

KEYWORD: Financial; Personal Conduct

DIGEST: Applicant has a history of delinquent debts totaling \$39,395.00 Notwithstanding the ability to presently maintain current expenses with a surplus each month, Applicant provided no evidence he was paying down these obligations. He also gave false answers to one question on an April 2003, security clearance questionnaire. He has not mitigated security concerns over his finances and personal conduct. Clearance is denied.

CASENO: 04-06050.h1

DATE: 06/29/2005

DATE: June 29, 2005

In Re:

SSN: -----

Applicant for Security Clearance

ISCR Case No. 04-06050

**DECISION OF ADMINISTRATIVE JUDGE
CHRISTOPHER GRAHAM**

APPEARANCES

FOR GOVERNMENT

Jennifer I Campbell, Esq., Department Counsel

FOR APPLICANT

Pro Se

SYNOPSIS

Applicant has a history of delinquent debts totaling \$39,395.00 Notwithstanding the ability to presently maintain current expenses with a surplus each month, Applicant provided no evidence he was paying down these obligations. He also gave false answers to one question on an April 2003, security clearance questionnaire. He has not mitigated security concerns over his finances and personal conduct. Clearance is denied.

STATEMENT OF THE CASE

On August 12, 2004, the Defense Office of Hearings and Appeals (DOHA), pursuant to Executive Order 10865, *Safeguarding Classified Information Within Industry*, dated February 20, 1960, as amended and modified, and Department of Defense Directive 5220.6, *Defense Industrial Personnel Security Clearance Review Program* (Directive), dated January 2, 1992, as amended and modified, issued a Statement of Reasons (SOR) to Applicant. The SOR alleged facts under Guideline F (financial considerations) and Guideline E (personal conduct) as the reasons why DOHA could not make the preliminary affirmative finding it is clearly consistent with the national interest to grant or continue Applicant's security clearance.

In a written statement, dated September 8, 2004, Applicant responded to the allegations in the SOR and waived a hearing. Department Counsel submitted a file of relevant material (FORM) in support of the Government's preliminary decision, a copy of which was received by Applicant on March 28, 2005. Applicant was afforded the opportunity to file objections and submit material in refutation, extenuation, or mitigation by April 27, 2005. Applicant submitted a letter dated March 28, 2005 in response to the FORM. The case was assigned to me on May 12, 2005.

FINDINGS OF FACT

Applicant has admitted the delinquent accounts listed in subparagraphs 1.a. through 1.m. pertaining to financial matters

under Guideline F, and denied the two allegations of Guideline E (subparagraph 2.a. and b.) 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 married 40-year-old employee of a federal contractor seeking to obtain a security clearance. He was employed by this contractor in 2002.⁽¹⁾ He has a history of unpaid debts, that on January 5, 2004, totaled \$39,395.00.⁽²⁾ His financial difficulties can be traced to his involvement in an automobile accident, the death of his mother, and periods of unemployment.⁽³⁾ His employment history on his SF 86 shows continuous employment from and after April 19, 1994.⁽⁴⁾ He experienced some temporary layoffs and working for a much reduced wage around the 2000 - 2001-time frame.⁽⁵⁾

Applicant made no effort to reduce these debts during this period of time. His income statement showed, after payment of current obligations, a net remainder of \$1,774.00 per month.⁽⁶⁾ His one page response to the FORM listed several proposals to reduce debt but there was no evidence that creditors had accepted these proposals. Nor did the letter contain any evidence showing that any of the listed debts in the SOR had been paid or reduced.⁽⁷⁾

Applicant answered "No" to Standard Form 86, **Question 39. Your Financial Delinquencies - 90 Days. In the last 7 years, have you ever been over 90 days delinquent on any debts?**⁽⁸⁾ He denied that these answers were false claiming that he had been pressured to quickly fill out the EPSQ, and not given adequate time to complete the questionnaire.⁽⁹⁾ Applicant's reasons are not credible.

