

KEYWORD: Financial

DIGEST: Applicant's history of financial difficulties makes him unsuitable for a security clearance. Clearance denied.

CASENO: 04-02493.h1

DATE: 02/24/2006

DATE: February 24, 2006

In Re:

SSN: -----

Applicant for Security Clearance

ISCR Case No. 04-02493

DECISION OF ADMINISTRATIVE JUDGE

JOHN GRATTAN METZ, JR

APPEARANCES

FOR GOVERNMENT

Sabrina Elaine Redd, Esquire, Department Counsel

FOR APPLICANT

Pro Se

SYNOPSIS

Applicant's history of financial difficulties makes him unsuitable for a security clearance. Clearance denied.

STATEMENT OF THE CASE

Applicant challenges the 25 April 2005 Defense Office of Hearings and Appeals (DOHA) Statement of Reasons (SOR) recommending denial or revocation of his clearance because of financial considerations.⁽¹⁾ Applicant answered the SOR in May 2005 and requested a decision on the record.. He did not respond to DOHA's 7 June 2005 File of Relevant Material (FORM). DOHA assigned the case to me 28 December 2005.

FINDINGS OF FACT

Applicant admitted the allegations of the SOR. He is a 53-year-old long-haul trucker employed by a defense contractor since January 2000. This is his first application for an industrial clearance. He previously held a clearance while in the Army in the early 1970s.

Applicant has a history of financial difficulties dating back to December 1997. He attributes his financial problems to recurring periods of unemployment as well as the income vagaries of employment in the trucking industry. However, his clearance application indicates that he has been employed continuously since December 1996. All the debts alleged in the SOR became delinquent after December 1997.

When Applicant completed his clearance application in November 2002, he disclosed delinquent debt. During his subject interview in December 2003, he acknowledged five delinquent debts (1.a., 1.b., 1.c., 1.d., and 1.e.) totaling over \$7,700.00. He was going to pay the \$100.00 debt at 1.a. that week, and had made an appointment with a credit counseling organization to work out a repayment schedule for the other four accounts.

In July 2004, Applicant responded to DOHA interrogatories and revealed that he had not made any payment on the five accounts, now totaling over \$8,800.00, because the credit counseling did not work out like he had thought it would. He was going to address the debts himself. He intended to pay the \$100.00 debt at 1.a. within the next thirty days. He was going to contact the remaining creditors to arrange repayment schedules, but indicated that he would have to address the larger debts serially.

The SOR alleges seven delinquent accounts totaling nearly \$11,000.00, falling delinquent between December 1997 and August 2004. Approximately \$600.00 of that debt is for two accounts that became delinquent in March 2003 and August 2004, respectively. The remaining debt is for the five delinquent accounts Applicant has been discussing since December 2003, now grown even larger with accumulated interest.

In his answer to the SOR, Applicant claimed payment or payment plan for each debt. In July and August 2005, Applicant provided supplemental information corroborating payments or payment plans for each debt except 1.f. Applicant paid the \$100.00 debt at 1.a. in May 2005. He arranged to pay \$100.00 per month on debt 1.b. beginning in June 2005.⁽²⁾ In May 2005, he compromised debt 1.c. to \$3,500.00, payable at \$250.00 per month for 14 months.⁽³⁾ In July 2005, he arranged to pay debt 1.d. with an up-front payment of \$712.84 and monthly payments of 190.09.⁽⁴⁾ Applicant paid debt 1.e. in June 2005. Applicant claims to have paid debt 1.f in May 2005, but did not provide corroboration. He paid debt 1.g. in June 2005.

POLICIES AND BURDEN OF PROOF

The Directive, Enclosure 2 lists adjudicative guidelines to be considered in evaluating an Applicant's suitability for access to classified information. Administrative Judges must assess both disqualifying and mitigating conditions under each adjudicative issue fairly raised by the facts and circumstances presented. Each decision must also reflect a fair and impartial common sense consideration of the factors listed in Section 6.3. of the Directive. The presence or absence of a disqualifying or mitigating condition is not determinative for or against Applicant. However, specific adjudicative guidelines should be followed whenever a case can be measured against them, as they represent policy guidance governing the grant or denial of access to classified information. Considering the SOR allegations and the evidence as a whole, the relevant, applicable, adjudicative guideline is Guideline F (Financial Considerations).

