

KEYWORD: Financial; Personal Conduct

DIGEST: The SOR alleged Applicant owed seven debts totaling approximately \$14,000. Some debt has been paid, some debt is being paid, however, two debts totaling approximately \$8,500 remain unresolved. The record evidence is insufficient to mitigate or extenuate the negative security implications stemming from the financial concerns. Clearance is denied.

CASENO: 03-16888.h1

DATE: 06/22/2005

DATE: June 22, 2005

In Re:

SSN: -----

Applicant for Security Clearance

ISCR Case No. 03-16888

DECISION OF ADMINISTRATIVE JUDGE

CLAUDE R. HEINY

APPEARANCES

FOR GOVERNMENT

Robert E. Coacher, Department Counsel

FOR APPLICANT

Pro Se

SYNOPSIS

The SOR alleged Applicant owed seven debts totaling approximately \$14,000. Some debt has been paid, some debt is being paid, however, two debts totaling approximately \$8,500 remain unresolved. The record evidence is insufficient to mitigate or extenuate the negative security implications stemming from the financial concerns. Clearance is denied.

STATEMENT OF THE CASE

On August 6, 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 asserting financial and personal conduct concerns. On August 27, 2004, Applicant answered the SOR and requested a hearing. On December 1, 2004, I was assigned the case. On January 6, 2005, a Notice of Hearing was sent convening the hearing on January 27, 2005. The record was kept open to allow Applicant to submit additional documents, which were subsequently submitted on February 7, 2005. Department Counsel (DC) having no objection, the documents were admitted into evidence. On February 4, 2005, the transcript (tr.) of the hearing was received.

FINDINGS OF FACT

The SOR alleges financial considerations and personal conduct. The SOR alleges Applicant owes seven debts totaling approximately \$14,000. Applicant admits he was paying \$150 per month on a \$3,127 department store debt. That admission is incorporated herein as a finding of fact. After thorough review of the whole record, I make the following additional findings of fact:

The Applicant is 55 years old, has worked for a defense contractor since April 2001, and is seeking to obtain a security clearance. Applicant served 20 years in the military, retiring in 1989 as an E-7. In July 1994, he was divorced. In August 2002, he first learned of credit problems when he was purchasing an automobile. For approximately two years he paid \$406 per month to a consumer credit counseling service (CCCS) to address his debts. (Gov Ex 2) In June 2004, he stopped making payments to CCCS because there was no reduction in the debts.

Applicant has had two homes go to foreclosure. The foreclosures resulted in a \$10,036 debt to the Veteran's Administration (VA). He has been making \$108 monthly payments on the debt, which has reduced the balance to \$2,334. When terminated from a job, he received severance pay of \$11,000 and also cashed in company stock, both of which were taxable events. Applicant owed the IRS \$12,000 on which he made \$250 per month payments. Between June 2001 and April 2003, he paid the IRS \$5,309. In April 2003, Applicant made a final payment of \$59.29. Applicant asserts the debt has been paid in full. However, he failed to provide documentation from the IRS indicating the debt has been satisfied.

In October 2003, Applicant started an automatic monthly allotment of \$150 on a \$3,127 department store debt (SOR 1.c). Applicant's credit report list three accounts with this creditor. Applicant's credit reports list a \$1,693 collection agency debt (SOR 1.b). At the hearing, Applicant stated he did not know the nature of this debt. Following the hearing, Applicant submitted a letter from the creditor indicating the debt is a collection account for the department store debt (SOR 1.c) previously listed. The balance owed was \$343. (See App Ex A) The debts listed in SOR 1.a and 1.b have the same account number.

Applicant cosigned on the loan for his ex-wife's son's car. Applicant has not heard from his ex-wife's son following the 1994 divorce. (Gov Ex 3) In addition to cosigning, Applicant asserts he used two credit cards to make the down payment on the car. A federal credit union credit card debt of \$1,860 (SOR 1.a) was charged off. The account had been opened in June 1989. The date of last action on the account was February 1999. The second credit card alleged to have been used for the down payment created a debt of \$6,667 (SOR 1.d.) That account was opened in November 2000. He received a letter stating the car had been repossessed. (Tr. 22). He asserts he has made \$2,000 in payment on this debt, but failed to provided documentation supporting his claim of payment.

Applicant asserts he has paid three debts. The SOR asserts Applicant owed his current telephone carrier \$28 (SOR 1.e). Applicant asserts he paid this debt by check, but did not provide documentation supporting his claim. A \$261 debt (SOR 1.f) was owed to a mail order firm. Applicant says he sent them a check, but provided no documentation supporting his claim. He owed \$357 to a nationwide furniture store debt . (SOR 1.g) Applicant's credit report lists two accounts with the creditor, one to a store and one to the company's finance company. The account with the store is listed as "pays as agreed." The finance account is listed as 120 days past due. Applicant says he has paid the debt. Following the hearing, Applicant states the creditor went bankrupt and he cannot get any information on the debt. The creditor had sought bankruptcy protection, but is still in business and still operates stores.