POLICIES

"[No] one has a 'right' to a security clearance."⁽¹⁰⁾ 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."⁽¹¹⁾ The President has restricted eligibility for access to classified information to United States citizens "whose personal and professional history affirmatively indicates loyalty to the United States, strength of character, trustworthiness, honesty reliability, discretion, and sound judgment, as well as freedom from conflicting allegiances and potential coercion, and willingness and ability to abide by regulations governing use, handling, and protection of classified information."⁽¹²⁾ Eligibility for a security clearance may be adjudicated using the security guidelines contained in the Directive.

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 factors listed in ¶ 6.3 of the Directive: nature and seriousness of the conduct and surrounding circumstances; frequency and recency of the conduct; age of the Applicant; motivation of the applicant, and the extent to which the conduct was negligent, wilful, voluntary, or undertaken with knowledge of the consequences involved; absence or presence of rehabilitation; and probability that the circumstances or conduct will continue or recur in the future.

Initially, the Government must establish, by substantial evidence, conditions in the personal or professional history of the applicant that disqualify, or may disqualify, the applicant from being eligible for access to classified information.⁽¹³⁾ The Directive presumes a nexus or rational connection between proven conduct under any of the disqualifying conditions listed in the guidelines and an applicant's security suitability.⁽¹⁴⁾

Once the Government establishes a disqualifying condition, the burden shifts to the applicant to rebut, explain, extenuate, or mitigate the facts.⁽¹⁵⁾ An applicant "has the ultimate burden of demonstrating that it is clearly consistent with the national interest to grant or continue his security clearance."⁽¹⁶⁾ A person who has access to classified information enters into a fiduciary relationship with the Government based on trust and confidence. The Government, therefore, has a compelling interest in ensuring each Applicant possesses the requisite judgment, reliability and trustworthiness of one who will protect the national interests as his or his own. The "clearly consistent with the national interest" standard compels resolution of any reasonable doubt about an Applicant's suitability for access in favor of the Government.⁽¹⁷⁾ 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 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.

Having considered the SOR allegations and having reviewed the record evidence as a whole, I conclude the relevant adjudicative guidelines to be applied here are those conditions listed under Guideline F (financial considerations), Directive, ¶ E2.A6.1.1. *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;* and Guideline E (personal conduct), Directive, ¶ E2.A5.1.1. *Conduct involving questionable judgment, untrustworthiness, unreliability, lack of candor, dishonesty, or unwillingness to comply with rules and regulations could indicate that the person may not properly safeguard classified information.*

CONCLUSIONS

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

The Government has established its case under Guideline F. Failure to pay outstanding financial obligations gives rise to Financial Considerations Disqualifying Condition (FC DC) E2.A6.1.2.1. (*A history of not meeting financial obligations*); and FC DC E2A6.1.2.3. (*Inability or unwillingness to satisfy debts*).

Applicant's bad debts go back as far as 1996. There is no evidence that there has been any effort to pay down these debts. While Mitigating Condition (FC C) 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 emergency, or a death, divorce or separation)*) might be applicable, because of the accident, death in the family, and periodic lay offs, some of these obligations have been unpaid for a long time. These are not recent debts. Applicant made some statement about attempting to resolve these debts with certain creditors. Even if an applicant is sincere that he will make an effort to get these debts paid in the future, his statement must be weighed in light of the record evidence as a whole in deciding whether the applicant is likely to adhere to such a commitment in the future. As a matter of common sense and human experience, people do not always successfully adhere to the promise to reform or change their conduct or lifestyle. I have not had the opportunity to personally observe Applicant and evaluate his demeanor or veracity and make a favorable credibility determination. Therefore, I cannot make a favorable determination concerning his future intent. No other mitigating factors apply. I conclude Guideline F against Applicant.

