

KEYWORD: Financial; Foreign Influence

DIGEST: Applicant was in arrears on four debts totaling \$20,862.00 raising a financial considerations concern. Although he has been successful in paying down a significant portion of his debt, the recency and amount of debts coupled with his inability to fully explain the status of all debts remains a concern. Applicant's wife is a citizen resident of the Ukraine, raising a foreign influence concern. He has not presented sufficient evidence to mitigate this concern. Clearance is denied.

CASENO: 04-01532.h1

DATE: 11/15/2005

DATE: November 15, 2005

In Re:

SSN: -----

Applicant for Security Clearance

ISCR Case No. 04-01532

DECISION OF ADMINISTRATIVE JUDGE

ROBERT J. TUIDER

APPEARANCES

FOR GOVERNMENT

FOR APPLICANT

Pro Se

SYNOPSIS

Applicant was in arrears on four debts totaling \$20,862.00 raising a financial considerations concern. Although he has been successful in paying down a significant portion of his debt, the recency and amount of debts coupled with his inability to fully explain the status of all debts remains a concern. Applicant's wife is a citizen resident of the Ukraine, raising a foreign influence concern. He has not presented sufficient evidence to mitigate this concern. Clearance is denied.

STATEMENT OF THE CASE

On August 3, 2004, the Defense Office of Hearings and Appeals (DOHA), under Executive Order 10865, *Safeguarding Classified Information Within Industry*, dated February 20, 1960, as amended and modified, and Department of Defense Directive 5220.6, *Defense Industrial Personnel Security Clearance Review Program* (Directive), dated January 2, 1992, as amended and modified, issued a Statement of Reasons (SOR) to Applicant. The SOR detailed reasons under Guideline F (Financial Considerations) and Guideline B (Foreign Influence) 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, and recommended referral to an administrative judge to conduct proceedings and determine whether a clearance should be granted, continued, denied, or revoked.

In a signed and sworn statement, dated October 21, 2004, Applicant responded to the SOR allegations and requested a hearing. On December 22, 2004, Applicant withdrew his request for a hearing and requested his case be decided on the

written record in lieu of a hearing.

On April 7, 2005, Department Counsel submitted the government's case through a file of relevant material (FORM), [\(U\)](#) a copy of which was provided to the Applicant. He was given the opportunity to file objections and submit material in refutation, extenuation, or mitigation. Applicant did submit additional material, undated, which was forwarded by Department Counsel memorandum dated June 14, 2005. The case was assigned to me on June 15, 2005.

FINDINGS OF FACT

Applicant admitted all of the SOR allegations (§§ 1., 1.a. through d., and 2., 2.a.). Those admissions are incorporated herein as findings of fact.

Applicant is a 48-year-old married man. Since November 2002, he has been employed as a senior logistics coordinator for a defense contractor and is a geographical bachelor at a job site on a United States military base in the Middle East. Since 1994, Applicant has worked for this defense contractor at different times at other overseas locations. Applicant seeks a secret security clearance as a job requirement.

In March 2002, Applicant married his current and third wife, who is a Ukrainian citizen. Their marriage ceremony took place in the Ukraine. At the time the SOR was prepared, Applicant's wife was living in Croatia. Since then, Applicant's wife has relocated to the Ukraine. Applicant's wife rents an apartment in Kiev and maintains another apartment in Poltava, which she recently inherited when her father passed away.

Applicant was married to his first wife from November 1975 to April 1983, and was married to his second wife from July 1987 to October 1996. Applicant has a 16-year-old son, who was born in January 1989. No further information was developed in the record regarding Applicant's son.

Applicant stated his current spouse "has no business or personal connections with people of foreign power." Unfortunately, no information was provided as to what his spouse does or what her family did for a living or if there were past connections with a foreign government. Applicant did indicate in his Response to FORM that his wife inherited an apartment in Poltava from her father. In Applicant's Response to SOR, he stated that his wife has been to the United States Embassy in Warsaw, Poland seeking an "immigration visa." The record is void of any further documentation on this subject. Lastly, there are no facts about his connections, if any, with foreign nationals through his spouse.

Applicant's Response to SOR offers that he is a loyal American citizen, that he has worked for his employer in various parts of the world, and is

"probably more at risk of being kidnaped for being an American than [his spouse] is . . ." He added that while married to his current wife, he has never lived with her more than 13 days. Such visits have occurred during his rest and relaxation leaves every four months.

