

KEYWORD: Financial

DIGEST: After Applicant left the Army, he accumulated considerable debt due to expenses incurred with going to school and expenses for his family. In January 2004, Applicant obtained a new job. Since that time he has made substantial efforts to resolve all of his debts. Clearance is granted.

CASENO: 04-02702.h1

DATE: 11/15/2005

DATE: November 15, 2005

In re:

SSN: -----

Applicant for Security Clearance

ISCR Case No. 04-02702

DECISION OF ADMINISTRATIVE JUDGE

JAMES A. YOUNG

APPEARANCES

FOR GOVERNMENT

Robert E. Coacher, Esq., Department Counsel

FOR APPLICANT

Pro Se

SYNOPSIS

After Applicant left the Army, he accumulated considerable debt due to expenses incurred with going to school and expenses for his family. In January 2004, Applicant obtained a new job. Since that time he has made substantial efforts to resolve all of his debts. Clearance is granted.

STATEMENT OF THE CASE

The Defense Office of Hearings and Appeals (DOHA) declined to grant or continue a security clearance for Applicant. On 9 June 2005, DOHA issued a Statement of Reasons (SOR) detailing the basis for its decision ⁽¹⁾-security concerns raised under Guideline F (Financial Considerations) of the Directive. Applicant answered the SOR in writing on 18 July 2005, and elected to have a hearing before an administrative judge. The case was assigned to me on 10 August 2005. A hearing was scheduled for 28 September 2005, but had to be rescheduled due to Hurricane Rita. I convened a hearing on 19 October 2005 to consider whether it is clearly consistent with the national interest to grant or continue a security clearance for Applicant. DOHA received the hearing transcript (Tr.) on 1 November 2005.

FINDINGS OF FACT

Applicant is a 37-year-old field support engineer working on communications systems for a defense contractor. Since 1986, he has been associated with the U.S. Army as either an active duty or reserve member. From February 2004-February 2005, Applicant served his employer in Iraq. He is married and has three children by his two previous wives.

Applicant made some major mistakes when he got out of the Army. He attended school and was unable to meet all of his expenses and child support obligations. Due to poor planning, and pride in not asking help from his family and friends, he became mired in debt.

Since graduating from college and acquiring his present position, Applicant has made significant efforts in reforming his financial situation and paying off all of his debts.

The following chart shows the status of the debts alleged as delinquent in the SOR:

Debt	Status	Record
¶ 1.a- \$6,236	Disputes-Debt is from corporate card. Corporation was to pay-never saw a bill or had control of the payments. He gave appropriate notice to this employer when he left and was never told of this debt. This acct was opened 6-7 months after he left the company.	Tr. 17-22
¶ 1.b- \$6,343	Disputes-Debt is from corporate card. Corporation was to pay-never saw a bill or had control of the payments. He gave appropriate notice to his employer when he left the company and was never told of this debt.	Tr. 17-22
¶ 1.c- \$115	Paid collection account	Ex. 6 at 1
¶ 1.d- \$266	Paid	Ex. W
¶ 1.e- \$2,025	Still owing. Has tried to set up payment plan. They never call back.	Tr. 27-29
¶ 1.f- \$2,744	Paid	Atch F
¶ 1.g- \$1,311	Paid	Atch G
¶ 1.h- \$98	Paid	Atch H
¶ 1.i- \$518	Paid	Atch V
¶ 1.j- \$19	Paid	Ex. J
¶ 1.k- \$167	Paid	Ex. K
¶ 1.l- \$6,293	Judgment-Applicant denies knowledge of this, but he did live in that state when the judgment was rendered.	Tr. 32-38
¶ 1.m- \$6,159	Paid \$3,000 (the interest and penalties were waived)	Ex. X
¶ 1.n- \$497	Paid	Ex. N
¶ 1.o- \$116	Paid-Same as 1.c	Ex. O
¶ 1.p- \$4,475	Has set up payment plan is paying \$337 @ mo. since Oct 2004	Ex. Y
¶ 1.q- \$10,380	He made agreement to settle by paying 3 payments of \$2,133. They took 2 payments out of his bank acct w/in 2 days (instead of 1), emptying his bank account. He telephoned creditor to complain-they have not returned his calls, but the debt no longer appears on his credit report.	Ex. Q

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 authorized the Secretary of Defense or his designee to grant applicants eligibility for access to classified information "only upon a finding that it is clearly consistent with the national interest to do so." Exec. Or. 10865, *Safeguarding Classified Information within Industry* § 2 (Feb. 20, 1960). Eligibility for a security clearance is predicated upon the applicant meeting the security guidelines contained in the Directive. 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.

Enclosure 2 of the Directive sets forth personnel 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 the applicant has not met the strict guidelines the President and the Secretary of Defense have established for issuing a clearance.

CONCLUSIONS

In the SOR, DOHA alleged Applicant has a 1998 judgment for \$6,293 that he has not paid (¶ 1.1); 16 delinquent debts that were placed for collection totaling more than \$41,000 (¶¶ 1.a-1.k, 1.m-1.q); and has financial resources to make payment on some of these debts, but has not done so (¶ 1.r). Applicant denies each allegation, except those in ¶¶ 1.e, 1.l, 1.p. An individual who is financially overextended is at risk of having to engage in illegal acts to generate funds. Directive ¶ E2.A6.1.1.

The Government's evidence establish potentially disqualifying conditions under Guideline F. Applicant has a history of not meeting his financial obligations (DC E2.A6.1.2.1) and was unable or unwilling to pay his debts (DC E2.A6.1.2.3). As the evidence established a potential disqualifying condition, Applicant had the burden to rebut, explain, extenuate, or mitigate the facts. Directive E3.1.15.

Applicant has made a dedicated good-faith effort to repay overdue creditors and otherwise resolve his delinquent debts. MC E2.A6.1.3.6. There are clear indications Applicant has matured and fully comprehends the Government's concerns about his financial history. He has made substantial progress in paying off his debts. He is diligently working to resolve his remaining debts and understands he needs to follow through.

SOR ¶ 1.r alleges Applicant's personal financial statement indicated he was not paying his debts even though he had adequate financial resources to begin paying them off. In fact, the personal financial statement on which this allegation was based was prepared shortly after he obtained his new job with a substantial increase in pay and before he had the opportunity to use this money to pay off his delinquent debts. Since then, Applicant has been resolving his debts in an expeditious manner. He realizes that he has to continue to fully resolve all of these debts if he wishes to be eligible for access to classified information. Of special concern is the full resolution of the judgment that is still outstanding. I have considered all of the evidence, the disqualifying and mitigating conditions, and the adjudicative process factors contained in Directive ¶ 6.3. I find for Applicant on ¶ 1.

FORMAL FINDINGS

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

Paragraph 1. Guideline F: FOR APPLICANT

Subparagraph 1.a-1.r: For Applicant

DECISION

In light of all of the circumstances in this case, it is clearly consistent with the national interest to grant or continue a security clearance for Applicant. Clearance is granted.

James A. Young

Administrative Judge

1. As required by Exec. Or. 10865 (Feb. 20, 1960), as amended and modified, and Department of Defense Directive 5220.6 (Jan. 2, 1992), as amended and modified (Directive).