

KEYWORD: Financial; Personal Conduct

DIGEST: Applicant owes three debts totaling approximately \$11,500, which he does not intend to pay. In January 2002, when Applicant completed a security clearance application, Standard Form (SF) 86, he failed to indicate he had an unpaid judgment against him. The record evidence is insufficient to mitigate or extenuate the negative security implications stemming from his debts and the falsification on his SF 86. Clearance is denied.

CASENO: 03-14993.h1

DATE: 03/10/2005

DATE: March 10, 2005

In Re:

SSN: -----

Applicant for Security Clearance

ISCR Case No. 03-14993

DECISION OF ADMINISTRATIVE JUDGE

CLAUDE R. HEINY

APPEARANCES

FOR GOVERNMENT

FOR APPLICANT

Pro Se

SYNOPSIS

Applicant owes three debts totaling approximately \$11,500, which he does not intend to pay. In January 2002, when Applicant completed a security clearance application, Standard Form (SF) 86, he failed to reveal he had an unpaid judgment against him. The record evidence is insufficient to mitigate or extenuate the negative security implications stemming from his debts and the falsification of his SF 86. Clearance is denied.

STATEMENT OF THE CASE

On April 22, 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 May 20, 2004, Applicant's answer to the SOR and request for a hearing was received. On October 14, 2004, I was assigned the case. On October 15, 2004, a Notice of Hearing was issued scheduling the hearing which was held on November 9, 2004. On November 17, 2004, DOHA received a copy of the transcript (Tr.). The record was kept open to allow Applicant to submit additional documents, which were received on November 17, 2004. Department Counsel having no objections, the documents were admitted into evidence.

FINDINGS OF FACT

The SOR alleges security significant financial considerations and personal conduct. After thorough review of the whole record, I make the following additional findings of fact:

The Applicant is a 61-year-old truck driver who has worked for a defense contractor since January 2002, and is seeking to obtain a security clearance. The Applicant is regarded by those who know him as honest, trustworthy, hardworking, dependable, a professional of high integrity and excellent character, who is known by his peers as a driver, owner-operator, as a person not only skilled in his profession, but deserving of respect for his knowledge and professionalism in the manner in which he carries out his duties.

The SOR alleges Applicant owes four debts totaling approximately \$23,600. A summary of those debts follows:

	Creditor	Amount Owed	Current Status
a.	Applicant cosigned on his son's loan	\$5,295	Unpaid.
b.	Vehicle loan	\$11,635	He has disputed this debt with the creditor. A record search by creditor failed to show an obligation.
c.	Bank credit card judgment	\$4,153.21	Unpaid.
d.	Telephone bill	\$2,538	Unpaid.
		\$23,621.21	Total amount of debt alleged

In 1997, Applicant cosigned with his son on a bank loan (SOR 1.b). His son made the payments on the note, paying down the note from \$10,884 to \$5,297. In 2001, his son died. The debt has been charged off. Applicant does not dispute owing the debt, but refuses to pay it. (Gov Ex 2) He has never made a payment on the loan. Applicant submitted three pages of his May 2004 Experian credit report, (App Ex B) which list four bank accounts with the same bank as the debt listed in SOR 1.b. However, none of the four accounts listed have the account number as the debt in question. Additionally, page 4 begins with a partial entry referencing the bank in question and lists the status as having previously been delinquent.

Applicant obtained a vehicle loan for a 1985 Chevy Blazer, which his son drove. He asserts the loan was paid in full in 1996 and the lien was released. In 1993 or 1994, the Blazer was traded for another vehicle. (Tr. 56) Since the vehicle was traded, Applicant has been contacted a number of times by creditors attempting to collect on the note. This is the third time this creditor (SOR 1. b) has owned the debt. (Tr. 39) When the creditors call Applicant, he explains the debt has been paid and asks them to produce documentation indicating he owes the debt. He has contacted the creditor listed in the SOR and a search by social security number failed to locate any outstanding obligation. (App Ex B) Applicant wrote on page four of his May 2004 credit report that the finance company account listed as "Paid/Never Late" refers to the vehicle debt. Applicant has had numerous accounts with this finance company. The listed installment account, which had a high balance of \$8,582, was opened in March 1994. His documentation does not establish this particular account

related to the vehicle loan in question.

Applicant's wife worked for a bank for approximately 21 years before receiving a serious neck injury on the job. She had two ruptured discs in her neck caused when she was struck by the closing of the vault door. She was on worker's compensation for a year. The bank terminated his wife's employment. A lawsuit concerning the termination and medical expenses was settled. Applicant had a VISA card with the bank and chose not to pay the balance due reasoning it was compensation for all the years his wife worked at the bank. He told the bank he considered the credit card balance to be part of the settlement. The bank disagreed and obtained a judgment (Gov Ex 6) against him for the amount owed on his credit card. He is unwilling to pay this debt. Applicant's May 2004 credit report indicates a \$3,703 debt with this bank was written off.

Applicant purchased a cellular telephone and service after being promised service would be available nation wide. The service rarely worked as promised. He had the service less than two months before he returned the cell phone to the company. Neither this creditor nor the other three creditors listed in the SOR are actively pursuing payment from Applicant.

