

KEYWORD: Financial

DIGEST: Applicant is 38 years old and works as a facilities engineer and internal security officer making about \$45,570 annually. He had eight outstanding debts totaling \$71,200, which started accumulating in 1993, when he began living well beyond his means. With a loan from mother-in-law, he has shown a good-faith effort to resolve his financial problems by paying off most of his outstanding debts. He has a stable job as a facilities engineer and internal security officer for a defense contractor and he is highly regarded by his employer for his excellent work ethic. Overall, he has demonstrated his commitment to overcoming his financial difficulties and he has taken steps to establish he is now financially responsible. He has successfully mitigated the financial considerations security concerns. Clearance is granted.

CASENO: 04-02928.h1

DATE: 05/31/2005

DATE: May 31, 2005

In re:

SSN: -----

Applicant for Security Clearance

ISCR Case No. 04-02928

DECISION OF ADMINISTRATIVE JUDGE

JACQUELINE T. WILLIAMS

APPEARANCES

FOR GOVERNMENT

Jason Perry, Esq., Department Counsel

Stephanie Hess, Esq., Department Counsel

FOR APPLICANT

Pro Se

SYNOPSIS

Applicant is 38 years old and works as a facilities engineer and internal security officer making about \$45,570 annually. He had eight outstanding debts totaling \$71,200, which started accumulating in 1993, when he began living well beyond his means. With a loan from mother-in-law, he has shown a good-faith effort to resolve his financial problems by paying off most of his outstanding debts. He has a stable job as a facilities engineer and internal security officer for a defense contractor and he is highly regarded by his employer for his excellent work ethic. Overall, he has demonstrated his commitment to overcoming his financial difficulties and he has taken steps to establish he is now financially responsible. He has successfully mitigated the financial considerations security concerns. 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 under Executive Order 10865, *Safeguarding Classified Information Within Industry* (Feb. 20, 1960), as amended and modified, and Department of Defense Directive 5220.6, *Defense Industrial Personnel Security Clearance Review Program* (Jan. 2, 1992), as amended and modified (the "Directive"). On December 7, 2004, DOHA issued a Statement of Reasons (SOR) detailing the basis for its decision: security concerns under Guideline F (Financial Considerations).

On February 9, 2005, the case was assigned to me. A Notice of Hearing was issued to the parties on February 15, 2005, and the hearing was held on March 10, 2005. The transcript (Tr.) was received on March 22, 2005.

FINDINGS OF FACT

Applicant admitted some of the factual allegations contained in the SOR; however, he denied the allegations in ¶ 1.e and

1.g. Those admissions are incorporated herein 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 38-year-old married man with two children. Since 1996 he has worked as an facilities engineer and internal security officer. He makes about \$45,570 annually. He has never held a security clearance.

Applicant had eight outstanding debts totaling approximately \$71,200; he denied two of these debts. He acknowledged he was unable to keep up with the minimum payments on all his credit cards and did not make credit card payments in over a year to any creditor.

At the hearing, Applicant credibly testified and provided evidence that: (1) most of the debts listed in the SOR had already been paid off because he borrowed money from his mother-in-law, about \$50,000, to pay off his delinquent accounts; (2) an outstanding \$5,000 credit card debt would be paid off by the end of arch 2005; and (3) a \$20,000 debt was being paid through a payroll garnishment of \$600 per month (\$300 per pay period), as of December 2002. Once these two debts are paid off, all debts listed in the SOR will have been satisfied.

Applicant's financial problems started in November 1993 when he started a computer bulletin board system business out of his home. He had to buy equipment to start the business, which included installing a new phone line. This was his hobby and things were going well for a while but he then divorced his first wife in June 1994 and remarried in October 1994.

In November 1994, Applicant had an automobile accident and rented a car, which was not covered by his car insurance. The car rental became another unexpected debt. In December 1994, he and his new wife purchased a house, which meant additional expenditures to furnish the place. In April 1995, his first child was born and his wife stopped working six weeks prior to the birth. When his wife went back to work, the babysitter expenses were another layer of the mounting expenses.

In February 1995, his wife encountered medical problems during her second pregnancy and was unable to work a majority of the time before delivery. Applicant decided to look for a new and better job. With a new job in September 1996, he discovered that he now had no medical insurance; from September to December 1996 he paid for his own health insurance for himself and his family. His wife waited six weeks to go back to work but then decided she needed a job where she could work at night so daycare would not become another part of their overburdened expenses; it was decided that Applicant would tend the children in the evening so there would be no daycare expenses. In March 1997, the medical bills for his second child's birth become payable, and he had problems paying these bills. Since the birth of their first child, both his parents and in-laws had been helping him and his family financially.

Applicant indicated "[t]he two main reasons for my credit card debts are as follows: (1) [m]y wife did not work and was a stay-at-home mom and (2) my family's lifestyle may have exceeded my income level." (1) He also stated "[c]urrently, I have no intention of filing for bankruptcy at any time in the future. Eventually, I do intend to repay all of my financial debts." (2)

His boss, the chief executive officer and president, testified:

Had I been aware of [Applicant's] personal financial situations in the past years other than the conversation of, gee, boss. I wish I had more money, things of this nature. I would have counseled him only because it is our personal practice in our company to be involved at any level we possible [sic] can. But it has to be instigated by the individual.