Applicant's March 2003 (Gov Ex 4) and April 2004 (Gov Ex 5) credit reports list seven accounts as bad debts, charged off accounts, or account transferred or sold. The reports also list other accounts as slow pay or pays as agreed. A summary and status of the seven debts follows:

	Creditor	Amount Owed	Current Status
a.	Federal credit union credit card was used to provide down payment on a car.	\$1,860	Unpaid.
b.	Collection Agency, same debt as c.	\$1,693	Balance \$343.24. See App Ex A.
c.	Department store debt, same debt as b.	\$3,127	Balance \$343.24. See App Ex A.
d.	Bank credit card was used to provide down payment on a car.	\$6,667	Unpaid
e.	Telephone company.	\$28	Applicant claims debt is paid, but has provided no supporting documentation.
f.	Mail order firm.	\$261	Applicant claims debt is paid, but has provided no supporting documentation.
g.	Furniture store.	\$357	Applicant claims debt is paid, but has provided no supporting documentation.
	total debts listed in SOR	\$13,993	

In April 2001, Applicant completed a Security Clearance Application, Standard Form (SF) 86). Question 38, asked him if, during the previous seven years, he had ever been more than 180 days delinquent on any debt. Question 39, asked if he was currently 90 days delinquent on any debt. He answered "no" to both questions even though the credit union credit card debt and the department store debt had been delinquent. The last action on the credit card debt was February 1999. He did not list the department store debt because he was making payments on the debt by allotment. Not listing the car related credit union debt was an oversight. (Tr. 27) He had not reviewed his credit report prior to completing his SF 86 and did not believe he had any outstanding debts. He was also unaware the department store debt had been transferred to the collection firm.

Applicant remarried in 1998. They have one daughter of the marriage. Applicant has \$21,265.69 in his company retirement program. During 2003, Applicant and his wife's yearly income was \$72,700, which included \$14,000 in military retirement and \$58,000 from his job. He has two company credit cards and a military exchange credit card on which he owes approximately \$4,000 (Tr. 31-32).

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. An applicant is not required to be debt free, but is required to manage his finances so as to meet his financial obligations. An applicant who is financially overextended is at risk of having to engage in illegal acts to generate funds. Directive E.2.A.6.1.1.

The Applicant has two unpaid debts totaling approximately \$8,500. 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 has been paying his department store debt. The same debt was turned over to a collection agency. The debt has been paid down to \$343.24. Mitigating Conditions (MC) 6 (E2.A6.1.2.6. *The individual initiated a good-faith effort to repay overdue creditors or otherwise resolve debts*) applies to this single debt listed for two different creditors. He has three debts totaling \$646 which he says he has paid, however, he provided no documentation to support his claim. Since the telephone bill is with his current carrier, I believe it has been paid. Even if the other two debts were unpaid, they are of such a small amount as not to be of security significance. I find for Applicant as to SOR 1.b, 1.c, 1.e, 1.f, and 1.g.

None of the mitigating conditions apply to the two credit card debts. Applicant says he used two credit cards for the down payment on his ex-wife's son's car. However, one of the credit card accounts was not opened until November 2000, well after the 1994 divorce. Applicant stated he had not seen his ex-wife's son since 1994 so the credit card account opened in 2000 could not have been used as down payment on the car. MC 1 (E2.A6.1.2.1. *The behavior was not recent*) does not apply even though the debts were incurred years ago, because the debts remain unpaid, which makes the conduct recent. MC 2 (E2.A6.1.2.2. *It was an isolated incident*) does not apply because there are two debts.

MC 3 (E2.A6.1.3.3. *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)*) does not apply because there was no showing the credit card debts were caused by factors beyond Applicant's control. There was a divorce, but that occurred more than ten years ago and the second credit card account was opened six years after the divorce.

For MC 4 (E2.A6.1.3.4. *The person has received or is receiving counseling for the problem and there are clear indications that the problem is being resolved or is under control*) to apply Applicant must have received counseling and there has been no showing Applicant has received financial counseling. MC6 (E2.A6.1.3.6. *The individual initiated a good-faith effort to repay overdue creditors or otherwise resolve debts*) does not apply to the credit card debt because the creditors have not been paid. Applicant asserts he has paid \$2,000 on one of the two debts, however, he provided no documentation supporting his claim. I find against Applicant as to SOR 1.a and 1. d. I find against Applicant as to financial consideration concerns.

The allegations under Guideline E, Personal Conduct are unfounded. The Government has shown Applicant's answer to questions 38 and 39 were incorrect, but this does not prove the Applicant deliberately failed to disclose information about his finances. Applicant did not list the department store debt because he was paying \$150 per month on that debt through allotment. Since he was making monthly payments, he did not believe he was past due on the debt. He did not know any accounts were delinquent and, therefore, did not list the credit union credit card debt.

Applicant has denied intentional falsification. Deliberate omission, concealment, or falsification of a material fact in any written document or oral statement to the Government when applying for a security clearance is a security concern. But every inaccurate statement is not a falsification. A falsification must be deliberate and material. An omission concerning delinquencies is not deliberate if the person did not know of their existence. I find for Applicant as to personal conduct.

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.: For the Applicant

Subparagraph 1.d.: Against the Applicant

Subparagraph 1.e.: For the Applicant

Subparagraph 1.f.: For the Applicant

Subparagraph 1.g.: For the Applicant

Paragraph 2 Personal Conduct: FOR THE APPLICANT

Subparagraph 2.a.: 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.