The SOR alleges Applicant is in arrears on four debts. The table below presents details about the debts alleged in the SOR, their current status, and cites to relevant parts of the record.

Debt	Nature & Amount in SOR	Current Status	Record
Debt 1/SOR ¶ 1.a.	Charged off credit card account in the amount of \$7,740.00.	Making monthly payments of \$400.00 since 11/04.	Item 5, Item 6, Response to SOR, Response to FORM.
Debt 2/SOR ¶ 1.b.	Collection account in the amount of \$5,159.00.	Credit report of 4/28/05 shows account current with a balance of \$4,628.00. Unable to determine amount of monthly payments.	Item 5, Item 6, Response to SOR, Response to FORM.
Debt 3/SOR ¶ 1.c.	Past due account in the amount of \$4,408.00.	Credit report of 4/28/05 shows account current with a balance of \$828.00. Credit Report shows monthly payment is \$328.00.	Item 5, Item 6, Response to SOR, Response to FORM.
Debt 4/SOR ¶ 1.d.	Past due account in the amount of \$3,555.00.	Unable to determine status of account from any evidence submitted.	Item 5, Item 6, Response to SOR, Response to FORM.

As the above chart reflects, Applicant owed \$20,862.00 at the time the SOR was issued in August 2004. I was unable to determine the status of Debt 4/SOR ¶ 1.d. from the evidence Applicant submitted. A copy of an unannotated credit report and the absence of monthly statements from individual creditors hampered my ability to readily or accurately determine individual accounts status. No explanation was provided as to how Applicant incurred these debts nor was there any evidence of circumstances causing or contributing to the debts.

Applicant stated since November 2002, he has been living overseas and has relied totally on his mother to pay his debts with a joint checking account maintained in his and her names. No further information was developed regarding his arrangement with his mother regarding the payment of his debts.

Applicant submitted a Letter of Appreciation from the base commander of his Mideast base, which recognized his outstanding performance from July 2003 to arch 2004 during Operation Enduring Freedom.

POLICIES

The Adjudicative Guidelines in the Directive are not a set of inflexible rules of procedure. Instead they are to be applied

by administrative judges on a case-by-case basis with an eye toward making determinations that are clearly consistent with the interests of national security. In making overall common sense determinations, administrative judges must consider, assess, and analyze the evidence of record, both favorable and unfavorable, not only with respect to the relevant Adjudicative Guidelines, but in the context of factors set forth in section E 2.2.1. of the Directive. The government has the burden of proving any controverted fact(s) alleged in the SOR, and the facts must have a nexus to an Applicant's lack of security worthiness.

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. Although the presence or absence of a particular condition for or against clearance is not determinative, the specific adjudicative guidelines should be followed whenever a case can be measured against this policy guidance.

BURDEN OF PROOF

As noted by the United States Supreme Court in *Department of Navy v. Egan*, 484 U.S. 518, 528 (1988), "no one has a 'right' to a security clearance." 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 restricted eligibility for access to classified information to "United States citizens . . . whose personal and professional history affirmatively indicates loyalty to the United States, strength of character, trustworthiness, honesty, reliability, discretion, and sound judgment, as well as freedom from conflicting allegiances and potential for coercion, and willingness and ability to abide by regulations governing the use, handling, and protection of classified information." Executive Order 12968, *Access to Classified Information* § 3.1(b) (Aug. 4, 1995). Eligibility for a security clearance is predicated upon the applicant meeting the security guidelines contained in the Directive.

Initially, the Government must establish, by substantial evidence, that conditions exist in the personal or professional history of the applicant which disqualify, or may disqualify, the applicant from being eligible for access to classified information. *See Egan*, 484 U.S. at 531. All that is required is proof of facts and circumstances which 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. Where the facts proven by the Government raise doubts about an applicant's judgment, reliability or trustworthiness, then the applicant has the ultimate burden of establishing his security suitability with substantial evidence in explanation, mitigation, extenuation, or refutation, sufficient to demonstrate that despite the existence of guideline conduct, it is clearly consistent with the national interest to grant or continue his security clearance.

