

KEYWORD: Financial

DIGEST: From 1998 to 2004, Applicant accrued nine financial delinquencies in excess of \$28,000. Currently, he has satisfied two equal to approximately \$3,700. His explanations regarding the status of the remainder lacked either clarity or corroborating evidence. Clearance is denied.

CASE NO: 04-05350.h1

DATE:06/13/2006

DATE: June 13, 2006

In re:

SSN: -----

Applicant for Security Clearance

ISCR Case No. 04-05350

DECISION OF ADMINISTRATIVE JUDGE

MARC E. CURRY

APPEARANCES

FOR GOVERNMENT

Nichole L. Noel, Esq., Department Counsel

FOR APPLICANT

Pro Se

SYNOPSIS

From 1998 to 2004, Applicant accrued nine financial delinquencies in excess of \$28,000. Currently, he has satisfied two equal to approximately \$3,700. His explanations regarding the status of the remainder lacked either clarity or corroborating evidence. Clearance is denied.

HISTORY OF CASE

On July 14, 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 was clearly consistent with the national interest to grant or continue a security clearance. [\(1\)](#) The SOR, which is in essence the administrative complaint, alleged security concerns under Guideline F, financial considerations. Applicant answered the SOR on July 22, 2005, and elected to have the case decided on the written record.

Department Counsel mailed the government's file of relevant material (FORM) to Applicant on November 30, 2005. He received it on December 5, 2005. Applicant was afforded an opportunity to file objections and submit material in refutation, extenuation, or mitigation. He neither objected to any of the FORM submissions, nor filed any additional evidence to be considered. The case was assigned to me on January 25, 2006.

FINDINGS OF FACT

Applicant admitted allegations 1.a. and 1.i. He denied the remaining ones. His admissions are incorporated herein as findings of fact. Subparagraph 1.g. is a duplicate of subparagraph 1.j. ⁽²⁾

Applicant is a 35-year-old married man with one child. He has a high school diploma and has taken some college courses. He served in the Marines from 1988 to 1992, and the Army National Guard from 1996 to 2000. While in the Marines, Applicant earned the National Defense Service Medal, a Good Conduct medal, a Meritorious Mast, a Certificate of Recognition, and a Rifle Expert Badge. ⁽³⁾ Currently, he works as a security guard.

From 1998 to 2004, Applicant accrued nine delinquencies in the approximate amount of \$28,000. Eight of the businesses were either banks which had issued him credit cards, or collection agents for banks which had issued him credit cards. The remaining delinquency was accrued to a telephone company.

Approximately \$7,000 of Applicant's delinquencies were incurred as a result of a long-distance relationship he developed with his wife in the late 1990s when they first began dating. ⁽⁴⁾ He frequently purchased plane tickets with his credit cards to visit her, and made long distance calls. Consequently his credit card bills and phone bills gradually became delinquent. He attributes the accrual of the remainder of his delinquencies to immaturity, irresponsibility, and poor judgment. ⁽⁵⁾

The delinquencies listed in subparagraphs 1.b. and 1.d. of the SOR were satisfied through monthly payments initiated in April 2004 and May 2004, respectively. ⁽⁶⁾ I find in his favor with respect to these allegations.

Applicant has been aware since 2001 that the debt listed in subparagraph 1.a. was delinquent. On April 17, 2004, he wrote the creditor and requested to settle it either through a lump-sum payment, or through the implementation of a monthly payment plan. ⁽⁷⁾ He has not received a response, and has submitted no evidence of any additional steps to resolve this delinquency since that time.

Applicant also wrote the creditors listed in subparagraph 1.f. ⁽⁸⁾ and 1.g. ⁽⁹⁾ in April 2004, in order to acknowledge the delinquencies and address repayment options. Currently, he disputes the validity of these debts without offering any explanation for the change from his earlier position.

Similarly, Applicant changed his position on the delinquency listed in subparagraph 1.c. In a signed, sworn statement executed in February 2004, he acknowledged the debt and promised to satisfy it.⁽¹⁰⁾ In his Answer to the SOR, he disputed the delinquency without offering any explanation for the change in position.⁽¹¹⁾

Applicant alleged that the debt listed in subparagraph 1.e. was satisfied, but provided no supporting evidence. Similarly, he alleged the debt listed in subparagraph 1.h. was successfully disputed, but provided no evidence. He has been attempting to resolve the debt listed in subparagraph 1.i. since 2000. It is still outstanding.

In February 2004, Applicant stated that he intended to seek financial counseling to help get his finances under control. He submitted no evidence that he obtained such services.

POLICIES

Enclosure 2 of the Directive sets forth adjudicative guidelines which must be considered in the evaluation of security suitability. In addition to brief introductory explanations for each guideline, the adjudicative guidelines are divided into those that may be considered in deciding whether to deny or revoke an individual's eligibility for access to classified information (Disqualifying Conditions) and those that may be considered in deciding whether to grant an individual's eligibility for access to classified information (Mitigating Conditions).

An administrative judge need not view the adjudicative guidelines as inflexible, ironclad rules of law. Instead, acknowledging the complexities of human behavior, these guidelines, when applied in conjunction with the factors set forth in the Adjudicative Process provision in Section E2.2., Enclosure 2, of the Directive, are intended to assist the administrative judge in reaching fair and impartial common sense decisions. 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.

Because the entire process is a conscientious scrutiny of a number of variables known as the "whole person concept," all

available, reliable information about the person, past and present, favorable and unfavorable, should be considered in making a meaningful decision. 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.

