

KEYWORD: Financial

DIGEST: Applicant's delinquent debts were discharged under Chapter 7 bankruptcy in 2004, and his financial situation has improved. Unexpected periods of unemployment and large medical expenses contributed to his financial difficulties. He is current with his obligations, his income exceeds his expenses, and he has no credit cards. These facts mitigate questions and doubts as to his security eligibility and suitability. Clearance is granted.

CASENO: 03-15046.h1

DATE: 03/23/2005

DATE: March 23, 2005

In Re:

SSN: -----

Applicant for Security Clearance

ISCR Case No. 03-15046

DECISION OF ADMINISTRATIVE JUDGE

CHRISTOPHER GRAHAM

APPEARANCES

FOR GOVERNMENT

FOR APPLICANT

Pro Se

SYNOPSIS

Applicant's delinquent debts were discharged under Chapter 7 bankruptcy in 2004, and his financial situation has improved. Unexpected periods of unemployment and large medical expenses contributed to his financial difficulties. He is current with his obligations, his income exceeds his expenses, and he has no credit cards. These facts mitigate questions and doubts as to his security eligibility and suitability. Clearance is granted.

STATEMENT OF THE CASE

On July 9, 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), detailing 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. The SOR detailed financial instability as the reasons why DOHA could not find that it is clearly in the national interest to grant or continue a security clearance.

In a sworn written statement, dated July 27, 2004, Applicant responded to the allegations in the SOR, attached four documents, and requested a hearing. The case was assigned to me on February 1, 2005, notice was mailed February 8, 2005, and I convened a hearing on February 24, 2005. During the hearing, eleven Government exhibits (GE) and Applicant's testimony were received. The transcript (Tr.) was received on March 4, 2005.

FINDINGS OF FACT

Applicant has admitted to all of the SOR allegations pertaining to financial matters under Guideline F (subparagraphs 1.a. through 1.o.). 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 single, 37-year-old employee of a federal contractor seeking to obtain a security clearance. He has a history of unpaid debts going back to 1988.⁽¹⁾ Illness accounted primarily for his financial problems. A diabetic since the age of four, he had a kidney and pancreas transplant in 1997, and a second kidney/pancreas transplant in 2001.⁽²⁾ He also had periods of unemployment and large medical bills which overextended him financially. He had frequent automobile repairs as he drove older cars.⁽³⁾ All debts listed in the SOR were discharged in a Chapter 7 bankruptcy on May 5, 2004.⁽⁴⁾ Although the debts in SOR subparagraphs 1.a., 1.b., and 1.c. show as current debts on Applicant's credit report⁽⁵⁾, I find that those debts were listed on his bankruptcy petition and were discharged.⁽⁶⁾ A state tax lien was paid from his 2003 federal income tax return.⁽⁷⁾ Applicant lives with his parents, has no credit cards, paid off a loan he obtained to pay his legal expenses, and the only debt he has is for an automobile, which is current. He has a child but is under no court ordered support obligations. He voluntarily provides several hundred dollars a month for this child. He now has health insurance through his employer, he has paid his college student loans, and he is making sufficient income at the present time to cover his expenses.⁽⁸⁾

POLICIES

"[No] one has a 'right' to a security clearance."⁽⁹⁾ 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."⁽¹⁰⁾ 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."⁽¹¹⁾ 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.⁽¹²⁾ 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.⁽¹³⁾

Once the Government establishes a disqualifying condition, the burden shifts to the applicant to rebut, explain, extenuate, or mitigate the facts.⁽¹⁴⁾ An applicant "has the ultimate burden of demonstrating that it is clearly consistent with the national interest to grant or continue his security clearance."⁽¹⁵⁾ 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 her 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.⁽¹⁶⁾ 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.

One additional comment is worthy of note. 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. Nothing in this Decision should be construed to suggest I have based this decision, in whole or in part, on any express or implied decision as to Applicant's allegiance, loyalty, or patriotism.

