

KEYWORD: Financial

DIGEST: Applicant accumulated delinquent debts between about 1989 and 2002. The debts arose largely from circumstances beyond his control, including his separation and contested divorce, his injury in an automobile accident and resulting lost wages, his mother's illness and subsequent death, several periods of unemployment, and a second automobile accident causing the destruction of his vehicle. Applicant obtained a degree and a better-paying job, and began paying off his delinquent debts. He obtained financial counseling and either paid off or negotiated a payment plan for substantially all his delinquent debts. Applicant mitigated the security concerns arising from his financial difficulties. Clearance is granted.

CASENO: 03-25565.h1

DATE: 10/21/2005

DATE: October 21, 2005

In re:

SSN: -----

Applicant for Security Clearance

ISCR Case No. 03-25565

DECISION OF ADMINISTRATIVE JUDGE

MICHAEL J. BRESLIN

APPEARANCES

FOR GOVERNMENT

Sabrina Redd, Esq., Department Counsel

FOR APPLICANT

Pro Se

SYNOPSIS

Applicant accumulated delinquent debts between about 1989 and 2002. The debts arose largely from circumstances beyond his control, including his separation and contested divorce, his injury in an automobile accident and resulting lost wages, his mother's illness and subsequent death, several periods of unemployment, and a second automobile accident causing the destruction of his vehicle. Applicant obtained a degree and a better-paying job, and began paying off his delinquent debts. He obtained financial counseling and either paid off or negotiated a payment plan for substantially all his delinquent debts. Applicant mitigated the security concerns arising from his financial difficulties. Clearance is granted.

STATEMENT OF THE CASE

On March 19, 2003, Applicant submitted an application for a security clearance. The Defense Office of Hearings and Appeals (DOHA) declined to grant or continue a security clearance for Applicant under Executive Order 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 (the "Directive"). On January 20, 2005, DOHA issued a Statement of Reasons (SOR) detailing the basis for its decision. The SOR alleges security concerns raised under the Directive, Guideline F, Financial Considerations.

Applicant answered the SOR in writing on February 28, 2005. He elected to have a hearing before an administrative judge.

I received the case on August 1, 2005. With the concurrence of Applicant and Department Counsel, I convened the hearing on September 14, 2005. The government introduced Exhibits 1 through 5. Applicant provided Exhibits A through P and testified on his own behalf. At Applicant's request, I kept the record open to allow Applicant additional time to submit documents. Thereafter, Applicant submitted Exhibits Q through CC, which were admitted without

objection. DOHA received the final transcript of the hearing (Tr.) on September 27, 2005.

FINDINGS OF FACT

Applicant denied the factual allegations in ¶ 1.n of the SOR. Applicant's Answer to SOR, dated May 17, 2005. He admitted the factual allegations in the remaining paragraphs of the SOR, with explanations. *Id.* Those admissions are incorporated herein as findings of fact. After a complete and thorough review of the evidence in the record, I make the following additional findings of fact.

Applicant is 46 years old. Ex. 1 at 1. He works as a computer specialist for a defense contractor. Tr. at 71.

Applicant entered active duty in the U.S. Army in January 1978 and served until November 1989, rising to the grade of E-5. Ex. 1 at 10. He held a Secret clearance for a period while on active duty in the Army. *Id.* at 13. In about 1986 or 1987, when Applicant applied for a higher clearance, the security investigation revealed delinquent financial accounts. Ex. 2 at 4; Tr. at 69. Authorities denied the higher clearance and revoked Applicant's Secret clearance. *Id.*

After leaving the Army, Applicant held a variety of short-term jobs. Ex. 2 at 4. He held 16 different jobs during the seven years between 1989 and June 2002. The positions did not pay well enough for Applicant to support himself and his family, and he fell behind on his debts. Ex. 2 at 4. He was also unemployed for brief periods between some of the jobs. Tr. at 54-57.

Other factors made Applicant's financial situation more difficult. He was married in 1983. Ex. 1 at 8. On December 24, 1994, his wife attempted suicide in front of their six-year-old child, and was hospitalized. Ex. D. In 1995, Applicant initiated divorce proceedings. *Id.* His wife sued for custody of the minor child. After considerable litigation and substantial expense, Applicant agreed to grant primary custody to his wife, with visitation privileges. Tr. at 20-21. He was divorced in 1996. Tr. at 66. In 1996, Applicant was injured in an automobile accident, resulting in lost income and unexpected medical bills. Ex. B; Tr. at 17-18. In 1998, Applicant's mother became ill. Tr. at 19. Applicant left his job and moved to be able to care for her, incurring additional expenses. Tr. at 19-20, 64. His mother passed away in October 1998. Ex. C; Tr. at 64. In May 2002, Applicant lost his job due to downsizing of the project. Ex. A. Applicant was let go one day before his wedding. Tr. at 16. He was unemployed between May and August 2002, increasing his financial difficulties. Ex. 1 at 4.

