

KEYWORD: Financial

DIGEST: Applicant is a 33-year-old veteran who has worked for a federal contractor since 2001. Applicant accumulated delinquent debt while on active duty and continued to add to his debt after he was discharged from the service in 1999. Applicant was unemployed for a short period of time in 1999, but has been fully employed since then and his salary has steadily increased in the past six years. Applicant has made minimal effort to resolve his delinquent debts. Applicant has failed to mitigate the security concerns regarding his financial situation. Clearance is denied.

CASENO: 04-02367.h1

DATE: 09/29/2005

DATE: September 29, 2005

In re:

SSN: -----

Applicant for Security Clearance

ISCR Case No. 04-02367

DECISION OF ADMINISTRATIVE JUDGE

CAROL G. RICCIARDELLO

APPEARANCES

FOR GOVERNMENT

FOR APPLICANT

Pro Se

SYNOPSIS

Applicant is a 33-year-old veteran who has worked for a federal contractor since 2001. Applicant accumulated delinquent debt while on active duty and continued to add to his debt after he was discharged from the service in 1999. Applicant was unemployed for a short period of time in 1999, but has been fully employed since then and his salary has steadily increased in the past six years. Applicant has made minimal effort to resolve his delinquent debts. Applicant has failed to mitigate the security concerns regarding his financial situation. Clearance is denied.

STATEMENT OF CASE

On May 2, 2005, the Defense Office of Hearings and Appeals (DOHA) issued to Applicant a Statement of Reasons (SOR) stating they were unable to find that it is clearly consistent with the national interest to grant or continue a security clearance. ⁽¹⁾ The SOR, which are in essence the administrative complaint, alleged a security concern under Guideline F, financial considerations.

In a sworn statement, dated June 2, 2005, Applicant responded to the SOR allegations, and requested a hearing. In his SOR response, Applicant admitted some allegations and denied other allegations under Guideline F, financial considerations.

The case was assigned to me on August 15, 2005. A notice of hearing was issued on August 29, 2005, scheduling the hearing for September 14, 2005. The hearing was conducted as scheduled. The government submitted eight exhibits that were marked as Government Exhibits (GE) 1-8. The exhibits were admitted into the record without objection. Applicant testified on his own behalf, and submitted seven exhibits that were marked as Applicant's Exhibits (AE) A-G. Government counsel objected to page 3 of AE D and AE E. The objections was overruled and the documents were

admitted. All other exhibits were admitted into the record without objection. The transcript was received on September 27, 2005.

FINDINGS OF FACT

Applicant's admissions to the allegations in the SOR, are incorporated herein. In addition, after a thorough and careful review of the pleadings, exhibits, and testimony, I make the following findings of fact:

Applicant is 33 years old and has been employed in aircraft maintenance by a federal contractor since 2001. Applicant holds a secret security clearance. Applicant has been married since 1993 and has one child. Applicant served in the National Guard and the Army. While serving in the military Applicant received numerous letters of appreciation, letters of commendation, a Good Conduct medal, an Army Achievement Medal, and two Army Commendation medals. Applicant was honorably discharged from the Army in 1999.

Prior to leaving the military Applicant's net monthly pay was \$947.00. Applicant had been living in base housing while in the military and lost that benefit when he was discharged. As a civilian Applicant was now required to pay rent and utilities at his new housing unit. Applicant was unemployed for two months after leaving the military. Applicant's net monthly pay from his new civilian job in 1999 was \$1,128.00. He worked at that job for several months before changing jobs where in 2001 his net monthly pay was \$2,682.00. Applicant admits when he left the military he had credit card debts that were delinquent. Applicant and his wife chose to live apart and maintain two households in two different areas of the state. ⁽²⁾ They chose to do this because Applicant was uncertain about his job security. ⁽³⁾

Applicant filed for bankruptcy on September 7, 2005. Applicant lists his liabilities as \$32,772.00, assets as \$5,165.00, net income per month as \$2,996.00, and expenditures per month as \$3,096.00. Applicant annual salary has been increasing steadily since 2002 and on his 2003 financial statement he listed a net remainder as \$1,970.00. ⁽⁴⁾ Applicant did not use this remainder to pay off his delinquent debts. Applicant's adjusted gross income in 2004 before deductions was \$62,000. ⁽⁵⁾

Applicant admits he owes the debts listed in subparagraphs 1.c., 1.d., 1.e., 1.f., 1.h., 1.i., 1.k., and 1.l. All of these debts are listed on Applicant's bankruptcy filing. Applicant has not made any payments towards any of these debts except debt 1.i. Applicant started making payments toward this debt in September 2004. ⁽⁶⁾ The current balance owed is \$390.00.

Applicant denies debt 1.a. and claims he had an account for telephone service with this company and had paid the debt in full. ⁽⁷⁾ Applicant failed to provide any verifying documentation. Debt 1.b. was charged off in March 1998 as a bad

debt. Applicant did pay this debt in full in June 2005.⁽⁸⁾ Applicant denies debt 1.g. in the amount of \$1,962.00 for an account that was placed in collection by a credit card company in December 1998.⁽⁹⁾ Applicant claims debt 1.g. is the same debt as debt 1.f., but offers no verification or documentation to support his claim. Applicant believes debt 1.j. is the same debt as 1.d. because it is from the same creditor.⁽¹⁰⁾ The two accounts are for different amounts. Applicant did not provide any documents to support his claim. Applicant lists debts 1.d. and 1.j. on his bankruptcy filing. It is unclear whether debt 1.g. is listed on the filing because it is unclear who the original creditor is.

