

KEYWORD: Financial

DIGEST: Applicant has a history of financial difficulties. While some of his past overdue debts have been resolved, he currently has more than \$46,000 in overdue debt. Mitigation has not been established. Clearance is denied.

CASENO: 03-18111.h1

DATE: 04/05/2005

DATE: April 5, 2005

---

In Re:

-----

SSN: -----

Applicant for Security Clearance

---

ISCR Case No. 03-18111

**DECISION OF ADMINISTRATIVE JUDGE**

**MARTIN H. MOGUL**

**APPEARANCES**

**FOR GOVERNMENT**

Marc E. Curry, Department Counsel

**FOR APPLICANT**

*Pro Se*

## SYNOPSIS

Applicant has a history of financial difficulties. While some of his past overdue debts have been resolved, he currently has more than \$46,000 in overdue debt. Mitigation has not been established. Clearance is denied.

## STATEMENT OF THE CASE

On August 19, 2004, the Defense Office of Hearings and Appeals (DOHA), under Executive Order 10865, *Safeguarding Classified Information Within Industry*, dated February 20, 1960, as amended and modified, and Department of Defense Directive 5220.6, *Defense Industrial Personnel Security Clearance Review Program* (Directive), dated January 2, 1992, as amended and modified, issued a Statement of Reasons (SOR) to Applicant. The SOR detailed reasons why DOHA could not make the preliminary affirmative finding under the Directive that it is clearly consistent with the national interest to grant or continue a security clearance for Applicant, and recommended referral to an Administrative Judge to conduct proceedings and determine whether clearance should be granted or denied.

In a signed and sworn statement, dated September 13, 2004, Applicant responded to the SOR allegations. He requested that his case be decided on the written record in lieu of a hearing. On January 21, 2005, Department Counsel prepared the Department's written case. A complete copy of the File of Relevant Material (FORM) was provided to Applicant, and he was given the opportunity to file objections and submit material in refutation, extenuation, or mitigation. Applicant filed a response to the FORM on February 11, 2005. The case was assigned to this Administrative Judge on March 17, 2005

Department Counsel offered 10 documentary exhibits (Exhibits 1-10), which were admitted without objection. Applicant offered one documentary evidence, his response to the FORM (Exhibit A), which was also admitted without objection into the record.

## FINDINGS OF FACT

In the SOR, the Government alleges that a security risk may exist under Adjudicative Guideline F (Financial Considerations) of the Directive. The SOR contains 15 allegations, 1.a. through 1.o., under Guideline F.

In his response to the SOR, Applicant admits all of the allegations. These allegations are incorporated as Findings of Fact.

After a complete and thorough review of the evidence in the record, including Applicant's Answer to the SOR and the admitted documents, and upon due consideration of that evidence, I make the following additional Findings of Fact:

Applicant is a 61 year old employee of a defense contractor who seeks access to classified information. He is married and has one son. He received a Bachelor of Science Degree in 1968 (Exhibit 4).

### **(Guideline F - Financial Considerations)**

The SOR lists 15 overdue debts that the Government alleges are owed by Applicant, 1.a. through 1.o., under Adjudicative Guideline F . In his September 13, 2004 response to the SOR, Applicant admitted owing these debts. The total amount owed by Applicant is approximately \$46,499, rather than \$60,000, which is the sum stated by Department Counsel in the FORM. These debts were all long overdue, most for several years. The evidence establishes that Applicant (1) was indebted in the amounts alleged, and (2) all of the debts were delinquent as of February 11, 2005, (Exhibit A). The table below presents details about each debt as they were listed in the SOR:

<b>Debt</b>	<b>Amount Owed</b>	<b>Current Status</b>	<b>Record</b>
1.a	\$1,651	unpaid	Exhibits 3, 5, 6, 9, 10
1.b.	\$532	unpaid	Exhibits 3, 5, 6, 9, 10
1.c.	\$3,352	unpaid	Exhibits 3, 5, 6, 9, 10
1.d.	\$3,581	unpaid	Exhibits 3, 5, 6, 9, 10
1.e.	\$ 810	unpaid	Exhibits 3, 5, 6, 9, 10
1.f.	\$2,060	unpaid	Exhibits 3, 5, 6, 9, 10
1.g.	\$775	unpaid	Exhibits 3, 5, 6, 9, 10

