

KEYWORD: Financial

DIGEST: Applicant has delinquent debts to eight creditors totaling about \$17,624.00, including a child-support arrearage of \$2,112.00. The security concern based on the child-support arrearage is mitigated, but the concern based on the remaining debts is neither rebutted nor mitigated. Clearance is denied.

CASENO: 03-12741.h1

DATE: 02/10/2005

DATE: February 10, 2005

In Re:

SSN: -----

Applicant for Security Clearance

ISCR Case No. 03-12741

DECISION OF ADMINISTRATIVE JUDGE

LEROY F. FOREMAN

APPEARANCES

FOR GOVERNMENT

Braden M. Murphy, Esq., Department Counsel

FOR APPLICANT

Pro Se

SYNOPSIS

Applicant has delinquent debts to eight creditors totaling about \$17,624.00, including a child-support arrearage of \$2,112.00. The security concern based on the child-support arrearage is mitigated, but the concern based on the remaining debts is neither rebutted nor mitigated. Clearance is denied.

STATEMENT OF THE CASE

On June 8, 2004, the Defense Office of Hearings and Appeals (DOHA) issued a Statement of Reasons (SOR) detailing the basis for its decision to deny Applicant a security clearance. This action was taken under Executive Order 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). The SOR alleges security concerns under Guideline F (Financial Considerations), based on eight delinquent debts totaling more than \$24,000.00, including about \$8,797.00 in child support arrearage.

Applicant answered the SOR in writing on July 2, 2004. He admitted four debts (SOR ¶¶ 1.b., 1.c., 1.e., and 1.g.) and denied four, including the child support (¶¶ 1.a., 1.d., 1.f., and 1.h.). He requested a hearing. The case was assigned to me on September 16, 2004. On October 13, 2004, DOHA issued a notice of hearing setting the case for November 3, 2004. The case was heard as scheduled. I kept the record open for 15 days to permit Applicant to submit documentary evidence that his debts were resolved, but he submitted nothing. DOHA received the transcript (Tr.) on November 17, 2004.

FINDINGS OF FACT

Applicant's admissions in his answer to the SOR and at the hearing are incorporated into my findings of fact. I also make the following findings:

Applicant is a 30-year-old senior security technician for a defense contractor. He has worked for his present employer since September 1999. He received a secret clearance in March 1993.

The following table summarizes the debts alleged in the SOR:

Debt	SOR/Answer	Amount
Credit Card	¶ 1.a., denied	\$2,480.00
Credit Card	¶ 1.b., admitted	\$1,345.00
Credit Card	¶ 1.c., admitted	\$569.00
Credit Card	¶ 1.d., denied	\$3,803.00
Credit Card	¶ 1.e., admitted	\$4,713.00
Child Support	¶ 1.f., admitted but amount disputed	\$8,797.00
Student Loan	¶ 1.g., admitted	\$2,336.00
Government Debt	¶ 1.h., denied	\$266.00

Applicant was married in 1992. He and his wife were divorced and then remarried in 1998. Their daughter was born in November 1998. Applicant and his wife separated in 2002 and were divorced in December 2003 (Tr. 26), and Applicant was required to pay \$1,000.00 per month in child support (Government Exhibit 2, p. 5). The amount was later adjusted to \$1,119.67 per month (Tr. 27). Applicant married his current wife shortly after the divorce.

Applicant's annual gross income is about \$75,000.00. After taxes and deductions, including child support, his monthly take-home pay is about \$2,200.00. His wife's monthly take-home pay is about \$1,200.00. He has about \$500.00 in his checking account, no savings, and no investments. His monthly rent is \$720.00 per month, and his monthly car payment is \$145.00. He no longer has any credit cards.

Applicant did not take any action to resolve his delinquent debts until he was interviewed by a security investigator in April 2003. He contacted a consumer counseling firm, but he could not afford the payments they required (Tr. 34). He has not contacted any creditors directly.

Applicant denied owing the credit card debt alleged in the SOR ¶ 1.a. and reflected on his credit report. He asserted he did not know what it was, but he has never challenged any of the information on his credit report (Tr. 48).

Applicant denied owing the credit card debt alleged in the SOR ¶ 1.d. At the hearing he asserted it was settled it for a lesser amount (Tr. 38, 50), but he presented no documentary evidence to support his testimony.

At the hearing, Applicant denied he owed \$8,797.00 in child support, the amount alleged in the SOR ¶ 1.f. He asserted his federal income tax refund was applied against the arrearage. His credit report and his admission at the hearing establish an arrearage of about \$2,112.00 (Tr. 31; Government Exhibit 5, p. 2). Child support payments are deducted from Applicant's pay (Applicant's Exhibit A). A portion of the amount deducted is applied to the arrearage (Tr. 59).

Applicant testified that the government debt alleged in the SOR ¶ 1.h. had been satisfied from his federal income tax return in 1999 or 2000. He presented no documentary evidence to support his testimony.

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. Two 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 3 applies where an applicant has exhibited inability or unwillingness to satisfy debts. Directive ¶ E2.A6.1.2.3.

Applicant has admitted the debts alleged in the SOR ¶¶ 1.b., 1.c., 1.e., and 1.g. His admissions are consistent with his credit reports. He has admitted a child support arrearage of about \$2,112.00, and his credit report supports that amount. I conclude DC 1 and DC 3 have been established.

A security concern arising from financial problems can be mitigated by showing a good-faith effort to resolve debts (MC 6). Directive ¶ E2.A6.1.3.6. The concept of good faith "requires a showing that a person acts in a way that shows reasonableness, prudence, honesty, and adherence to duty or obligation." ISCR Case No. 99-9020, *supra* at *5, quoting ISCR Case No. 99-0201, 1999 WL 1442346 at *4 (App. Bd. Oct. 12, 1999). Applicant is making regular child support payments, including the arrearage, through automatic payroll deductions. I conclude MC 6 is established, and the security concern based on the child support arrearage (SOR ¶1.f.) is mitigated.

Applicant disputed the credit card debt alleged in the SOR ¶ 1.a., but he has done nothing to resolve it or contest it. He asserted the debt alleged in the SOR ¶ 1.d. was settled, but he provided no documentation, even though he was give additional time after the hearing to obtain and submit such documentation. He has disputed the government debt alleged in the SOR ¶ 1.h., asserting it was paid by application of his federal income tax refund, but again he submitted no documentation to support his assertion. I conclude he has neither rebutted nor mitigated the security concerns based on these three debts. Viewing Applicant's financial situation as a whole and his lack of attention to resolving it, I conclude Applicant has not mitigated the concerns based on his financial history and current financial status.

FORMAL FINDINGS

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

Paragraph 1. Guideline F (Financial Considerations): 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

Subparagraph 1.f.: For Applicant

Subparagraph 1.g.: Against Applicant

Subparagraph 1.h.: Against Applicant

DECISION

In light of all the circumstances presented by the record in this case, it is not clearly consistent with the national interest to grant a security clearance for Applicant. Clearance is denied.

LeRoy F. Foreman

Administrative Judge