In September 1999, Applicant began taking classes at a local college. Ex. 2 at 4. He obtained an associate's degree in March 2002. Ex. 1 at 3. The degree made Applicant eligible for better jobs. Tr. at 37-38.

In June 2000, Applicant joined the U.S. Army Reserve. *Id.* at 10. He is a noncommissioned officer, and serves as an executive administrative assistant for a signals brigade. Ex. L. His commanders and co-workers praise his skill, motivation and leadership. Exs. I, J, K, L, and CC. They also recommend his selection to attend Warrant Officer Candidate School. Exs. I, J, and K. Applicant completed the necessary training to serve as an information systems operator analyst and was awarded that military occupational speciality (MOS), subject to his receipt of a security clearance. Ex. M; Tr. at 42.

In June 2002, Applicant began working in his present position as a systems architect (computer specialist) for a defense contractor. Ex. 1 at 3. He also enrolled in a local college and began taking classes to obtain a bachelor's degree. Ex. 1 at 3.

His improved financial circumstances made him able to begin paying off outstanding creditors. In 2003, before the initiation of this action, Applicant contacted a credit counseling service, arranged a debt repayment plan, and began making regular payments toward some outstanding debt. Ex. H; Ex. G at 2. Some of the creditors would not join in the debt repayment plan. Tr. at 52; Ex. W at 2. The credit counseling service provided resources about financial planning, budgeting and investments. Tr. at 49.

In October 2004, Applicant was the victim of another vehicle accident that destroyed his vehicle. Ex. P; Tr. at 45. This unexpected loss made him unable to continue with the formal debt repayment plan. Tr. at 45-46; Ex. BB. However, he readjusted his payment rates and continued paying on some delinquent debts. Tr. at 47, 72. Applicant paid off some debts and began making payments on other outstanding accounts. Tr. at 72-73.

Applicant is current on his ordinary living expenses and has not incurred any new delinquent debt since obtaining his present position. Tr. at 38, 52-53. He also established savings and retirement accounts through his employer. Ex. N.

The current status of the debts listed in the SOR is shown in the chart below. Applicant made some arrangements for payment plans after the hearing.

#	Account	Status	Evidence
1.a	Collection Co. \$659.00	Payment Plan.	Ex. Q at 1.

1.b	Furniture Store 919.00	Payment Plan.	Ex. E; Tr. at 22 (balance down to \$286.00).
1.c	Retailer 401.00	Paid.	Ex. F; Tr. at 23-24.
1.d	Collection Co. 144.00	Payment Plan.	Ex. Q.
1.e	Collection Co. 56.00	Unresolved.	Tr. at 25, 67-68 (unable to locate creditor); Exs. Q, R, and S.
1.f	Collection Co. 198.00 (Electrical Service)	Payment Plan.	Ex. Q at 2.
1.g	Collection Co. 40.00	Paid.	Ex. 3 at 1; Tr. at 27.
1.h	Collection Co. 2,065.00 (Credit Card Co.)	Payment Plan.	Ex. G; Tr. at 27.
1.i	Collection Co. 305.00 (Retailer)	Paid.	Tr. at 29; Ex. Q at 2; Ex. T at 2.
1.j	Collection Co. 420.00 (Telephone services)	Current.	Ex. Q at 2; Ex. U; Tr. at 29 (prior payment plan); Tr. at 47-48.
1.k	Collection Co. 74.00 (Medical bill)	Paid.	Ex. 3 at 1; Tr. at 29.
1.l	Collection Co. 244.00	Paid.	Ex. F (same as 1.c, above).
1.m	Collection Co. 70.00 (Telephone services)	Unresolved.	Tr. at 30-31; Ex. Q at 2 (unable to locate creditor).
1.n	Collection Co. 104.00 (Telephone Service)	Paid.	Ex. 3 at 1; Tr. at 31.
1.o	Collection Co. 48.00	Paid.	Ex. 3 at 1; Ex. 4; Tr. at 31, 33.
1.p	Telephone Co. 333.00	Current.	Tr. at 32-33; Ex. Q at 2; Ex. U.
1.q	Retailer 5,685.00	Payment Plan.	Ex. Q at 2 (payment plan-balance: \$997.00); Tr. at 34; Exs. W, X, Y, Z, AA (prior payment plan).

