

KEYWORD: Financial; Personal Conduct

DIGEST: Applicant has a history of financially delinquent accounts that have been reduced to civil judgment or charged off. While three judgment debts have been repaid through garnishment of his wages, he still owes about \$14,500 in old debt. He is currently meeting his day-to-day expenses, has incurred no new credit card debt, but has inadequate finances available to repay these old delinquencies. His failure to report all his debts on his security clearance application was not deliberate so it does not raise Personal Conduct concerns, but his financial situation remains tenuous. Financial Considerations persist. Clearance is denied.

CASENO: 03-13674.h1

DATE: 09/01/2004

DATE: September 1, 2004

In Re:

SSN: -----

Applicant for Security Clearance

ISCR Case No. 03-13674

DECISION OF ADMINISTRATIVE JUDGE

ELIZABETH M. MATCHINSKI

APPEARANCES

FOR GOVERNMENT

James B. Norman, Esq., Department Counsel

FOR APPLICANT

Pro Se

SYNOPSIS

Applicant has a history of financially delinquent accounts that have been reduced to civil judgment or charged off. While three judgment debts have been repaid through garnishment of his wages, he still owes about \$14,500 in old debt. He is currently meeting his day-to-day expenses, has incurred no new credit card debt, but has inadequate finances available to repay these old delinquencies. His failure to report all his debts on his security clearance application was not deliberate so it does not raise Personal Conduct concerns, but his financial situation remains tenuous. Financial Considerations persist. Clearance is denied.

STATEMENT OF CASE

On November 7, 2003, the Defense Office of Hearings and Appeals (DOHA) issued a Statement of Reasons (SOR) to the Applicant which detailed reasons 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 a security clearance for the Applicant.

(1) DOHA recommended referral to an Administrative Judge to conduct proceedings and determine whether clearance should be granted, continued, denied, or revoked. The SOR was based on Financial Considerations (Guideline F) and Personal Conduct (Guideline E).

On November 18, 2003, Applicant filed his response to the SOR and requested a hearing before a DOHA Administrative Judge. The case was assigned to me on February 19, 2004, and pursuant to notice of March 2, 2004, a hearing was scheduled for March 9, 2004, Applicant having waived the 15-day notice requirement. At the hearing held as scheduled, the Government submitted four exhibits. On the Government's motion, the SOR was amended to allege as subparagraph 2.a. rather than 2.b., that Applicant deliberately falsified his SF 86 when he failed to list several delinquent debts. Applicant's case consisted of his testimony. A transcript of the hearing was received on March 18, 2004.

FINDINGS OF FACT

The SOR as amended alleges Financial Considerations concerns because of outstanding delinquencies and Personal Conduct concerns due to Applicant's failure to list all but one of his old debts on his security clearance application (SF 86) completed in July 2001. Applicant admits three of the debts, but denies intentional falsification of his SF 86. Applicant's admissions are accepted and incorporated as findings of fact. After a complete and thorough review of the evidence, I render the following additional findings:

Applicant is a 40-year-old technician who has monitored radiation for a defense contractor since July 2001. He has held a company-granted confidential security clearance during his entire employ and requires a security clearance for his position.

Applicant and his first wife married in February 1987. She had two daughters, born in December 1980 and March 1984, respectively. He adopted them in 1990.

Applicant has a history of financial delinquency from the mid-1990s. In August 1997, a bank obtained a civil judgment against him in the amount of \$2,160 (SOR subparagraph 1.b.).⁽²⁾

In May 1998, the local telephone company obtained a civil judgment against Applicant in the amount of \$1,111 (SOR subparagraph 1.c.) for unpaid residential phone service provided him and his spouse. Neither Applicant nor his spouse made any effort to pay the debt. At the time, Applicant was employed as a grower for a mushroom farm taking home \$280 to \$320 per week.

In September 1999, Applicant and his spouse separated and he went to live with his parents. That November, he was injured at work when a forklift pinned him against the wall. While he was recuperating from his injury, a \$392 past due credit card balance was charged off by a creditor in December 1999 (SOR subparagraph 1.a.).

Applicant elected not to return to work at the farm and he was unemployed from February 2000 to November 2000. He received a settlement of \$4,200 for his injury, \$3,000 of which went to pay medical expenses not covered by insurance. In March 2000, a \$153.50 unpaid medical debt was placed for collection (SOR subparagraph 1.g.). In June 2000, a local hospital obtained a civil judgment against Applicant in the amount of \$1,859.11 for unpaid medical care provided the younger of his daughters (SOR subparagraph 1.i.).⁽³⁾ Applicant does not recall receiving notice of the court judgment. In August 2000, a radiology group obtained a civil judgment in the amount of \$465 against Applicant (SOR subparagraph 1.f.) that was eventually paid through garnishment of his wages in June 2003. A credit card account was cancelled by the credit grantor in August 2000 when it became \$845 past due on an outstanding balance of \$1,544 (SOR

subparagraph 1.e.).

