

KEYWORD: Financial; Personal Conduct

DIGEST: Applicant has ten delinquent accounts with an approximate total balance of \$28,443. He got behind on paying bills and child support due to brief periods of unemployment and low paying jobs. Since 2004, he has had a well paying job but did not attempt to resolve any of his delinquent debt until prior to the hearing. The majority of his delinquent accounts remain unresolved. He has not demonstrated a good-faith effort to repay overdue creditors or otherwise resolve debts. The concern under Guideline E has been mitigated since Applicant's failure to list his delinquent debt on his security clearance application was not deliberate. Security concerns remain under Guideline F. Clearance is denied.

CASENO: 05-06615.h1

DATE: 05/09/2006

DATE: May 9, 2006

In re:

SSN: -----

Applicant for Security Clearance

ISCR Case No. 05-06615

DECISION OF ADMINISTRATIVE JUDGE

ERIN C. HOGAN

APPEARANCES

FOR GOVERNMENT

Nichole Noel Esq., Department Counsel

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FOR APPLICANT

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SYNOPSIS

Applicant has ten delinquent accounts with an approximate total balance of \$28,443. He got behind on paying bills and child support due to brief periods of unemployment and low paying jobs. Since 2004, he has had a well paying job but did not attempt to resolve any of his delinquent debt until prior to the hearing. The majority of his delinquent accounts remain unresolved. He has not demonstrated a good-faith effort to repay overdue creditors or otherwise resolve debts. The concern under Guideline E has been mitigated since Applicant's failure to list his delinquent debt on his security clearance application was not deliberate. Security concerns remain under Guideline F. Clearance is denied.

STATEMENT OF THE CASE

On October 19, 2005, the Defense Office of Hearings and Appeals (DOHA) issued to Applicant a Statement of Reasons (SOR) stating they were unable to find that it is clearly consistent with the national interest to grant or continue a security clearance. This action was taken under Executive Order 10865, dated February 20, 1960, as amended and DoD Directive 5220.6, dated January 2, 1992, as amended and modified. The SOR, which is in essence the administrative complaint, alleged security concerns under Guideline F, Financial Considerations and Guideline E, Personal Conduct.

In a sworn statement dated November 30, 2005, Applicant responded to the SOR allegations and requested a hearing. The case was assigned to me on January 30, 2006. A notice of hearing was issued on February 10, 2006, scheduling the hearing for March 14, 2006. The hearing was conducted on that date. The government submitted seven exhibits that were marked as Government Exhibits (Gov Ex) 1-7. The exhibits were admitted into the record without objection. Applicant testified on his own behalf, and submitted 11 exhibits that were marked as Applicant's Exhibits (AE) A-K. Applicant Exhibits A-K were admitted without objection. The record was kept open until March 31, 2006. Applicant timely submitted 3 additional documents which were admitted without objection as AE L-N. DOHA received the hearing transcript (Tr.) on March 24, 2006.

FINDINGS OF FACT

In his SOR response, Applicant denies the allegations in subparagraphs 1.i and 2.a but admits to all remaining allegations. Applicant's admissions are incorporated herein. In addition, after a thorough and careful review of the pleadings, exhibits, and testimony, I make the following findings of fact:

Applicant is employed as a video teleconference technician with a Department of Defense contractor. He has applied for a security clearance. (Tr. at 121.) He is 41 years old and has been married twice. (Gov Ex 1.) He divorced his first wife in March 1995. He married his second wife in December 1995. They divorced in June 2000. (*Id.*) Two boys, ages 7 and 8, were born during the second marriage. (Tr. at 35.) Applicant also has a son, age 15, from a prior relationship. (Tr. at 34, 36.) He pays \$100.00 a month in child support to his oldest son. He pays \$600.00 a month in child support for his two younger sons. (Tr. at 36-37.) Of that amount, \$250 a month goes towards child support and \$350 a month goes towards arrearages. (Tr. at 37, 51 - 52, 103.)

Applicant served on active duty in United States Marines Corps from August 5, 1983, to May 22, 1998. He was discharged for medical reasons and received an honorable discharge. (AE H; AE J; Tr. at 30). He separated at the rank of Staff Sergeant. He held a TOP SECRET security clearance while on active duty. (AE I.)

Applicant has periodically encountered financial difficulties. He had financial difficulties in the late 1980s while on active duty in the military. (Gov Ex 6.) During his second marriage, he supported his wife's two daughters from a prior marriage as well as his children. He found supporting five dependents on a Staff Sergeant's salary difficult. (Tr. at 40.) Upon separating from the military, he had several low paying jobs which made it difficult to pay his bills. From 2000 to 2003, his average annual salary was \$25,000. In April 2004, he moved to Northern Virginia and accepted a position starting at \$52,000 a year. (Tr. at 55.) He has worked for his current employer since May 2005 and earns \$60,000 a year. (Tr. at 39.)