In January 2002, Applicant completed a Security Clearance Application, Standard Form (SF) 86. He answered "no" to question 37, which asked him if he had any unpaid judgments against him during the prior seven years. He answered "no" to question 38, which asked him if he had ever been more than 180 days delinquent on any account during the prior seven years. He answered "no" to question 39, which asked him if he was currently more than 90 days delinquent on any debt. Pride and misunderstanding guided his answers. Since the creditors were not pursuing him for payment, he considered his past debts resolved. He was proud to state he had no debts. In April 2002 and June 2002, Applicant was questioned by a special agent of the Defense Security Service (DSS) about his finances where he admitted the three debts and disputed the forth.

In 1968, Applicant was in the Marine Corps and served in Viet Nam. He spent 15 years as a police department investigator. Applicant and his wife are the owners/operators of 2001 \$120,000 tractor (Tr. 33) on which they obtained a \$40,000 loan. They are make \$1,700 payments every two weeks. (Tr. 33, 61) Applicant anticipates having the truck loan paid in full by April 2005. He has a car payment, but no house payment or credit card debt. His house is worth approximately \$120,000.

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.

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 so as to meet his financial obligations. Directive E.2.A.6.1.1. The Applicant owes three debts totaling approximately \$11,500. Disqualifying Conditions (DC) 1. (E2.A6.1.2.1. *A history of not meeting financial obligations*) and 3. (E2.A6.1.2.3. *Inability or unwillingness to satisfy debts*) apply.

Applicant disputed the largest (SOR 1.b, \$11,635) of the four debts listed in the SOR. After failing to locate a debt under Applicant's social security number, the creditor requested the credit bureaus to remove this account from Applicant's credit report. I find for Applicant as to SOR 1.b.

Applicant admits he cosigned on a loan with his son who made payments until his death. Applicant acknowledges he has made no payments on this debt. Applicant's May 2004 credit report does not prove this debt has been paid. The credit report is from only one of the three credit reporting companies. The debt could be reflected on other credit reports just as it is reflected on his February 2002 credit report (Gov Ex 5). Second, the accounts with the bank Applicant lists as paid do not have the same account number as the debt in question. Third, only 4 of 12 pages of the May 2004 credit report have been submitted. Page 4 of the credit report lists a debt with the same bank, which is not listed as paid and appears to have been previously delinquent. Applicant has failed to document this debt (\$5,295) is paid.

Applicant admits he had credit card debt with the bank where his wife previously worked. When his wife was injured at the bank, Applicant told the bank he considered non payment of the credit card debt as part of the settlement for his wife's injury. The bank disagreed and obtained a judgment of \$4,153 against Applicant. The judgment remains unpaid.

Applicant purchased a telephone and cellular service on the promise that service would be nationwide. Two months later, Applicant returned the telephone and told the manager he was not going to pay for the telephone. Merely telling someone you do not intend to pay a debt does not eliminate the financial responsibility for the debt. This debt (\$2,438) remains unpaid.

None of the Mitigating Conditions (MC) apply in the Applicant's favor to the three debts that remain unpaid. MC 1 (E2.A6.1.2.1. *The behavior was not recent*) does not apply because the conduct is recent since the debts remain unpaid. MC 2 (E2.A6.1.2.2. *It was an isolated incident*) does not apply because there are three debts. There was no showing the debts were caused by factors beyond Applicant's control. There has been no showing Applicant has received financial counseling nor is there any indication his financial difficulties are under control. For MC 6 (E2.A6.1.2.6. *The individual*

initiated a good-faith effort to repay overdue creditors or otherwise resolve debts) to apply there must be an "ability" to repay the debts, the "desire" to repay, and evidence of a good faith effort to repay. Applicant has assets of more than \$180,000, which include his house and truck. He appears to have the ability to pay these three debts, but he is unwilling to do so. Because disqualifying conditions apply and no mitigating conditions apply, I find against Applicant on financial considerations.

The Government has satisfied its initial burden of proof under guideline E, (Personal Conduct). Under Guideline E, the security eligibility of an applicant is placed into question when that applicant is shown to have been involved in personal conduct which creates doubt about the person's judgment, reliability, and trustworthiness. Complete honesty and candor on the part of applicants for access to classified information is essential to make an accurate and meaningful security clearance determination. Without all the relevant and material facts, a clearance decision is susceptible to error, thus jeopardizing the nation's security. The nature of Applicant's actions, in providing false information on his January 2002 SF 86 poses a serious potential risk to the nation's security precautions.

In January 2002, when Applicant completed an SF 86 he answered "no" to question 37, which asked if he had any unpaid judgments against him during the previous seven years. A year and a half earlier in June 2000, a bank obtained a judgment against him, which he failed to list it on his SF 86. I find against Applicant as to SOR 2.a.

Applicant also answered "no" to questions 38 and 39, which asked him if he had ever been more than 180 days delinquent on any debt or was currently 90 days delinquent on any debt. Applicant had one debt (SOR 1.d) listed as a collection account on his March 2004 credit report (Gov Ex 4) and another debt (SOR 1.a) listed as a bad debt on his February 2002 credit report. (Gov Ex 5) However, I am unable to determine if these debts were ever 180 days delinquent or were currently more than 90 days delinquent when he completed his SF 86 in January 2002. I find for Applicant as to SOR 2.b. and 2.c.

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 Considerations: AGAINST THE APPLICANT

Subparagraph 1.a.: Against the Applicant

Subparagraph 1.b.: For the Applicant

Subparagraph 1.c.: Against the Applicant

Subparagraph 1.d.: Against the Applicant

Paragraph 2 Personal Conduct: AGAINST THE APPLICANT

Subparagraph 2.a.: Against the Applicant

Subparagraph 2.b.: For the Applicant

Subparagraph 2.c.: 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 the Applicant. Clearance is denied.

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.