

KEYWORD: Financial

DIGEST: Applicant seeks a security clearance to work as an electronics installer for a defense contractor. While newly married and attempting to renovate a house, he accumulated substantial delinquent debts resulting in Chapter 7 bankruptcy in 1999. Since then, some briefs periods of unemployment, problems with a questionable home-loan program, and numerous unexpected medical bills resulted in ten delinquent debts totaling about \$1,000.00. He obtained financial counseling but has not been able to resolve his delinquent debts. Applicant's financial problems are insufficient to raise security concerns. Clearance is granted.

CASENO: 04-01403.h1

DATE: 01/30/2006

DATE: January 30, 2006

In re:

SSN: -----

Applicant for Security Clearance

ISCR Case No. 04-01403

DECISION OF ADMINISTRATIVE JUDGE

MICHAEL J. BRESLIN

APPEARANCES

FOR GOVERNMENT

Sabrina Redd, Esq., Department Counsel

FOR APPLICANT

Pro Se

SYNOPSIS

Applicant seeks a security clearance to work as an electronics installer for a defense contractor. While newly married and attempting to renovate a house, he accumulated substantial delinquent debts resulting in Chapter 7 bankruptcy in 1999. Since then, some briefs periods of unemployment, problems with a questionable home-loan program, and numerous unexpected medical bills resulted in ten delinquent debts totaling about \$1,000.00. He obtained financial counseling but has not been able to resolve his delinquent debts. Applicant's financial problems are insufficient to raise security concerns. Clearance is granted.

STATEMENT OF THE CASE

On May 29, 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 May 11, 2005, DOHA issued a Statement of Reasons (SOR) detailing the basis for its decision. The SOR alleges security concerns raised under Guideline F of the Directive, Financial Considerations.

Applicant answered the SOR in writing by letter dated July 18, 2005. He elected to have a hearing before an administrative judge.

The case was assigned to me on September 28, 2005. With the concurrence of Applicant and Department Counsel, I convened the hearing on November 1, 2005. The government introduced Exhibits 1 through 6. Applicant provided Exhibits A through V and testified on his own behalf. DOHA received the final transcript of the hearing (Tr.) on

November 16, 2005.

FINDINGS OF FACT

Applicant admitted the factual allegations in ¶¶ 1.a, 1.b, 1.c, 1.d, 1.i, 1.j, 1.k, 1.l, and 1.r of the SOR. (Applicant's Answer to SOR, dated July 18, 2005, at 3.) Those admissions are incorporated herein as findings of fact. He denied the factual allegations in ¶¶ 1.e, 1.f, 1.g, 1.h, 1.m, 1.n, 1.p, and 1.q of the SOR (*Id.*) After a complete and thorough review of the evidence in the record, I make the following additional findings of fact.

Applicant graduated from high school in 1986. (Tr. at 31.) In October 1987, he entered active duty in the U.S. Navy and served aboard submarines for three years. (Tr. at 31.) While assigned to the submarine service, Applicant held a security clearance.

After leaving the Navy in January 1990, Applicant began working two jobs while attending community college. (Tr. at 32.) His grandmother died in about 1992, and his aunt inherited her home. In order to keep the home in the family, Applicant took on a mortgage to purchase it. (Ex. 2 at 1; Tr. at 33.) Shortly thereafter, Applicant realized that the house needed substantial repairs. (Tr. at 33.) He acquired a second mortgage and an additional line of credit to finance the improvements. (Ex. 2 at 1; Tr. at 33.) The banks gave him loans exceeding 125% of the value of the home. (Ex. 2 at 2.)

In June 1993, Applicant was married. (Ex. 1 at 3.) His wife worked outside the home, but was only able to find jobs at about minimum wage. (Ex. 2 at 2.) Eventually, the obligations of two jobs and a family were too much. Applicant dropped out of college. In October 1993, took a job working in a warehouse.

In October 1994, the couple had their first child. (Ex. 1 at 4.) Their second child was born in October 1998. (*Id.*) Their insurance covered most of the medical bills, but they were still required to pay some medical expenses. Applicant and his wife found themselves unable to keep up financially. (Ex. 2 at 2.) Applicant was denied mortgage consolidation loans. (*Id.*) In early 1999, he sought credit counseling, and was advised to file for personal bankruptcy. (*Id.*)

Applicant filed for bankruptcy under Chapter 7 in June 1999. (Ex. 2 at 2.) He did not include his car loan or his cellular telephone service contract in the bankruptcy. (Tr. at 36; Ex. 2 at 3.) The bankruptcy court discharged Applicant's listed debts on September 16, 1999. (Ex. 6 at 33; Tr. at 34.) Among the debts discharged was the mortgage debt for \$38,128.68 listed in ¶ 1.e of the SOR.

In November 1999, Applicant sought credit counseling for help in improving his financial position so he could buy a home for his family. (Ex. 2 at 21.) His counselor informed him about a company that helped families with credit problems buy homes. (*Id.*)

Applicant contacted the company, and arranged to buy a home through their program in March 2000. According to Applicant, the company falsified documents to secure Applicant's loan. The program required Applicant to make regular monthly payments, and pay several additional monthly fees; at some future time when their credit problems were resolved, the company would convey title to the property. Under the program, Applicant and his wife were supposed to receive credit counseling assistance to help them meet their financial goals. Applicant and his wife entered into the agreement, however the company never provided credit counseling services. Additionally, Applicant and his wife realized that the effective interest rate was relatively high, and the additional fees were well above normal rates.

