

KEYWORD: Financial

DIGEST: Applicant failed to mitigate security concerns raised by his financial situation. He is financially overextended, but doesn't realize it as his wife handles their finances. Clearance is denied.

CASENO: 05-05334.h1

DATE: 06/12/2006

DATE: June 12, 2006

In re:

SSN: -----

Applicant for Security Clearance

ISCR Case No. 05-05334

DECISION OF ADMINISTRATIVE JUDGE

JAMES A. YOUNG

APPEARANCES

FOR GOVERNMENT

Ray T. Blank Jr., Esq., Department Counsel

FOR APPLICANT

Pro Se

SYNOPSIS

Applicant failed to mitigate security concerns raised by his financial situation. He is financially overextended, but doesn't realize it as his wife handles their finances. Clearance is denied.

STATEMENT OF THE CASE

The Defense Office of Hearings and Appeals (DOHA) declined to grant or continue a security clearance for Applicant. As required by Department of Defense Directive 5220.6 ¶ E3.1.2 (Jan. 2, 1960), as amended, DOHA issued a Statement of Reasons (SOR) on 19 October 2005 detailing the basis for its decision-security concerns raised under Guideline F (Financial Considerations) of the Directive. Applicant answered the SOR in writing on 15 November 2005 and elected to have a hearing before an administrative judge. The case was assigned to me on 14 February 2006. On 27 April 2006, I convened a hearing to consider whether it is clearly consistent with the national interest to grant or continue a security clearance for Applicant. DOHA received the hearing transcript (R.) on 9 May 2006.

Department Counsel moved to amend each allegation to read that the debts had not been paid as of "August 3, 2005." Applicant had no objection, so the motion was granted.

I kept the record open to permit Applicant to submit more evidence. Applicant submitted a letter from one of his creditors which was admitted, without objection, as Exhibit D.

FINDINGS OF FACT

Applicant is a 42-year-old program project manager for a defense contractor. On 1 January 2003, he retired from the U.S. Marine Corps as a gunnery sergeant (E-7) after more than 21 years of service. He has held a secret clearance since 1982. Applicant, his second wife, one of his two children, and both of her children live together in State 1. He divorced his first wife in 1994. Ex. 1 at 3. She resides in State 2.

In the SOR, DOHA alleged Applicant had two accounts (¶¶ 1.b, 1.c) totaling more than \$15,000 that had been charged off as bad debts, three account (¶¶ 1.a, 1.d, 1.e) totaling more than \$1,400 that were in collection status, and an account (¶ 1.f) for more than \$290 that was delinquent more than 120 days. He denied the debts alleged in ¶¶ 1.a, 1.b, 1.d and 1.e. In his Answer, he admitted the debts in ¶¶ 1.c and 1.f, but asserted the debt in ¶ 1.c (\$5,375) is being paid at \$200 a month, and the debt in ¶ 1.f (\$290) was paid in full.

Applicant asserts the debt alleged in ¶ 1.a (\$349) is not his. He claims it is for telephone service opened in 2004 in State 2. He asserts he was not then living in State 2, and worked with a debt counseling service to get it removed from his credit report. R. 18. The debt does not appear on his latest credit report. Ex. C.

The debt alleged in ¶ 1.b is for a car Applicant bought his ex-wife in 1999. R. 12. She was unable to keep up the payments on the vehicle and returned it to him. At the hearing, he asserted two theories for this debt. First, he was unable to afford the necessary repairs, so voluntarily had the vehicle repossessed. R. 19. Second, he did not make any effort to pay for it because he believed it was a "lemon, junk." R. 35. The debt was initially charged off. In June 2005, the creditor canceled the debt of \$9,636.80 and sent Applicant an IRS Form 1099-C evidencing that fact. Ex. B. The cancellation resulted in taxable income to Applicant. R. 18-20.

The debt alleged in ¶ 1.c (\$5,375) is to a military exchange. Applicant asserts his wife opened two separate accounts under his name in 1996 or 1997 using a general power of attorney he had given her before he deployed with the Marines. The documents he submitted (Ex. D) show one account was opened in February 2004 for \$1,667. A dishonored check from 9 May 2003 was added to the account for a total of \$1,917. No payments were made, and finance and penalty charges raised the balance to \$2,185 by 1 June 2004. On 13 June 2004 another account was opened with a principal of \$5,375. The accounts, totaling more than \$7,500, were merged. Applicant made a voluntary payment of \$200 in July 2004. In August 2004, the creditor involuntarily collected approximately \$600 from Applicant. He has been paying \$200 a month since September 2004 to resolve this debt, which now stands at approximately \$5,600. Approximately \$60 of each \$200 payment is applied to penalties and interest on the debt. Ex. D at 5.