Applicant originally sought credit counseling in 2000.⁽¹¹⁾ He was advised to file bankruptcy. He did not want to file bankruptcy so he did not return to counseling.⁽¹²⁾ In 2004, Applicant again sought credit counseling because he wanted to buy a house.⁽¹³⁾ He set up a payment plan for some of his debts. The counselors offered to help settle the debts but Applicant was also advised that settling would negatively impact his ability to get a loan to buy a house.⁽¹⁴⁾ Applicant failed to follow through on the payment plan.⁽¹⁵⁾ Applicant found when he contacted creditors they were uncooperative, unfriendly, and difficult to deal with.⁽¹⁶⁾

Applicant admitted his financial problems started with the use of credit cards and his failure to make timely payments. He had ten delinquent debts in 1998-1999 when he was still in the military. Applicant decided to save money to live on when he got out of the service rather than pay his delinquent debts.⁽¹⁷⁾ Applicant's financial problems became more serious when he left the military and had to pay more of his basic living expenses. Applicant stated in 2003 "I will work hard on my finances to speed[i]ly pay the creditors I owe for."⁽¹⁸⁾ He additionally stated that he was receiving \$104.00 a month from the Veterans Administration as a disability payment.⁽¹⁹⁾

Applicant had difficulty contacting creditors during the day to resolve his debts because of his work hours. Applicant claims to relieve the stress from dealing with creditors he would only focus on his work.⁽²⁰⁾ Applicant's wife does not work. Applicant handles the finances and did not have his wife contact the creditors because she is not good with finances.⁽²¹⁾ Applicant did have some time off while working, but did not use it to contact creditors.⁽²²⁾ Applicant claims he wants to pay off his debts, but doesn't know whom to pay.⁽²³⁾

Applicant is well thought of by his supervisors. He is considered highly motivated, knowledgeable in his craft, and an all around team player.⁽²⁴⁾ Applicant is considered dedicated and trustworthy.⁽²⁵⁾ Throughout his military and civilian career, Applicant has received certificates of recognition and appreciation for his contributions to his company and the projects he was involved in.⁽²⁶⁾

POLICIES

Enclosure 2 of the Directive sets forth adjudicative guidelines to be considered in evaluating a person's eligibility to hold a security clearance. Included in the guidelines are disqualifying conditions (DC) and mitigating conditions (MC) applicable to each specific guideline. Considering the evidence as a whole, Guideline F, financial considerations, with its respective DC and MC, applies in this case. Additionally, each security clearance decision must be a fair and impartial commonsense decision based on the relevant and material facts and circumstances, the whole-person concept, along with the factors listed in the Directive. Specifically these are: (1) the nature and seriousness of the conduct and surrounding circumstances; (2) the frequency and recency of the conduct; (3) the age of the applicant; (4) the motivation of the applicant, and the extent to which the conduct was negligent, willful, voluntary, or undertaken with knowledge of the consequences; (5) the absence or presence of rehabilitation; and (6) the probability that the circumstances or conduct will continue or recur in the future. 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.

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.⁽²⁷⁾ The government has the burden of proving controverted facts.⁽²⁸⁾ The burden of proof is something less than a preponderance of evidence.⁽²⁹⁾ Once the government has met its burden, the burden shifts to an applicant to present evidence of refutation, extenuation, or mitigation to overcome the case against

him.⁽³⁰⁾ Additionally, an applicant has the ultimate burden of persuasion to obtain a favorable clearance decision.⁽³¹⁾

No one has a right to a security clearance⁽³²⁾ and "the clearly consistent standard indicates that security clearance determinations should err, if they must, on the side of denials."⁽³³⁾ Any reasonable doubt about whether an applicant should be allowed access to sensitive information must be resolved in favor of protecting such sensitive information.⁽³⁴⁾ The decision to deny an individual a security clearance is not necessarily a determination as to the loyalty of an applicant.⁽³⁵⁾ 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 consideration of the evidence, I find the following adjudicative guideline most pertinent to the evaluation of the facts in this case:

Guideline F- Financial Considerations-a security concern exists when a person has significant delinquent debts. An individual who is financially overextended is at risk of having to engage in illegal or unethical acts to generate funds to meet financial obligations. Similarly, an individual who is financially irresponsible may also be irresponsible, unconcerned, or careless in their obligation to protect classified information. Behaving responsibly or irresponsibly in one aspect of life provides an indication of how a person may behave in other aspects of life.

Conditions that could raise a security concern and may be disqualifying, as well as those which would mitigate security concerns, pertaining to the adjudicative guidelines are set forth and discussed in the conclusions below.

CONCLUSIONS

I carefully considered all the facts in evidence and the legal standards. The government has established a *prima facie* case for disqualification under Guideline F.