Applicant's background investigation revealed he had ten delinquent accounts with a total approximate balance of \$28,443. (*See* Gov Ex 2, 3 and 4.) The accounts included a medical collection account for \$3,396 (SOR ¶ 1.a); a medical collection account for \$84 (SOR ¶ 1.b); a \$662 collection account for phone service (SOR ¶ 1.c); a \$187 collection account (SOR ¶ 1.d); a \$237 charged off utility account (SOR ¶ 1.e); a \$5,858 collection account pertaining to child support (SOR ¶ 1.f); a \$443 charged off account pertaining to a phone bill (SOR ¶ 1.g); a \$10,437 collection account related to an automobile repossession (SOR ¶ 1.h); a \$6,789 account pertaining to an automobile repossession (SOR ¶ 1.i); and a \$350 collection account. (SOR ¶ 25)

The debt alleged in ¶ 1.a was for medical expenses related to an August 2000 automobile accident. Applicant maintains the VA agreed to pay the medical expenses. They are now requesting that he obtain a copy of the medical records before they make a decision whether they will cover it. If the VA denies coverage, he is willing to pay it. (Tr. 42 - 45, 80 - 88, 103; AE G.) He has paid the debt alleged in ¶ 1.b. (Tr. at 45; AE C.)

On March 1, 2006, Applicant entered into a debt repayment plan with a consumer credit agency. (AE A; AE F.) Payments are to begin in early April 2006. (Tr. at 111.) The debts alleged in ¶¶ 1.c, 1.e, and 1.g are included in the repayment plan as well as several debts that were not listed in the SOR. The additional debts included a \$491 credit card debt; a \$592 loan which he claims he borrowed for a friend, two cell phone accounts delinquent in the amount of \$657.00 and \$557.00 which he opened for the same friend. Although he took the loan and the two cell phone accounts out in his name, his friend was supposed to make payments on these accounts. His friend did not make any payments on the accounts. (Tr. at 105 - 110.) A \$510 debt for an educational course is also included in the repayment plan. (Tr. at 109 - 110.)

Applicant contacted the collection agency pertaining to the debt alleged in ¶ 1.d. The original creditor had filed bankruptcy and the collection agency had no record of the debt. (Tr. at 48-49.) The debts alleged in ¶¶ 1.h, 1.i, and 1.j have not been resolved. He is attempting to make arrangements for resolving these debts. The debts alleged in ¶¶ 1.h and 1.j were the result of money owed after automobile repossessions. The first car was repossessed in about 1996. The second car was repossessed in 1997. Applicant claims that he was not aware he owed any money for the first automobile repossession but was aware that he and his second wife had a balance owed for the second repossession. (Tr. at 56-63.) He is trying to settle these accounts but has not entered into a repayment agreement with any of the creditors.

At the time the of the issuance of the SOR, Applicant owed approximately \$5,858 in delinquent child support (¶ 1.d). He got behind in his child support payments after he separated from the military. He was unable to keep up with payments during periods of unemployment and when he was working jobs that paid low wages. (Tr. at 50-54, 90-97.) He was unemployed between May - August 1998; August - November 2000; October - November 2001; and March - April 2003. (Gov Ex 1, question 6.) As of March 30, 2006, his delinquent child support balance is \$5,369. (AE M.) He anticipates a \$3,842 income tax refund which will be applied towards his delinquent child support. (AE N.)

Applicant has approximately \$4,400 in net monthly income. He has approximately \$4,053 in total expenses. He has a monthly surplus of \$347. (AE B.)

On his security clearance application submitted in April 2004, Applicant responded "No" to question "38. Your Financial Delinquencies - 180 Days. In the last 7 years, have you ever been over 180 days delinquent on any debt(s)?" (Gov Ex 1.) He did not list the debts listed in ¶s 1.a through 1.k. He did not list these debts because he was not aware whether the debts were over 180 days delinquent. He did not have a current credit report for reference. (Tr. at 71.) He did not think that the automobile repossession debt listed in ¶ 1.i needed to be listed since it was more than 7 years old. (Tr. at 72.) He did not think he needed to list debts in ¶¶ 1.a and 1.j since he is disputing each debt. (Tr. at 73.) He did not list the delinquent child support debt since he was paying on the debt. (Tr. at 74.)

Two of his former co-workers submitted statements indicating Applicant is a professional leader who has great integrity. (AE D- E.)

POLICIES

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." (*Department of the Navy v. Egan*, 484 U.S. 518, 527 (1988).) In Executive Order 10865, *Safeguarding Classified Information Within Industry* (Feb. 20, 1960), the President set out guidelines and procedures for safeguarding classified information within the executive branch.

To be eligible for a security clearance, an applicant must meet the security guidelines contained in the Directive. Enclosure 2 of the Directive sets forth personnel security guidelines, as well as the disqualifying conditions and mitigating conditions under each guideline. The adjudicative guidelines at issue in this case are:

Guideline F, Financial Considerations: An individual who is financially overextended is at risk of having to engage in illegal acts to generate funds. (Directive ¶ E2.A6.1.1.)

Guideline E, Personal Conduct: Conduct involving questionable judgment, untrustworthiness, unreliability, lack of candor, dishonesty, or unwillingness to comply with rules and regulations could indicate that the person may not properly safeguard classified information.