Applicant intends to continue working toward complete resolution of all the delinquent debts. Tr. at 51. He hopes to either settle the accounts through lump-sum payments, or pay them off through regular monthly payments. *Id.*; Tr. at 71.

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 guideline at issue in this case is:

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.

Conditions that could raise a security concern and may be disqualifying, as well as those which could mitigate security concerns pertaining to this adjudicative guideline, 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 considered carefully all the facts in evidence and the legal standards discussed above. I reach the following conclusions regarding the allegations in the SOR.

Paragraph E2.A6.1.2.1 of the Directive provides that it may be a disqualifying condition if the evidence reveals "[a] history of not meeting financial obligations." Similarly, ¶ E2.A6.1.2.3 indicates that an "[i]nability or unwillingness to satisfy debts" may be disqualifying. Applicant has a history of not meeting his financial obligations. He had substantial delinquent debts that have remained unpaid for many years. I find Applicant has shown both a history of failing to meet his financial obligations and an inability to satisfy his debts. I conclude both these potentially disqualifying conditions apply.

The security concerns arising from Applicant's financial difficulties can be mitigated under certain circumstances. Under the Directive, ¶ E2.A6.1.3.1, it may be mitigating where "the behavior was not recent." Applicant's delinquent debts arose between 1989 and 2002. However, they remained unpaid until recent times, and several are still not completely resolved. I find Applicant's financial problems are recent. This mitigating condition does not apply.

Paragraph E2.A6.1.3.2 of the Directive provides that it may be mitigating where the financial difficulty "was an isolated incident." Applicant's numerous delinquent debts arose over many years because of a variety of reasons. I conclude this mitigating condition does not apply.

Under ¶ E2.A6.1.3.3, it may be mitigating where, "[t]he 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)." Several circumstances beyond his control caused or exacerbated Applicant's financial problems. These include his separation and contested divorce, his injury in an automobile accident and resulting lost wages, his mother's illness and subsequent death, several periods of unemployment, and a second automobile causing the destruction of his vehicle. I find this mitigating condition applies.

Proof that "[t]he 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," may be mitigating, under ¶ E2.A6.1.3.4 of the Directive. Similarly, it may be mitigating where "[t]he individual initiated a good-faith effort to repay overdue creditors or otherwise resolve debts." Directive, ¶ E2.A6.1.3.6. Applicant obtained financial counseling through a credit counseling service well before the initiation of this action. He also arranged a debt payment plan and made multiple payments on the plan until his second automobile accident prevented him from continuing. Since then he has paid off several delinquent debts and made payments plans with other creditors. His current financial situation demonstrates he is capable of continuing the payment plans until the debts are substantially resolved. The few debts to creditors that remain unresolved (because Applicant is unable to locate the account holders) are so minor they do not raise security concerns. I find his financial problem is under control or is being resolved. I conclude both these mitigating conditions apply.

I considered the potentially disqualifying and mitigating circumstances in light of the "whole person" concept. Applicant is a mature individual with a lengthy history of service to the United States through active duty and reserve military service. The financial problems at issue arose largely from circumstances beyond his control, rather than his own negligence or misconduct. Significantly, he took action to begin to resolve these debts before the initiation of this action. Even after the automobile accident interfered with his plan, he persisted to the extent possible and resolved several debts. He obtained his degree and a better job, and took advantage of financial counseling. I find he has made significant behavioral changes greatly diminishing the likelihood of a continuation or recurrence of his previous financial problems. I conclude Applicant has mitigated the security concerns arising from his history of failing to meet his financial obligations and his inability to pay his debts.

FORMAL FINDINGS

My conclusions as to each allegation in the SOR are:

Paragraph 1, Guideline F: FOR APPLICANT

Subparagraph 1.a: For Applicant

Subparagraph 1.b: For Applicant
Subparagraph 1.c: For Applicant
Subparagraph 1.d: For Applicant
Subparagraph 1.e: For Applicant
Subparagraph 1.f: For Applicant
Subparagraph 1.g: For Applicant
Subparagraph 1.h: For Applicant
Subparagraph 1.i: For Applicant
Subparagraph 1.j: For Applicant
Subparagraph 1.k: For Applicant
Subparagraph 1.l: For Applicant
Subparagraph 1.m: For Applicant
Subparagraph 1.n: For Applicant
Subparagraph 1.o: For Applicant
Subparagraph 1.p: For Applicant
Subparagraph 1.q: 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.

Michael J. Breslin
Administrative Judge