The following adjudicative guideline is raised:

Guideline F - Financial Considerations: 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 pertaining to this adjudicative guideline that could raise a security concern and may be disqualifying, as well as those which could mitigate security concerns, are set forth and discussed in the Conclusions section, below.

Since the protection of national security is the paramount consideration, the final decision in each case must be reached by applying the standard that the issuance of the clearance is "clearly consistent with the interests of national security," or "clearly consistent with the national interest."⁽¹²⁾ For the purposes herein, despite the different language in each, I have concluded both standards are one and the same. In reaching this decision, I have drawn only those conclusions that are reasonable, logical, and based on the evidence contained in the record. Likewise, I have avoided drawing inferences grounded on mere speculation or conjecture.

The government is responsible for presenting witnesses and other evidence to establish facts in the SOR that have been controverted. The applicant is responsible for presenting witnesses and other evidence to rebut, explain, extenuate, or mitigate facts admitted by the applicant or proven by the government, and has the ultimate burden of persuasion as to obtaining a favorable security decision.

A person who seeks access to classified information enters into a fiduciary relationship with the government predicated upon trust and confidence. It is a relationship that transcends normal duty hours and endures throughout off-duty hours as well. It is because of this special relationship the government must be able to repose a high degree of trust and confidence in those individuals to whom it grants access to classified information. Decisions under this Directive include, by necessity, consideration of the possible risk an applicant may deliberately or inadvertently fail to protect or safeguard classified information. Such decisions entail a certain degree of legally permissible extrapolation as to potential, rather than actual, risk of compromise of classified information.

Applicant's allegiance, loyalty, and patriotism are not at issue in these proceedings. Section 7 of Executive Order 10865 specifically provides industrial security clearance decisions shall be "in terms of the national interest and shall in no sense be a determination as to the loyalty of the applicant concerned." Security clearance decisions cover many characteristics of an applicant other than allegiance, loyalty, and patriotism. Nothing in this Decision should be construed to suggest I have based this decision, in whole or in part, on any express or implied decision as to Applicant's allegiance, loyalty, or patriotism.

CONCLUSIONS

Upon consideration of all the facts in evidence, and after application of all appropriate legal precepts, factors, and conditions, including those described above, I conclude the following with respect to each allegation set forth in the SOR:

Applicant has struggled with his finances for several years, accruing approximately \$28,000 of delinquent debt. The available evidence raises 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*).

The financial delinquencies accrued over a six-year period. Applicant has struggled to satisfy them, and the majority continue to remain delinquent. Neither Financial Considerations Mitigating Condition (FC MC) E2.A6.1.3.1. (*The behavior was not recent*), nor FC MC E2.A6.1.3.2. (*It was an isolated incident*), apply.

Applicant has only managed to resolve the delinquencies listed in subparagraphs 1.b. and 1.d. He has had five years to satisfy the delinquency listed in subparagraph 1.a. and resolve his dispute with the creditor of the delinquency listed in subparagraph 1.i., yet both are still outstanding. He failed to provide corroboration that the debt listed in subparagraph 1.e. has been paid, and he disputed the remaining delinquencies without providing any reason as to why he believes they were invalid, or any documentation showing they had been erroneously attributed to him. His contention that he has been working with a credit counselor to get his finances under control is similarly uncorroborated. None of the remaining mitigating conditions apply.

Considering the whole person concept, Applicant served the U.S. Army National Guard and the Marines admirably for eight years. However, any positive inference generated by his military service is outweighed by the negative security inferences generated by his ongoing financial difficulties. I conclude Applicant has not mitigated the Financial Considerations security concern.

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-Guideline F: Against Applicant

Subparagraph 1.a.: Against Applicant

Subparagraph 1.b.: For Applicant

Subparagraph 1.c.: Against Applicant

Subparagraph 1.d.: For Applicant

Subparagraph 1.e.: Against Applicant

Subparagraph 1.f.: Against Applicant

Subparagraph 1.g.: Against Applicant

Subparagraph 1.h.: Against Applicant

Subparagraph 1.i.: Against Applicant

Subparagraph 1.j.: 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. Clearance is denied.

Marc E. Curry

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. *Cf.* Credit Bureau Report of April 15, 2004, as included in Item 5, Interrogatory Responses, dated May 24, 2004, at 34, with Item 7, Credit Bureau Report of February 5, 2004, at 9.
3. Item 5, Interrogatory Responses executed May 24, 2004, at 5.
4. Item 6, Signed, Sworn Statement, dated February 26, 2004, at 1, 2.
5. *Id.* at 3.
6. *See* note 3, *supra* at 13, 14.
7. *Id.* at 12.
8. *Id.* at 11.
9. *Id.* at 13.
10. *See* note 4, *supra* at 3.
11. Item 2, Answer to the SOR, dated July 22, 2005, at 1.
12. The Directive, as amended by Change 4, dated April 20, 1999, uses "clearly consistent with the national interest" (Sec. 2.3.; Sec. 2.5.3.; Sec. 3.2; and Sec. 4.2.; Enclosure 3, Sec. E3.1.1.; Sec. E3.1.2.; Sec. E3.1.25.; Sec. E3.1.26.; and Sec. E3.1.27.), "clearly consistent with the interests of national security" (Enclosure 2, Sec. E2.2.3.) and "clearly consistent with national security" (Enclosure 2, Sec. E2.2.2.).