

KEYWORD: Financial

DIGEST: Applicant is 34 years old, married with two children, and works for a defense contractor as a calibration technician. He filed Chapter 7 bankruptcy in 2001. He incurred two debts subsequently that he successfully paid in full by February 2004. A third debt may not be his debt, and he is attempting to pay it or dispute it. Applicant mitigated the financial considerations security concern. Clearance is granted.

CASENO: 03-13992.h1

DATE: 03/17/2005

DATE: March 17, 2005

In re:

SSN: -----

Applicant for Security Clearance

ISCR Case No. 03-13992

DECISION OF ADMINISTRATIVE JUDGE

PHILIP S. HOWE

APPEARANCES

FOR GOVERNMENT

FOR APPLICANT

Pro Se

SYNOPSIS

Applicant is 34 years old, married with two children, and works for a defense contractor as a calibration technician. He filed Chapter 7 bankruptcy in 2001. He incurred two debts subsequently that he successfully paid in full by February 2004. A third debt may not be his debt, and he is attempting to pay it or dispute it. Applicant mitigated the financial considerations security concern. Clearance is granted.

STATEMENT OF THE CASE

The Defense Office of Hearings and Appeals (DOHA) declined to grant or continue a security clearance for Applicant. On June 10, 2004, DOHA issued a Statement of Reasons⁽¹⁾ (SOR) detailing the basis for its decision-security concerns raised under Guideline F (Financial Considerations). Applicant answered the SOR in writing on July 26, 2004 and elected to have a hearing before an administrative judge. The case was assigned to me on October 8, 2004. On November 29, 2004, I convened a hearing to consider whether it is clearly consistent with the national interest to grant or continue a security clearance for Applicant. The Government and the Applicant submitted exhibits that were admitted into evidence. DOHA received the hearing transcript (Tr.) on December 7, 2004.

FINDINGS OF FACT

Applicant's admissions to the SOR allegations are incorporated here as findings of fact. After a complete and thorough review of the evidence in the record, and full consideration of that evidence, I make the following additional findings of fact:

Applicant is 34 years old, married, a veteran, and now works for a defense contractor as a calibration technician. He has

two children. His take home income is about \$30,000 annually. He has \$40 to \$60 remaining every month from his income after his monthly bills are paid. (Tr. 16, 18, 85; Exhibits 1 and 6)

Applicant served 10 years in the Air Force. When he got off active duty in 1998 and had to live on the economy like all civilians, he found it difficult to manage his finances. He filed Chapter 7 bankruptcy in August 2001 to rid himself of the delinquent debts he accumulated in three years, and especially to have the electricity turned on again. Applicant had an electric bill for \$1,670 that he could not pay. Applicant was discharged in bankruptcy on December 3, 2001. Before his bankruptcy, and even until the present day, Applicant paid at least the minimum amount on his debts. Applicant does not have a checking account, but does have a savings account and a 401k account. Applicant's wife takes care of the monthly finances for the family now. (Tr. 18-21, 30, 50, 66; Exhibit 6)

The telephone bill delinquent debt alleged in SOR paragraph 1.a. arose because Applicant's wife was calling her family overseas and the rates were high. The debt is paid as of October 2003. The family now uses prepaid long-distance telephone calling cards. (Tr. 21; Exhibit C)

The automobile delinquent debt alleged in SOR paragraph 1.b. was for an auto Applicant bought while stationed in Europe. The creditor told him it would send him a payment book to continue payments after Applicant separated from the Air Force and had to stop his allotment. The creditor never sent the booklet, and Applicant could not locate anyone to whom to make payments. The debt is now paid and the lien released. The final payment was made in February 2004. (Tr. 21-23; Exhibit D)

The financial services debt alleged in SOR paragraph 1.c. is a mystery to Applicant. He made several efforts in 2004 to contact the creditor, but has not been able to establish a contact to arrange an installment payment plan. Applicant does not know how to contest or dispute the debt through the credit reporting agencies. Applicant does not know the origin of this debt. The credit report that is Exhibit 4 shows that creditor is an assignee of a bank debt, and I conclude that debt is from a credit card. (Tr. 23, 40; Exhibits 3-5)

Applicant is current on all his bills at present. He has three credit cards and is making payments on them. His credit card payments are the minimum amount and he has not been able to pay off any of the cards yet. His total debt for those is about \$700. His wife sends \$200 every other month to help support her unemployed brothers overseas. That money in one year would have paid off the credit card debts on which Applicant makes the minimum payments, so Applicant does earn sufficient funds to pay his debts and save some money. Applicant owes about \$11,000 on a used automobile he bought, on which he pays \$278 monthly, which amount and debt is common in the U.S. for an automobile. Applicant appeared to be a poor money manager and struggling to pay his current expenses, and it able to do so barely every month. (Tr. 27-90; Exhibits 3-5)

