

KEYWORD: Financial

DIGEST: Applicant fell behind on 15 debts totaling \$26,256.00. Applicant has paid, settled, or otherwise resolved all 15 debts. Applicant has retained a credit counseling service to make payments on his unpaid accounts. Applicant has successfully mitigated security concerns about his financial situation. Clearance is granted.

CASENO: 03-18479.h1

DATE: 01/26/2005

DATE: January 26, 2005

In Re:

SSN: -----

Applicant for Security Clearance

ISCR Case No. 03-18479

DECISION OF ADMINISTRATIVE JUDGE

ROBERT J. TUIDER

APPEARANCES

FOR GOVERNMENT

Erin C. Hogan, Esq., Deputy Chief Department Counsel

FOR APPLICANT

Pro Se

SYNOPSIS

Applicant fell behind on 15 debts totaling \$26,256.00. Applicant has paid, settled, or otherwise resolved all 15 debts. Applicant has retained a credit counseling service to make payments on his unpaid accounts. Applicant has successfully mitigated security concerns about his financial situation. Clearance is granted.

STATEMENT OF THE CASE

The Defense Office of Hearings and Appeals (DOHA) declined to grant or continue a security clearance for Applicant. On November 3, 2003, DOHA issued a Statement of Reasons (SOR) ^(U) detailing the basis for its decision-security concerns raised under Guideline F (Financial Considerations) of the Directive. Applicant answered the SOR in writing on December 8, 2003, and elected to have a hearing before an administrative judge. The case was assigned to me January 30, 2004. On February 23, 2004, I convened a hearing to consider whether it is clearly consistent with the national interest to grant or continue a security clearance for Applicant.

The government offered seven documents, which were admitted without objection as Government Exhibits (GE) 1 through 7. The Applicant offered 31 documents, which were admitted without objection as Applicant Exhibits (AE) A through EE. I left the record open after the hearing to afford Applicant the opportunity to submit additional documents. The Applicant timely submitted six additional documents, which were admitted without objection as AE FF through KK. DOHA received the transcript on March 3, 2004.

FINDINGS OF FACT

Applicant's partial admissions to the SOR allegations are incorporated herein. In addition, after a thorough review of the

pleadings, exhibits, and testimony, I make the following findings of fact:

Applicant is a 36-year-old married man, and father of two small children. He has been with his current employer, a defense contractor, since February 2002 as an Electronic Technician II. He earned an AAS degree in June 1998, a BAS degree in June 1999, and completed a certificate program in October 2001. Additionally, he also has been certified as a Microsoft Certified Professional and as a Microsoft Certified Systems Engineer. He has held a security clearance at the secret level since May 2001 and desires to upgrade his security clearance to top secret to comply with requirements to work on projects requiring a higher security access level.

Applicant filed for Chapter 7 bankruptcy protection in September 1992, and was granted a discharge in January 1993. Applicant filed for bankruptcy protection "due to poor money management" and "also [because he] obtained and used too many credit cards." His summary of schedules listed total assets of \$2,350.00 and total liabilities of \$6,117.00. GE 6.

Applicant's current financial problems escalated when he accepted an unfunded transfer to his current location in February 2002. Applicant and his wife knew they were moving to a higher cost area and expected to make up the shortfall by Applicant and his wife finding part-time jobs. Their former location was satisfactory until their oldest child was born. After that, Applicant and his wife decided to move to their present location to take advantage of a better school system and a higher quality of life.

Upon arrival in their new location, Applicant found a part-time job delivering newspapers in May 2002 and his wife found a part-time job in September 2002. The item that had the largest impact on the family budget was a \$395.00 per month rent increase. Before they moved to their present location, Applicant was current on "[m]ost everything" and "[n]othing was behind that we couldn't handle." Tr. 66.

The majority of Applicant's debt stemmed from misuse of credit cards. He was current on his monthly payments until his move, when he diverted his monthly payment funds to cover the cost of his move.

The SOR alleged Applicant incurred 15 debts totaling \$26,256.00. Of the 15 debts alleged in the SOR, Applicant has settled and satisfied two of the debts for a lesser amount and has paid the lesser amounts agreed to in full, (¶¶ 1.h., and 1.n.). Applicant has paid two other debts in full, (¶¶ 1.c. and 1.d.), and is disputing one debt (¶ 1.k.). Furthermore, Applicant is making payments on three other debts (¶¶ 1.g., 1.j., and 1.m.).

Among the documents submitted by Applicant after the hearing was a copy of a contract he entered into with a credit

counseling service. Applicant has retained their services to make monthly payments to the remaining creditors not addressed during the hearing. Specifically, debts listed in ¶¶ 1.a., 1.b., 1.e., 1.f., 1.g., 1.i., 1.j., 1.l. and 1.m. are included under the contract. AE FF, AE GG. The debt contained in ¶ 1.o. was not included as part of the contract because it no longer appears due on Applicant's credit report. Applicant is attempting to contact the creditor to ascertain its status.