Security clearances are granted only when "it is clearly consistent with the national interest to do so." *See* Executive Orders 10865 § 2 and 12968 § 3.1(b). "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 "The clearly consistent standard indicates that security clearance determinations should err, if they must, on the side of denials." *See Egan*, 484 U.S. at 531. Doubts are to be resolved against the applicant.

CONCLUSIONS

Guideline F - Financial Considerations

In the SOR, DOHA alleged Applicant had four delinquent debts (¶¶ 1.a. through 1.d.). *The Concern:* An individual who is financially overextended is at risk of having to engage in illegal acts to generate funds. Directive ¶ E2.A6.1.1.

The Government established its case under Guideline F by Applicant's admissions and evidence submitted. The facts of this case give rise 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*).

Viewing the evidence in the light most favorable to the Applicant, he has made progress in paying down Debts 1 through 3. However, I am unable to determine the status of Debt 4 based on the evidence submitted. I am also unable to determine how these debts were incurred or to what extent potential mitigating conditions are applicable. Again viewing the evidence in the light most favorable to the Applicant, I find the known facts trigger application of Financial Considerations Mitigating Condition (FC MC) E2.A6.1.3.6 (*The individual initiated a good-faith effort to repay overdue creditors or otherwise resolve debts*) for three of the four debts alleged. I am also concerned with the amount of debt Applicant incurred while overseas. Lastly, I am unable to accept Applicant's explanation that he is required to rely on his mother in the United States to pay his debts. I find against Applicant on this concern.

Guideline B-Foreign Influence

In the SOR, DOHA alleged Applicant's wife is a citizen of the Ukraine and a resident of Croatia; (¶ 1.a). A security risk may exist when an Applicant's immediate family, or other persons to whom he may be bound by affection, influence, or obligation, are not citizens of the United States or may be subject to duress. These situations could create the potential for foreign influence that could result in the compromise of classified information. Directive ¶ E2.A2.1.1.

The Government established its case under Guideline B by Applicant's admissions and evidence submitted. However, since the SOR was issued, Applicant's wife has moved back to the Ukraine. DC E2.A2.1.2.1. While the

mere possession of family ties with persons in a foreign country is not, as a matter of law,

automatically disqualifying . . . [it] does raise a prima facie security concern sufficient to require an applicant to present evidence of rebuttal, extenuation or mitigation sufficient to

meet the applicant's burden of persuasion that it is clearly consistent with the national interest to grant or continue a security clearance for the applicant.

ISCR Case No. 99-0424, 2001 DOHA LEXIS 59 at **33-34 (App. Bd. Feb 8, 2001). It is a mitigating condition if the immediate family members or associates are not agents of a foreign power and are not in a position to be exploited by a foreign power in a way that could force the individual to choose between loyalty to his family members and loyalty to the United States. MC E2.A2.1.3.1.

Based on the evidence submitted, I am unable to determine, whether any mitigating conditions under this concern are applicable. I find against Applicant on this concern.

The awarding of a security clearance is not a once in a life time occurrence, but is based on applying the factors, both disqualifying and mitigating, as set forth in the Directive, to the evidence presented. Additionally, this determination does not question the Applicant's patriotism and should not be seen as such.

In closing, Applicant would have been better served had he taken more time to be thorough in his responses, especially after he became aware of the deficiencies in his Response to SOR noted in Department Counsel's FORM. I also took into account Applicant is based in the Mideast and made every effort to view the facts and evidence in the light most favorable to him. I can not, however, invent facts and am required to base my decision on the facts presented as required by the Directive.

FORMAL FINDINGS

Formal findings regarding each SOR allegation as required by Directive Section E3.1.25 are as follows:

Paragraph 1.: Guideline F: AGAINST APPLICANT

Subparagraph 1.a.: For Applicant

Subparagraph 1.b.: For Applicant

Subparagraph 1.c.: For Applicant

Subparagraph 1.d.: Against Applicant

Paragraph 2.: Guideline B: AGAINST APPLICANT

Subparagraph 2.a.: Against Applicant; however, substituting "Your spouse is a citizen and resident of Ukraine."

DECISION

In light of all of the circumstances presented by the record in this case, it is not clearly consistent with the national interest to grant or continue a security clearance for Applicant. Clearance is denied.

Robert J. Tuider

Administrative Judge

1. The government submitted seven items or exhibits in support of its contention.