

KEYWORD: Financial

DIGEST: Applicant suffered financial problems in the early 1990s. He resolved those debts through a Chapter 13 bankruptcy. Since 1998, he incurred other delinquent debts. After his attempts to set up payment plans with his creditors failed, Applicant filed for Chapter 7 bankruptcy and his debts were discharged in January 2006. Applicant received a recent increase in pay, has a budget, and understands the serious consequences that will result from a failure to keep his financial house in order. Clearance is granted.

CASE NO: 04-04184.h1

DATE: 04/19/2006

DATE: April 19, 2006

In re:

SSN: -----

Applicant for Security Clearance

ISCR Case No. 04-04184

DECISION OF ADMINISTRATIVE JUDGE

JAMES A. YOUNG

APPEARANCES

FOR GOVERNMENT

Francisco J. Mendez Jr., Esq., Department Counsel

FOR APPLICANT

Pro Se

SYNOPSIS

Applicant suffered financial problems in the early 1990s. He resolved those debts through a Chapter 13 bankruptcy. Since 1998, he incurred other delinquent debts. After his attempts to set up payment plans with his creditors failed, Applicant filed for Chapter 7 bankruptcy and his debts were discharged in January 2006. Applicant received a recent increase in pay, has a budget, and understands the serious consequences that will result from a failure to keep his financial house in order. 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. In accordance with Department of Defense Directive 5220.6 ¶ E3.1.2 (Jan 2, 1992), as amended, DOHA issued a Statement of Reasons (SOR) on 25 May 2005 detailing the basis for its decision-security concerns raised under Guideline F (Financial Considerations) of the Directive. Applicant answered the SOR in writing on 17 June 2005 and elected to have a hearing before an administrative judge. The case was originally assigned to another judge but reassigned to me on 14 February 2006. On 14 arch 2006, I convened a hearing 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 24 March 2006.

Department Counsel moved to amend the SOR on 4 January 2006. As Applicant had no objections, the motion was granted to add two subparagraphs as follows:

1.h. You filed for Chapter 7 bankruptcy on or about September 2005.

1.g. You filed for Chapter 13 bankruptcy on or about June 14, 1991.

FINDINGS OF FACT

Applicant is a 49-year-old test operations section logistician for a defense contractor. He served on active duty in the U.S. Army from 1973-93, retiring as a staff sergeant (E-6). His supervisors report Applicant is an excellent and reliable worker whom they fully trust.

In the SOR, DOHA alleged Applicant has debts totaling more than \$13,700 in collection status, a debt for more than \$1,000 that was charged off as a bad debt, and a delinquent debt of \$117. In his Answer, Applicant admitted each of the allegations.

Applicant divorced his first wife in 1985. He gained custody of their two children and raised them on his own. He married his present wife in 1989. She brought four children into the marriage. Applicant began to experience financial difficulties with the additional mouths to feed. He was immature and mismanaged his money. He filed a Chapter 13 bankruptcy petition in 1991. He successfully completed the wage-earner's plan in 1994, the year following his retirement from the Army.

For the past year, Applicant's stepson and the stepson's two children live with Applicant and his wife. The stepson suffers from seizures and is going to have brain surgery in April 2006. Although Medicaid will pay for the operation, Applicant provides financial support for the other needs of his stepson and "grandchildren." He believes his son will be back on his feet and able to return to his job within a few months of his surgery.

As of a year ago, Applicant owed almost \$15,000 in delinquent debts, some delinquent as far back as 1998. In July 2005, his salary was raised to \$3,000 a month. His military retirement is approximately \$1,000 a month. He attempted to setup payment plans with some of his creditors. When that failed, he filed for Chapter 7 bankruptcy in September 2005. All of the debts listed in the SOR were discharged on 13 January 2006. In February 2006, Applicant replaced his wife's car with a 2005 model-year van for \$21,000, so she could provide transportation for her son and grandchildren. Applicant makes \$455 a month payments on it. However, he has finished paying on his own car, so the new payments do not impose any added burden on his finances. Applicant and his wife have a budget. He has not sought any financial counseling since he retired from the military.

Applicant has about \$2,500 in a savings account. The couple no longer have any credit cards. He has a 401(k) plan of about \$6,000. He is paying back a \$1,000 loan from the 401(k) at the rate of \$50 a month. His wife does not work outside their home.

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 debts totaling more than \$13,700 in collection status (¶¶ 1.a, 1.b, 1.d-1.f), a debt for more than \$1,000 that was charged off as a bad debt (¶ 1.c), and a delinquent debt of \$117 (¶ 1.g). In his Answer, Applicant admitted each of the allegations. The SOR was amended to allege Applicant filed for Chapter 13 bankruptcy in 1991 (¶ 1.i) and Chapter 7 bankruptcy in September 2005 (¶ 1.h). An applicant who is financially overextended is at risk of having to engage in illegal acts to generate funds. Directive ¶ E2.A6.1.1.

The Government established each of the allegations in the SOR. Applicant has a history of not meeting his financial obligations (DC E2.A6.1.2.1.) and was unable or unwilling to satisfy his debts (DC E2.A6.1.2.3.). On the other hand, I conclude Applicant made a good-faith effort to resolve his debts. MC E2.A6.1.3.6. He requested assistance from creditors in an effort to setup payment plans. When the creditors failed to respond, he applied for bankruptcy. Applicant has finally gotten his financial house in order and understands the necessity of staying solvent if he wishes to obtain and maintain a security clearance. His bankruptcy has resolved his delinquent debts. His salary increase from last year should make it easier for him to meet his financial obligations. After considering all of the evidence, the disqualifying and mitigating conditions, and the adjudicative process factors, I find for Applicant.

FORMAL FINDINGS

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

Paragraph 1. Guideline F: FOR APPLICANT

Subparagraph 1.a: For Applicant

Subparagraph 1.b: For Applicant

Subparagraph 1.c: For Applicant

Subparagraph 1.d: For Applicant

Subparagraph 1.e: For Applicant

Subparagraph 1.f: For Applicant

Subparagraph 1.g: For Applicant

Subparagraph 1.h: For Applicant

Subparagraph 1.i: 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