

KEYWORD: Financial

DIGEST: Applicant is 36 years old, a data base administrator for a defense contractor. His divorce in 1995, periods of unemployment, a series of short-term or low-paying jobs, and medical bills caused him to be delinquent on his financial obligations. In 2005 Applicant filed Chapter 7 bankruptcy and was discharged of all his debts. He pays his current monthly financial debts on time. Applicant mitigated the financial considerations security concern. Clearance is granted.

CASENO: 03-27073.h1

DATE: 01/30/2006

DATE: January 30, 2006

In re:

SSN: -----

Applicant for Security Clearance

ISCR Case No. 03-27073

DECISION OF ADMINISTRATIVE JUDGE

PHILIP S. HOWE

APPEARANCES

FOR GOVERNMENT

Braden M. Murphy, Esq., Department Counsel

FOR APPLICANT

Pro Se

SYNOPSIS

Applicant is 36 years old, a data base administrator for a defense contractor. His divorce in 1995, periods of unemployment, a series of short-term or low-paying jobs, and medical bills caused him to be delinquent on his financial obligations. In 2005 Applicant filed Chapter 7 bankruptcy and was discharged of all his debts. He pays his current monthly financial debts on time. Applicant mitigated the financial considerations security concern. 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 December 29, 2004, DOHA issued a Statement of Reasons [\(1\)](#) (SOR) detailing the basis for its decision-security concerns raised under Guideline F (Financial Considerations) of the Directive. Applicant answered the SOR in writing on January 24, 2005 and elected to have a hearing before an administrative judge. The case was assigned to me on April 4, 2005. On June 24, 2005, 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 and the Applicant submitted exhibits that were admitted into evidence. DOHA received the hearing transcript (Tr.) on July 14, 2005.

FINDINGS OF FACT

Applicant's admissions to the SOR allegations are incorporated here as findings of fact. After a complete and thorough review of the evidence in the record, and full consideration of that evidence, I make the following additional findings of fact:

Applicant is 36 years old, married, and has two children. His wife has a disabled son from her first marriage. Applicant works as a data base administrator for a defense contractor. His wife works for a grocery chain, and is pursuing her bachelor's degree, and eventually a master's degree in business administration. Applicant has one year of college work. (Tr. 13, 14, 69, 62, 70, 74; Exhibit 2)

Applicant was divorced in 1995. About that time he moved to be near his present wife, and had a series of unemployment periods, temporary work situations, and generally low-paying jobs that prevented him from paying his bills on time. He has been working full-time since 1998, and has had steady employment since May 2000. His wife takes off time periodically from her job to care for her disabled son, who is 20 years old and has a bipolar disorder. Her care helps keep her son from having to live in a residential facility. Between their two incomes, they earn about \$60,000 annually. From that income, they pay their current bills on time, and have medical expenses not covered by insurance of about \$6,000 annually. Applicant's spouse also has her own medical conditions that may require surgery to ameliorate in the future, but she has delayed any surgery for financial reasons. (Tr. 30-33, 42-47, 62, 63, 70-74, 87)

Applicant's spouse manages the family finances, writing the checks after they discuss their available funds and the bills to be paid that month. Applicant has income tax bills from the IRS and their state from 2002 through 2004 that are due, and they are paying them. They filed returns, but insufficient withholding occurred because they used the W-4 calculations instead of claiming zero exemptions to have the maximum withheld from their paychecks. Now Applicant claims one exemption and his wife zero exemptions. Applicant could not claim his stepson as a deduction because the boy's father claimed him pursuant to his wife's divorce agreement with her first husband. That situation affected his tax liability to his detriment. They were paying the IRS \$50 per pay period from the wife's paycheck on the 2002 and 2003 tax debts, and the IRS stopped the deduction when the Chapter 7 bankruptcy was filed on January 21, 2005, pending a recalculation of their debt. The 2004 IRS tax debt of \$154 is paid in full, and the state has an installment payment plan in effect with Applicant. Applicant and his wife also owe about \$50,000 in school loan debts that are currently in deferment. They are also listed in the Chapter 7 bankruptcy. (Tr. 37-41, 59-61, 66, 67, 69, 78; Exhibit 2, 8)

