

KEYWORD: Financial

DIGEST: Applicant incurred significant debt following his discharge from military service and resulting periodic employment. He is now steadily employed, has resolved most of his unpaid debt, and is currently working to resolve his one remaining unpaid debt. The evidence is sufficient to mitigate or extenuate the financial concerns raised as a result of Applicant's excessive debt. Clearance is granted.

CASENO: 04-01201.h1

DATE: 09/28/2005

DATE: September 28, 2005

In Re:

SSN: -----

Applicant for Security Clearance

ISCR Case No. 04-01201

DECISION OF ADMINISTRATIVE JUDGE

MARY E. HENRY

APPEARANCES

FOR GOVERNMENT

Kathryn D. MacKinnon, Esq., Department Counsel

FOR APPLICANT

Pro Se

SYNOPSIS

Applicant incurred significant debt following his discharge from military service and resulting periodic employment. He is now steadily employed, has resolved most of his unpaid debt, and is currently working to resolve his one remaining unpaid debt. The evidence is sufficient to mitigate or extenuate the financial concerns raised as a result of Applicant's excessive debt. Clearance is granted.

STATEMENT OF THE CASE

On February 21, 2005, the Defense Office of Hearings and Appeals (DOHA), pursuant to Executive Order 10865, *Safeguarding Classified Information Within Industry*, as amended and modified, and Department of Defense Directive 5220.6, *Defense Industrial Security Clearance Review Program* (Directive), dated January 2, 1992, as amended and modified, issued a Statement of Reasons (SOR) to Applicant. The SOR details reasons why DOHA could not make the preliminary affirmative finding under the Directive that it is clearly consistent with the national interest to grant or continue a security clearance for Applicant. Specifically, the SOR set forth security concerns arising under Guideline F, Financial Considerations, of the Directive. DOHA recommended the case be referred to an administrative judge to determine whether a clearance should be granted, continued, denied, or revoked.

On April 12, 2005, Applicant submitted a notarized response to the allegations. He elected to have his case decided on the written record in lieu of a hearing.

Department Counsel prepared a File of Relevant Material (FORM) and provided Applicant with a complete copy on July 6, 2005. Applicant had 30 days from receipt of the FORM to file objections and submit material in refutation, extenuation, or mitigation. On August 19, 2005, he submitted a second response and additional evidence. This case was assigned to me on September 12, 2005.

FINDINGS OF FACT

Applicant admitted the allegations in subparagraphs 1.a and 1.b of the SOR.⁽¹⁾ Those admissions are incorporated herein as findings of fact. He denied the allegation in subparagraph 1.c.⁽²⁾ After a complete review of the evidence in the record and upon due consideration, I make the following additional findings of fact:

Applicant is a 35-year-old small arms repairman for a defense contractor.⁽³⁾ He has worked for this contractor for three years.⁽⁴⁾ He is married and has three children.⁽⁵⁾ He served in the United States Army from 1989 until 1997,⁽⁶⁾ when he separated from active military duty with an honorable discharge.⁽⁷⁾ Since then, he has been a member of the Army National Guard.⁽⁸⁾

After his discharge, Applicant encountered difficulties with obtaining stable employment, which impacted his financial situation.⁽⁹⁾ He got behind in credit card payments and his monthly payment on his mobile home.⁽¹⁰⁾ He moved from his mobile home and returned it to the note holder to be sold.⁽¹¹⁾ He has paid some debts as agreed, paid other debts late, and did not pay some debts during this period of time.⁽¹²⁾ He has two collection debts: a telephone bill for \$781.00 and the unpaid balance on the mobile home of \$11,998.00, plus one unpaid store charge account for approximately \$1,560.00, all listed in the SOR.⁽¹³⁾ Applicant submitted a letter dated August 19, 2004 verifying payment of the store charge account months before the SOR was issued, and a letter dated August 9, 2005 showing payment of the telephone bill.⁽¹⁴⁾ With the assistance of a financial counseling service, he is negotiating with the mobile home note holder on payment of the outstanding debt.⁽¹⁵⁾

Since obtaining stable employment, he has worked hard to resolve his financial situation as shown by the absence of many previously identified overdue debts in the SOR. His credit report shows that he is current in routine payments, including his child support.⁽¹⁶⁾ His pay stub for the pay period ending April 1, 2004, the most recent in the file, indicates that he has a monthly gross income of \$2,846.00 and a net monthly income of \$1,864.00.⁽¹⁷⁾ Other household income totals \$1,956.00⁽¹⁸⁾ for a total net monthly income of \$3,820.00. Their monthly expenses total \$3,460.00, leaving a net remainder of \$360.00.⁽¹⁹⁾

POLICIES

Enclosure 2 of the Directive sets forth adjudication guidelines which must be considered in the evaluation of security

suitability. An administrative judge need not view the adjudicative guidelines as inflexible ironclad rules of law. Instead, acknowledging the complexities of human behavior, these guidelines, when applied in conjunction with the factors set forth in the adjudicative process provision in Paragraph E2.2., Enclosure 2 of the Directive, are intended to assist the administrative judge in reaching fair and impartial common sense decisions.

Included in the guidelines are disqualifying conditions and mitigating conditions applicable to each specific guideline. In addition, each security clearance decision must be based on the relevant and material facts and circumstances, the whole-person concept, along with the factors listed in the Directive. Specifically, these are: (1) the nature, extent, and seriousness of the conduct; (2) the circumstances surrounding the conduct; (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 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. Although the presence or absence of a particular condition or factor for or against clearance is not outcome determinative, the adjudicative guidelines should be followed whenever a case can be measured against this policy guidance.

