

KEYWORD: Financial considerations

DIGEST: Applicant incurred significant debt due to increased costs and a slowdown in business. More recently, his salary and available income have stabilized and improved. He is currently paying on one old debt, but has not made an effort to pay on his remaining significant debt, despite income to do so. He has not mitigated or overcome the government's concerns regarding his security eligibility and suitability based on financial considerations. Clearance is denied.

CASE NO: 04-02143.h1

DATE: 06/09/2006

DATE: June 9, 2006

In re:

SSN:-----

Applicant for Security Clearance

ISCR Case No. 04-02143

DECISION OF ADMINISTRATIVE JUDGE

MARY E. HENRY

APPEARANCES

FOR GOVERNMENT

FOR APPLICANT

Pro Se

SYNOPSIS

Applicant incurred significant debt due to increased costs and a slowdown in business. More recently, his salary and available income have stabilized and improved. He is currently paying on one old debt, but has not made an effort to pay on his remaining significant debt, despite income to do so. He has not mitigated or overcome the government's concerns regarding his security eligibility and suitability based on financial considerations. Clearance is denied.

STATEMENT OF THE CASE

On May 2, 2005, the Defense Office of Hearings and Appeals (DOHA) issued a Statement of Reasons (SOR) to Applicant, 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 Security Clearance Review Program* (Directive), dated January 2, 1992, as amended and modified. 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. 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 May 20, 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 February 14, 2005. Applicant had 30 days from receipt of the FORM to file objections and submit material in refutation, extenuation, or mitigation. He did not respond. This case was assigned to me on ay 22, 2006.

FINDINGS OF FACT

Applicant admitted the allegations under Guideline F, subparagraphs 1.a. through 1.g. of the SOR.⁽¹⁾ Those admissions are incorporated as findings of fact. 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 36-year-old owner-operator of a semi-tractor trailer for a defense contractor.⁽²⁾ He has worked for this contractor for four years.⁽³⁾ He completed a security clearance application (SF 86) in February 2003.⁽⁴⁾

Since he is a trucker, Applicant's monthly earnings vary.⁽⁵⁾ He estimated he would earned approximately \$33,552.00 in 2004.⁽⁶⁾ His estimated net monthly income averages \$2,416.00.⁽⁷⁾ His monthly expenses are: \$30.00 for rent (for storage only), \$720.00 for groceries, \$350.00 for car expenses, \$180.00 for utilities, \$166.00 for life and medical insurance and expenses, \$200.00 for clothing, \$200.00 for miscellaneous expenses, and \$100.00 on credit card payments.⁽⁸⁾ These expenses total \$1,946.00, leaving a balance of \$470.00 per month.⁽⁹⁾

Applicant's debts alleged in the SOR, including current status, are summarized in the following table:

SOR ¶	TYPE OF DEBT	AMOUNT	STATUS
1.a.	medical ⁽¹⁰⁾	\$ 390.00 ⁽¹¹⁾	Unpaid ⁽¹²⁾
1.b.	bank credit card ⁽¹³⁾	\$5,506.00 ⁽¹⁴⁾	Paying - balance remaining \$3,302.00 ⁽¹⁵⁾
1.c.	credit card ⁽¹⁶⁾	\$2,525.00 ⁽¹⁷⁾	Unpaid ⁽¹⁸⁾
1.d.	credit card ⁽¹⁹⁾	\$1,177.00 ⁽²⁰⁾	Unpaid ⁽²¹⁾
1.e.	credit card ⁽²²⁾	\$1,283.00 ⁽²³⁾	Unpaid ⁽²⁴⁾
1.f.	credit loan ⁽²⁵⁾	\$1,295.00 ⁽²⁶⁾	Unpaid ⁽²⁷⁾
1.g.	credit card ⁽²⁸⁾	\$8,189.00 ⁽³¹⁾	Unpaid ⁽³²⁾

Applicant worked as an independent truck driver for about one year.⁽³³⁾ When work slowed down and fuel prices increased, he could not pay his bills.⁽³⁴⁾ He now pays cash for his purchases, as he has destroyed his credit cards, a

statement which is supported by the credit reports.⁽³⁵⁾ He has been paying on one credit card debt, but has not paid on any of the remaining outstanding bills. He still owes approximately \$18,000.00 on the above debt. He has not provided evidence that he has contacted his creditors to establish a payment plan for eliminating his outstanding debt.

