

KEYWORD: Financial Conditions

DIGEST: Applicant has had a long history of financial difficulties, including a Chapter 7 Bankruptcy filed in 1998. He currently has overdue charged off debts, totaling approximately \$13,000, which have not been resolved. Mitigation has not been shown. Clearance is denied.

CASENO: 04-05899.h1

DATE: 04/29/2005

DATE: April 29, 2005

In Re:

SSN: -----

Applicant for Security Clearance

ISCR Case No. 04-05899

DECISION OF ADMINISTRATIVE JUDGE

MARTIN H. MOGUL

APPEARANCES

FOR GOVERNMENT

Melvin A. Howry, Department Counsel

FOR APPLICANT

Pro Se

SYNOPSIS

Applicant has had a long history of financial difficulties, including a Chapter 7 Bankruptcy filed in 1998. He currently has overdue charged off debts, totaling approximately \$13,000, which have not been resolved. Mitigation has not been shown. Clearance is denied.

STATEMENT OF THE CASE

On November 30, 2004, the Defense Office of Hearings and Appeals (DOHA), pursuant to Executive Order 10865 (as amended) and Department of Defense Directive 5220.6 (Directive), dated January 2, 1992, issued a Statement of Reasons (SOR) to the Applicant, which detailed reasons why DOHA could not make the preliminary affirmative finding under the Directive that it is clearly consistent with the national interest to grant or continue a security clearance for Applicant and recommended referral to an Administrative Judge to determine whether a clearance should be denied or revoked.

In a signed and sworn statement, dated December 28, 2004, Applicant responded to the SOR allegations. He requested that his case be decided on the written record in lieu of a hearing. On January 25, 2005, Department Counsel prepared the Department's written case. A complete copy of the File of Relevant Material (FORM) was provided to Applicant, and he was given the opportunity to file objections and submit material in refutation, extenuation, or mitigation. Applicant filed no response to the FORM. The case was assigned to this Administrative Judge on March 17, 2005.

Department Counsel offered eight documentary exhibits (Exhibits 1-8), which have been admitted without objection. Applicant offered two pages of documentary evidence, attached to his SOR reply, (Exhibit A), which has also been admitted into the record without objection.

FINDINGS OF FACT

In the SOR, the Government alleges that a security risk may exist under Adjudicative Guideline F (Financial Considerations) of the Directive. The SOR contains three allegations, 1.a., through 1.c., under Guideline F. Applicant admitted all of the SOR allegations. The admitted allegations are incorporated herein as Findings of Fact.

After a complete and thorough review of the evidence in the record, including Applicant's Answer to the SOR and the admitted documents, and upon due consideration of that evidence, I make the following Findings of Fact:

Applicant is employed by a defense contractor, and he seeks a DoD security clearance in connection with his employment in the defense sector. He is married.**Paragraph 1 (Guideline F - Financial Considerations)**

Since this matter is being decided without a hearing, my evaluation is necessarily limited to the contents of the various documents that are found in the case file.

1.a. On December 7, 1998, Applicant filed a Chapter 7 Bankruptcy in the United States Bankruptcy Court. His assets were \$7,208 and his liabilities totaled \$37,654. The bankruptcy was discharged on March 26, 1999 (Exhibits 3 -7).

1.b. This overdue debt to Creditor 1 is cited in the SOR in the amount of \$9,643. Applicant has admitted that this debt is due and owing (Exhibit 3). This unpaid debt has been established through Exhibits 4, 7, and 8. I find that Applicant still owes this debt.

1.c. This overdue debt, also to Creditor 1, is cited in the SOR in the amount of \$3,319. Applicant has admitted that this debt is due and owing (Exhibit 3). This unpaid debt has also been established through Exhibits 4, 7, and 8. I find that Applicant still owes this debt.

Applicant indicated that his initial financial difficulties were incurred in 1991, when he lost his job and was unemployed for six months. He claimed that when he did go back to work, he did not earn a sufficient amount to support his family, and this resulted in his filing the 1998 bankruptcy. After his debts were discharged in 1999, he incurred additional credit card debts, on which he has not been able to remain current, in part because his wife was laid off from her job for three months in 2003. There was some indication, although not clear, that his wife may have lost some of the family income as a result of a gambling problem (Exhibit 4).

POLICIES

Security clearance decisions are not made in a vacuum. Accordingly, the Department of Defense, in Enclosure 2 of the 1992 Directive, has set forth policy factors which must be given "binding" consideration in making security clearance determinations. These factors should be followed in every case according to the pertinent guideline. However, the factors are neither automatically determinative of the decision in any case, nor can they supersede the Administrative Judge's reliance on his own common sense, as well as his knowledge of the law, human nature and the ways of the world, in making a reasoned decision. Because each security clearance case presents its own unique facts and circumstances, it cannot be assumed that these factors exhaust the realm of human experience, or apply equally in every case.

