

KEYWORD: Financial

DIGEST: Applicant's financial problems led him to petition for Chapter 13 bankruptcy in 1993. When he failed to maintain monthly payments to his trustee, his petition was dismissed in 1996. He filed for Chapter 7 bankruptcy protection in March 2005, and the court discharged his debts in June 2005. Applicant has a history of financial delinquencies and bad debts. His long-standing financial problems raise security concerns which he failed to mitigate. Clearance is denied.

CASENO: 04-01626.h1

DATE: 09/28/2005

DATE: September 28, 2005

In Re:

SSN: -----

Applicant for Security Clearance

ISCR Case No. 04-01626

DECISION OF ADMINISTRATIVE JUDGE

JOAN CATON ANTHONY

APPEARANCES

FOR GOVERNMENT

Jason R. Perry, Esq., Department Counsel

Sabrina Redd, Esq., Department Counsel

FOR APPLICANT

Pro Se

SYNOPSIS

Applicant's financial problems led him to petition for Chapter 13 bankruptcy in 1993. When he failed to maintain monthly payments to his trustee, his petition was dismissed in 1996. He filed for Chapter 7 bankruptcy protection in March 2005, and the court discharged his debts in June 2005. Applicant has a history of financial delinquencies and bad debts. His long-standing financial problems raise security concerns which he failed to mitigate. Clearance is denied.

STATEMENT OF THE CASE

The Defense Office of Hearings and Appeals (DOHA) declined to grant or continue a security clearance for Applicant. On November 18, 2004, under the applicable Executive Order⁽¹⁾ and Department of Defense Directive,⁽²⁾ DOHA issued a Statement of Reasons (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 December 21, 2004 and elected to have a hearing before an administrative judge. The case was assigned to me June 13, 2005. On August 17, 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 submitted seven documents for admission to the record. The Government's documents were identified as Exhibits (Ex.) 1 through 7 and admitted into evidence without objection. Applicant submitted ten documents for admission to the record. His documents were identified as Exhibits (Ex.) A through J and were admitted into evidence without objection. On August 25, 2005, DOHA received the transcript (Tr.) of the proceeding.

RULINGS ON PROCEDURE

After a discussion of the facts surrounding Applicant's Chapter 13 bankruptcy, the parties agreed to amend allegation 1.a. of the SOR to reflect that Applicant's Chapter 13 petition in bankruptcy was dismissed and not discharged.

FINDINGS OF FACT

The SOR contains ten allegations of disqualifying conduct under Guideline F, Financial Considerations. In his answer to the SOR, Applicant admitted eight allegations and denied two allegations. His admissions are incorporated as findings of fact.

Applicant is 57 years old and employed as a maintenance technician by a defense contractor. He was married in 1976 and divorced in 1991. (Ex. 1, at 2, 3, 4.) He has not remarried and has no children. He is an hourly worker and earns approximately \$48,000 per year. (Tr. 48.)

Applicant was unemployed from February until May 1993. (Tr. 45.) Subsequently, he was employed as a federal contractor from May 1993 until mid-April 2000. From April to early June 2000, he was unemployed for approximately six weeks. From June 2000 to May 2001 he was again employed by a government contractor. For approximately ten months, from June 2001 to April, 2002, Applicant was again unemployed. He has worked steadily for his present employer since April 2002. (Ex. 1, at 2.) His starting salary in 2002 was \$40,000. (Tr. 48.)

Applicant has a history of financial problems, which he attributes to his 1991 divorce and his periods of unemployment. (Answer to SOR; Tr. 46.) In October 1993, Applicant petitioned for Chapter 13 bankruptcy protection. When he failed to make required payments to his trustee, Applicant's Chapter 13 petition was dismissed in July 1996. (Ex. 6.) In a signed, sworn statement dated March 6, 2003, Applicant stated he intended to contact his creditors and negotiate repayment plans. He stated he would file for bankruptcy protection if he was unable to work out payment plans with his creditors. He further stated: "My intention is to repay my debts and regain my A-1 credit rating." (Ex. 2, at 1.) On March 30, 2005, Applicant filed a petition for Chapter 7 bankruptcy. Unspecified debts were discharged by order of the bankruptcy court on June 29, 2005. (Exs. 7, I, and J.)

In his December 21, 2004, answer to the SOR, Applicant admitted his 1993 Chapter 13 bankruptcy and the debts identified in allegations 1.b., 1.c., 1.d., 1.e., 1.f., 1.h., and 1.i. He stated he intended to include these debts in his Chapter 7 bankruptcy filing. He denied knowledge of the debt alleged at 1.g. At his hearing he recognized the debt under another name and stated he had intended for the debt to be included in his Chapter 7 bankruptcy. (Tr. 40.)