Applicant has a good work record. He is competent and provides a quality work product. (Exhibits A and B)

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 authorized the Secretary of Defense or his designee to grant applicants eligibility for access to classified information "only upon a finding that it is clearly consistent the national interest to do so." Exec. Or. 10865, *Safeguarding Classified Information with Industry*

§ 2 (Feb. 20, 1960). Eligibility for a security clearance is predicated upon the applicant meeting the security guidelines contained in the Directive. 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.

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. Enclosure 2 of the Directive sets forth personnel security guidelines, as well as the disqualifying conditions (DC) and mitigating conditions (MC) under each guideline that must be carefully considered in making the overall common sense determination required.

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. Those assessments include: (1) the nature, extent, and seriousness of the conduct; (2) the circumstances surrounding the conduct, and the extent of knowledgeable participation; (3) how recent and frequent the behavior was; (4) the individual'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 (See Directive, Section E2.2.1. of Enclosure 2). Because each security case presents its own unique facts and circumstances, it should not be assumed that the factors exhaust the realm of human experience or that the factors apply equally in every case. Moreover, although adverse information concerning a single condition may not be sufficient for an unfavorable determination, the individual may be disqualified if available information reflects a recent or recurring pattern of questionable judgment, irresponsibility, or other behavior specified in the Guidelines.

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). All that is required is proof of facts and circumstances that 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. ISCR Case No. 00-0277, 2001 DOHA LEXIS 335 at **6-8 (App. Bd. 2001). Once the Government has established a *prima facie* case by substantial evidence, the burden shifts to the applicant to rebut, explain, extenuate, or mitigate the facts. *See* Directive ¶ E3.1.15. An applicant "has the ultimate burden of demonstrating that is clearly consistent with the national interest to grant or continue his security clearance. ISCR Case No. 01-20700 at 3 (App. Bd. 2002). "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. "[S]ecurity clearance determinations should err, if they must, on the side of denials." *Egan*, 484 U.S. at 531. *See* Exec. Or. 12968 § 3.1(b).

Based upon a consideration of the evidence as a whole, I find the following adjudicative guidelines most pertinent to an evaluation of the facts of this case:

Guideline F:Financial Considerations: *The Concern*: An individual who is financially overextended is at risk of having to engage in illegal acts to generate funds.

CONCLUSIONS

The Government established by substantial evidence and Applicant's admissions each of the allegations in the SOR. Applicant had three delinquent debts. He filed for and was discharged in Chapter 7 bankruptcy in 2001 to relieve himself of earlier debts. Disqualifying Conditions (DC) E2.A6.1.2.1 (*a history of not meeting financial obligations*) and DC E2.A6.1.2.3 (*inability or unwillingness to satisfy debts*) apply. Applicant's financial statement of January 20, 2004, showed he did not have enough income to pay these debts in addition to the debts already listed.

Applicant paid the debts listed in the first two paragraphs of the SOR, and did so before and immediately after January 20, 2004. Therefore, those debts are not a factor. The third SOR debt is not a debt Applicant recognizes because his credit card grantor turned the debt over to a collection agency. Applicant committed to pay that debt on an installment payment account. If not valid, he would dispute it, seeking its removal from his credit report. Applicant is unsophisticated about financial management, and surrendered the family finances to his wife after they filed bankruptcy

in 2001. However, through all of Applicant's financial difficulties, it is clear he has made an effort to pay something, usually the minimum amount or an amount reasonable under his income, on each debt. He has not ignored an obligation. The bankruptcy in 2001 was a reasonable and legal method to resolve his delinquent debts. Applicant finds himself in the same situation many people do of only being able to live from paycheck to paycheck and get by financially. Outside of his car debt, his debts are not large, being less than \$2,000. Therefore, I conclude he initiated and maintains good-faith efforts to repay his overdue creditors or otherwise resolve his debts, so that Mitigating Condition (MC) E2.A6.1.3.6 (*the individual initiated a good-faith effort to repay overdue creditors or otherwise resolve debts*) applies.

FORMAL FINDINGS

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

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

DECISION

In light of all of 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 Applicant. Clearance is granted.

Philip S. Howe

Administrative Judge

1. Pursuant to Exec. Or. 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).