

KEYWORD: Financial

DIGEST: Applicant's financial problems continue to raise security concerns over his failure to resolve four debts totaling approximately \$21,000. The record evidence is insufficient to mitigate or extenuate the negative security implications stemming from a debt of such magnitude. Clearance is denied.

CASENO: 03-18509.h1

DATE: 08/31/2005

DATE: August 31, 2005

In Re:

SSN: -----

Applicant for Security Clearance

ISCR Case No. 03-18509

DECISION OF ADMINISTRATIVE JUDGE

CLAUDE R. HEINY

APPEARANCES

FOR GOVERNMENT

Robert E. Coacher, Department Counsel

FOR APPLICANT

Pro Se

SYNOPSIS

Applicant's financial problems continue to raise security concerns over his failure to resolve four debts totaling approximately \$21,000. The record evidence is insufficient to mitigate or extenuate the negative security implications stemming from a debt of such magnitude. Clearance is denied.

STATEMENT OF THE CASE

On July 29, 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. Security concerns were raised under Guideline F (Financial Considerations). DOHA recommended the case be referred to an administrative judge to determine whether a clearance should be granted, continued, denied, or revoked.

In an undated response, Applicant answered the SOR and requested a hearing. On December 22, 2004, I was assigned the case. On January 6, 2005, a Notice of Hearing was issued scheduling the hearing held on January 26, 2005. At that hearing, it was determined Applicant was not informed of the hearing time and location in a timely manner. The hearing was continued. On March 11, 2005, a second Notice of Hearing was issued scheduling the hearing which was held on March 28, 2005. The record was kept open to allow Applicant to submit additional documents. Several documents were received and admitted into the record. On February 3, 2005 and April 7, 2005, DOHA received copies of the transcripts (Tr.).

FINDINGS OF FACT

In his response to the SOR, Applicant admits owing five debts totaling approximately \$22,000. That admission is incorporated herein as a findings of fact. After a thorough review of the entire record, I make the following additional finding of fact:

Applicant is a 44 year old engineer who has worked for a defense contractor since December 2004, and is seeking a security clearance.

Applicant incurred three credit card debts (SOR 1.a, \$1,316 and SOR 1.b, \$2,566, SOR 1.c, \$7,755). From March 1999 to August 1999, Applicant was unemployed. He was unable to pay his credit card bills while unemployed. Once he was employed, he discovered the debts had been charged off. Additionally, he was unable to catch up on his bad debts once he was again employed because he had two children in college. The state paid their tuition, but Applicant paid for their food, lodging, room, board, and books. (Tr. 40) Applicant's daughter, who is 24 years old, has 85% hearing loss, and his son, who is 22 years old, has 60% hearing loss (Tr. 26). He has incurred medical expenses due to their hearing impairment.

Applicant says his one credit card debt (SOR 1.c) has been transferred to various collection agencies. The amount listed on his February 2004 credit report (Gov Ex 3) is \$11,656. Applicant states the debt was actually \$7,755. (Tr. 31)

In 1989 or 1990, Applicant had a home repossessed. He was working for a government contractor when laid off and unable to find a job for 10 months (Gov Ex 1, p 3). In 1996, Applicant entered into an agreement to do some design work for an individual. The two worked together until 1999. The agreement required a 60-40% division of all profits. No profits were ever realized. Applicant borrowed \$4,000 from the individual when his daughter started college. When the money was not repaid, the individual obtained a \$4,000 judgment (SOR 1.e) against Applicant. Applicant has bitter feelings about this transaction. (Tr. 41) He did not believe the money was a loan when he received it. He indicates this will be the last debt paid.

In May 2003, Applicant was questioned about his finances and past due debts (Gov Ex 2). At that time, he said he would repay the debt sometime after January 2005. Applicant stated his children would be out of college by December 2004, which would free up "a lot of money." (Gov Ex 2, p 2) He planned to contact his creditors in January 2005 and establish repayment plans. At the time of the hearing, Applicant had developed no repayment plan.

In March 2004, Applicant responded to financial interrogatories (Gov Ex 3). At that time, he had a verbal agreement to refinance his house in October 2004 and would provide enough money to offer settlements on his debts. The refinancing did not occur. Applicant has established a credit union account. In the future, he intends to make direct deposits into the account and then use the funds in the account to settle his debts. Applicant did not document the balance of this account.

Applicant's daughter has taken over repayment of her debts, which include a car payment and insurance payment. Applicant has paid off two trucks, which provides him with \$600 per month he can devote to his debts.

