

KEYWORD: Financial; Personal Conduct

DIGEST: Applicant, an employee of a federal contractor, had a history of unpaid debts which led to a 1992 revocation of his security clearance. Even after his clearance was subsequently reinstated, Applicant continued to have financial difficulties. Notwithstanding the ability to presently maintain current expenses with a surplus each month, Applicant testified he had no intention of paying his debts, even though he acknowledged it was irresponsible conduct. In 2002, he gave false answers to two finance-related questions on a security clearance questionnaire. He has not mitigated security concerns over his finances and personal conduct. Clearance is denied.

CASE NO: 03-13900.h1

DATE: 06/06/2005

DATE: June 6, 2005

In Re:

SSN: -----

Applicant for Security Clearance

ISCR Case No. 03-13900

DECISION OF ADMINISTRATIVE JUDGE

CHRISTOPHER GRAHAM

APPEARANCES

FOR GOVERNMENT

Nichole Noel, Esq., Department Counsel

FOR APPLICANT

Pro Se

SYNOPSIS

Applicant, a n employee of a federal contractor, had a history of unpaid debts which led to a 1992 revocation of his security clearance. Even after his clearance was subsequently reinstated, Applicant continued to have financial difficulties. Notwithstanding the ability to presently maintain current expenses with a surplus each month, Applicant testified he had no intention of paying his debts, even though he acknowledged it was irresponsible conduct. In 2002, he gave false answers to two finance-related questions on a security clearance questionnaire. He has not mitigated security concerns over his finances and personal conduct. Clearance is denied.

STATEMENT OF THE CASE

On August 5, 2004, the Defense Office of Hearings and Appeals (DOHA), 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, issued a Statement of Reasons (SOR) to Applicant. The SOR alleged facts under Guideline F (financial considerations) and Guideline E (personal conduct) which detail 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 Applicant's security clearance, and recommended referral to an administrative judge to determine whether a clearance should be granted, continued, denied or revoked.

In a sworn written statement, dated September 1, 2004, Applicant responded to the allegations in the SOR and requested a hearing. The case was assigned to me on February 10, 2005. Notice of the hearing was mailed February 28, 2005. A hearing was conducted on April 22, 2005. The transcript was received May 2, 2005.

FINDINGS OF FACT

Applicant has admitted to all eight SOR allegations pertaining to Guideline F financial considerations (subparagraphs 1.a. through 1.h.), and denied the two allegations of Guideline E personal conduct (subparagraph 2.a. and b.) Those admissions are incorporated herein as findings of fact. After a complete and thorough review of the evidence in the record, I make the following additional findings of fact:

Applicant, is a married, 42-year-old employee of a federal contractor seeking to obtain a security clearance.⁽¹⁾ He was employed as a senior communication technician by this contractor in November 2001.⁽²⁾ He obtained a security clearance in February 1981, which was revoked in May 1991, for financial considerations, and reinstated in May 1995.⁽³⁾

Applicant has a history of financial problems. He wrote two insufficient funds checks in 1986 but paid restitution.⁽⁴⁾ In 1992, his home mortgage was foreclosed which led to the prior revocation of his security clearance.⁽⁵⁾ His clearance was reinstated in 1995.⁽⁶⁾ He petitioned for Chapter 7 bankruptcy in June 2000.⁽⁷⁾ Subsequent to his discharge in bankruptcy, Applicant's car was repossessed resulting in a \$11,0451.00 deficiency, which has not been paid.⁽⁸⁾ On April 22, 2005, Applicant's debts:

SOR ¶	DELINQUENT	TYPE DEBT	AMOUNT	CURRENT STATUS
1.a.	June 2000	collection account	\$ 174.00	Unpaid ⁽⁹⁾
1.b.	January 2002	medical bill/collection	\$ 173.00	Unpaid ⁽¹⁰⁾
1.c.	February 2002	collection account	\$ 237.00	Unpaid ⁽¹¹⁾
1.d.	September 2001	auto repossession	\$11, 541.00	Unpaid ⁽¹²⁾

In his answer he said he could pay 1.a. through 1.c. in a few months. He testified that his and his wife's income is about \$76,000.00 per year⁽¹³⁾, which is adequate to pay his debts but he had no reason why he had not paid them.⁽¹⁴⁾ He further testified that :

"Since my last interview I have thought about paying these debts off, but I decided not to for several reasons. First of all, my financial situation is too tight to pay them off. Also, they're simply not a priority in my life. I realize I am responsible for them. However, the debts have been around for a while. I haven't paid them, so why should I pay them now. I acknowledge that this is irresponsible, but I'm still not going to pay them. None of the creditors contact me anymore. My federal tax refund is always returned to me, and it is never applied to any of the debt. The only problem that my bad credit history has caused me is that I have a high interest on my car payment."⁽¹⁵⁾