Applicant was not fully aware of the extent of his delinquent debts until the government investigator interviewed him in November 2003. Applicant realized his debts exceeded \$200,000 and his only solution was to file Chapter 7 bankruptcy as he was advised to do by his attorney in 2004. He saved the money for the attorney's fee and bankruptcy filing fee, and was able to file the Chapter 7 bankruptcy on January 21, 2005. The SOR was issued December 29, 2004. The bankruptcy was discharged on April 26, 2005. All of the delinquent debts alleged in the SOR are included in the bankruptcy filing. Those debts included apartment rent, medical bills, repossessed automobile loan balances, a truck debt from a business lease Applicant had, fees for bounced checks he wrote for gasoline, utility bills, and library fees of \$184 for books his children took out on his library card and then lost. The SOR delinquent debts total \$57,437. The total liabilities listed in the Chapter 7 bankruptcy are \$234,375.71. (Tr. 16-26, 51; Exhibits 3-9)

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 has 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 the national

interest to do so." Exec. Or. 10865, *Safeguarding Classified Information with Industry*

§ 2 (Feb. 20, 1960). 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.

The adjudication process is based on the whole person concept. All available, reliable information about the person, past and present, is to be taken into account in reaching a decision as to whether a person is an acceptable security risk. Enclosure 2 of the Directive sets forth personnel security guidelines, as well as the disqualifying conditions (DC) and mitigating conditions (MC) under each guideline that must be carefully considered in making the overall common sense determination required.

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. Those assessments include: (1) the nature, extent, and seriousness of the conduct; (2) the circumstances surrounding the conduct, and the extent of knowledgeable participation; (3) how recent and frequent the behavior was; (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 (See Directive, Section E2.2.1. of Enclosure 2). Because each security case presents its own unique facts and circumstances, it should not be assumed that the factors exhaust the realm of human experience or that the factors apply equally in every case. Moreover, although adverse information concerning a single condition may not be sufficient for an unfavorable determination, the individual may be disqualified if available information reflects a recent or recurring pattern of questionable judgment, irresponsibility, or other behavior specified in the Guidelines.

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. 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. ay 2, 1996). All that is required is proof of facts and circumstances that 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. ISCR Case No. 00-0277, 2001 DOHA LEXIS 335 at **6-8 (App. Bd. 2001). Once the Government has established a *prima facie* case by substantial evidence, the burden shifts to the applicant to rebut, explain, extenuate, or mitigate the facts. *See* Directive ¶ E3.1.15. An applicant "has the ultimate burden of demonstrating that is clearly consistent with the national interest to grant or continue his security clearance. ISCR Case No. 01-20700 at 3 (App. Bd. 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. "[S]ecurity clearance determinations should err, if they must, on the side of denials." *Egan*, 484 U.S. at 531. *See* Exec. Or. 12968 § 3.1(b).

Based upon a consideration of the evidence as a whole, I find the following adjudicative guidelines most pertinent to an evaluation of the facts of this case:

Guideline F:Financial Considerations: *The Concern*: An individual who is financially overextended is at risk of having to engage in illegal acts to generate funds. E2.A6.1.1

CONCLUSIONS

The Government established by substantial evidence and Applicant's admissions each of the allegations in the SOR. Disqualifying Conditions (DC) 1 (A history of not meeting financial obligations E2.A6.1.2.1) and DC 3 (Inability or unwillingness to satisfy debts E2.A6.1.2.3) apply. Applicant had a large sum of debts accumulated over the past decade. His income in that time was too small to allow him to pay off all the debts.

The Mitigating Conditions (MC) that apply are MC 3 (Conditions resulting in the behavior were beyond Applicant's control because of unemployment and divorce E2.A6.1.3.3), and MC 6 (Applicant initiated a good-faith effort to repay overdue creditors or otherwise resolve debts E2.A6.1.3.6). Applicant's divorce and his subsequent series of low-paying or temporary jobs, and periods of unemployment, adversely affected his ability to pay his debts. With the large amount of delinquent debts, Chapter 7 bankruptcy was his only option as his attorney advised him. The bankruptcy was his good-faith effort to resolve the debts. His wife's and stepson's medical and mental health conditions, respectively, affected his ability to pay his debts also. At present, Applicant pays his monthly bills on time, and lives within his means. I conclude the financial considerations security concern for Applicant.

FORMAL FINDINGS

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

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

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.

Philip S. Howe

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 (Directive).