

KEYWORD: Financial

DIGEST: Applicant has a history of financial difficulties caused by poor judgment and unsound personal financial management. Despite two Chapter 7 bankruptcy liquidations and recent remedial efforts to pay or otherwise resolve over \$37,000 in delinquent debts consisting mainly of unpaid tax liens, he is still financially overextended and is likely to continue experiencing financial problems. Applicant has failed to mitigate the resulting security concerns as addressed under Guideline F (financial considerations). Clearance is denied.

CASENO: 03-18422.h1

DATE: 08/15/2005

DATE: August 15, 2005

In Re:

SSN: -----

Applicant for Security Clearance

ISCR Case No. 03-18422

DECISION OF ADMINISTRATIVE JUDGE

MATTHEW E. MALONE

APPEARANCES

FOR GOVERNMENT

FOR APPLICANT

Pro Se

SYNOPSIS

Applicant has a history of financial difficulties caused by poor judgment and unsound personal financial management. Despite two Chapter 7 bankruptcy liquidations and recent remedial efforts to pay or otherwise resolve over \$37,000 in delinquent debts consisting mainly of unpaid tax liens, he is still financially overextended and is likely to continue experiencing financial problems. Applicant has failed to mitigate the resulting security concerns as addressed under Guideline F (financial considerations). Clearance is denied.

STATEMENT OF THE CASE

After reviewing the results of Applicant's background investigation, adjudicators for the Defense Office of Hearings and Appeals (DOHA) were unable to make a preliminary affirmative finding⁽¹⁾ it is clearly consistent with the national interest to give Applicant a security clearance. On July 13, 2004, DOHA issued to Applicant a Statement of Reasons (SOR) alleging facts that raise security concerns addressed in the Directive under Guideline F (financial considerations). Applicant timely answered the SOR (Answer), and admitted all but two of the 14 allegations therein. He also requested a hearing.

The case was originally assigned to a different administrative judge but transferred to me on December 3, 2004. I convened a hearing January 12, 2005.⁽²⁾ The parties appeared as scheduled and the government presented 23 exhibits (GE 1 through 23), which were admitted without objection. Applicant submitted seven documents admitted without objection (AE A through G) and testified in his own behalf. DOHA received the transcript (Tr) on January 21, 2005. Issuance of this decision has been delayed by an unusually large caseload.

FINDINGS OF FACT

After a thorough review of the pleadings, transcript, and exhibits, I make the following essential findings of fact:

Applicant is 51 years old and has been employed by a defense contractor since 1997 as a program manager. Applicant served in the Navy as an electronic warfare technician from 1971 until 1980, advanced to the rank of Petty Officer First Class (paygrade E-6) and was eligible for selection to Chief Petty Officer when he left the service. He and his wife have been married since 1977 and they have two grown children. Applicant's wife has generally stayed at home, holding only occasional part-time employment.

From 1980 until 1986, Applicant worked for a defense contractor and was assigned to its west coast office. Applicant was transferred cross country in 1983. The increased cost of living on the east coast combined with unanticipated expenses associated with his move placed significant strain on Applicant's finances. He soon incurred several unpaid or past due debts and other liabilities totaling about \$8,000. In 1983, Applicant petitioned for and was granted a discharge of his debts through a Chapter 7 bankruptcy action. (SOR ¶1.m)

Between 1985 and 1991, Applicant and his wife worked as coordinators of a national foreign student exchange program. For their work, they were paid a stipend to cover expenses and were able to realize a modest supplement to Applicant's main income. No federal or state income taxes were withheld from the stipends and Applicant was required to account for and pay the taxes on his own. However, Applicant failed to set aside sufficient funds to pay the taxes owed and decided to not file his returns hoping the problem would just go away. ⁽³⁾

Applicant did not pay his federal income taxes for tax years 1987 through 1997 (SOR ¶¶1.c through 1.i), and did not file a return on time for tax year 2002 (SOR ¶1.j). For taxes owed from 1987 through 1997, the Internal Revenue Service (IRS) eventually filed tax liens against him totaling more than \$37,000. After receiving the SOR, Applicant established a re-payment plan with the IRS whereby \$1,200 is taken directly from his pay each month starting in August 2004 until the full amount owed is repaid. ⁽⁴⁾ At this rate, Applicant will pay off his tax debts in about three years. He had previously satisfied an IRS lien for \$162 levied against him in 1996. (SOR ¶1.b)

In May 1998, a judgment was entered against Applicant to enforce a debt of \$866 for unpaid rent. Applicant satisfied that judgment before the court hearing, but the paperwork was not filed until June 1998. (SOR ¶1.a) ⁽⁵⁾ Applicant is still delinquent in paying a \$53 medical bill (SOR ¶1.k), and owes about \$2,500 for a delinquent credit card account. (SOR ¶1.l) He has not yet taken action to pay or otherwise resolve either obligation.

Applicant and his wife filed a second Chapter 7 petition in December 1996. In April 1997, they were discharged of more than \$42,000 in delinquent or overdue debts, excluding the aforementioned tax liabilities. (SOR 1.n)

In addition to his unpaid taxes, Applicant's financial background is replete with unpaid obligations including bad checks, unpaid medical bills, telephone bills totaling several thousands of dollars, a defaulted five-figure loan from a co-worker, wage garnishments, judgments from landlords, and so on. As of the hearing, Applicant was overdue or delinquent on at least three recent accounts. Applicant's most recent personal financial statement shows he has about \$3,000 remaining each month after expenses. This does not reflect, however, his ongoing support of his children's college tuition, car payments, and rent. Nor does it reflect the monthly allotment to the IRS. Further, as recently as one week before hearing, Applicant's wife bounced a check. Applicant admits he lives paycheck to paycheck.