Having considered the SOR allegations and having reviewed the record evidence as a whole, I conclude the relevant adjudicative guideline 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.*

CONCLUSIONS

Upon consideration of all the facts in evidence, an assessment of witness credibility, 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. As indicated above, Applicant's financial situation deteriorated beginning in 1997. Instead of working with his creditors to attempt to resolve his financial difficulties, he chose to wipe the slate clean and filed for bankruptcy under Chapter 7. All of his debts were discharged in May 2004. Applicant's 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 diabetic condition combined with the necessity for two kidney/pancreas transplants constitute sufficient reasons to justify the claim that his financial situation was largely beyond his control so as to bring this matter within the Financial Considerations Mitigating Condition (FC MC) E2A6.1.3.3. (*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)*). Applicant provided evidence of his transplants, the resulting periods of unemployment, lack of medical insurance, and the high cost of medications as extenuating and mitigating circumstances that caused him to be overburdened with debt.

The only positive action taken was to have his debts, accumulated since 1997, discharged through a Chapter 7 bankruptcy. That action does qualify as meaningful efforts to resolve outstanding financial obligations, and thus, this matter comes within FC MC E2A6.1.3.6. (*The individual initiated a good-faith effort to repay overdue creditors or otherwise resolve debts*). It appears that Applicant's attitude toward his finances is healthy at this time. Other than a car payment he has no other current debt. While the car he purchased (2003 Pontiac Grand Prix) seems a little pricey for someone coming out of bankruptcy, his reason for the purchase was to own a vehicle that was not constantly in need of maintenance. As he needs reliable transportation to work, his reason is sound.

Having no credit cards, having repaid a loan, the fact that he is current with his obligations, and that his income exceeds his expenses lead me to conclude that Applicant has matured, has his medical condition under control, and has his financial affairs in order. Accordingly, I find the allegations in the SOR in Applicant's favor.

For the reasons stated, I conclude Applicant is eligible for access to classified information.

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: FOR THE APPLICANT

Subparagraph 1.a. For the Applicant

Subparagraph 1.b. For the Applicant

Subparagraph 1.c. For the Applicant

Subparagraph 1.d. For the Applicant

Subparagraph 1.e. For the Applicant

Subparagraph 1.f. For the Applicant

Subparagraph 1.g. For the Applicant

Subparagraph 1.h. For the Applicant

Subparagraph 1.i. For the Applicant

Subparagraph 1.j. For the Applicant

Subparagraph 1.k. For the Applicant

Subparagraph 1.l. For the Applicant

Subparagraph 1.m. For the Applicant

Subparagraph 1.n. For the Applicant

Subparagraph 1.o. For the Applicant

DECISION

In light of all the circumstances presented by the record in this case, it is clearly consistent with the national interest to grant or continue Applicant's security clearance. Clearance is granted.

Christopher Graham

Administrative Judge

1. Tr. at 6.
2. Tr. at 15.
3. Tr. at 19-23.
4. Applicant's Exhibits to Answer (*Discharge and Final Decree in Bankruptcy, Case 04-11311, U. S. District of Maryland*, dated May 5, 2004) at 3-4.
5. GE 11 (*Applicant's Credit Report dated February 24, 2005*) at 1.
6. Tr. at 11-12.
7. Tr. at 11.
8. Tr. at 15-29
9. See *Department of the Navy v. Egan*, 484 U.S. 518, 528 (1998).
10. *Id.*, at 527.
11. Exec. Or. 12968, *Access to Classified Information* § 3.1(b) (Aug. 4, 1995).
12. *Egan, supra*, at 531.
13. See *ISCR Case No. 95-0611* at 2 (App. Bd. May 2, 1996).
14. See *ISCR Case No. 01-20700* at 3 (App. Bd. Dec. 19, 2002).
15. *Id.*, at 3.
16. See *Egan*; Directive ¶ E2.2.2.