POLICIES

Enclosure 2 of the Directive sets forth adjudicative 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. 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. In addition, each security clearance decision must be based on the relevant and material facts and circumstances, the whole-person concept, and 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.⁽³⁶⁾

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.⁽³⁷⁾ The government has the burden of proving controverted facts.⁽³⁸⁾ The burden of proof is something less than a preponderance of the evidence.⁽³⁹⁾ 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.⁽⁴⁰⁾ Additionally, an applicant has the ultimate burden of persuasion to obtain a favorable clearance decision.⁽⁴¹⁾

No one has a right to a security clearance,⁽⁴²⁾ and "the clearly consistent standard indicates that security clearance determinations should err, if they must, on the side of denials."⁽⁴³⁾ Any reasonable doubt about whether an applicant should be allowed access to sensitive information must be resolved in favor of protecting such sensitive information.⁽⁴⁴⁾ 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.⁽⁴⁵⁾ 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 has established its case under Guideline F. Applicant has a history of excessive debt, which has not been paid. Applicant's financial problems clearly fall within the Financial Considerations Disqualifying Conditions E2.A6.1.2.1. (*A history of not meeting financial obligations*) and E2.A6.1.2.3. (*Inability or unwillingness to satisfy debts*)

A security concern based on financial problems can be mitigated in several ways. Applicant's debt problems have been ongoing for a number of years, are not recent, and are not an isolated incident. Thus, he has not established a mitigating condition under Financial Considerations Mitigating Conditions (FC MC) E2.A6.1.3.1. (*The behavior was not recent*) and E2.A6.1.3.2. (*It was an isolated incident*). Likewise, since he has not received counseling for his credit problems, and has not established a repayment plan for his debt, 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*) does not apply.

Although Applicant's debt initially occurred as a result of a business slow down some years ago, an event beyond his control, he has worked continuously for the last four years. He still owes significant money on old credit card debt. He has stopped using his credit cards and pays cash for everything. He is slowly paying one debt, but has not taken any steps to repay any of the other debt. The fact that some of these debts are no longer listed on his credit report does not relieve him of his obligation. He has sufficient additional income to made modest payments on some of his old debt, but

has chosen not to do so. While he is not required to pay off all old debt to be granted a security clearance, his failure to make any attempts at resolving most of his outstanding debt precludes granting him a security clearance. Guideline F is found against Applicant. Accordingly, for the reasons stated, I find that it is not 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 (Financial Considerations): AGAINST APPLICANT

Subparagraph 1.a: Against Applicant

Subparagraph 1.b: For 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

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 a security clearance for Applicant. Clearance is denied.

Mary E. Henry
Administrative Judge

1. Item 3 (Response to SOR, dated May 20, 2005 at 1-2.
2. Item 4 (Applicant's security clearance application, dated February 3, 2003) at 3.
3. *Id.*
4. *Id.* at 11.
5. Item 5 (Applicant's signed statement, dated January 6, 2004) at 4.
6. Item 4 (Applicant's signed statement, dated January 4, 2004) at 3-4.
7. *Id.* at 3.
8. *Id.*
9. *Id.*
10. Item 7 (Credit report, dated October 19, 2003) at 6.
11. *Id.*
12. *Id.*
13. *Id.* at 7; Item 8 (Credit report, dated March 9, 2005) at 3.
14. *Id.*
15. Item 9 (Credit report, dated February 13, 2006) at 1.
16. Item 8, *supra* note 13, at 1.
17. *Id.*; Item 9, *supra* note 15, at 1.
18. Item 9, *supra* note 15, at 1.
19. Item 7, *supra* note 10, at 5.
20. *Id.*; Item 9, *supra* note 15, at 2.

21. Item 9, *supra* note 15, at 2.
22. Item 7, *supra* note 10, at 6.
23. *Id.*; Item 9, *supra* note 15, at 1.
24. Item 9, *supra* note 15, at 1.
25. Item 7, *supra* note 10, at 5.
26. Item 8, *supra* note 13, at 2. The SOR incorrectly lists the amount due as \$1,349.00. *Id.*
27. *Id.*
28. [\(29\)](#)
29. Item 8, *supra* note 13, at 2. [\(30\)](#)
30. Item 8, *supra* note 13, at 2.
31. *Id.*
32. Item 9, *supra* note 15, at 2.
33. Item 5, *supra* note 5, at 1.
34. *Id.*
35. *Id.*; Item 8, *supra* note 13, at 2-3; Item 9, *supra* note 15, at 1-2.
36. Directive, Enclosure 2, ¶ E2.2.1.1. through E2.2.1.9.
37. ISCR Case No. 96-0277 (July 11, 1997) at 2.
38. ISCR Case No. 97-0016 (App. Bd., December 31, 1997) at 3; Directive, Enclosure 3, ¶ E3.1.14.
39. *Department of the Navy v. Egan*, 484 U.S. 518, 528 (1988).
40. ISCR Case No. 94-1075 (App. Bd., August 10, 1995) at 3-4; Directive, Enclosure 3, ¶ E3.1.15.
41. ISCR Case No. 93-1390 (App. Bd. Decision and Reversal Order, January 27, 1995) at 7-8; Directive, Enclosure 3, ¶ E3.1.15.
42. *Egan*, 484 U.S. at 531.
43. *Id.*
44. *Id.*; Directive, Enclosure 2, ¶ E2.2.2.
45. Executive Order No. 10865 § 7.