In September 2000, Applicant and his first wife were divorced. That same month, Applicant took out a vehicle loan of \$13,667, to be repaid at \$363 per month. In November 2000, he began working in the parts department for a local auto dealer at about \$8.00 an hour. Even with his mother's financial assistance, he could not afford the payments, and in April or May 2001 the vehicle was voluntarily repossessed. Applicant owed a deficiency balance on his loan of \$7,313 (SOR subparagraph 1.h.).

In January 2001, a local utility obtained a civil judgment of \$1,943 against Applicant (SOR subparagraph 1.d.). In February 2001, the state unemployment compensation department obtained a civil judgment against Applicant in the amount of \$2,124 (SOR subparagraph 1.i.).⁽⁴⁾

Applicant went to work for his present employer in July 2001. Needing a security clearance for his duties, Applicant executed a security clearance application (SF 86) on July 15, 2001. In response to questions concerning any repossessions and any delinquent debts, Applicant listed the delinquent auto loan and consequent repossession of his vehicle in April 2001. Aware he had an "erratic pattern" of repayment of some of his obligations, Applicant did not list any other debts because he was unaware of the extent of his indebtedness. In late July 2001, Applicant was given a company-granted confidential clearance.

In September 2001, Applicant married his second wife. She has two minor daughters and is due child support of \$60 per week for one of them. Her ex-husband's payments have not always been consistent, and he has fallen behind as much as two months at least three times since 2001.

In June 2002, Applicant's wages were ordered garnisheed to repay the \$1,859.11 hospital judgment. On execution of the order, Applicant learned for the first time of the judgment debt as he had trusted that his first wife was take care of the bill for their daughter. That September 2002, a wage garnishment was ordered to collect the unemployment compensation department's debt of \$2,124. With the garnishment of his wages through June 2003 to pay these debts as well as the \$465 judgment awarded in August 2000 (SOR subparagraph 1.f.), Applicant fell behind on some of his other bills. After the garnishment of his wages stopped, Applicant had at times as much as \$250 per week in discretionary funds.

As of March 2004, Applicant had caught up on his household bills. Except for one payment of \$25 each in October 2003 on two of the judgment debts (the \$1,111 telephone services judgment debt and the \$1,943 utility judgment), he made no payments toward his old delinquencies.⁽⁵⁾

Applicant drives an older model vehicle that he bought for a few hundred dollars. He does not use any credit cards. With medication expenses of \$75 and a rental obligation of \$661.00 per month, he and his spouse live paycheck to paycheck. As of his hearing, he had \$2.00 in savings and \$8.00 in his checking account. His spouse has a separate account with a balance of about \$40.00. Since January 2004, his spouse has earned about \$50 per week from part-time sales of cosmetics. They do not rely on her income to meet their expenses.

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.

Enclosure 2 of the Directive sets forth personal 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 process factors listed in ¶ 6.3 of the Directive. 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, 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. *See Egan*, 484 U.S. at 531. 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. *See* ISCR Case No. 95-0611 at 2 (App. Bd. May 2, 1996).

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.

Considering the evidence as a whole, the following adjudicative guidelines are the most pertinent to this case:

Guideline F

Financial Considerations

E2.A6.1.1. 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 acts.

E2.A6.1.2. Conditions that could raise a security concern and may be disqualifying include:

E2.A6.1.2.1. A history of not meeting financial obligations;

E2.A6.1.2.3. Inability or unwillingness to satisfy debts.

E2.A6.1.3. Conditions that could mitigate security concerns include:

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 or separation).

Guideline E

Personal Conduct

E2.A5.1.1. The Concern: Conduct involving questionable judgment, untrustworthiness, unreliability, lack of candor, dishonesty, or unwillingness to comply with rules and regulations could indicate that the person may not properly safeguard classified information.

E2.A5.1.2. Conditions that could raise a security concern and may be disqualifying also include:

None applicable.