The SOR lists five debts totaling approximately \$ 22,000 owed to five creditors. A summary of those debts and their current status follows:

	Creditor	Amount Owed	Current Status
a.	credit card bad debt	\$1,472	Unpaid.
b.	credit card bad debt	\$4,067	Unpaid.
c.	collection agency delinquent credit card account	\$11,656	Unpaid.
d.	late house payment	\$956	Applicant is current on his mortgage payments
e.	judgment	\$4,000	Unpaid.
	total debts listed in SOR	\$22,151	

In May 2003, Applicant submitted a monthly financial statement showing his monthly net remainder was a negative \$440 (Gov Ex 2). In March 2004, he submitted another statement showing a positive \$83 net remainder. Following the hearing, Applicant submitted a financial statement showing \$176 net remainder plus \$200 dedicated to savings and \$200 dedicated to debt reduction. (App Ex A)

Applicant's yearly salary is \$66,000 and his wife's yearly income is \$26,000. He is not currently being contacted by creditors concerning past due debts. He has no credit cards. He has not received any credit counseling. (Tr. 35)

POLICIES

The Directive sets forth adjudicative guidelines to be considered when evaluating a person's eligibility to hold a security clearance. Disqualifying Conditions (DC) and Mitigating Conditions (MC) are set forth for each applicable guideline. Additionally, each decision must be a fair and impartial commonsense decision based upon the relevant and material facts and circumstances, the whole person concept, and the factors listed in Section 6.3 of the Directive. The adjudicative guidelines 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. The presence or absence of a particular condition or factor for or against clearance is not determinative of a conclusion for or against an applicant. However, the adjudicative guidelines should be followed whenever a case can be measured against this policy guidance. Considering the evidence as a whole, I conclude the relevant guideline to be applied here is Guideline F (Financial Considerations).

BURDEN OF PROOF

The sole purpose of a security clearance decision is to decide if it is clearly consistent with the national interest to grant or continue a security clearance for an applicant. Initially, the Government must establish, by substantial evidence, that conditions exist in the personal or professional history of the applicants which disqualify, or may disqualify, an applicant from being eligible for access to classified information. The burden of proof in a security clearance case is something less than a preponderance of evidence, although the government is required to present substantial evidence to meet its burden of proof. Substantial evidence is more than a scintilla, but less than a preponderance of the evidence. 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. Additionally, the government must prove controverted facts alleged in the SOR. Once the government has met its burden, the burden shifts to an applicant to present evidence to refute, extenuate or mitigate government's case. Additionally, an applicant has the ultimate burden of persuasion to obtain a favorable clearance decision. [\(2\)](#)

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." 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. The "clearly consistent with the national interest" standard compels resolution of any reasonable doubt about an applicant's suitability for access to classified information to be resolved in favor of protecting national security. Security clearance determinations should err, if they must, on the side of denials.

CONCLUSIONS

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 Government has satisfied its initial burden of proof under Guideline F (Financial Considerations). Applicant admitted he owed five debts totaling approximately \$22,000. Disqualifying Conditions (DC) 1 (E2.A6.1.2.1. *A history of not meeting financial obligations*) and DC 3 (E2.A6.1.2.3. *Inability or unwillingness to satisfy debts*) apply.

Applicant is current on his mortgage payments. I find for him as to SOR 1.d.

None of the Mitigating Conditions (MC) apply in the Applicant's favor to the other four debts. MC 1 (E2.A6.1.2.1. *The behavior was not recent*) does not apply because the conduct is recent since the debts remain unpaid. MC 2 (E2.A6.1.2.2. *It was an isolated incident*) does not apply because there are four unpaid debts. There was no showing the debts were caused by factors beyond Applicant's control. Applicant was unemployed for 10 months in 1989 or 1990 and unemployed for six months from March 1999 through August 1999. Subsequently, Applicant has been employed for more than five and one half years; and there is no showing of payments having been made on the listed debts. He has had additional medical expenses due to his children's hearing loss, but he failed to document the impact of these expenses on his current finances. Because Applicant has failed to document the impact of the additional medical expenses and the impact of his unemployment five years ago on his current finances, I find MC3 (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.

There has been no showing Applicant has received financial counseling nor is there any indication his financial difficulties are under control. Therefore, MC4 (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*) does not apply.

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 not present. Following the hearing, Applicant was going to establish an account to which he would make systematic deposits. At some future date, he would then use those accumulated funds to offer settlement on his four debts. He has failed to document the account or its balance. Of more importance, Applicant has yet to make any payment on these debts. He was first made aware of the government's concern during a May 2003 interview, and he has yet to make any payment. Because he has failed to document payment on the four debts, I find against Applicant on these debts. I find against Applicant as to financial considerations.

In reaching my conclusions I have also considered: the nature, extent, and seriousness of the conduct; Applicant's age and maturity at the time of the conduct; the circumstances surrounding the conduct; 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.: For the Applicant

Subparagraph 1.e.: 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 Applicant. Clearance is denied.

Claude R. Heiny

Administrative Judge

1. Required by Executive Order 10865, *Safeguarding Classified Information Within Industry*, as amended, and Department of Defense Directive 5220.6, *Defense Industrial Personnel Security Clearance Review Program* (Directive), dated January 2, 1992, as amended.
2. ISCR Case No. 93-1390 (January 27, 1995) at pp. 7-8; Directive, Enclosure 3, Item E3.1.15