1.h.	\$4,684	unpaid	Exhibits 3, 5, 6, 9, 10
1.i.	\$19,278	unpaid	Exhibits 3, 5, 6, 7, 9, 10
1.j.	\$540	unpaid	Exhibits 3, 5, 6, 9, 10
1.k.	\$5,862	unpaid	Exhibits 3, 5, 6, 9, 10
1.l.	\$934	unpaid	Exhibits 3, 5, 6, 9, 10
1.m.	\$489	unpaid	Exhibits 3, 5, 6, 9, 10
1.n.	\$228	unpaid	Exhibits 3, 5, 6, 9, 10
1.o.	\$1,723	unpaid	Exhibits 3, 5, 6, 9, 10

Applicant explained that these debts resulted primarily, when a full time gardening business that he started with his wife began having increasing financial problems and finally failed. This ultimately negatively impacted all of his finances, including his being assessed a debt to the Internal Revenue Service in excess of \$64,000 (Exhibits 3, 7, and 9). Applicant has reduced this debt to approximately \$19,278 (See 1.i., above), and he has become current on his home mortgages (Exhibit A). However, as discussed above, Applicant still owes more than \$46,499 for overdue debts.

## **POLICIES**

Enclosure 2 of the Directive sets forth adjudicative guidelines that must be carefully considered in evaluating an individual's security eligibility and making the overall common sense determination required. The Administrative Judge must take into account the conditions raising or mitigating security concerns in each area applicable to the facts and circumstances presented. 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, as the guidelines reflect consideration of those factors of seriousness, recency, motivation, *etc.*

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.

Each adjudicative decision must also include an assessment of: (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).

## BURDEN OF PROOF

Initially, the Government must prove controverted facts alleged in the Statement of Reasons. If the Government meets that burden, the burden of persuasion then shifts to Applicant to establish his security suitability through evidence of refutation, extenuation or mitigation sufficient to demonstrate that, despite the existence of disqualifying conduct, it is nevertheless clearly consistent with the national interest to grant or continue the security clearance. Assessment of Applicant's fitness for access to classified information requires evaluation of the whole person, and consideration of such factors as the recency and frequency of the disqualifying conduct, the likelihood of recurrence, and evidence of rehabilitation.

A person who seeks access to classified information enters into a fiduciary relationship with the U.S. Government that is predicated upon trust and confidence. Where facts proven by the Government raise doubts about Applicant's judgment, reliability, or trustworthiness, Applicant has a heavy burden of persuasion to demonstrate that he is nonetheless security worthy. As noted by the United States Supreme Court in *Department of the Navy v. Egan*, 484 U.S. 518, 531 (1988), "the clearly consistent standard indicates that security-clearance determinations should err, if they must, on the side of denials."

## CONCLUSIONS

Having considered the evidence of record in light of the appropriate legal precepts and factors, I conclude the following:

The Government has established its case under Guideline F. The record evidence clearly establishes Applicant's indebtedness and his current non-payment of all of the debts listed on the SOR.

Applicant's overall conduct pertaining to his financial obligations falls within Financial Considerations Disqualifying Condition (DC) E2.A6.1.2.1., and DC E2.A6.1.2.3., because of Applicant's history of not meeting financial obligations and his inability to satisfy his debts. Regarding Mitigating Condition (MC) E2.A6.1.3.3, which regards debts that result from circumstances beyond the person's control, I find it applicable to this case, but not controlling. While Applicant's

indebtedness was in large part due to circumstances beyond his control, specifically the problems of Applicant's gardening business, Applicant's debts are substantial, and there has been no independent evidence introduced to establish that Applicant has done everything he can resolve these debts and that he is now living in such a manner so that he will not incur these kind of financial difficulties in the future.

Until Applicant can make greater progress toward reducing his overdue debts and establish a record of financial responsibility and stability, security concerns will continue to exist under Guideline F. I resolve Guideline F against Applicant, and I conclude Applicant has not established, at this time, that it is "clearly consistent with the national interest" that he should be granted the privilege of a security clearance.

### **FORMAL FINDINGS**

Formal Findings as required by Section E3.1.25 of Enclosure 3 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.: Against the Applicant

Subparagraph 1.f.: Against the Applicant

Subparagraph 1.g.: Against the Applicant

Subparagraph 1.h.: Against the Applicant

Subparagraph 1.i.: Against the Applicant

Subparagraph 1.j.: Against the Applicant

Subparagraph 1.k.: Against the Applicant

Subparagraph 1.l.: Against the Applicant

Subparagraph 1.m.: Against the Applicant

Subparagraph 1.n.: Against the Applicant

Subparagraph 1.o.: Against the Applicant

**DECISION**

In light of all the circumstances and facts 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.

Martin H. Mogul

Administrative Judge