Applicant's current credit report reflects his credit is on the mend. AE KK. Furthermore, he submitted 13 character letters attesting to his honesty, work ethic and overall good character. AE S through AE EE.

POLICIES AND BURDEN OF PROOF

"[N]o one has a 'right' to a security clearance." *Department of the Navy v. Egan*, 484 U.S. 518, 528 (1988). 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." Exec. Or. 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.

Enclosure (2) of the Directive sets forth personal security guidelines, as well as the disqualifying conditions (DC) and mitigating conditions (MC) under each guideline. In evaluating the security worthiness of an applicant, the administrative judge must also assess the adjudicative process factors listed in ¶ 6.3 of the Directive. The decision to deny an individual a security clearance is not necessarily a determination as to the loyalty of the applicant. *See* Exec. Or. 10865 § 7. 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 establish, by substantial evidence, conditions in the personal or professional history of the applicant that disqualify, or may disqualify, the applicant from being eligible for access to classified information. *See Egan*, 484 U.S. at 531. The Directive presumes a nexus or rational connection between proven conduct under any of the disqualifying conditions listed in the guidelines and an applicant's security suitability. *See* ISCR Case No. 95-0611 at 2 (App. Bd. May 2, 1996).

Once the Government establishes a disqualifying condition by substantial evidence, the burden shifts to the applicant to rebut, explain, extenuate, or mitigate the facts. ISCR Case No. 01-20700 at 3 (App. Bd. Dec. 19, 2002); *see* Directive ¶ E3.1.15. An applicant "has the ultimate burden of demonstrating that it is clearly consistent with the national interest to grant or continue his security clearance." ISCR Case No. 01-20700 at 3.

CONCLUSIONS

Guideline F - Financial Considerations

In the SOR, DOHA alleged Applicant had 15 delinquent debts (¶¶ 1.a. through 1.p) totaling \$26,256.00, and had been granted chapter 7 bankruptcy relief in 1993. An applicant who is financially overextended is at risk of having to engage in illegal acts to generate funds. Directive ¶ E2.A6.1.1.

The Government established in part by Applicant's admissions and evidence submitted each of the allegations contained in the SOR. As reflected above, Applicant submitted evidence at his hearing that he had settled and satisfied two of the debts for a lesser amount and has paid the lesser amounts agreed to in full (¶¶ 1.h. and 1.n.), he has paid two of the debts in full (¶¶ 1.c. and 1.d.), he is disputing one of the debts (¶ 1.k.), and he is making payments on three debts and is current in his payments (¶¶ 1.g., 1.j., and 1.m.).

After the hearing, Applicant submitted evidence he had retained the services of a credit counseling service and had made arrangements for that service to make payments for nine of the debts (¶¶ 1.a., 1.b., 1.e., 1.f., 1.g., 1.i., 1.j., 1.l., and 1.m.). The debt contained in ¶ 1.o. no longer appears due on Applicant's credit report and he is attempting to contact the creditor to ascertain its status.

Although the manner in which Applicant has managed his finances in the past leaves something to be desired, he now recognizes the seriousness of the situation and has made good-faith efforts to repay or resolve his past debts. A combination of the responsibility that goes along with supporting a young family and the prospect of hitting a dead end professionally has weighed on him to turn his financial situation around. He is certainly held in high regard by a number of his colleagues, friends, and associates. In any event, the demonstrated steps he has taken by paying down his debt and retaining the services of a credit counseling service for debts alleged in the SOR suggests he has turned a corner.

Disqualifying Conditions applicable under the Directive are contained in ¶ E2.A6.1.2.1, *A history of not meeting financial obligations*; and, ¶ E2.A6.1.2.3, *Inability or unwillingness to satisfy debts*.

The Mitigating Conditions applicable under the Directive are contained in ¶ 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; and, ¶ E2.A6.1.3.6, *The individual initiated a good-faith effort to repay overdue creditors or otherwise resolve debts.*

Based on the totality of the circumstances to include his documented actions coupled with his credible testimony, I find for Applicant on SOR ¶ 1.

FORMAL FINDINGS

Formal findings regarding each SOR allegation as required by Directive Section E3.1.25 are as follows:

Paragraph 1. Guideline F: FOR APPLICANT

Subparagraph 1.a.-1.p: For Applicant

DECISION

In light of all of the circumstances presented by the record in this case, it is clearly consistent with the national interest to grant or continue a security clearance for Applicant. Clearance is granted.

Robert J. Tuider

Administrative Judge

1. Pursuant to Exec. Or. 10865, *Safeguarding Classified Information within Industry* (Feb. 20, 1960), as amended and modified, and Department of Defense Directive 5220.6, *Defense Industrial Personnel Security Clearance Review Program* (Jan. 2, 1992), as amended and modified.