

KEYWORD: Financial

DIGEST: Applicant is a welder for a defense contractor. He petitioned and approved for a Chapter 13 payment plan in bankruptcy in 1998. He was unable to make the required payments because of injuries from an automobile accident and the payment plan was dismissed. Applicant received a settlement from the accident but did not use the resources to pay any of his debts. He continued to accumulate debts. Applicant has recently paid off some but not all of his delinquent debts. The payments made on some debts are below the minimum amount needed to pay them, and they continue to grow. Applicant has not mitigated security concerns for financial considerations. Clearance is denied.

CASENO: 03-16196.h1

DATE: 04/27/2005

DATE: April 27, 2005

In Re:

SSN: -----

Applicant for Security Clearance

ISCR Case No. 03-16196

DECISION OF ADMINISTRATIVE JUDGE

THOMAS M. CREAN

APPEARANCES

FOR GOVERNMENT

Marc E. Curry, Esq., Department Counsel

FOR APPLICANT

Pro Se

SYNOPSIS

Applicant is a welder for a defense contractor. He petitioned and approved for a Chapter 13 payment plan in bankruptcy in 1998. He was unable to make the required payments because of injuries from an automobile accident and the payment plan was dismissed. Applicant received a settlement from the accident but did not use the resources to pay any of his debts. He continued to accumulate debts. Applicant has recently paid off some but not all of his delinquent debts. The payments made on some debts are below the minimum amount needed to pay them, and they continue to grow. Applicant has not mitigated security concerns for financial considerations. Clearance is denied.

STATEMENT OF THE CASE

On August 13, 2004, the Defense Office of Hearings and Appeals (DOHA) issued a Statement of Reasons (SOR) detailing the basis for its decision to deny a security clearance for 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 August 20, 2004. The SOR alleges security concerns under Guideline F (Financial Considerations) of the Directive.

Applicant answered the SOR in writing on September 10, 2004, admitted all of the allegations under Guidelines F, and requested a hearing before an administrative judge. The request was received by DOHA on September 14, 2004, and Department Counsel was prepared to proceed with the case on January 24, 2005. The case was assigned to me on January 31, 2005. A notice of hearing was issued on February 22, 2005, and the hearing convened on March 7, 2005.⁽¹⁾ Six government exhibits, one Applicant exhibit, and the testimony of the Applicant were received during the hearing. The record was held open for Applicant to submit additional information. Applicant timely submitted additional information on April 11, 2005. The information was admitted without objection from Department Counsel. The transcript was received on March 15, 2005.

FINDINGS OF FACT

Applicant is a 45 year old welder for a defense contractor. Applicant worked 13 years for an employer before being injured on the job in 1993. When it was determined he could no longer work as a welder, he was terminated by the employer with a workman's compensation settlement. Applicant used the settlement funds to purchase cars. Applicant did find work for a number of employers as a welder before finding work as a welder with the defense contractor. Applicant is married with no children. [\(2\)](#)

Applicant petitioned for a Chapter 13 payment plan in bankruptcy in 1998. He was approximately \$54,000 in debt at the time. The payment plan required him to pay \$567 per month for 50 months to settle accounts with creditors. In July 1998, a few months after the payment plan was approved, Applicant and his wife were injured in an automobile accident and he was unable to work for 12 months. Since Applicant was not working, he could not continue making the plan payments and the Chapter 13 bankruptcy was dismissed and Applicant's debts were not discharged. Applicant and his wife received an insurance settlement from the accident of approximately \$22,000. Part of the settlement was used to pay fees and cost and medical expenses resulting from the accident. Applicant and his wife received \$10,000 in cash between them. [\(3\)](#)

Allegation 1.a. in the SOR concerns Applicant's 1998 petition for bankruptcy and eventual dismissal of the discharge in bankruptcy for failure to make scheduled payments. A number of debts were to be discharged in the bankruptcy if it had not been dismissed.

Debt 1.b. in the SOR is for a personal loan. This debt was included in the 1998 bankruptcy but was not discharged. Applicant tried to contact the creditor after the bankruptcy was dismissed but did not receive a reply. Applicant did not pursue the matter with the creditor. This debt has not been satisfied. [\(4\)](#)

Debt 1.c. in the SOR is a delinquent debt to a jewelry store. This debt was included in the 1998 bankruptcy but only recently satisfied by Applicant. [\(5\)](#)

Debt 1.d. in the SOR is a delinquent debt to a collection agency that was included in the 1998 bankruptcy. Applicant tried to contact the creditor to make payment arrangements but he never heard from them. Applicant did not pursue the matter. [\(6\)](#)

Debt 1.e. in the SOR is for the remaining payments on the car involved in the July 1998 accident. The car was included in the original bankruptcy and was to be surrendered. Before the car could be turned over, it was involved in the accident and totaled. Applicant did not receive an insurance settlement for the car since Applicant did not have collision insurance. Applicant did not use any of the settlement proceeds to pay the debt on this car.