The Government also alleged that Applicant falsely answered two questions on his security clearance application, by failing to disclose he had debts in arrears more than 90 days. This false statement comes under Guideline E, Personal Conduct Disqualifying Condition (PC DC) E2.A5.1.2.2. (*the deliberate omission, concealment, or falsification of relevant material facts from any personnel security questionnaire, personal history statement, or similar form used to conduct investigations, determine employment qualifications, award benefits or status, determine security clearance eligibility or trustworthiness, or award fiduciary responsibilities*). Applicant explained his answers by saying that he was under pressure from his employer's security representative to finish filling out his security questionnaire and he forgot to list his debts that were delinquent. I do not find this reason persuasive. A person with the number of unpaid debts as Applicant doesn't forget he owes these amounts. The questions are unambiguous.

In reaching my conclusions I have also considered: the nature, extent, and seriousness of the conduct; the Applicant's age and maturity at the time of the conduct; the circumstances surrounding the conduct; the Applicant's voluntary and knowledgeable participation; the motivation for the conduct; the frequency and recency of the conduct; potential for pressure, coercion, exploitation, or duress; and the probability that the circumstance or conduct will continue or recur in the future. Applicant's conduct demonstrates a lack of candor required of cleared personnel. The government has an interest in examining all relevant and material adverse information about an Applicant before making a clearance decision. The government relies on applicants to truthfully disclose that adverse information. Further, an applicant's

willingness to report adverse information about himself provides some indication of his willingness to report inadvertent security violations or other security concerns in the future, something the government relies on in order to perform damage assessments and limit the compromise of classified information. No mitigating conditions are applicable. I conclude Guideline E against the Applicant.

FORMAL FINDINGS

Formal findings For or Against Applicant on the allegations set forth in the SOR, as required by ¶ E3.1.25 of Enclosure 3 of the Directive, are:

Paragraph 1. Guideline F: AGAINST THE APPLICANT

Subparagraph 1.a. Against the Applicant

Subparagraph 1.b. Against the Applicant

Subparagraph 1.c. Against the Applicant

Subparagraph 1.d. Against the Applicant

Subparagraph 1.e. Against the Applicant

Subparagraph 1.f. Against the Applicant

Subparagraph 1.g. Against the Applicant

Subparagraph 1.h. Against the Applicant

Subparagraph 1.i. Against the Applicant

Subparagraph 1.j. Against the Applicant

Subparagraph 1.k. Against the Applicant

Subparagraph 1.l. Against the Applicant

Subparagraph 1.m. Against the Applicant

Paragraph 2. Guideline E: AGAINST THE APPLICANT

Subparagraph 2.a. Against the Applicant

Subparagraph 2.b. Against the 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 Applicant's security clearance. Clearance is denied.

Christopher Graham

Administrative Judge

1. Item 4 (*Applicant's Application for National Security Clearance SF86 April 11, 2003*) at 1-4.
2. Item 7 (*Applicant's Credit Report dated January 5, 2004*) at 1-10.
3. Item 3 (*Applicant's Answer dated September 8, 2004*) at 4.
4. Item 4, *supra*, at 2-4.
5. Item 6 (*Applicant's Sworn Statement dated March 8, 2004*) at 2-3.
6. Item 6, *supra*, at 4.
7. *Applicant's letter in response to the FORM dated March 28, 2005.*
8. Item 4, *supra*, at 11.
9. *Applicant's letter in response to the FORM dated March 28, 2005.*
10. See *Department of the Navy v. Egan*, 484 U.S. 518, 528 (1998).
11. *Id.*, at 527.
12. Exec. Or. 12968, *Access to Classified Information* § 3.1(b) (Aug. 4, 1995).
13. *Egan, supra*, at 531.
14. See *ISCR Case No. 95-0611* at 2 (App. Bd. May 2, 1996).

15. See *ISCR Case No. 01-20700* at 3 (App. Bd. Dec. 19, 2002).

16. *Id.*, at 3.

17. See *Egan*; Directive ¶ E2.2.2.