

KEYWORD: Financial

DIGEST: Applicant is a electronic maintenance and installation technician for a defense contractor. He has delinquent debts from car repossessions, tax liens, and household expenses that have not been satisfied. Applicant made little effort to satisfy his debts. He filed for bankruptcy which will relieve him of his debts. He has not made a good-faith effort to satisfy his delinquent debts and mitigate security concerns based on financial considerations. Clearance is denied.

CASENO: 03-1519.h1

DATE: 04/07/2005

DATE: April 7, 2005

In Re:

SSN: -----

Applicant for Security Clearance

ISCR Case No. 03-15191

DECISION OF ADMINISTRATIVE JUDGE

THOMAS M. CREAN

APPEARANCES

FOR GOVERNMENT

FOR APPLICANT

Pro Se

SYNOPSIS

Applicant is a electronic maintenance and installation technician for a defense contractor. He has delinquent debts from car repossessions, tax liens, and household expenses that have not been satisfied. Applicant made little effort to satisfy his debts. He filed for bankruptcy which will relieve him of his debts. He has not made a good-faith effort to satisfy his delinquent debts and mitigate security concerns based on financial considerations. Clearance is denied.

STATEMENT OF THE CASE

On June 16, 2004, the Defense Office of Hearing and Appeals (DOHA) issued a Statement of Reasons (SOR) detailing the basis for its decision to not grant a security clearance to Applicant. The action was taken under Executive Order 10865, *Safeguarding Classified Information within Industry* (February 20, 1990), as amended and modified, and Department of Defense Directive 5220.6, *Defense Industrial Personnel Security Clearance Review Program* (January 2, 1992), as amended and modified (Directive). Applicant acknowledged receipt of the SOR on July 1, 2004. The SOR alleges security concerns under Guideline F (Financial Considerations) of the Directive.

Applicant answered the SOR in writing on July 2, 2004. He admitted all of the allegations under Guidelines F and requested a hearing before an administrative judge. The request for a hearing was received by DOHA on July 6, 2004. Department Counsel was prepared to proceed with the case on January 10, 2005, and the case was assigned to me on January 11, 2005. A notice of hearing was issued on February 22, 2005, and the hearing convened on March 10, 2005. Eight government exhibits, one Applicant exhibit, and the testimony of the Applicant were received during the hearing. The transcript was received on March 18, 2005.

FINDINGS OF FACT

Applicant is a 31 year old electronics maintenance and installation technician for a defense contractor. He is married with two children.⁽¹⁾

There are 13 allegations of delinquent debt in the SOR to include judgments, tax liens, and returned dishonored checks. Debt 1.a. in the SOR is the remaining debt from a car repossessed in 2002. Debt 1.b in the SOR is a jewelry store credit card used by Applicant and his mother. Debt 1.c. in the SOR is the remainder from a car repossessed in 1995. Debt 1.d. in the SOR is for funds paid to Applicant by a tax preparing agency based on a tax refund that was not paid by the Internal Revenue Service. Applicant has made no payments on these delinquent debts nor made an effort to arrange with creditors to pay the delinquent debts.⁽²⁾

Debt 1.e. in the SOR is for a company credit card from Applicant's former employer. The card was used by Applicant while he was on travel for the employer. The employer reimbursed Applicant for his expenses by check mailed to his home. Applicant was not home when the check arrived and the check was cashed. Applicant asked his employer about the check but they could not tell him who cashed the check. Applicant made no further inquiries either at home or from the employer as to the status of the check or his reimbursement for expenses. He made no payments on this account.⁽³⁾

Debt 1.f. in the SOR is for a home telephone bill Applicant did not pay the final bill when he moved from his apartment. Debt 1.g. in the SOR is for a medical bill incurred for medical care provided Applicant. Debt 1.h. in the SOR is for a cellular telephone bill incurred when Applicant thought he had free long distance service. Debt 1.i. in the SOR is an utility bill for the Applicant's apartment. Debt 1.j. in the SOR is for two checks cashed by Applicant at a grocery store but returned for insufficient funds. Debt 1.k. in the SOR is for the remaining debt from a car repossessed in 2000. Debt 1.l. in the SOR is for the rent remaining when Applicant was evicted from his apartment with rent due. Applicant made no payments on this delinquent debt and no inquiries of the creditor to arrange payment of the debt.⁽⁴⁾

Applicant claimed his daughter as a dependent on his federal tax return for tax years 1996 and 1997. The Internal Revenue Service disallowed the daughter as a dependent and assessed taxes, penalties, and interest. Some of the taxes owed have been paid to the Internal Revenue Service from payroll deductions but the balance is a delinquent debt.⁽⁵⁾ Applicant received a tax refund loan from a tax preparing agency based on his claimed refund resulting in debt 1.d. in the SOR.

