 coercion, and willingness and ability to abide by regulations governing use, handling, and protection of classified information."⁽¹⁸⁾ Eligibility for a security clearance may be adjudicated using 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 factors listed in ¶ 6.3 of the Directive: nature and seriousness of the conduct and surrounding circumstances; frequency and recency of the conduct; age of the Applicant; motivation of the applicant, and the extent to which the conduct was negligent, wilful, voluntary, or undertaken with knowledge of the consequences involved; absence or presence of rehabilitation; and probability that the circumstances or conduct will continue or recur in the future.

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.⁽¹⁹⁾ 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.⁽²⁰⁾

Once the government establishes a disqualifying condition, the burden shifts to the applicant to rebut, explain, extenuate, or mitigate the facts.⁽²¹⁾ An applicant "has the ultimate burden of demonstrating that it is clearly consistent with the national interest to grant or continue his security clearance."⁽²²⁾ A person who has access to classified information enters into a fiduciary relationship with the government based on trust and confidence. The government, therefore, has a compelling interest in ensuring each Applicant possesses the requisite judgment, reliability and trustworthiness of one who will protect the national interests as his or his own. The "clearly consistent with the national interest" standard compels resolution of any reasonable doubt about an Applicant's suitability for access in favor of the government.⁽²³⁾ Decisions under this Directive include, by necessity, consideration of the possible risk an applicant may deliberately or inadvertently fail to protect or safeguard classified information. Such decisions entail a certain

degree of legally permissible extrapolation as to potential, not actual, risk of compromise of classified information.

Applicant's allegiance, loyalty, and patriotism are not at issue in these proceedings. Section 7 of Executive Order 10865 specifically provides industrial security decisions shall be "in terms of the national interest and shall in no sense be a determination as to the loyalty of the applicant concerned." Security clearance decisions cover many characteristics of an applicant other than allegiance, loyalty, and patriotism.

Having considered the evidence as a whole, I find the following guidelines most pertinent to an evaluation of the facts of this case:

Guideline F: E2.A6.1.1. *An individual who is financially overextended is at risk of having to engage in illegal acts to generate funds. Unexplained affluence is often linked to proceeds from financially profitable criminal acts.*

CONCLUSIONS

The government has established its case under Guideline F. Financial Considerations Disqualifying Condition (FC DC) E2.A6.1.2.1. arises where there is *A history of not meeting financial obligations*. Similarly, FC DC E2.A6.1.2.3. applies where the information shows an *Inability or unwillingness to satisfy debts*. The available information demonstrates Applicant has a history of not meeting his financial obligations. He has been delinquent in payments on numerous accounts. I conclude that FC DC E2.A6.1.2.1. and FC DC E2.A6.1.2.3. apply.

Various conditions can mitigate the security concerns arising from financial difficulties. The Directive sets out financial considerations mitigating condition (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 or a death or divorce)*). His first wife delayed their divorce proceedings, both had been financially irresponsible during their marriage, he lost his job just before a son was born, and the loss of his medical insurance substantially undermined his ability to pay delinquent debts. He was unemployed for four months. Divorce and loss of employment are factors beyond his control. FC MC E2.A6.1.3.3. applies.

FC MC E2.A6.1.3.4. (*The person has received or is receiving counseling for the problem and there are clear indications that the problem is being resolved or is under control*) also applies. Applicant and his wife received and are receiving counseling. In considering bankruptcy, they sought the advice of an attorney who handled the proceedings for them and also gave them counseling. His father-in-law, an attorney, also counseled them. While in Iraq he used the

unit's financial counselor. Hi is resolving his indebtedness.

FC MC E2.A6.1.3.6. may apply where (*The individual initiated a good-faith effort to repay overdue creditors or otherwise resolve bad debts*). All of the debts listed in the SOR are paid. Bankruptcy is also a method to resolve financial delinquencies. It may not be the preferred method but it is a factor showing that he has taken steps to get his finances under control. His financial statement indicates adequate income to keep current his debt obligations. He has made a good-faith effort to bring his fiscal affairs in order. FC MC E2.A6.1.3.6. applies.

I have carefully weighed all of the available evidence, and I have applied the appropriate disqualifying and mitigating conditions. Further, I have tried to make a fair and commonsense assessment of the record before me as required by Directive Section E2.2.3. This record raises no reasonable or persistent doubts about Applicant's ability to protect classified information and to exercise the requisite good judgment and discretion expected of one in whom the government entrusts its interests. Because of his perseverance in efforts at mitigation, I conclude he has mitigated the security concerns arising from his financial difficulties.

FORMAL FINDINGS

Formal findings For or Against Applicant on the allegations set forth in the SOR, as required by E3.1.25 of Enclosure 3 of the Directive, are:

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

DECISION

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

Christopher Graham

Administrative Judge

1. Tr. at 10,14.

2. Government Exhibit 1, (*Security Clearance Application*, Standard Form 86, dated May 8, 2002) at 10.

3. Tr. at 10.

4. Tr. at 11.

5. Tr. at 13, 21.
6. Tr. at 13-15.
7. Tr. at 17-18.
8. Response to the SOR, dated April 27, 2005, Government Exhibit 1(Bankruptcy Court Records) at 1-37.
9. Applicant's Exhibit E (Facsimile Transmittal dated November 29, 2005) at 2-3.
10. Tr. at 18-22.
11. Tr. at 8.
12. Applicant's Exhibit D (Financial Spreadsheet, dated October 2005) at 1.
13. Tr. at 23.
14. Tr. at 24.
15. Tr. at 18.
16. *See Department of the Navy v. Egan*, 484 U.S. 518, 528 (1998).
17. *Id.* at 527.
18. Exec. Or. 12968, *Access to Classified Information*, § 3.1(b) (Aug. 4, 1995).
19. *Egan, supra*, at 531.
20. *See* ISCR Case No. 95-0611 at 2 (App. Bd. May 2, 1996).
21. *See* ISCR Case No. 01-20700 at 3 (App. Bd. Dec. 19, 2002).
22. *Id.*, at 3.
23. *See Egan*; Directive ¶ E2.2.2.