The sole purpose of a security clearance determination is to decide if it is clearly consistent with the national interest to grant or continue a security clearance for an applicant.⁽²⁰⁾ The government has the burden of proving controverted facts.⁽²¹⁾ The burden of proof is something less than a preponderance of the evidence.⁽²²⁾ Once the government has met its burden, the burden shifts to the applicant to present evidence of refutation, extenuation, or mitigation to overcome the case against him.⁽²³⁾ Additionally, an applicant has the ultimate burden of persuasion to obtain a favorable clearance decision.⁽²⁴⁾

No one has a right to a security clearance⁽²⁵⁾ and "the clearly consistent standard indicates that security clearance determinations should err, if they must, on the side of denials."⁽²⁶⁾ Any reasonable doubt about whether an applicant should be allowed access to sensitive information must be resolved in favor of protecting such sensitive information.⁽²⁷⁾ Section 7 of Executive Order 10865 specifically provides industrial security clearance decisions shall be "in terms of the national interest and shall in no sense be a determination as to the loyalty of the applicant concerned." The decision to deny an individual a security clearance is not necessarily a determination as to the allegiance, loyalty, and patriotism of an applicant.⁽²⁸⁾ 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.

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

Financial Considerations - Guideline F: An individual who is financially overextended is at risk of having to engage in illegal acts to generate funds. Unexplained affluence is often linked to proceeds from financially profitable criminal acts.

CONCLUSIONS

Upon consideration of all the facts in evidence, and after application of all appropriate adjudicative factors, I conclude the following with respect to the allegations set forth in the SOR:

The government established its case under Guideline F. Financial Considerations Disqualifying Conditions (FC DC) E2.A6.1.2.1. (*A history of not meeting financial obligations*), and FC DC E2.A6.1.2.3. (*Inability or unwillingness to satisfy debts*) apply in this case. Applicant has a history of not paying some of his debts and an inability to pay some of his debts. Due to his periodic employment for the first several years after leaving active duty, he could not pay all his credit card debts, his high telephone bills and his monthly payment on his mobile home.

I considered all the Financial Considerations Mitigating Conditions (FC MC) and concluded that 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)*), FC MC 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*), and FC MC E2.A6.1.3.6. (*The individual initiated a good-faith effort to repay overdue creditors or otherwise resolve debt*) apply in this case. Applicant worked periodically, not steadily until beginning his current position three years ago. His employment situation was beyond his control. Once he obtained steady employment, he took responsibility for paying his unpaid debt. Before this action had been initiated, he had paid off much of his outstanding debt. He has repaid the outstanding telephone bill, and through his credit counselor, he is negotiating a resolution with the note holder on the mobile home debt. He has taken control of his debts and is financially responsible. These are clear indicators he will resolve his remaining debt.

Finally, I considered the "whole person" concept in evaluating Applicant's risk and vulnerability in protecting our national interests. I am persuaded by the totality of the evidence that Applicant has made a good faith effort to resolve his past debt problems. His family monthly income provides him with the ability to do so. His attitude about repaying the debt he owes reflects his commitment to resolving the one remaining unpaid debt. I conclude that Applicant has mitigated and overcome the government's case under Guideline F. Accordingly, for the reasons stated, I find that it is clearly consistent with the national interest to grant a security clearance to Applicant.

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: FOR APPLICANT

Subparagraph 1.a.: For Applicant

Subparagraph 1.b.: For Applicant

Subparagraph 1.c.: For Applicant

DECISION

In light of all of the circumstances presented by the record in this case, it is clearly consistent with national interest to grant a security clearance for Applicant. Clearance is granted.

Mary E. Henry

Administrative Judge

1. Item 2 (Applicant's Answer to SOR, dated April 12, 2005) at 1.
2. *Id.*
3. Item 4 (Applicant's Security Clearance Application, dated May 29, 2003) at 1 and 3.
4. *Id.* at 3.
5. *Id.* at 2-3; Item 5 (Applicant's Statement, signed December 12, 2003) at 1.
6. Item 4, *supra* note 3, at 5.

7. Item 3 (Applicant's Answers to Interrogatories with attachments, including a credit report, earnings statements, financial statement, his written answers, and military discharge papers, dated April 12, 2004) at 25.
8. Item 4, *supra* note 3, at 2 and 5.
9. Item 5, *supra* note 5, at 2.
10. *Id.*; Item 3, *supra* note 7, at 7-8.
11. Item 3, *supra* note 7, at 7-8.
12. *Id.* at 11-23.
13. *Id.*
14. Applicant's response letter to the FORM dated August 12, 2005.
15. *Id.*
16. Item 3, *supra* note 7, at 11-23.
17. *Id.* at 10.
18. *Id.* at 24.
19. *Id.*
20. ISCR Case No. 96-0277 (July 11, 1997) at 2.
21. ISCR Case No. 97-0016 (App. Bd., December 31, 1997) at 3; Directive, Enclosure 3, ¶ E3.1.14.
22. *Department of the Navy v. Egan*, 484 U.S. 518, 528 (1988).
23. ISCR Case No. 94-1075 (App. Bd., August 10, 1995) at 3-4; Directive, Enclosure 3, ¶ E3.1.15.
24. ISCR Case No. 93-1390 (App. Bd. Decision and Reversal Order, January 27, 1995) at 7-8; Directive, Enclosure 3, ¶ E3.1.15.
25. *Egan*, 484 U.S. at 531.
26. *Id.*
27. *Id.*; Directive, Enclosure 2, ¶ E2.2.2.
28. Executive Order No. 10865 § 7.