

KEYWORD: Financial; Personal Conduct

DIGEST: Applicant failed to mitigate security concerns raised by his failure to pay off judgments entered against him and other long delinquent accounts totaling more than \$13,000. Clearance is denied.

CASENO: 04-05829.h1

DATE: 07/14/2005

DATE: July 14, 2005

In re:

SSN: -----

Applicant for Security Clearance

ISCR Case No. 04-05829

DECISION OF ADMINISTRATIVE JUDGE

JAMES A. YOUNG

APPEARANCES

FOR GOVERNMENT

Kathryn A. Trowbridge, Esq., Department Counsel

FOR APPLICANT

Pro Se

SYNOPSIS

Applicant failed to mitigate security concerns raised by his failure to pay off judgments entered against him and other long delinquent accounts totaling more than \$13,000. Clearance is denied.

STATEMENT OF THE CASE

The Defense Office of Hearings and Appeals (DOHA) declined to grant or continue a security clearance for Applicant. On 29 October 2004, DOHA issued a Statement of Reasons⁽¹⁾ (SOR) detailing the basis for its decision-security concerns raised under Guideline F (Financial Considerations) and Guideline E (Personal Conduct) of the Directive. Applicant answered the SOR in writing on 19 November 2004 and elected to have a hearing before an administrative judge. The case was assigned to me on 27 April 2005. On 25 May 2005, 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 6 June 2005.

At the request of Applicant, I kept the record open until 10 June 2005. Applicant submitted a statement summarizing his position on the allegations against him and two exhibits. Department Counsel objected to the additional argument, but had no objection to the exhibits. Applicant's Exs. Y and Z were admitted into evidence. I also considered Applicant's statement.

FINDINGS OF FACT

Applicant is a 37-year-old senior network analyst for a defense contractor. Applicant served in the U.S. Navy for several months in 1996 and was granted an entry level separation. His wife recently suffered a heart attack. Applicant's customers and supervisor find him to be a dedicated professional.

The following chart summarizes the delinquent debt allegations from the SOR ¶ 1.

¶	Debt	Status	Record
1.b	Judgment \$3,071 from 1996	Unpaid	Tr. 23
1.c	Collection acct \$248 from 1997	Paid May 2005	Ex. Y
1.d	Collection acct \$2,122 from 1998-judgment was for \$265	Claims judgment paid, but no proof; contests additional charges	Ex. K; Tr. 89-90
1.e	Balance after resale of repossessed motor vehicle \$10,045	Charged off-unpaid-is trying to resolve	9 Jun 2005 statement
1.f	Telephone collection acct \$1,347 from 2002	Unpaid; contests amount of bill	Ex. F
1.g	Default judgment \$6,190 from 2003	On appeal (de novo)	Tr. 49-50
1.h	Judgment \$4,351 from 2003	Unpaid, but now reported as \$520	Tr. 63; Ex. T

Applicant completed a personal financial statement in December 2003 that showed he had over \$1,000 a month remaining after he paid his monthly expenses. Ex. 2 at 4.

While Applicant was overseas, the owner of the house Applicant and his family were renting sold it, and Applicant's wife had to find another place to live. She moved to a local hotel and became involved in several disputes with the management. In an undated letter to management (apparently sent in 1998), Applicant protested his wife's treatment. He stated, "Just the fact that someone entered the room without notice when there is approximately \$10k worth of computer equipment and government classified material in there is cause enough for the authorities to get involved . . ." Ex. 9 at 2. In a statement given to a Defense Security Service agent, Applicant claimed the material was only FOUO. Ex. 4 at 1. At the hearing, Applicant presented examples of the documents he had at his wife's dwelling. They are neither classified nor FOUO. Applicant claims he thought they were FOUO at the time he made the statement. See Tr. 64-65.

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 has 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

Guideline F-Financial Considerations

In the SOR, DOHA alleged Applicant was arrested for issuing a bad check in 1990 (¶ 1.a), has three unsatisfied judgments totaling more than \$13,000 (¶¶ 1.b, 1.g, and 1.h), had three delinquent debts totaling more than \$3,800 placed for collection (¶¶ 1.c, 1.d, and 1.f), and was delinquent in paying the more than \$10,000 balance on a vehicle that was repossessed (¶ 1.e). Applicant denied all allegations, except those in ¶¶ 1.e and 1.g. Answer. 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 failed to establish Applicant was arrested for issuing a bad check. I find for Applicant on ¶ 1.a.

Applicant has two judgments that have not been paid, totaling more than \$3,000 (¶¶ 1.b, 1.h) and another judgment for which he has no proof he paid (¶ 1.d); he has a charged-off debt of more than \$10,000 for the balance on a repossessed motor vehicle (¶ 1.e); and he has a delinquent debt that went to collection for more than \$1,300 (¶ 1.f). The Government established Applicant has a history of not meeting his financial obligations (DC E2.A6.1.2.1.) and is unable or unwilling to satisfy his debts (DC E2.A6.1.2.3.). Although the debts were not recently incurred (MC E2.A6.1.3.1), Applicant has done little to resolve them and more than \$10,000 in delinquent debt remains outstanding. His failure to pay these debts in a timely manner, especially when he appears to be in fairly good financial condition, demonstrates his cavalier attitude towards his debts. Even the debt he paid (¶ 1.c), a 1997 debt for \$248, was not paid until after the hearing was scheduled. None of the other mitigating conditions apply. I find against Applicant on ¶¶ 1.b, 1.c, 1.d, 1.e, 1.f, and 1.h. As the most recent evidence shows Applicant appealed de novo the default judgment alleged in ¶ 1.g, I find for him.

Guideline E-Personal Conduct

In the SOR, DOHA alleged Applicant left For Official Use Only (FOUO) materials in the hotel room where his wife was residing while he was performing temporary duty at another location (§ 2.a). Applicant denied the allegation. Answer. Conduct involving questionable judgment, untrustworthiness, unreliability, lack of candor, dishonesty, or unwillingness to comply with rules and regulations could indicate the applicant may not properly safeguard classified information. Directive ¶ E2.A5.1.1.

The Government's evidence and Applicant's admissions establish potentially disqualifying conditions under Guideline E. The evidence Applicant had FOUO materials in his wife's hotel room-is sketchy at best. It is based on a statement Applicant made. After reviewing the statement, I am not convinced Applicant had FOUO materials in the room. Although not alleged, Applicant's claim, in a letter to an uncleared person, that he had left classified information in his wife's hotel room is of some concern. Such action certainly demonstrates his questionable judgment. Nevertheless, as the SOR does not put him on clear notice of this issue, I find for Applicant on ¶ 2.a.

FORMAL FINDINGS

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

Paragraph 1. Guideline F: AGAINST APPLICANT

Subparagraph 1.a: For Applicant

Subparagraph 1.b: Against Applicant

Subparagraph 1.c: Against Applicant

Subparagraph 1.d: Against Applicant

Subparagraph 1.e: Against Applicant

Subparagraph 1.f: Against Applicant

Subparagraph 1.g: For Applicant

Subparagraph 1.h: Against Applicant

Paragraph 2. Guideline E: FOR APPLICANT

Subparagraph 2.a: For Applicant

DECISION

In light of all of the circumstances in this case, it is not clearly consistent with the national interest to grant or continue a security clearance for Applicant. Clearance is denied.

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).