Applicant's pay per month is approximately \$3,400 and his recurring monthly expenses are approximately \$2,900.⁽⁶⁾ Applicant's alleged indebtedness is approximately \$21,400, \$18,500 of which is the result of the three car repossessions, the credit card debt from his previous employer, and the federal tax lien. Approximately \$3,000 of Applicant's debt for the eight remaining delinquent debts are for normal expenses. Applicant did not make any payments on any of these debts unless specified above. Applicant claimed in his answer to the SOR in July 2004, that he would file for bankruptcy. Applicant told agents from the Defense Security Service in April 2003 he would file for bankruptcy.⁽⁷⁾ Applicant

filed a Chapter 7 petition in bankruptcy on January 30, 2005.⁽⁸⁾ Based upon information from his lawyer, Applicant anticipates that all of his delinquent debts will be discharged in bankruptcy. The discharged is anticipated in May or June 2005.

POLICIES

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."⁽⁹⁾ Eligibility for a security clearance is predicated upon the applicant meeting the security guidelines contained in the Directive.⁽¹⁰⁾

The Directive sets out the adjudicative guidelines for making decisions on security clearances. Enclosure 2 of the Directive sets forth adjudicative guidelines for determining eligibility for access to classified information, and it lists the disqualifying conditions and mitigating conditions for each guideline. Each clearance decision must be fair, impartial, and a commonsense decision based on the relevant and material facts and circumstances, the whole person concept, and the factors listed in the Directive ¶ 6.3.1 through ¶ 6.3.6.

"The adjudicative process is an examination of a sufficient period of a person's life to make an affirmative determination that the person is eligible for a security clearance." An administrative judge must apply the "whole person concept," and consider and carefully weigh the available, reliable information about the person.⁽¹¹⁾ An administrative judge should consider: (1) the nature, extent, and seriousness of the conduct; (2) the circumstances surrounding the conduct, to include knowledgeable participation; (3) the frequency and recency of the conduct; (4) the applicant'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 of recurrence.⁽¹²⁾

A person granted access to classified information enters into a special relationship with the government. The government must be able to repose a high degree of trust and confidence in those individuals to whom it grants access to classified information. The decision to deny an individual a security clearance is not necessarily a determination as to the loyalty of the applicant.⁽¹³⁾ 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 present evidence to establish controverted facts in the SOR that disqualify or may disqualify the Applicant from being eligible for access to classified information.⁽¹⁴⁾ Thereafter, Applicant is responsible for presenting evidence to rebut, explain, extenuate, or mitigate facts.⁽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."⁽¹⁶⁾ "[T]he Directive presumes there is a nexus or rational connection between proven conduct under any of the Criteria listed therein and an applicant's security suitability."⁽¹⁷⁾ "Any doubt as to whether access to classified information is clearly consistent with national security will be resolved in favor of the national security."⁽¹⁸⁾

Based upon a consideration of the evidence, I find the following adjudicative guideline most pertinent to the evaluation of the facts in this case:

Guideline F - Financial Considerations: A security concern exists for an individual who is financially irresponsible. An individual who is financial irresponsibility may also be irresponsible, unconcerned, or careless in their obligations to protect classified information. Behaving responsibly or irresponsibly in one aspect of life provides an indication of how a person may behave in other aspects of life.

Conditions that could raise a security concern and may be disqualifying, as well as those which would mitigate security concerns, pertaining to the adjudicative guideline are set forth and discussed in the conclusions section below.