Applicant has been continuously employed since 1977. He is a superior performer in his current position and brings to his work a wealth of technical experience. While he does not dispute he has owed or still owes the debts listed in the SOR, he has recently undertaken a concerted effort to examine and clarify his credit history to ensure what is reported by the credit bureaus is accurate and current. He has held a security clearance both in the Navy and throughout his civilian career. As a result, he has been interviewed by the Defense Security Service (DSS) about his finances at least six times since 1991.

POLICIES

The Directive sets forth adjudicative guidelines⁽⁶⁾ to be considered in evaluating an Applicant's suitability for access to classified information. Security clearance decisions must reflect consideration of both disqualifying and mitigating conditions under each adjudicative issue applicable to the facts and circumstances of each case. Each decision must also reflect a fair and impartial common sense consideration of the factors listed in Section 6.3 of the Directive. The presence or absence of a disqualifying or mitigating condition is not determinative of a conclusion for or against an Applicant. However, specific applicable guidelines should be followed whenever a case can be measured against them as they represent policy guidance governing the grant or denial of access to classified information. Having considered the record evidence as a whole, I conclude the relevant adjudicative guideline to be applied here is Guideline F (financial considerations).

A security clearance decision is intended to resolve whether it is clearly consistent with the national interest⁽⁷⁾ for an Applicant to either receive or continue to have access to classified information. If the Applicant has denied or otherwise controverted the facts alleged in the SOR, the government bears the initial burden of producing admissible information on which it based the preliminary decision to deny or revoke a security clearance for the Applicant. If the government meets its burden, it establishes that it is not clearly consistent with the national interest for the Applicant to have access to classified information. The burden then shifts to the Applicant to refute, extenuate or mitigate the government's case. Because no one has a "right" to a security clearance, the Applicant bears a heavy burden of persuasion.⁽⁸⁾ A person who has access to classified information enters into a fiduciary relationship with the government based on trust and confidence. The government, therefore, has a compelling interest in ensuring each Applicant possesses the requisite judgement, reliability and trustworthiness of one who will protect the national interests as his or her own. The "clearly consistent with the national interest" standard compels resolution of any reasonable doubt about an Applicant's suitability for access in favor of the government.⁽⁹⁾

CONCLUSIONS

The security concern under Guideline F is that someone who is financially overextended through delinquent debt and poor personal financial management may be at risk of engaging in illegal acts to generate funds to resolve their fiscal difficulties. The government presented sufficient information to support the SOR allegations, thereby establishing a case for disqualification under Guideline F. Applicant admitted and the available information further shows Applicant has accrued nearly \$40,000 in unpaid debts consisting primarily of tax obligations he deliberately ignored for at least 13 years. His financial difficulties extend back almost 20 years. Despite being repeatedly interviewed by DSS about his finances, and having twice had his debts discharged through Chapter 7 bankruptcy, his financial problems persist. Applicant still appears to be overextended, living paycheck to paycheck. Given his current expenses, which now include a \$1,200 monthly payment to the IRS, Applicant has little margin for financial error should unforeseen circumstances result in additional expenses. In light of the foregoing findings of fact, Guideline F disqualifying condition (DC) 1 [\(10\)](#) and DC 3 [\(11\)](#) apply here.

Having reviewed the Guideline F mitigating conditions in light of all available information, I conclude none apply. Applicant still struggles to keep up with his current obligations, and has taken corrective action to pay his IRS obligations only after the government indicated he might lose his clearance. Based on the entire record pertaining to Applicant's debts, I cannot conclude Applicant has not presented sufficient evidence to overcome the adverse security concerns raised by the government's information. On balance, I conclude Guideline F against the Applicant.

I have carefully weighed all of the available evidence, and I have applied the appropriate disqualifying and mitigating conditions. Further, I have tried to make a fair and commonsense assessment of the record before me as required by Directive Section E2.2.3. Reasonable doubts persist about Applicant's ability to protect classified information and to exercise the requisite good judgment and discretion expected of one in whom the government entrusts its interests. Absent substantial information to mitigate these doubts, which Applicant has failed to provide, I cannot conclude he has overcome the government's case.

FORMAL FINDINGS

Formal findings regarding each SOR allegation are as follows:

Paragraph 1, Guideline F (Financial): AGAINST THE APPLICANT

Subparagraph 1.a: For 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

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.

Matthew E. Malone

Administrative Judge

1. Required by Executive Order 10865, as amended, and by DoD Directive 5220.6 (Directive), as amended.
2. Prior to the hearing, Applicant had previously requested a continuance; however, for the reasons stated in the transcript at pp. 13 - 15, I denied his request and the hearing proceeded as scheduled.
3. Tr., p. 46 - 47.
4. Attachment to Answer.
5. Department Counsel conceded at hearing that this debt was resolved and I specifically find for Applicant as to SOR ¶1.a.
6. Directive, Enclosure 2.
7. *See Department of the Navy v. Egan*, 484 U.S. 518 (1988).
8. *See Egan*, 484 U.S. at 528, 531.
9. *See Egan*; Directive E2.2.2.
10. Directive, E2.A6.1.2.1. A history of not meeting financial obligations;
11. Directive, E2.A6.1.2.3. Inability or unwillingness to satisfy debts;