

KEYWORD: Financial

DIGEST: Applicant owes four debts totaling approximately \$16,700. The record evidence is insufficient to mitigate or extenuate the negative security implications stemming from Applicant's financial difficulties. Clearance is denied.

CASENO: 03-16928.h1

DATE: 04/07/2005

DATE: April 7, 2005

In Re:

SSN: -----

Applicant for Security Clearance

ISCR Case No. 03-16928

DECISION OF ADMINISTRATIVE JUDGE

CLAUDE R. HEINY

APPEARANCES

FOR GOVERNMENT

Robert E. Coacher, Department Counsel

FOR APPLICANT

Pro Se

SYNOPSIS

Applicant owes four debts totaling approximately \$16,700. The record evidence is insufficient to mitigate or extenuate the negative security implications stemming from Applicant's financial difficulties. Clearance is denied.

STATEMENT OF THE CASE

On May 24, 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 [\(U\)](#) it is clearly consistent with the national interest to grant or continue a security clearance for Applicant. On August 14, 2004, Applicant answered the SOR and requested a hearing. On February 25, 2005, I was assigned the case. On March 14, 2005, I convened a hearing in this matter. On March 22, 2005, DOHA received the transcript (tr.) of the hearing.

FINDINGS OF FACT

The SOR alleges security significant financial considerations. The Applicant admits owing the six debts listed in the SOR. That admission is incorporated herein as a finding of fact. After a thorough review of the entire record, I make the following additional findings of fact:

The Applicant is 62 years old, has worked as an engineer for a defense contractor since September 2000, and is seeking to obtain a security clearance.

		Creditor	Amount Owed	Current Status
1	a	Credit card debt.	\$8,317	Unpaid.
2	b	Credit card debt.	\$2,399	Unpaid.
3	c	Credit card debt.	\$3,705	Unpaid.
4	d	Credit card debt.	\$2,273	Unpaid.
5	e	Credit card debt.	\$1,914	Paid. Settled for \$500 in July 2004.
6	f	telephone debt	\$60	Paid.
		Total of debts listed in SOR	\$18,668	

In the late 1980s, Applicant was laid off after 17 years with a company when the company's revenue dropped from \$460 million to \$30 million per year. He then worked for three other computer companies before his current employment.

Applicant started a business when he could not find employment he desired. An associate of Applicant obtained a contract to provide computer equipment to a hospital. Applicant provided the equipment, his associate was paid and then skipped the state with the money, and even left behind his wife. Applicant lost his entire investment of approximately \$30,000. Applicant has been unable to locate his associate to bring suit against him to recover money owed. Applicant used his credit cards to pay for the equipment he had provided to the hospital. The debt involved three credit card debts with the same company (SOR a \$8,317, SOR b \$2,399, and SOR c \$3,705). In June 2004, the creditor offered to settle the three accounts for 75% of the outstanding debt (\$6,237, \$1,800, and \$2,780). Applicant was unable to pay these amounts. The creditor wanted to be repaid in a single payment and was not interested in taking a mortgage on Applicant's home or in receiving monthly payments on the debt.

With his current employer, Applicant has twice been placed in a leave without pay status (LWOP) when the company had insufficient work which did not require a clearance. If Applicant does not get a clearance, he is likely to be put in the LWOP status again. With a clearance, he anticipates staying with this employer until he retires.

In October 2003 through August 2004, Applicant was on assignment with his current employer at an overseas location. His annual income with additional incidentals was approximately \$100,000 per year. He used that money to repay his children who had provided him financial assistance in the past, to make settlement on one credit card debt (SOR 1.e), and to pay off his mortgage. His home, worth approximately \$80,000, is mortgage free. Nine months ago, Applicant's wife began collecting \$300 per month from social security. Applicant sought financial assistance through the Consumer Credit Counseling Service (CCCS) which recommended he seek bankruptcy. Applicant's wife strongly opposed bankruptcy, so Applicant never filed. Applicant is a Viet Nam era veteran of the Marine Corps. He believes the government has no reason to fear him.

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. Under Guideline F, 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 admits owing four debts totaling approximately \$16,700. 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.

None of the Mitigating Conditions (MC) apply in the Applicant's favor. 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 four debts remain unpaid and the conduct is, therefore, recent. MC 2 (E2.A6.1.2.2. *It was an isolated incident.*) does not apply because there are four unpaid debts. Although Applicant has received some financial counseling there is no showing his financial difficulties are under control. For MC 6 (E2.A6.1.2.6. *The individual initiated a good-faith effort to repay overdue creditors or otherwise resolve debts.*) to apply there must be an "ability" to repay the debts, the "desire" to repay, and evidence of a good faith effort to repay. A systematic, concrete method of handling his debts is needed, which is not present here with the four unpaid debts. However MC6 does apply to the two debts which Applicant has paid. I find for Applicant as to SOR 1.e and 1.f.

In the late 1980s, Applicant was laid off from his job after 17 years. Following his termination, he had a number of other jobs interspersed with periods of unemployment. When he started his own business, an associate absconded with the proceeds from the sale of equipment and Applicant has been unable to locate the associate to bring suit to recover what he was due on the contract. Even with his current employer he has experienced two periods of LWOP, which added to his financial difficulties. However sufficient time has passed since he was laid off from his job in the late 1980s and subsequent periods of unemployment for the debts listed in the SOR to have been resolved.

I have considered that Applicant's delinquent debts initially arose because of circumstances beyond Applicant's control. However, I have considered Applicant's failure to deal with and resolve those delinquent debts since he gained employment in September 2000. From October 2003 through July 2004 Applicant was making approximately \$100,000 per year, which he used to pay off debts not listed in the SOR, repay his children for loans they had made to him, and pay off the mortgage on his home. However, even though he arranged settlement on the three debts owed the one creditor, he did not follow through with payment. I find Applicant has not made timely, reasonable efforts to deal with the financial problems. I find against him as to SOR 1.a, 1.b, 1.c, and 1.d.

None of the mitigating conditions apply to the four unpaid debts. Applicant's financial problems are long standing, and, until he establishes a long-term track record of good debt management and a financially responsible lifestyle, it is simply too soon to tell if he has truly changed his ways for the better. Accordingly, I find against Applicant as to financial considerations.

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.: Against the Applicant

Subparagraph 1.c.: Against the Applicant

Subparagraph 1.d.: Against the Applicant

Subparagraph 1.e.: For the Applicant

Subparagraph 1.f.: 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.