Conditions that could raise a security concern and may be disqualifying, as well as those which could mitigate security concerns pertaining to these adjudicative guidelines, are set forth and discussed in the conclusions below.

"The adjudicative process is an examination of a sufficient period of a person's life to make an affirmative determination that the person is eligible for a security clearance." (Directive, ¶ E2.2.1.) An administrative judge must apply the "whole person concept," and consider and carefully weigh the available, reliable information about the person. *Id.* An administrative judge should consider the following factors: (1) the nature, extent, and seriousness of the conduct; (2) the circumstances surrounding the conduct, to include knowledgeable participation; (3) the frequency and recency of the conduct; (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. (*Id.*)

Initially, the Government must present evidence to establish controverted facts in the SOR that disqualify or may disqualify the applicant from being eligible for access to classified information. (Directive, ¶ E3.1.14.) Thereafter, the applicant is responsible for presenting evidence to rebut, explain, extenuate, or mitigate the facts. (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 (App. Bd. Dec. 19, 2002).) "Any doubt as to whether

access to classified information is clearly consistent with national security will be resolved in favor of the national security." (Directive, ¶ E2.2.2.)

A person granted access to classified information enters into a special relationship with the government. The government must be able to repose a high degree of trust and confidence in those individuals to whom it grants access to classified information. The decision to deny an individual a security clearance is not a determination as to the loyalty of the applicant. (Exec. Ord. 10865, § 7.) It is merely an indication that the applicant has not met the strict guidelines the President has established for issuing a clearance.

CONCLUSIONS

I have carefully considered all the facts in evidence and the legal standards. The government has established a *prima facie* case for disqualification under Guideline F - Financial Considerations.

Financial Considerations

Applicant has approximately ten delinquent debts with a total approximate balance of \$28,443. Under Guideline F, Disqualifying Conditions (FC DC) E2.A6.1.2.1: (*A history of not meeting financial obligations*) and FC DC 3 E2.A6.1.2.3: (*Inability or unwillingness to satisfy debts*) apply to Applicant's case. He has incurred numerous delinquent debts. The oldest delinquent debts are the debts related to his automobile repossessions which occurred in 1996 and 1997. He continued to incur additional delinquent debt after separating from active duty in 1998.

The security concern under Guideline F can be mitigated. I find the following Financial Considerations Mitigating Conditions (FC MC) apply:

FC MC 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)*) applies, in part. Applicant and his ex-wife always struggled financially since they were supporting their two children and his wife's two daughters from a prior marriage on a SSgt's income. His financial situation became more precarious upon separating from the military. He endured brief periods of unemployment and low paying jobs. His second separation and divorce added a further financial burden. Although his finances have been adversely affected by two divorces, brief periods of unemployment, and low paying jobs, I cannot conclude that FC C E2.A6.1.3.3 completely mitigates the entire Guideline

F security concern based on Applicant's history of financial irresponsibility.

Although not alleged in the SOR, there is evidence indicating he had financial difficulties while in the military as far back as 1988. His actions in taking out a personal loan and opening two cell phone accounts for a friend also raise questions about his financial judgment. He had his own delinquent debts that he was responsible for including delinquent child support. His decision to do this favor for a friend further complicated his overall financial situation. Applicant's poor financial decisions have also contributed to his financial situation.

No other mitigating conditions apply. However, I find for the Applicant with respect to ¶ 1.a since he has been actively working with the VA to resolve this debt. I also find for the Applicant with respect to ¶ 1.b since he paid off the debt. However, the majority of the delinquent debts remain outstanding. Applicant made no attempt to resolve these debts until shortly before the hearing. As of the date of the hearing, he made no payments towards his debt repayment plan. His attempts to resolve his finances occurred too late for a determination that his financial problems are being resolved or are under control. He has not made a good -faith effort towards resolving his delinquent debts.

A security concern remains under Guideline F. I find against the Applicant under Guideline F.

Personal Conduct

Although Applicant did not list his delinquent debts on his security clearance application, I find that he had no intent to falsify his security clearance application. I find credible his explanation that he did not recall certain delinquent debts or did not think he had to list them. I find for the Applicant under Guideline E.

FORMAL FINDINGS

Formal Findings for or against Applicant on the allegations set forth in the SOR, as required by Section E3.1.25 of Enclosure 3 of the Directive, are:

Paragraph 1. Guideline F: AGAINST APPLICANT

Subparagraph 1.a: For Applicant

Subparagraph 1.b: For Applicant

Subparagraph 1.c: Against Applicant

Subparagraph 1.d: Against Applicant

Subparagraph 1.e: Against Applicant

Subparagraph 1.d: Against Applicant

Subparagraph 1.e: Against Applicant

Subparagraph 1.f: Against Applicant

Subparagraph 1.g: Against Applicant

Subparagraph 1.h: Against Applicant

Subparagraph 1.i: Against Applicant

Subparagraph 1.j: Against Applicant

Paragraph 2. Guideline E FOR APPLICANT

Subparagraph 1.a: 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.

Erin C. Hogan

Administrative Judge