The debts alleged in ¶¶ 1.d and 1.e were verified as not being Applicant's debts and have been removed from his credit report. The debt alleged in ¶ 1.f (\$290) was for a check that was returned for insufficient funds. Applicant asserts this debt was paid in full. Answer; R. 21, 39.

Applicant and his wife have a combined gross income of more than \$163,900 a year. R. 22. His wife handles all the finances. R. 31. At the hearing Applicant submitted a credit report (Ex. C), dated 26 April 2006, showing he had three current mortgages for more than \$630,000, installment accounts totaling more than \$105,000, and revolving credit totaling more than \$39,000. His debt to the military exchange was not included, although he admits he still owes it. Ex. D. Applicant appears to be current on all of the accounts listed in his latest credit report, but he is close to his credit limit on most of them. Applicant's credit report does not reflect his wife's credit cards, student loans, vehicles, and a recently purchased recreational van. He could not begin to guess at his wife's monthly debt. Applicant reports the couple's debt-to-income ratio is 56-57%. R. 28-30.

POLICIES

"[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 authorized the Secretary of Defense or his designee to grant applicants eligibility for access to classified information "only upon a finding that it is clearly consistent with the national interest to do so." Exec. Or. 10865, *Safeguarding Classified Information within Industry* § 2 (Jan. 6, 1993). Eligibility for a security clearance is predicated upon the applicant meeting the security guidelines contained in the Directive. 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.

Enclosure 2 of the Directive sets forth personnel 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 the applicant has not met the strict guidelines the President and the Secretary of Defense have established for issuing a clearance.

CONCLUSIONS

An applicant who is financially overextended is at risk of having to engage in illegal acts to generate funds. Directive ¶ E2.A6.1.1. Failure or inability to live within one's means, satisfy debts, and meet financial obligations may indicate poor self-control, lack of judgment, or unwillingness to abide by rules and regulations, all of which can raise questions about an individual's reliability, trustworthiness and ability to protect classified information.

A possibly disqualifying security concern may be raised when an applicant has a history of not meeting his financial obligations (DC E2.A6.1.2.1.) or is unable or unwilling to satisfy his debts (DC E2.A6.1.2.3.). The Government established Applicant had two debts totaling more than \$15,000 that were charged off, and a debt resulting from a check returned for insufficient funds.

An applicant may mitigate financial security concerns by establishing he initiated good-faith efforts to resolve his debts. MC E2.A6.1.3.6. Applicant was able to get the car debt canceled and has been paying off the debt to the military exchange, although with penalties and finance charges. On the other hand, Applicant is financially overextended and does not seem to understand it. His debt-to-income ratio demonstrates he is leveraged to the hilt. Applicant's wife handles their finances. It is neither unusual nor unacceptable for a couple to divide up their duties. Nevertheless, applicants must accept responsibility for their financial condition.

Applicant's lack of knowledge of his financial situation is evident. His testimony about his debt to the military exchange was not accurate. The debts to the military exchange did not result from his wife opening accounts in 1996 and 1997 while he was deployed. It resulted from purchases in 2004, more than a year after he retired from the Marine Corps. This account was delinquent because no payments were made.

Applicant's financial condition is inextricably entwined with that of his wife. They have several joint accounts, including mortgages and car loans. While his wife is not seeking a security clearance, her debts become relevant when applicant includes her income in his list of assets. Applicant had no guess as to what her debts were, although he knew she had her own credit card accounts and student loans. After reviewing all of the evidence, considering the disqualifying and mitigating conditions, and the adjudicative process factors, I conclude Applicant is financially overextended and failed to establish that his financial situation does not represent a security concern.

FORMAL FINDINGS

The following are my conclusions as to each allegation in the SOR:

Paragraph 1. Guideline F: AGAINST APPLICANT

Subparagraph 1.a: For Applicant

Subparagraph 1.b: For Applicant

Subparagraph 1.c: Against Applicant

Subparagraph 1.d: For Applicant

Subparagraph 1.e: For Applicant

Subparagraph 1.f: For Applicant

DECISION

In light of all of the circumstances in this case, it is not clearly consistent with the national interest to grant or continue a security clearance for Applicant. Clearance is denied.

JAMES A. YOUNG

Administrative Judge