

KEYWORD: Financial

DIGEST: Applicant had five delinquent debts for about \$34,000. He reduced his discretionary spending, cancelled credit cards, and employed a debt management program to negotiate with creditors to pay his debts. Applicant paid or has a plan to pay all his delinquent debts and will be debt free by 2007. Applicant mitigated the financial considerations security concerns. Clearance is granted.

CASENO: 03-15157.h1

DATE: 08/24/2004

DATE: August 24, 2004

In re:

SSN: -----

Applicant for Security Clearance

ISCR Case No. 03-15157

DECISION OF ADMINISTRATIVE JUDGE

PHILIP S. HOWE

APPEARANCES

FOR GOVERNMENT

Pamela Benson, Esq., Department Counsel

FOR APPLICANT

Pro Se

SYNOPSIS

Applicant had five delinquent debts for about \$34,000. He reduced his discretionary spending, cancelled credit cards, and employed a debt management program to negotiate with creditors to pay his debts. Applicant paid or has a plan to pay all his delinquent debts and will be debt free by 2007. Applicant mitigated the financial considerations security concerns. 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 December 22, 2003, DOHA issued a Statement of Reasons [\(u\)](#) (SOR) detailing the basis for its decision-security concerns raised under Guideline F (Financial Considerations) of the Directive. Applicant answered the SOR in writing with an undated answer and elected to have a hearing before an administrative judge. The case was assigned to me arch 11, 2004. A Notice of Hearing was issued March 12 2004. On April 7, 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 April 14, 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 36 years old, married, has two children, and works as a senior computer operator for a defense contractor. (Tr. 19, 21)

Applicant worked for one defense contractor for seven years until he was laid off suddenly in 2002, and went on unemployment. Applicant spent money based on an expectation of overtime work for his prior employer, and when that overtime reduced from 525 hours in one year to almost nothing, he found himself unable to repay all his debts in a timely manner. He used credit cards to make up the difference in income. Then, Applicant borrowed money to pay credit card debts. When he was laid off from his job, he went on unemployment at a substantially reduced income, thereby further aggravating his financial situation. He was employed in 2003 at a salary \$10,000 less than he made when employed at his former employer. The birth of Applicant's second child, now two years old, added expenses to his household budget, including medical bills for his wife who had a difficult pregnancy. All of these events contributed to Applicant's financial problems, in addition to his family's spending habits. (Tr. 20 to 32, 51)

Applicant discussed filing bankruptcy with an attorney, but decided he should pay his debts. In 2001 he found a debt management service on the internet, and started paying it \$645 monthly toward the settlement of his debts. Over the past three years Applicant's payments have enabled this service to settle four debts, including two credit card debts listed in subparagraphs 1.c. and 1.e. in the SOR. They were settled for less than originally owed. A large part of each debt was accumulated interest. The remaining debts (subparagraphs 1.a., 1.b., and 1.d.) are to be paid over the next 40 months. That debt on credit cards totals about \$29,000. (Tr. 30 to 47; Exhibits 2, 3 at 5 to 8, 4 at 1 and 2, 5, A, B, and C)

Applicant has other credit cards outstanding with no balances, and his two department store credit cards were to be paid off in May 2004. Applicant uses a monthly and weekly budget, and uses cash only for purchases. Applicant also attempted to refinance his first and second mortgages to use any equity to pay off delinquent credit card debt, but his credit rating prevented that attempt from being consummated. (Tr. 36 to 59)

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 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." Exec. Or. 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.

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. Unexplained affluence is often linked to proceeds from financially profitable criminal acts.

Conditions that could raise a security concern and may be disqualifying include:

- (1) A history of not meeting financial obligations. E2.A6.1.2.1.
- (3) Inability or unwillingness to satisfy debts. E2.A6.1.2.3.

Conditions that could mitigate security concerns include:

- (3) The conditions that resulted in the behavior were largely beyond the person's control (loss of employment, unexpected medical emergency)
- (4) The person has received counseling for the problem and there is clear indication the problem is being resolved or is under control. E2.A6.1.3.4.
- (6) The individual initiated good-faith efforts to repay overdue creditors or otherwise resolve debts. E2.A6.1.3.6.

CONCLUSIONS

In the SOR, DOHA alleged Applicant had delinquent debts that were in collection or charged off status (§ 1.a.-1.e.) totaling approximately \$34,000. An applicant who is financially overextended is at risk of having to engage in illegal acts to generate funds. The Government established by substantial evidence each of the allegations in the SOR. Applicant has a history of not meeting his financial obligations and is unable or unwilling to satisfy his debts, and Disqualifying Conditions (DC) 1 and 3 apply, respectively.

Applicant contemplated seeking legal relief through bankruptcy, but decided to pay his debts with help from a debt management service. Since 2001 Applicant has been paying \$645 monthly to this service, which has paid off four debts, and three remain to be paid over the next 40 months. Applicant has reduced his discretionary spending, and his wife is working full time. His loss of employment, management's reduction of overtime, and the difficult second pregnancy of Applicant's wife contributed to Applicant's financial problems. His spending habits and use of credit cards, a common problem in modern America, also caused his financial problems. Mitigating Conditions 3 (factors beyond Applicant's control), MC 4 (Applicant received counseling and there is clear evidence the problem is resolved or under control), and MC 6 (the individual initiated a good-faith effort, that means a reasonable, prudent, honest, and dutiful effort, to repay overdue creditors or otherwise resolve debts) apply. I conclude this guideline for Applicant.

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).