In his answer to the SOR, Applicant denied a bad debt alleged in the SOR at 1.j. as charged off in September 2001 and unpaid as of September 13, 2004. He stated the debt was \$100.27 and had been paid by personal check dated December 15, 2004. He did not include a copy of the check.

Applicant included his September 13, 2004 response to DOHA interrogatories with his answer to the SOR. The response to the interrogatories contained documents identified and admitted as Applicant's Exhibits B through H. In his response to the interrogatories, Applicant asserted the debt alleged at 1.j. would be paid off with 30 days. He included a copy of the face of a personal check, dated September 16, 2004, for \$100 to the creditor identified at SOR 1.j. (Ex. F.) Applicant's credit report for August 15, 2005 identified the debt identified at SOR 1.j. as discharged in Applicant's Chapter 7 bankruptcy.

The August 15, 2005, credit report also identified the debts alleged at 1.b., 1.e., and 1.f. of the SOR as discharged in Applicant's Chapter 7 bankruptcy. The credit report identified the debt alleged at SOR 1.c. as a charged-off account, dating to September 2001, that had been closed by the credit grantor. The credit report identified the debt alleged at SOR 1.d. as a paid-off charged-off account; the debt alleged at SOR 1.h. as a charged-off account; the debt alleged at SOR 1.g. as an unpaid collection account; and the debt alleged at 1.i. as transferred or sold by the creditor. (Ex. 5.)

A judgment was entered against Applicant on a credit card debt with a balance due of \$6,452.67. This debt was alleged at SOR 1.h. The creditor's agent contacted Applicant in October 2003 and Applicant agreed to a pay approximately \$200 a month on the debt (Ex. B; Ex. C.). Applicant produced documents to show he made the \$200 monthly payments to the creditor from October 2003 to August 2004 (Ex. D.) He stopped making the payments after August 2004 and stated he included this account in his Chapter 7 bankruptcy. He said he stopped paying the creditor because he wanted "to get out from under" his debt. (Tr. 36-37.) His August 2005 credit report did not list this debt as a part of Applicant's bankruptcy and reported the debt as a charged-off account. (Ex. 5.)

Applicant did not provide a list identifying creditors included in his bankruptcy. (Tr. 33.) While he acknowledged that most of the debts alleged in the SOR were delinquent in 2001, he was vague about payments and the identity of his creditors (See, e.g., Tr. 31; 35; 38; 39; 40-41; 43.) He did not know the total liabilities claimed in his Chapter 7 bankruptcy (Tr. 47), and he was unaware of the balance in his 401-K plan. (Tr. 49.) He provided no evidence that he had sought financial counseling for his financial problems, that he had a grasp of his current debts and financial obligations, or that he had a plan to identify and pay his existing creditors.

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 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." Exec. Or. 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.

Enclosure 2 of the Directive sets forth personal security guidelines, as well as the disqualifying conditions (DC) and mitigating conditions (MC) under each guideline. 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. 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. *See Egan*, 484 U.S. at 531. 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. May 2, 1996).

Once the Government establishes a disqualifying condition by substantial evidence, the burden shifts to the applicant to rebut, explain, extenuate, or mitigate the facts. ISCR Case No. 01-20700 at 3 (App. Bd. Dec. 19, 2002); *see* 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.

CONCLUSIONS

Guideline F-Financial Considerations

The Government's concern under Guideline F, Financial Considerations, is that individuals who are financially overextended and unable or unwilling to pay their just debts may try to generate funds by engaging in illegal acts. Applicant has a history of not meeting his financial obligations, and his financial history suggests an inability or unwillingness to satisfy his debts, conditions which raise security concerns under subparagraphs E2.A6.1.2.1. and

E2.A6.1.2.3. of Guideline F. DOHA's Appeal Board has concluded that "[a] person who is unwilling to fulfill his legal obligations does not demonstrate the high degree of good judgment and reliability required of persons granted access to classified information." ISCR Case No. 98-0810 at 4 (App. Bd. June 8, 2000).