Security clearance decisions resolve whether it is clearly consistent with the national interest to grant or continue an Applicant's security clearance. The government must prove, by something less than a preponderance of the evidence, controverted facts alleged in the SOR. If it does so, it establishes a *prima facie* case against access to classified information. Applicant must then refute, extenuate, or mitigate the government's case. Because no one has a right to a security clearance, the Applicant bears a heavy burden of persuasion.

Persons with access to classified information enter into a fiduciary relationship with the government based on trust and confidence. Therefore, the government has a compelling interest in ensuring each Applicant possesses the requisite judgement, reliability, and trustworthiness of those who must protect national interests as their own. The "clearly consistent with the national interest" standard compels resolution of any reasonable doubt about an Applicant's suitability for access in favor of the government.⁽⁵⁾

CONCLUSIONS

The government established a Guideline F case, and Applicant did not mitigate the security concerns. Applicant had nearly \$11,000.00 in delinquent debt, all of which occurred after any period of unemployment, which ended no later than December 1996.⁽⁶⁾ Applicant meets none of the mitigating factors for financial considerations. His financial difficulties are both recent⁽⁷⁾ and not isolated. Even if I accept that the debts were due somewhat to circumstances beyond his control,⁽⁸⁾ his handling of the delinquent debt since December 1996 does not demonstrate financial responsibility. Applicant became aware of the government's concern about his debts no later than his December 2003 subject interview, yet took no meaningful action until recently. Of the five delinquent debts then, one was \$100.00, another \$537.00. He promised to pay the \$100.00 debt that week, yet did not. He repeated his promise to address his debts in July 2004, including prompt payment of the \$100.00 debt, yet again did nothing. He took no action at all until after receiving the SOR. Although Applicant provided proof of payment on four accounts and payment schedules on the remaining three, there is insufficient evidence that Applicant has brought the problem under control.⁽⁹⁾ He provided evidence that he started repayment, but no evidence that payments continued as promised. Given Applicant's past failures to resolve his debts as promised, I am uncomfortable simply assuming that payments have continued. Further, under the circumstances of this case, Applicant's payment efforts cannot be considered good-faith efforts,⁽¹⁰⁾ coming as they do on the heels of the SOR. It is simply too early to say that Applicant has resolved all his outstanding debt and his financial problems are behind him. I conclude Guideline F against Applicant.

FORMAL FINDINGS

Paragraph 1. Guideline F: AGAINST APPLICANT

Subparagraph a: Against Applicant

Subparagraph b: Against Applicant

Subparagraph c: Against Applicant

Subparagraph d: Against Applicant

Subparagraph e: Against Applicant

Subparagraph f: Against Applicant

Subparagraph g: 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.

John G. Metz, Jr.

Administrative Judge

1. Required by Executive Order 10865 and Department of Defense Directive 5220.6, as amended (Directive).

2. Applicant provided proof of the June 2005 payment. If he continued to make the payments as scheduled, this debt would be paid in approximately March 2006.
3. Applicant provided proof of the June and July 2005 payment, made by automatic debit.
4. Applicant provided proof of his August 2005 payment of \$712.84. Interest continues to accrue on this account, which means Applicant had at least 12 payments remaining after his August 2005 payment.
5. *See, Department of the Navy v. Egan*, 484 U.S. 518 (1988).
6. E2.A6.1.2.1 A history of not meeting financial obligations; E2.A6.1.2.3 Inability or unwillingness to satisfy debts;
7. E2.A6.1.3.1 The behavior was not recent;
8. E2.A6.1.3.3 The conditions that resulted in the behavior were largely beyond the person's control. . .;
9. 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;
10. E2.A6.1.3.6 The individual initiated a good-faith effort to repay overdue creditors or otherwise resolve debts.