Within a year, Applicant and his wife were struggling to make their payments. In September 2000, Applicant's wife gave birth to their third child, generating some additional medical expenses. (Ex. 1 at 4.) In March 2001, Applicant sought the advice of a lawyer, who advised him to terminate the agreement. (Ex. 2 at 20.) He did so. At the time he moved out, he believed he was current with his payments. (Tr. 59-60.) The company claims Applicant owes \$2,349.00 (SOR, ¶ 1.f) however Applicant disputes that claim. He filed a complaint about the company with the Federal Housing Authority, which began investigating the company's practices. (Ex. 2 at 5.) Additionally, the state's Attorney General's Office began an investigation of the company. (Ex. 2 at 26.)

In 2001, Applicant obtained his associate's degree in electrical engineering after a four-year course of study while working full-time. (Ex. 1 at 2; Tr. at 35.) Applicant acquired several student loans to pay for his education.

In June 2002, he began working for his current employer, a defense contractor, as an installation mechanic. (Tr. at 36; Ex.1 at 2.) Applicant's performance reviews praise his duty performance and his potential. (Exs. E, F, and G.) His supervisor commends his work ethic and technical expertise. (Ex. D.) Applicant's job requires him to travel extensively, leaving his wife to manage their finances.

Applicant is a salaried employee, but only works when the defense contractor has a contract to perform, therefore his employment is sporadic at times. (Tr. at 47.) Recently, when a long-term contract ended, he was unemployed for some brief periods. The defense contractor found a series of smaller jobs to keep Applicant employed most of the time. (Tr. at 47.)

Several of the debts listed in the SOR do not accurately reflect delinquencies. The largest (¶ 1.e) was discharged in

bankruptcy in 1999, and should not have been included in this action. Regarding the debt listed in ¶ 1.h, the available evidence shows Applicant remains current on that bill. (Ex. 5 at 1; Tr. at 65.) He paid off the \$271.00 medical bill listed in ¶ 1.i. (Ex. K at 2; Ex. 4 at 1.) Furthermore, the medical bill listed at ¶ 1.o duplicates the bill in ¶ 1.b. (Tr. at 68.) Applicant disputes the debts listed in ¶ 1.a (water cooler, Ex. 2 at 6) and 1.f (housing dispute discussed above).

Applicant has ten delinquent debts listed on the SOR. One is for telephone services in the amount of \$119.00 (SOR, ¶ 1.g). The remaining nine are for medical bills totaling less than \$900.00.

He remains current on his regular monthly bills, but the intermittent nature of the work has made it difficult for Applicant to establish a solid plan to repay his delinquent debt. At the time of the hearing, Applicant just began work on a contract that should last 19 months, providing greater stability. (Tr. at 49.)

Applicant obtained credit counseling recently in the form of a review of his income and debts. (Tr. at 45.) His current approach is to continue to pay his current monthly obligations, and apply some of the remaining funds toward his delinquent debts. (Tr. at 52.) Recently, some unexpected medical bills and brief periods of unemployment have consumed any additional funds. (Tr. at 42, 55.) Applicant has personal savings far greater than his delinquent debt; he is building his savings in the hope of buying a home for his family. (Ex. 2 at 8, 9.)

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 developed financial difficulties resulting in personal bankruptcy, and shortly thereafter incurred more delinquent debt. I find Applicant has shown both a history of failing to meet his financial obligations and an inability to satisfy his debts. I conclude the available evidence raises both of these potentially disqualifying conditions.

Security concerns arising from financial difficulties can be mitigated. Under the Directive, ¶ E2.A6.1.3.1, it may be mitigating where "the behavior was not recent." The bulk of Appellant's delinquent debts arose between 1999 and 2005 and remain unresolved. I find most of the unpaid obligations 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 conditions beyond Applicant's control contributed to his financial problems, including expenses due to the questionable home-loan assistance program, unexpected medical bills, and periods of unemployment. I conclude this potentially 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. Applicant obtained financial counseling on several occasions: prior to his personal bankruptcy in 1999, during his second efforts at buying a home, before terminating his home purchase agreement, and while trying to restore his credit. He remains current on his regular bills, and paid at least one debt listed in the SOR. Applicant intends to pay off the delinquent debts with surplus funds, but recent, unexpected medical bills have prevented that. I cannot find that his debt problem is under control or is being resolved. I conclude this mitigating condition does not apply.

Finally, 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. As noted above, Applicant has not begun repaying the bulk of his delinquent debts listed in the SOR. I conclude this mitigating condition does not apply.

I considered the potentially disqualifying and mitigating circumstances in light of the "whole person" concept. Applicant is a mature individual. His financial difficulties arose largely from circumstances beyond his control, such as medical bills and difficulties with his home purchase agreement, rather than his own malfeasance. Some bills are quite small and yet have remained unpaid for an extended period. At the same time, I note that the largest debt forming the basis of this action was discharged in bankruptcy many years ago, and never should have been included in this case. The total of the unpaid obligations is only about \$1,000.00. Applicant has taken some steps to resolve his debts, even before the initiation of this action, and seems genuinely dedicated to resolving these issues in order to obtain financial stability. I conclude Applicant's financial liabilities are not substantial enough to raise security concerns.

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.r: 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