

KEYWORD: Financial

DIGEST: Applicant owed six creditors approximately \$14,500. He is current on one debt and four others are being paid through Consumers Credit Counseling Service. The remaining \$44 debt does not establish Applicant is financially overextended. The record evidence is sufficient to mitigate or extenuate the negative security implications stemming from his debts. Clearance is granted.

CASENO: 03-12690.h1

DATE: 01/12/2005

DATE: January 12, 2005

In Re:

SSN: -----

Applicant for Security Clearance

ISCR Case No. 03-12690

DECISION OF ADMINISTRATIVE JUDGE

CLAUDE R. HEINY

APPEARANCES

FOR GOVERNMENT

FOR APPLICANT

Pro Se

SYNOPSIS

Applicant owed six creditors approximately \$14,500. He is current on one debt and four others are being paid through Consumers Credit Counseling Service. The remaining \$44 debt does not establish Applicant is financially overextended. The record evidence is sufficient to mitigate or extenuate the negative security implications stemming from his debts. Clearance is granted.

STATEMENT OF THE CASE

On January 20, 2004, the Defense Office of Hearings and Appeals (DOHA) issued a Statement of Reasons (SOR) to Applicant, stating that DOHA could not make the preliminary affirmative finding [\(1\)](#) it is clearly consistent with the national interest to grant or continue a security clearance for Applicant. On March 2, 2004, Applicant answered the SOR and elected to have his case decided on the written record in lieu of a hearing.

On February 18, 2004, the Applicant received a complete copy of the file of relevant material (FORM) dated June 24, 2004, and was given the opportunity to file objections and submit material in extenuation, mitigation, or refutation. On September 1, 2004, Applicant responded to the FORM. Department Counsel (DC) having no objection to Applicant's response, the submissions were admitted as Applicant Exhibit (App Ex) A. In the FORM, DC presented seven Government Exhibits (Gov Ex). I was assigned the case on September 13, 2004.

FINDINGS OF FACT

The SOR alleges Financial Considerations. The Applicant admits to owing all but two of the debts. Those admissions are incorporated herein as findings of fact. After a complete and thorough review of the evidence in the record, and upon due consideration of same, I make the following additional findings of fact:

The Applicant is 54 years old, has worked for a defense contractor since October 1999, and is seeking to obtain security clearance.

In February 2002 (Gov Ex 5), Applicant made a sworn statement addressing his debts. At that time, Applicant thought many of the accounts in question had been included in his 1989 Chapter 13, Wage Earner's Plan bankruptcy. From October 1990 through January 1994, Applicant made \$389 monthly payments to the bankruptcy trustee. The bankruptcy plan required 56 monthly payments, which would have ended the plan in June 1995. However, in January 1994, Applicant asked that his bankruptcy be dismissed in order to qualify for a home loan.

In February 2002, Applicant alleged a \$44 gas bill should not be on his credit report. He has provided no further documentation supporting this allegation. One debt has been transferred to a new creditor. A letter (App Ex A) dated September 1, 2004, indicates he is current on that debt. In March 2004, Applicant entered into an agreement with Consumer Credit Counseling Service (CCCS) by which he makes \$219 monthly payments. The four remaining creditors listed in the SOR are included in his CCCS plan. Between March 2004 and August 2004, he made six payments totaling \$1,359.

A summary of the Applicant's debts follows:

	Creditor	Amount Owed	Current Status
a.	Bank VISA and Master Card	\$3,329	Current. See App Ex A.
b.	Bank Creditor, four accounts	\$8,027	Included in CCCS.
c.	Bank Mastercard	\$1,079	Included in CCCS.
d.	VISA debt	\$1,854	Included in CCCS.
e.	Telephone Company	\$250	Included in CCCS.
f.	Gas Corporation debt	\$44	Disputed.
	Total debt alleged in SOR	\$14,583	

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.

Considering the evidence as a whole, this Administrative Judge finds the following adjudicative guidelines to be most pertinent to this case:

Financial Considerations, Guideline F, the Concern: 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. E2.A6.1.1.

Conditions that could raise a security concern and may be disqualifying include:

1. A history of not meeting financial obligations. (E2.A6.1.2.1.)
3. Inability or unwillingness to satisfy debts. (E2.A6.1.2.3.)

Conditions that could mitigate security concerns include:

6. The individual initiated a good-faith effort to repay overdue creditors or otherwise resolve debts. (E2.A6.1.3.6.)

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

The Government has satisfied its initial burden of proof under Guideline F, Financial Considerations. A person's relationship with his creditors is a private matter until evidence is uncovered demonstrating an inability or unwillingness to repay debts under agreed upon terms. Absent evidence of strong extenuating or mitigating circumstances, an applicant with a history of serious or recurring financial difficulties is in a position of risk that is inconsistent with the holding of a security clearance. Under Guideline F, an applicant is not required to be debt free, but is required to manage his finances in such a way as to meet his financial obligations.

Applicant owed delinquent debts to six creditors totaling approximately \$14,500. Disqualifying Conditions (DC) 1. (A history of not meeting financial obligations.) and 3. (Inability or unwillingness to satisfy debts.) apply.

In mitigation, there is no indication of extravagant expenditure. He is current on one debt (SOR paragraph 1.a) and debts to four others creditors are part of his CCCS repayment plan. Applicant has established a systematic, concrete method of handling his debts. He has made payments sufficiently long enough to establish the likelihood he will continue his payments until these debts have been resolved. Mitigating Condition 6 (The individual initiated a good-faith effort to repay overdue creditors or otherwise resolve debts.) applies to these debts. Applicant disputed the remaining debt of \$44. There is insufficient written documentation to prove this debt has been paid or was inappropriately included in Applicant's credit report. However, this debt, does not establish Applicant is financially overextended. With proof of a good-faith repayment plan, I find for Applicant as to the financial considerations.

In reaching my conclusions I have also considered: the nature, extent, and seriousness of the conduct; the Applicant's age and maturity at the time of the conduct; the circumstances surrounding the conduct; the Applicant's voluntary and knowledgeable participation; the motivation for the conduct; the frequency and recency of the conduct; presence or absence of rehabilitation; potential for pressure, coercion, exploitation, or duress; and the probability that the circumstance or conduct will continue or recur in the future.

FORMAL FINDINGS

Formal Findings as required by Section 3., Paragraph 7., of Enclosure 1 of the Directive are hereby rendered as follows:

Paragraph 1 Financial .: FOR THE APPLICANT

Subparagraph 1.a.: For the Applicant

Subparagraph 1.b.: For the Applicant

Subparagraph 1.c.: For the Applicant

Subparagraph 1.d.: For the Applicant

Subparagraph 1.e.: For the Applicant

Subparagraph 1.f.: For the 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 a security clearance for the Applicant. Clearance is granted.

Claude R. Heiny

Administrative Judge

1. Required by Executive Order 10865, as amended, and Department of Defense Directive 5220.6 (Directive), dated January 2, 1992, as amended.