As set forth in Enclosure 2 of the Directive at pages 16-17, "In evaluating the relevance of an individual's conduct, the [Administrative Judge] should consider the following factors [General Factors]:

- a. The nature, extent and seriousness of the conduct
- b. The circumstances surrounding the conduct, to include knowledgeable participation
- c. The frequency and recency of the conduct
- d. The individual's age and maturity at the time of the conduct
- e. The voluntariness of participation
- f. The presence or absence of rehabilitation and other pertinent behavior changes
- g. The motivation for the conduct
- h. The potential for pressure, coercion, exploitation or duress
- i. The likelihood of continuation or recurrence.

The eligibility guidelines established in the DoD Directive identify personal characteristics and conduct which are reasonably related to the ultimate question of whether it is "clearly consistent with the national interest" to grant an Applicant's request for access to classified information.

In the defense industry, the security of classified industrial secrets is entrusted to civilian workers who must be counted upon to safeguard such sensitive information twenty-four hours a day. The Government is therefore appropriately concerned where available information indicates that an Applicant for clearance may be involved in acts of alcohol abuse and criminal conduct that demonstrates poor judgement, untrustworthiness or unreliability on the Applicant's part.

The DoD Directive states, "Each adjudication is to be an overall common sense determination based upon consideration and assessment of all available information, both favorable and unfavorable, with particular emphasis placed on the seriousness, recency, frequency, and motivation for the individual's conduct; the extent to which conduct was negligent, willful, voluntary, or undertaken with the knowledge of the circumstances or consequences involved; and, to the extent that it can be estimated, the probability that conduct will or will not continue in the future."

The Administrative Judge can only draw those inferences or conclusions that have a reasonable and logical basis in the evidence of record. The Judge cannot draw inferences or conclusions based on evidence which is speculative or conjectural in nature. Finally, as emphasized by President Eisenhower in Executive Order 10865, "Any determination under this order...shall be a determination in terms of the national interest and shall in no sense be a determination as to the loyalty of the applicant concerned."

Burden of Proof

Initially, the Government must prove controverted facts alleged in the Statement of Reasons. If the Government meets that burden, the burden of persuasion then shifts to the applicant to establish his security suitability through evidence of refutation, extenuation or mitigation sufficient to demonstrate that, despite the existence of disqualifying conduct, it is nevertheless clearly consistent with the national interest to grant or continue the security clearance.

A person who seeks access to classified information enters into a fiduciary relationship with the Government predicated upon trust and confidence. Where facts proven by the Government raise doubts about an applicant's judgment, reliability or trustworthiness, the applicant has a heavy burden of persuasion to demonstrate that he or she is nonetheless security worthy. As noted by the United States Supreme Court in *Department of the Navy v. Egan*, 484 U.S. 518, 531 (1988), "the clearly consistent standard indicates that security-clearance determinations should err, if they must, on the side of denials."

CONCLUSIONS

It is the Government's responsibility to present substantial evidence to support the finding of a nexus, or rational connection, between the Applicant's conduct and the continued holding of a security clearance. If such a case has been established, the burden then shifts to the Applicant to go forward with evidence in rebuttal, explanation or mitigation which is sufficient to overcome or outweigh the Government's case. The Applicant bears the ultimate burden of persuasion in proving that it is clearly consistent with the national interest to grant him or her a security clearance.**(Guideline F - Financial Considerations)**

In this case, the Government has established its case under Guideline F. The record evidence clearly establishes Applicant's long history of financial instability, including the filing of a bankruptcy and the incurring of subsequent overdue indebtedness. Applicant has failed to introduce persuasive evidence in rebuttal, explanation or mitigation that is sufficient to overcome the Government's case against him.

Applicant's overall conduct pertaining to his financial obligations falls within Financial Considerations Disqualifying Condition (DC) (E2.A6.1.2.1.), and DC (E2.A6.1.2.3.), a history of not meeting financial obligations, and an inability or unwillingness to satisfy debts. Regarding Mitigating Condition (MC) (E2.A6.1.3.3.), which regards debts that result from circumstances beyond the person's control, I find it applicable to this case, but not controlling. While Applicant's indebtedness was in large part due to circumstances beyond his control, specifically his and his wife's unemployment, Applicant's debts after the bankruptcy are substantial, and there has been no independent evidence introduced to establish that Applicant has done everything he can to resolve these debts, and that he is now living in such a manner so that he will not incur these kind of financial difficulties in the future.

In this case, Applicant failed to offer any independent evidence indicating that he has reformed and is now financially reliable and trustworthy. Until Applicant makes a good-faith effort to resolve his debts, and can establish a record of financial responsibility and stability, security concerns will continue to exist under Guideline F. I resolve Guideline F against Applicant.

FORMAL FINDINGS

Paragraph 1. Guideline F: AGAINST APPLICANT

Subparagraph 1.a.: Against Applicant

Subparagraph 1.b.: Against Applicant

Subparagraph 1.c.: 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.

Martin H. Mogul

Administrative Judge