Today, [Applicant] is different. And, of course, he [sic] considerably more mature. . . . when he got this documentation (SOR), he sat down with me and said, here's the entire book. Here is my situation. (3)

Applicant's wife now manages their finances. Applicant's home is valued at about \$186,000. His mother-in-law owns half interest in the house, and he and his wife each own a quarter interest in the house. Because of Applicant's dismal financial situation, his mother-in-law decided to assist him, so she took out a home equity loan, so he could pay off his debts; they have not set up a payment schedule yet. He no longer has any credit cards, but he does maintain a debit card, which deducts purchases immediately from his bank account. He has approximately \$19,000 in a retirement account.

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, pertaining to 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 decision is to decide if it is clearly consistent with the national interest to grant or continue a security clearance for an applicant.⁽⁴⁾ The government has the burden of proving controverted facts.⁽⁵⁾ The burden of proof in a security clearance case is less than a preponderance of the evidence.⁽⁶⁾ Once the government has met its burden, the burden shifts to an applicant to present evidence of refutation, extenuation, or mitigation sufficient to overcome the case against him.⁽⁷⁾ Additionally, an applicant has the ultimate burden of persuasion to obtain a favorable clearance decision.⁽⁸⁾

No one has a right to a security clearance⁽⁹⁾ and "the clearly consistent standard indicates that security clearance determinations should err, if they must, on the side of denials."⁽¹⁰⁾ Any reasonable doubt about whether an applicant should be allowed access to sensitive information must be resolved in favor of protecting such sensitive information.⁽¹¹⁾ The decision to deny an individual a security clearance is not necessarily a determination as to the loyalty of an applicant.⁽¹²⁾ 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 all 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 acts to generate funds. Unexplained affluence is often linked to proceeds from financially profitable criminal acts.

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 have carefully considered all the facts in evidence and the legal standards. The government has established a case for disqualification under Guideline F. Based on all the evidence, Financial Considerations Disqualifying Conditions (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 accumulated significant delinquent debt due to medical expenses during his wife's pregnancies, payment of employee's share of medical insurance, and poor money management. Applicant's debts and his ability to pay them off, exceeded his income.

I have considered all the Financial Considerations Mitigating Conditions (FC MC), and specifically considered: 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 they all apply.

Applicant and his family have suffered many financial setbacks. During and after his first marriage, his finances appeared manageable. Applicant's financial situation dramatically changed when he remarried and started a family. There was purchase of a house which had to be furnished, eventually two babies and a complicated pregnancy, one salary instead of two before and after the birth of his children, no health insurance for about three months, and payment of a substantial part of his own medical insurance with one employer. His debt mounted and started to spiral out of control. Credit card accounts became delinquent and judgments were entered for nonpayment of debts.

Applicant came to the hearing with documentation to prove that all of his debts had been paid off with the exception of two: one of which is a payroll garnishment and the other debt would be paid off at the end March 2005. His mother-in-law, who owns a half interest in the house Applicant lives in, took out a home equity loan and gave Applicant approximately \$50,000 to pay off his creditors. He had paid off most of his creditors to my satisfaction based on the evidence and testimony at the hearing. Applicant was highly credible when he talked about his delinquent finances and that he believes he will never travel down that path again because he has learned the value of managing his money. Applicant now has someone to guide him, his boss, and therefore he should make better financial choices in the future. Thus, the disqualifying conditions under Guideline F of the Directive, apply in this case.

Moreover, Applicant and his wife each own a quarter interest in their home and Applicant's mother-in-law owns a half interest. I find that having his mother-in-law willingly take out a home equity home to help her son-in-law pay off his family's debt is a noble gesture, one which I will not hold against Applicant because there were not too many venues left open for him to borrow money and pay off his debts. At the hearing, when he testified about his debts and how he paid them off, I found Applicant had matured in many ways and together with the continued financial coaching from his boss and friend, Applicant will make better financial choices in the future because he now understands that he can only buy what he can afford and that depends on his financial situation at the time. Applicant did not accumulate any new debts outside of those listed in the SOR; he made a conscientious decision when he was in debt to not let history repeat itself. He is more successfully managing his finances as opposed to spending and purchasing without his budget in mind.

I have considered all the evidence in this case. I have also considered the "whole person" concept in evaluating Applicant's risk and vulnerability in protecting our national interests. I am persuaded by the totality of the evidence in this case that Applicant has mitigated the security concerns caused by his financial considerations. Accordingly, subparagraphs 1.a through 1.h of the SOR are decided for 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) FOR THE APPLICANT

Subparagraph 1.a For the Applicant

Subparagraph 1.b For the Applicant

Subparagraph 1.c For the Applicant

Subparagraph 1.d For the Applicant

Subparagraph 1.e For the Applicant

Subparagraph 1.f For the Applicant

Subparagraph 1.g For the Applicant

Subparagraph 1.h For the Applicant

DECISION

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

Jacqueline T. Williams

Administrative Judge

1. Ex. 2, (Sworn Statement of Applicant, dated January 27, 2004), at 2.

2. *Id.*

3. Tr. at 40-41.

4. ISCR Case No. 96-0277 (July 11, 1997) at 2.

5. ISCR Case No. 97-0016 (December 31, 1997) at 3; Directive, Enclosure 3, ¶ E3.1.14.
6. *Dep't of Navy v. Egan*, 484 U.S. 518, 531 (1988).
7. ISCR Case No. 94-1075 (August 10, 1995) at 3-4; Directive, Enclosure 3, ¶ E3.1.15.
8. ISCR Case No. 93-1390 (January 27, 1995) at 7-8; Directive, Enclosure 3, ¶ E3.1.15.
9. *Egan*, 484 U.S. at 531.
10. *Id.*
11. *Id.*; Directive, Enclosure 2, ¶ E2.2.2.
12. Executive Order 10865 § 7.