In answer to Standard Form 86, **Question 38. Your Financial Delinquencies - 180 Days. In the last 7 years, have you**

ever been over 180 days delinquent on any debts?, his answer was "No". In answer to **Question 39. Your Financial Delinquencies - 90 Days**. In the last 7 years, have you ever been over 90 days delinquent on any debts?, his answer was "No".⁽¹⁶⁾ He denied that these answers were false because he believed that as the debts were "charged off" that they were no longer delinquent. He testified that he did not ask anyone what defines "delinquent" as asked for in questions 38 and 39 of SF 86.⁽¹⁷⁾

POLICIES

"[No] one has a 'right' to a security clearance."⁽¹⁸⁾ 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."⁽¹⁹⁾ 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."⁽²⁰⁾ 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.⁽²¹⁾ 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.⁽²²⁾

Once the Government establishes a disqualifying condition, the burden shifts to the applicant to rebut, explain, extenuate, or mitigate the facts.⁽²³⁾ An applicant "has the ultimate burden of demonstrating that it is clearly consistent with the national interest to grant or continue his security clearance."⁽²⁴⁾ 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. ⁽²⁵⁾ 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, rather than 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 SOR allegations and having reviewed the record evidence as a whole, I conclude the relevant adjudicative guidelines to be applied here are those conditions listed under Guideline F (financial considerations) (FC), Directive, ¶ 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;* and Guideline E (personal conduct) (PC), Directive, ¶ E2.A5.1.1. *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.*

CONCLUSIONS

Upon consideration of all the facts in evidence, and after application of all appropriate legal precepts, factors, and conditions, including those described briefly above, I conclude the following with respect to each allegation set forth in the SOR:

The Government has established its case under Guideline F. Failure to pay outstanding financial obligations gives rise to Financial Considerations Disqualifying Condition (FC DC) E2.A6.1.2.1. (*A history of not meeting financial obligations*); and FC DC E2A6.1.2.3. (*Inability or unwillingness to satisfy debts*).

Applicant's own words answer the question of how to conclude the Guideline F allegations. *"Also, they're simply not a priority in my life. I realize I am responsible for them. However, the debts have been around for a while. I haven't paid them, so why should I pay them now. I acknowledge that this is irresponsible, but I'm still not going to pay them."* There are no applicable mitigating factors. I conclude Guideline F against Applicant.

The Government also alleged that Applicant falsely answered two questions on his security clearance application, by failing to disclose that he had debts in arrears more than 180 and 90 days respectively. These false statements come under Guideline E, Personal Conduct Disqualifying Condition (PC DC) E2.A5.1.2.2. (*the deliberate omission, concealment, or falsification of relevant material facts from any personnel security questionnaire, personal history statement, or similar form used to conduct investigations, determine employment qualifications, award benefits or status, determine security clearance eligibility or trustworthiness, or award fiduciary responsibilities*). Applicant testified that he thought the fact the debts had been charged off meant they were no longer delinquent. He testified that he did not ask anyone what the word "delinquent" meant when answering the questions on SF 86. I do not find his testimony persuasive. With his long history of financial difficulties, it isn't plausible that Applicant didn't know what a delinquent debt is. Additionally, these debts had been delinquent in excess of these periods before they were written off. No mitigating conditions are applicable. I conclude SOR allegations 2.a. and 2.b. against the Applicant.

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: 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. Against the Applicant

Subparagraph 1.g. Against the Applicant

Subparagraph 1.h. Against the Applicant

Paragraph 2. Guideline E: AGAINST THE APPLICANT

Subparagraph 2.a. Against the Applicant

Subparagraph 2.b. Against 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 Applicant's security clearance. Clearance is denied.

Christopher Graham

Administrative Judge

1. Government Exhibit (hereafter GE) 1 (*Applicant's Application for National Security Clearance SF86 February 19, 2002*) at 1-2; Tr. at 14-15.
2. *Id.* at 2; Tr. at 14-15.
3. *Id.* at 9; GE 7 (*Letter: Final Revocation of Security Clearance dated June 5, 1992*).
4. Tr. at 16-17.
5. Tr. at 21; GE 7, *supra*, at 1.
6. Tr. at 23; GE 8 (*Letter: Explanation of Indebtedness undated*) at 1-3; GE 9 (*Letter: Release of Conditions on Security Clearance dated October 26, 1993*) at 1.
7. Tr. at 21.
8. Tr. at 37.
9. Tr. at 32-34.
10. Tr. at 34.
11. Tr. at 34.
12. Tr. at 32-34.
13. Tr. at 47-50.
14. Tr. at 35-37.

15. Tr. at 39-40.
16. GE 1, *supra*, at 10.
17. Tr. at 46-47.
18. See *Department of the Navy v. Egan*, 484 U.S. 518, 528 (1998).
19. *Id.*, at 527.
20. Exec. Or. 12968, *Access to Classified Information* § 3.1(b) (Aug. 4, 1995).
21. *Egan, supra*, at 531.
22. See *ISCR Case No. 95-0611* at 2 (App. Bd. May 2, 1996).
23. See *ISCR Case No. 01-20700* at 3 (App. Bd. Dec. 19, 2002).
24. *Id.*, at 3.
25. See *Egan*; Directive ¶ E2.2.2.