Based on all the evidence, 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. Applicant has accumulated significant delinquent debts. He has not made payments on many of them for a lengthy period of time and many were charged off as bad debts or are in a collection status.

I have considered all the Financial Considerations Mitigating Conditions (FC MC), and especially considered FC MC E2.A6.1.3.1 (*The behavior was not recent*), FC MC E2.A6.1.3.2 (*It was an isolated incident*), FC MC E2.A6.1.3.3 (*The 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)*), 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*), and FC MC E2.A6.1.3.6 (*The individual initiated a good-faith effort to repay overdue creditors or otherwise resolve debts*), and conclude none apply.

Applicant's debts are recent. Some date as far back as 1998 and have been charged off or are in a collection. Applicant has not paid these debts and therefore the lack of recency is not considered mitigating. Applicant has numerous creditors and therefore his delinquencies are not isolated. Prior to leaving the service Applicant had delinquent debts. His financial difficulties were exacerbated upon his discharge when for a short period of time he was unemployed and later when he was employed he had expenses that he was not accustomed to paying. Applicant has been steadily employed since 1999 and his salary has increased since then. Applicant and his wife are not separated due to marital conflict, but choose to live in separate households, thereby increasing their expenses. Applicant's financial statement in 2003 showed remaining expendable income at the end of each month, but he did not taken action to resolve most of his delinquent debts. Applicant did seek financial counseling when he was interested in buying a house. He did not follow-up on the payment plan that was set up. Applicant filed for bankruptcy a short time before his hearing. Although bankruptcy is a legitimate and legal means to discharge debt it is not a substitute for making a good faith effort to resolve delinquent debts, which Applicant has failed to do since 1998. Applicant has failed to mitigate the security concerns regarding financial considerations.

In all adjudications, the protection of our national security is the paramount concern. The objective of the security-clearance process is the fair-minded, commonsense assessment of a person's life to make an affirmative determination that the person is eligible for a security clearance. Indeed, the adjudicative process is a careful weighing of a number of variables in considering the "whole person" concept. It recognizes that we should view a person by the totality of their acts, omissions, motivations and other variables. Each case must be adjudged on its own merits, taking into consideration all relevant circumstances, and applying sound judgment, mature thinking, and careful analysis.

I considered all the evidence provided and also considered the "whole person" concept in evaluating Applicant's risk and vulnerability in protecting our national interests. I have considered Applicant's devotion to his job and commitment to excellence in his performance. This determination in no way reflects negatively upon Applicant's loyalty to the United States. However, Applicant has neglected for many years to take care of his financial situation. I find Applicant has failed to mitigate the security concerns raised by the financial consideration concerns. Therefore, I am persuaded by the totality of the evidence in this case, that it is not clearly consistent with the national interest to grant Applicant a security clearance. Accordingly, Guideline F is decided against 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 Financial Considerations (Guideline F) AGAINST THE APPLICANT

Subparagraph 1.a. Against the Applicant

Subparagraph 1.b. For the Applicant

Subparagraph 1.c. Against the Applicant

Subparagraph 1.d. Against the Applicant

Subparagraph 1.e. Against the Applicant

Subparagraph 1.f. Against the Applicant

Subparagraph 1.g. Against the Applicant

Subparagraph 1.h. Against the Applicant

Subparagraph 1.i. For the Applicant

Subparagraph 1.j. Against the Applicant

Subparagraph 1.k. Against the Applicant

Subparagraph 1.l. Against the 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.

Carol. G. Ricciardello

Administrative Judge

1. This action was taken under Executive Order 10865, dated February 20, 1960, as amended, and DoD Directive 5220.6, dated January 2, 1992, as amended and modified (Directive).

2. Tr. at 76.

3. *Id.*

4. GE 2.

5. Tr. at 85.

6. Tr. at 63-65.

7. Tr. at 32-36.

8. AE C at 4.

9. Tr. at 55-58.

10. Tr. at 65-67.
11. Tr. at 73
12. Tr. at 97.
13. Tr. at 90-93.
14. *Id.*
15. *Id.*
16. Tr. at 66-70.
17. Tr. at 100-101.
18. GE 2.
19. *Id.*
20. Tr. at 58.
21. Tr. at 59-60.
22. Tr. at 60-61.
23. Tr. at 112.
24. AE A at 17.
25. *Id.*
26. AE A
27. ISCR Case No. 96-0277 (July 11, 1997) at 2.
28. ISCR Case No. 97-0016 (December 31, 1997) at 3; Directive, Enclosure 3, ¶ E3.1.14.
29. *Department of the Navy v. Egan*, 484 U.S. 518, 531 (1988).
30. ISCR Case No. 94-1075 (August 10, 1995) at 3-4; Directive, Enclosure 3, ¶ E3.1.15.
31. ISCR Case No. 93-1390 (January 27, 1995) at 7-8; Directive, Enclosure 3, ¶ E3.1.15.
32. *Egan*, 484 U.S. at 531.
33. *Id.*
34. *Id.*; Directive, Enclosure 2, ¶ E2.2.2.
35. Executive Order 10865 § 7.