In the amended SOR, DOHA alleged Applicant owed creditors on six accounts charged off as bad debts in 2001 which had not been satisfied by September 13, 2004 (§§ 1.b., 1.c., 1.d., 1.e., 1.f., and 1.j.); that he was responsible for two collection account debts, one which had not been satisfied as of July 13, 2004 and the other which had not been satisfied as of September, 2004 (§§ 1.g. and 1.i.); that he owed a judgment of approximately \$6,452.07, which he had agreed to pay at the rate of \$200 per month (§ 1.h.); and that he had filed a Chapter 13 bankruptcy petition which had been dismissed.(§ 1.a.) An applicant who is financially overextended is at risk of having to engage in illegal acts to generate funds. Directive ¶ E2.A6.1.1.

Applicant elected to file for Chapter 7 bankruptcy after receiving notice of the SOR and the Government's concerns about his financial instability. His debts were discharged in June, 2005. While a discharge in bankruptcy is a permissible way to acquire a clean financial slate, it is not a substitute "for evidence of a demonstrated track record of financial reform, a track record that is necessary to satisfy Applicant's burden of persuasion that it is clearly consistent with the national interest to grant or continue access to classified information." ISCR Case No. 98-0445 at 3 (App. Bd. April 2, 1999.) A discharge in bankruptcy between the time an Applicant files for a security clearance and his due process hearing does not preclude an assessment of his overall history of financial problems. ISCR Case No. 98-0349 at 3 (App. Bd. Feb. 3, 1999).

While Applicant initially denied owing the creditor of the debt identified at 1.g. of the SOR, he recognized the debt when it was also listed under a previous creditor on his August 2005 credit report. I conclude that Applicant's denial of the debt was not credible. While Applicant insisted the debt alleged at 1.j. had been paid in full, and submitted explanations it had been paid in full in September 2004 and also in December 2004, it was among the debts identified on his credit report as discharged in the Chapter 7 bankruptcy. Applicant was unable to establish that the debt alleged at 1.j. of the SOR had been paid or otherwise resolved prior to the discharge in bankruptcy. His lack of awareness of his financial obligations raises serious security concerns. The Government has established, through Applicant's admissions and the record evidence, a *prima facie* case that Applicant is financially overextended. Applicant provided no persuasive evidence to rebut the financial concerns specified in the SOR and identified as disqualifying conditions under §§ E2.A6.1.2.1. and E2.A6.1.2.3. of Guideline F.

We turn to a review of the several conditions that could mitigate the security concerns raised by Applicant's financial delinquencies. Applicant's acknowledged delinquencies date to at least 1993, when he filed for Chapter 13 bankruptcy. By 1996, he was no longer making required payments to his trustee in bankruptcy, and his Chapter 13 petition was dismissed. Applicant's financial delinquencies involve long-standing debts. Some of his delinquent debts were discharged in his Chapter 7 bankruptcy; some continue to be unsatisfied to this day. Thus, neither mitigating condition E2.A.6.1.3.1. nor mitigating condition E2.A6.1.3.2. applies.

The record shows that Applicant was divorced in 1991 and unemployed from February until May 1993, from April to

early June 2000, and from June 2001 to April, 2002. He has worked steadily for his present employer since April 2002. While the record evidence suggests that Applicant's divorce and three episodes of unemployment might have contributed in part to his past financial difficulties and were largely beyond his control, they do not explain his inability or unwillingness to meet his financial obligations since 2002, a time when he has been single and steadily employed. Thus, I conclude mitigating condition E2.A6.1.3.3. applies only in part.

Applicant has not sought counseling for his financial problems. He was unable to credibly identify the debts discharged through the Chapter 7 bankruptcy proceeding, and there is little indication in the evidentiary record that he has developed and implemented a practical plan for resolving debts not included in the bankruptcy and avoiding further indebtedness. Thus, mitigating conditions E2.A6.1.3.4. and E2.A6.1.3.6. do not apply, and the Guideline F allegations in the SOR are concluded against the Applicant.

FORMAL FINDINGS

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

Paragraph 1. Guideline F: AGAINST APPLICANT

Subparagraph 1.a.: Against Applicant

Subparagraph 1.b.: Against Applicant

Subparagraph 1.c.: Against Applicant

Subparagraph 1.d.: Against Applicant

Subparagraph 1.e.: Against Applicant

Subparagraph 1.f.: Against Applicant

Subparagraph 1.g.: Against Applicant

Subparagraph 1.h.: Against Applicant

Subparagraph 1.i.: Against Applicant

Subparagraph 1.j.: Against Applicant

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.

Joan Caton Anthony

Administrative Judge

1. Exec. Or. 10865, *Safeguarding Classified Information within Industry* (Feb. 20, 1960), as amended and modified.
2. Department of Defense Directive 5220.6, *Defense Industrial Personnel Security Clearance Review Program* (Jan. 2, 1992), as amended and modified.