CONCLUSIONS

I carefully considered all of the facts in evidence and the legal standards discussed above. I reach the following conclusions regarding the allegations in the SOR:

The government has established its case under Guideline F. Applicant's delinquent debts brings the matter within Financial Considerations Disqualifying Conditions Directive ¶ E2.A6.1.2.1 (*a history of not meeting financial obligations*); and Directive ¶ E2.A6.1.2.3 (*inability or unwillingness to satisfy debts*). Applicant has delinquent debts from as far back as 1995. He has made no efforts to resolve his indebtedness, even for those that are for small monetary amounts. Applicant recently filed a petition in bankruptcy. Bankruptcy is a legal and permissible means of resolving debts. It is assumed for the purposes of this decision that the petition in bankruptcy will be approved and Applicant relieved of his debts. However, a discharge in bankruptcy does not preclude consideration of the security significance of the actions leading to the delinquent debts.⁽¹⁹⁾ Applicant has a history of not meeting his financial obligations and he has been unable and unwilling to satisfy his debts. I conclude the aforementioned Financial Considerations Disqualifying Conditions have been established.

The Financial Consideration Mitigating Condition that may apply in this case because Applicant filed for bankruptcy is Directive ¶ E2.A6.1.3.6 (*the individual initiated a good-faith effort to repay overdue creditors or otherwise resolve debts*). The approval of the bankruptcy petition will resolve Applicant's indebtedness, but it does not relieve the security concerns. Applicant did not make a good-faith effort to pay his delinquent debts. His income is sufficient to make arrangements with creditors to pay

some of the indebtedness, but Applicant has not done so. Instead of trying to pay his indebtedness, Applicant waited until confronted with the possible loss of a security clearance before turning to bankruptcy to resolve his indebtedness. I conclude that under the circumstances Applicant has not established that he made a good-faith effort to repay overdue creditors or otherwise resolve debt.

I carefully considered all of the circumstances in light of the "whole person" concept. I conclude Applicant is not 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 Section E3.1.25 of Enclosure 3 of the Directive, are:

Paragraph 1, Guideline F: AGAINST APPLICANT

Subparagraph 1.a.: Against Applicant

Subparagraph 1.b.: Against Applicant

Subparagraph 1.c.: Against Applicant

Subparagraph 1.d.: Against Applicant

Subparagraph 1.e.: Against Applicant

Subparagraph 1.f.: Against Applicant

Subparagraph 1.g.: Against Applicant

Subparagraph 1.h.: Against Applicant

Subparagraph 1.i.: Against Applicant

Subparagraph 1.j.: Against Applicant

Subparagraph 1.k.: Against Applicant

Subparagraph 1.l.: Against Applicant

Subparagraph 1.m. Against Applicant

DECISION

In light of all of 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.

Thomas M. Crean

Administrative Judge

1. Tr. 20-22.
2. Tr. 22-27.
3. Tr. 28-29.
4. Tr. 30-36.
5. Tr. 38-40; Government exhibit 7 (Tax lien, dated Sep. 26, 2000).
6. Tr. 41-45; Government exhibit 2 (Interrogatories, dated Dec. 21, 2003) at 5.
7. Government exhibit 3 (Applicant's statement, dated Apr. 17, 2003) at 5.
8. Applicant exhibit A (Letter for Applicant's lawyer, dated Mar. 7, 2005).
9. *Department of the Navy v. Egan*, 484 U.S. 518 (1988).
10. Directive ¶ E2.2.1.
11. *Id.*
12. Directive ¶¶ E2.2.1.1 through E2.2.1.9.
13. *See* Exec. Or. 10865 § 7.
14. Directive ¶ E3.1.14.
15. ISCR Case No. 01-20700 at 3 (App. Bd. Dec. 19, 2002); *see* Directive ¶ E3.1.15.

16. ISCR Case No. 01-20700 at 3 (App. Bd. Dec. 19, 2002).

17. ISCR Case No. 95-0611 at 2 (App. Bd. May 2, 1996) (quoting DISCR Case No. 92-1106 (App. Bd. Oct. 7, 1993))

18. *Egan*, 484 U.S. at 531; *see* Directive ¶ E2.2.2.

19. ISCR Case No. 01-26675 at 3 (App. Bd. Jun. 13, 2003),. *See*, ISCR Case No. 97-0016 (App. Bd. Dec. 13, 1997).