CONCLUSIONS

Having considered the evidence in light of the appropriate legal precepts and adjudicative guidelines, and having assessed the credibility of Applicant, I conclude the following with respect to Guidelines F and E:

Under Guideline F, the security eligibility of an applicant is placed into question when the applicant is shown to have a history of excessive indebtedness, recurring financial difficulties, or a history of not meeting his financial obligations. The Government must consider whether individuals granted access to classified information are because of financial irresponsibility in a position where they may be more susceptible to mishandling or compromising classified information.

Applicant has a history of financial delinquency since at least 1997 when the first of several financial judgments was awarded against him. While his work-related injury in 1999 and unemployment in 2000 are unforeseen circumstances that negatively impacted his finances, ⁽⁶⁾ as evidenced by the judgment awarded the state's department of unemployment compensation to recover funds paid out, he was not completely without income when he was unemployed. He also made a poor financial decision in taking out an automobile loan of \$13,667 in September 2000 when he was out of work. He was unable to afford the \$363 monthly payments even after he began working for the defense contractor, and the vehicle was repossessed. Disqualifying conditions E2.A6.1.2.1. *A history of not meeting financial obligations*, and E2.A6.1.2.3. *Inability or unwillingness to satisfy debts* apply in this case.

Despite his gainful employment by the defense contractor since July 2001, Applicant has made little effort on his own to resolve his remaining delinquencies. Three of his judgment creditors, including the one alleged in SOR subparagraph 1.f., have been satisfied through garnishment of his wages, so favorable findings are warranted as to subparagraphs 1.f. and 1.i. of the SOR. However, his payments of \$25 each in October 2003 toward those debts alleged in SOR subparagraphs 1.c. and 1.d. are not enough to demonstrate a good faith effort to address his outstanding obligations. There is no evidence of extravagant expenditure or recent reliance on credit, but it is too soon to safely conclude that his financial problems are safely in the past. With Applicant and his spouse living from paycheck to paycheck and having no appreciable savings (about \$50 total in checking and savings as of March 2004), there is little assurance that he will be able to satisfy his debts in the foreseeable future. SOR subparagraphs 1.a., 1.b., 1.c., 1.d., 1.e., 1.g., and 1.h. are resolved against him as these ongoing delinquencies raise significant concerns for his judgment, reliability, and trustworthiness.

The Government's case under Guideline E, as amended, is based on alleged falsification of his security clearance application for failure to list all of his debts. While security significant Personal Conduct concerns are raised where an applicant has not been completely candid with the Government about matter relevant and material to his or her personnel security application and investigation (*see* DC E2.A5.1.2.2.), I am persuaded Applicant did not deliberately conceal his debts from the Government. Applicant responded affirmatively to the inquiries posed regarding any repossessions as well as any financial delinquencies over 180 days in the preceding seven years. While he did not list any of the financial judgments awarded against him over the 1997 to 2000 time frame, he has denied knowledge of the financial judgments before efforts were made to collect through wage execution in 2002, and testified credibly that he was unaware of the extent of his indebtedness as his ex-wife was supposed to pay the debts. SOR subparagraph 2.a. is resolved in his favor.

FORMAL FINDINGS

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

Paragraph 1. Guideline F: AGAINST THE APPLICANT

Subparagraph 1.a.: Against the Applicant

Subparagraph 1.b.: Against the Applicant

Subparagraph 1.c.: Against the Applicant

Subparagraph 1.d.: Against the Applicant

Subparagraph 1.e.: Against the Applicant

Subparagraph 1.f.: For the Applicant

Subparagraph 1.g.: Against the Applicant

Subparagraph 1.h.: Against the Applicant

Subparagraph 1.i.: For the Applicant

Paragraph 2. Guideline E: FOR THE APPLICANT

Subparagraph 2.a. (as amended): For the 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 or continue a security clearance for Applicant. Clearance is denied.

Elizabeth M. Matchinski

Administrative Judge

- 1.
2. Applicant testified he has contacted the creditor several times and been advised there is no record of this debt. Yet, two separate credit reports reflect this outstanding judgment award.
3. The debt was not specifically alleged as an outstanding debt, although it is one of the debts collected by wage garnishment as alleged in subparagraph 1.i. of the SOR.
4. This debt was also not alleged as a separate debt, although it is one of the debts collected through the garnishment actions taken in 2002.
5. When he responded to the SOR, Applicant maintained he had been paying on the \$1,111 telephone and \$1,943 utility judgment debts at the rate of \$25 biweekly. However, he provided no proof of repayments. At his hearing, he admitted he had made a payment on both in October 2003 but stopped due to high utility costs and had not resumed repayment.
6. Under the Directive, financial difficulties may be mitigated where they are due to circumstances largely beyond the person's control (*see* E2.A6.1.3.3.).