Debts 1.f. and 1.g. in the SOR are personal loans from a credit union. Applicant submitted activity reports for payments made on the loans. While the activity reports show payments, the payments have not kept pace with the interest and charges. In almost all the accounts, the amount of the debt has grown and not decreased.⁽⁷⁾

Debt 1.h. in the SOR is a personal loan from a finance company. This debt was included in the 1998 bankruptcy but not discharged. Applicant made no effort to contact the creditor. The debt has not been satisfied.⁽⁸⁾

Debt 1.i. in the SOR is a medical bill from Applicant's July 1998 accident. This debt was recently satisfied.⁽⁹⁾ Debts 1.j. and 1.k. in the SOR are medical bills resulting from the accident that were satisfied by the settlement from the accident and paid by the insurance company.⁽¹⁰⁾

Debt 1.l. in the SOR is for trash removal. This debt was recently satisfied by Applicant.⁽¹¹⁾

Debts 1.m. to 1.s. in the SOR are for unpaid taxes owed the Internal Revenue Service. The Internal Revenue Service did not allow a deduction for dependents claimed by Applicant for tax years 1996 to 2001.⁽¹²⁾ Funds are being taken from Applicant's pay to satisfy these debts.

Applicant now has approximately \$3,200 a month in net pay with approximately \$2,800 in monthly expenses. He has sufficient financial resources to pay his recurring monthly expenses.

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."⁽¹³⁾ Eligibility for a security clearance is predicated upon the applicant meeting the security guidelines contained in the Directive.⁽¹⁴⁾

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.⁽¹⁵⁾ 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.⁽¹⁶⁾

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.⁽¹⁷⁾ 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.⁽¹⁸⁾ Thereafter, Applicant is responsible for presenting evidence to rebut, explain, extenuate, or mitigate facts.⁽¹⁹⁾ An applicant "has the ultimate burden of demonstrating that it is clearly consistent with the national interest to grant or continue his security clearance."⁽²⁰⁾ "[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."⁽²¹⁾ "Any doubt as to whether access to classified information is clearly consistent with national security will be resolved in favor of the national security."⁽²²⁾

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 debt 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 long standing delinquent debts. His petition in bankruptcy would have relieved his indebtedness but was dismissed for Applicant's failure to make the approved payments and his debts were restored. Even though Applicant was injured at work or in accidents affecting his ability to work, he had financial resources from accident and injury settlements that could be applied to relieve indebtedness. Applicant did not use any of these resources to assist in relieving indebtedness. He spent the resources on other things, like new cars. Applicant has a history of not meeting his financial obligations and has shown an inability and unwillingness to resolve his indebtedness. I conclude the above Financial Considerations Disqualifying Conditions have been established.

Financial Considerations Mitigating Conditions Directive ¶ E2.A6.1.3.1 (*the behavior was not recent*) and Directive ¶ E2.A6.1.3.2 (*it was an isolated incident*) do not apply. Applicant has debts incurred prior to 1998 that are long standing. He has delinquent debts in many areas so that his debts are not isolated.

I have considered Financial Considerations Mitigating Conditions Directive ¶ E2.A6.1.3.3 (*the conditions that resulted in the behavior were largely beyond the person's control (e.g., loss of employments, . . . , unexpected medical emergency, . . .)*); and Directive ¶ E2.A6.1.3.6 (*the individual initiated a good-faith effort to repay overdue creditors or otherwise resolve debts*). There were conditions that were beyond Applicant's control that affected his ability to settle debts. The bankruptcy would have resolved his early indebtedness but the accident prevented him from working and making the bankruptcy payments. However, Applicant did not use financial settlements from the accident and work injuries to resolve debts, but used them to buy other items. Applicant could have used the settlements to pay some of his debts. The injuries and accident did not prevent Applicant from paying creditors. Applicant has recently paid off some of his small delinquent debts and is paying on his delinquent Internal Revenue Service debts by forced payroll deductions. He is making payment on other loans, but the payments do not keep up with the accrued interest so Applicant is actually falling behind on those debts. His limited activity to resolve his debts does not show a good faith effort to pay overdue creditors or otherwise resolve debts. I conclude Applicant has not met his burden to mitigate the security concerns under Financial Considerations.

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 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.: For 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.: For Applicant

Subparagraph 1.j.: For Applicant

Subparagraph 1.k.: For Applicant

Subparagraph 1.l.: For Applicant

Subparagraph 1.m.: Against Applicant

Subparagraph 1.n.: Against Applicant

Subparagraph 1.o.: Against Applicant

Subparagraph 1.p.: Against Applicant

Subparagraph 1.q.: Against Applicant

Subparagraph 1.r.: Against Applicant

Subparagraph 1.s.: Against Applicant

DECISION

In light of all of the circumstance presented by the record in this case, it is not clearly consistent with the national security to grant or continue a security clearance for Applicant. Clearance is denied.

Thomas M. Crean

Administrative Judge

1. Applicant waived the 15 days notice requirement for a hearing.
2. Tr. 16-20.
3. 2Tr. 20-23.
4. Tr. 29-32.
5. Applicant's additional documents (Money order receipt, dated Apr. 11, 2005).
6. Tr. 25-34.
7. Applicant's additional documents (Account activity reports, dated Apr. 11, 2005).
8. Tr. 38-46.
9. Applicant's additional documents (Postal money orders, dated Apr. 5, 2005).
10. Tr. 48-55.
11. Applicant's additional documents (Postal money order, dated Apr. 5, 2005).
12. Tr. 58-66; Government exhibit 3 at 2(Applicant's statement, dated Jun. 10, 2003)
13. *Department of the Navy v. Egan*, 484 U.S. 518 (1988).
14. Directive ¶ E2.2.1.
15. *Id.*
16. Directive ¶¶ E2.2.1.1 through E2.2.1.9.
17. *See* Exec. Or. 10865 § 7.

18. Directive ¶ E3.1.14.

19. ISCR Case No. 01-20700 at 3 (App. Bd. Dec. 19, 2002); *see* Directive ¶ E3.1.15.

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

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

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