

KEYWORD: Financial

DIGEST: Applicant's financial problems and inability to pay his debts totaling \$10,000.00 resulted in a Chapter 7 bankruptcy in 1992. In 2000, Applicant co-signed a car loan for his son in the amount of \$12,000.00. Applicant's son never made any payments on the car and totaled the vehicle. Applicant has not paid the loan, thus failing to mitigate the security concerns about his financial difficulties. Clearance is denied. CASENO: 04-01790.h1

DATE: 03/20/2006

DATE: March 20, 2006

In re:

SSN: -----

Applicant for Security Clearance

ISCR Case No. 04-01790

DECISION OF ADMINISTRATIVE JUDGE

NOREEN A. LYNCH

APPEARANCES

FOR GOVERNMENT

Daniel F. Crowley, Esq., Department Counsel

FOR APPLICANT

Pro Se

SYNOPSIS

Applicant's financial problems and inability to pay his debts totaling \$10,000.00 resulted in a Chapter 7 bankruptcy in 1992. In 2000, Applicant cosigned a car loan for his son in the amount of \$12,000.00. Applicant's son never made any payments on the car and totaled the vehicle. Applicant has not paid the loan, thus failing to mitigate the security concerns about his financial difficulties. Clearance is denied.

STATEMENT OF THE CASE

On March 14, 2005, the Defense Office of Hearings and Appeals (DOHA), pursuant to 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 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 because of security concerns arising under Guideline F (Financial Considerations).

In a sworn written statement, dated March 28, 2005, Applicant responded to the allegations in the SOR. He elected to have his case decided on the written record in lieu of a hearing. Department Counsel submitted the government's written case on November 23, 2005. Applicant was provided a complete copy of the file of relevant material (FORM), ⁽¹⁾ along with notice of his opportunity to file objections and submit material to refute, extenuate, or mitigate the government's case. Applicant received the FORM on November 30, 2005. Applicant did not submit any additional information to the SOR. The case was assigned to me on January 23, 2006.

FINDINGS OF FACT

Applicant admitted the SOR allegations pertaining to financial considerations under Guideline F (subparagraphs 1.a. through 1.c.). ⁽²⁾ Those admissions are incorporated as findings of fact. After a complete and thorough review of the

evidence in the record, I make the following additional findings of fact.

Applicant is a divorced, 63-year-old employee of a defense contractor.⁽³⁾ He has one son from his marriage. On August 6, 2003, he submitted his security clearance application.⁽⁴⁾

From 1972 until 1992, Applicant worked as a graphic artist. In 1992, he filed Chapter 7 bankruptcy due to unpaid delinquent bills which were in part due to loss of employment and lower salary. He was discharged of \$10,000.00 debt in 1993. Applicant worked steadily after that time, but his annual pay was almost \$20,000.00 lower than his previous salary. He paid his bills, including a car payment, rent, utilities and child support.⁽⁵⁾

Applicant's minor son (17) was working full-time as a sales representative for a cellular phone company and needed a car for his employment. He also required a cell phone. Because his son was not of legal age to contract for a loan, Applicant agreed to co-sign the car loan with a bank for approximately \$12,000.00.⁽⁶⁾ He also signed for the cell phone. Soon after his son received the car, he disappeared from Applicant's home for several months, and did not make any payments on the car. Instead, Applicant made the car payments for three months, using his tax refund. When Applicant did not hear from his son, he called the company and did a voluntary repossession.⁽⁷⁾ Applicant's desire to help his son financially remained steadfast. His son returned home again and Applicant retrieved the car and allowed his son to have the car. However, within a short period of time, Applicant's son was involved in an automobile accident, which totaled the vehicle. He was also arrested for drug possession.⁽⁸⁾

From 1999-2001, Applicant paid all the legal fees, and court costs for his son. He spent all of his savings to do this. Applicant acknowledged that all his time and effort was spent to help get his son back on track. He admitted that the bank loan was secondary to the well-being of his son. The bank loan was never paid.⁽⁹⁾ His credit report from 2003 until present confirms a debt in the amount of \$11,283.000 and another debt in the amount of \$329.00. These bills are the same outstanding debts listed in the SOR. Both debts were in collection and charged off. Since receiving the SOR in 2005, Applicant paid the debt of \$329.00 in March 2005.⁽¹⁰⁾

In 2001, Applicant's employer downsized and he lost his job as a graphic artist. He did find another job, but that job ended in 2003. Since 2003, Applicant has worked in the defense industry.⁽¹¹⁾

Applicant's monthly gross income in 2004 was \$2,499.42. His expenses were approximately \$913.00. There is a net remainder of \$129.00.⁽¹²⁾ Although Applicant made payments on his own bills, he did not make any payments on the bank loan for the totaled car. Applicant reported he has not heard from them since 2002 and will wait to hear from them. He acknowledges that the account is in collection and charged off.⁽¹³⁾

POLICIES

Enclosure 2 of the Directive sets forth adjudicative guidelines to be considered in the evaluation of security suitability. In addition to brief introductory explanations for each guideline, the adjudicative guidelines are divided into those that may be considered in deciding whether to deny or revoke an individual's eligibility for access to classified information (disqualifying conditions) and those that may be considered in deciding whether to grant an individual's eligibility for access to classified information (mitigating conditions).

An administrative judge need not view the adjudicative guidelines as inflexible 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 set forth in Section E.2.2, Enclosure 2, of the Directive, are intended to assist the administrative judge in reaching fair and impartial common-sense decisions. Because the entire process is a conscientious scrutiny of a number of variables known as the "whole person concept," all available, reliable information about the person, past and present, favorable and unfavorable, should be considered in making a meaningful decision.

The Adjudicative Process factors to consider are: (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. Protecting national security is the paramount concern in reaching a decision in any case, and is dependent upon the primary standard that issuance of a clearance must be clearly consistent with the interest of national security.

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

Guideline F - Financial Consideration: An individual who is financially overextended is at risk of having to engage in illegal acts to generate funds.

In the decision-making process, the burden of producing evidence initially falls on the government to establish a case which demonstrates, in accordance with the Directive, that it is not clearly consistent with the national interest to grant or continue an applicant's access to classified information.⁽¹⁴⁾ If the government meets its burden, the heavy burden of persuasion then falls upon the applicant to present evidence in refutation, explanation, extenuation, or mitigation sufficient to overcome the doubts raised by the government's case, and to ultimately demonstrate that it is clearly

consistent with the national interest to grant or continue the applicant's clearance. [\(15\)](#)

A person who seeks access to classified information enters into a fiduciary relationship with the government predicated upon trust and confidence. It is a relationship that transcends normal duty hours and endures throughout off-duty hours as well. It is because of this special relationship that 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. Decisions under this Directive include, by necessity, consideration of the possible risk that an applicant may deliberately or inadvertently fail to protect or safeguard classified information. Such decisions entail a certain degree of legally permissible extrapolation as to potential, rather than actual, risk of compromise of classified information. Any doubt about whether an applicant should be allowed access to classified information must be resolved in favor of national security. [\(16\)](#)

One additional comment is worthy of note. Applicant's allegiance, loyalty, and patriotism are not at issue in these proceedings. Section 7 of the Executive Order 10865 specifically provides that 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." Security clearance decisions cover many characteristics of an applicant other than allegiance, loyalty, and patriotism. Nothing in this decision should be construed to suggest I have based this decision, in whole or in part, on any express or implied decision as to Applicant's allegiance, loyalty or patriotism.

CONCLUSIONS

Upon consideration of all the facts in evidence, and after application of all appropriate legal precepts, factors, and conditions, I conclude the following with respect to each allegation set forth in the SOR.

The government established its case under Guideline F. Applicant filed for bankruptcy in 1992. He remained sound financially until 2000, when he co-signed a car loan his son. The loan in the amount of \$11,283.00 has not been paid. This account has been delinquent since 2000. Financial Considerations Disqualifying Condition (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.

While the Applicant's 1992 bankruptcy is not recent, the delinquent debts alleged in the SOR at 1.a. and 1.b. are recent. Moreover, the car loan representing about 97% of the debt is continuing. These financial problems are ongoing and not isolated. Financial Considerations Mitigating Condition (FC MC) E2.A6. 1.3.1 (*the behavior was not recent*) and FC MC E2.A6.1.3.2 (*it was an isolated incident*) do not apply.

Applicant's fatherly concern for his son does not absolve him legally from the car loan. Although his son did not make any payments as promised and totaled the car, Applicant is responsible for the loan. He did not act reasonably in not making any payments and allowing the loan to be charged off. His period of unemployment and lower salary did not directly cause his nonpayment of the car loan. I find FC MC E2.A6.1.3.3 (*the conditions that resulted in the behavior were largely beyond the person's control*) does not apply.

Applicant has not paid the car loan originating in 2000. He is not taking any steps to resolve the problem, and he acknowledged he would just wait to hear from the bank concerning the loan. (FC MC) E2.A6.1.3.4. (*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 debts*) are not applicable in this case.

Considering all the evidence in this case, I find Applicant has failed to overcome the financial concerns in the SOR. Accordingly, subparagraph 1.a of the SOR is concluded against Applicant. The debt alleged in subparagraph 1.b., now paid, is resolved for Applicant. The allegation in subparagraph 1.c., the filing of bankruptcy in 1992, is a fact. The bankruptcy is a legitimate method to resolve debt. However, despite Applicant paying his own debts after discharge in bankruptcy, ignoring a delinquent car loan is financial irresponsibility. I find against Applicant as to this allegation.

Applicant has failed to meet his ultimate burden of persuasion to obtain a favorable clearance decision. In reaching my decision, I considered the record evidence, the whole person concept, the clearly-consistent standard, and the appropriate factors and guidelines in the Directive.

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: AGAINST APPLICANT

Subparagraph 1.a: Against Applicant

Subparagraph 1.b: For Applicant

Subparagraph 1.c: Against Applicant

DECISION

In light of all 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.

Noreen A. Lynch

Administrative Judge

1. The government submitted ten items in support of its contentions.
2. Item 2 (Response to SOR dated March 28, 2005) at 1-2.
3. *Id.*
4. Item 4 (Applicant's Security Clearance Application (SF 86), dated August 6, 2003) at 1.
5. Item 8 (Response to Financial Interrogatories, dated April 5, 2004) at 3.
6. *Id.*
7. *Id.*
8. *Id.*
9. Item 2 (Applicant's Answer, dated March 28, 2005) at 1-4.
10. Item 6 (Credit Bureau Report, dated August 11, 2003); Item 9 (Credit Bureau Report, dated January 5, 2005); and Item 10 (Credit Bureau Report, dated September 23, 2005).

11. *Id.*
12. Item 8, supra note 5 at 1.
13. Item 7 (Statement of Subject, dated October 21, 2003).
14. ISCR Case No. 96-0277 (July 11, 1997) at 2.
15. ISCR Case No. 94-1075 (August 10, 1995) at 3-4; Directive, Enclosure 3, Para E3.1.15.
16. Directive, Enclosure 2, Para. E2.2.2