

KEYWORD: Financial

DIGEST: Applicant is 47 years old and has worked as a heavy equipment operator for a federal contractor since 2002. He incurred a heavy state tax debt in 1998 that he was unaware of until 2004, because he had left the state. During the same period of time he was involved in a motorcycle accident and incurred injuries. The insurance company was slow in paying the medical bills which caused some of his medical debts to become delinquent. Applicant had his debts discharged in bankruptcy and resolved his tax liability. He made a good faith effort to pay those bills he could and get his financial health back on track. Applicant has successfully mitigated the security concerns regarding his financial considerations under Guideline F. Clearance is granted.

CASENO: 04-06180.h1

DATE: 03/20/2006

DATE: March 20, 2006

In re:

SSN: -----

Applicant for Security Clearance

ISCR Case No. 04-06180

DECISION OF ADMINISTRATIVE JUDGE

CAROL G. RICCIARDELLO

APPEARANCES

FOR GOVERNMENT

Melvin Howry, Esq., Department Counsel

FOR APPLICANT

Pro se

SYNOPSIS

Applicant is 47 years old and has worked as a heavy equipment operator for a federal contractor since 2002. He incurred a heavy state tax debt in 1998 that he was unaware of until 2004, because he had left the state. During the same period of time he was involved in a motorcycle accident and incurred injuries. The insurance company was slow in paying the medical bills which caused some of his medical debts to become delinquent. Applicant had his debts discharged in bankruptcy and resolved his tax liability. He made a good faith effort to pay those bills he could and get his financial health back on track. Applicant has successfully mitigated the security concerns regarding his financial considerations under Guideline F. Clearance is granted.

STATEMENT OF THE CASE

On November 23, 2005, the Defense Office of Hearings and Appeals (DOHA) issued to Applicant Statement of Reasons (SOR) stating it was unable to find that it is clearly consistent with the national interest to grant or continue a security clearance. [\(1\)](#) The SOR, which is in essence the administrative complaint, alleged a security concern under Guideline F (financial considerations).

In a sworn statement, dated December 15, 2005, Applicant responded to the SOR allegations. In his SOR response, Applicant admitted allegation ¶ 1.a, and denied allegations ¶¶ 1.b, 1.c, 1.d, 1.e, 1.f, 1.g. The case was assigned to me on February 8, 2006. A notice of hearing was issued on February 15, 2006, scheduling the hearing for March 8, 2006. The hearing was conducted as scheduled. The government submitted eleven exhibits that were marked as Government Exhibits (GE) 1-11. The exhibits were admitted into the record without objection. Applicant testified on his own behalf, and submitted three exhibits that were marked as Applicant's Exhibits A-C. The exhibits were admitted without objection. DOHA received the hearing transcript (Tr.) on March 16, 2006.

FINDINGS OF FACT

Applicant's admissions to the allegations in the SOR, are incorporated herein. In addition, after a thorough and careful review of the pleadings, exhibits, and testimony, I make the following findings of fact:

Applicant is 47 years old and has worked as a heavy machine operator for a federal contractor since 2002. He held an interim secret security clearance until it was revoked pending determination of his security clearance application. Applicant is divorced and remarried and has a son from a previous marriage.

Applicant lived in State A and worked in real estate. He left the real estate business in 1998 and moved out of state. For tax year 1998, his former real estate company reported his income three times to the Internal Revenue Service and he later learned he owed three times as much as he thought for tax year 1998.⁽²⁾ He had also cashed in his 401k account and owed additional taxes. He was unaware of this tax liability because he had left State A and bought a boat that he was living on in a different state. He had not received any notice of this liability until 2004.⁽³⁾ Applicant had a tax lien entered against him in 2002 for \$22,028.

Applicant was divorced from his wife in 1999, and subsequently left a long term career. From 1999 to 2002, he paid his bills, maintained his credit, and lived within a budget. He worked at low paying jobs and made enough to cover his expenses, but was not very motivated or productive during this period.⁽⁴⁾

Applicant had been dutifully paying his credit bills, but because of the tax lien his credit cards increased their interest rates from 8-9% to approximately 29%.⁽⁵⁾ Despite the exorbitant increase he still managed to keep up with his payments. Applicant went on temporary duty assignment (TDY) for six weeks. He paid his bills by computer and did not receive his mail during this time. He had received an offer to reduce his credit card interest rate, but had a certain period of time to act. He missed his window of opportunity because of his assignment and the company refused to compromise.⁽⁶⁾

In June 2003, a day after returning from TDY Applicant was involved in a motorcycle accident where he was not at fault.⁽⁷⁾ He was injured and was on workman's compensation. Because it took a period of time for the insurance company to pay the medical bills, the providers sent his overdue bills to a collection company. The insurance company for the "at fault" person that injured Applicant in the accident would not pay the medical bills until all the treatment was completed, and the medical providers would not continue their treatment until they had been paid. It took time for Applicant to resolve this problem.⁽⁸⁾

The combination of the tax liability, the exorbitant interest rates on his credit cards and the insurance bills caused Applicant to fall behind with his expenses. He realized he could not pay the tax liability and his other debts at the same time. He sought financial counseling and, based on the advice he received, he decided he would file for bankruptcy and pay his tax liability.⁽⁹⁾

Applicant resolved and paid his tax liability to State A as alleged in SOR ¶1.a.⁽¹⁰⁾ Applicant provided proof that the debt in SOR ¶1.b for medical services was reported in error and he does not owe that debt.⁽¹¹⁾ Applicant provided proof that the debt in SOR ¶1.c. was paid.⁽¹²⁾ The debt in SOR ¶1.d for medical services was paid.⁽¹³⁾ The debt in SOR ¶1.d for medical services was discharged in Applicant's bankruptcy.⁽¹⁴⁾ Applicant paid the debts for medical services in SOR ¶1.e and 1.g.⁽¹⁵⁾

Applicant currently lives within his means and makes enough money to pay his bills. He does not have any credit cards and has a consistent record since October 2004 of paying his bills.

POLICIES

Enclosure 2 of the Directive sets forth adjudicative guidelines to be considered in evaluating a person's eligibility to hold a security clearance. Included in the guidelines are disqualifying conditions (DC) and mitigating conditions (MC) applicable to each specific guideline. Considering the evidence as a whole, Guideline F, pertaining to financial considerations, with its respective DC and MC, applies in this case. Additionally, each security clearance decision must be a fair and impartial commonsense decision based on the relevant and material facts and circumstances, the whole-person concept, along with the factors listed in the Directive. 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. 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.

The sole purpose of a security clearance determination is to decide if it is clearly consistent with the national interest to grant or continue a security clearance for an applicant.⁽¹⁶⁾ The government has the burden of proving controverted facts.⁽¹⁷⁾ The burden of proof is something less than a preponderance of evidence.⁽¹⁸⁾ Once the government has met its burden, the burden shifts to an applicant to present evidence of refutation, extenuation, or mitigation to overcome the case against

him.⁽¹⁹⁾ Additionally, an applicant has the ultimate burden of persuasion to obtain a favorable clearance decision.⁽²⁰⁾

No one has a right to a security clearance⁽²¹⁾ and "the clearly consistent standard indicates that security clearance determinations should err, if they must, on the side of denials."⁽²²⁾ Any reasonable doubt about whether an applicant should be allowed access to sensitive information must be resolved in favor of protecting such sensitive information.⁽²³⁾ The decision to deny an individual a security clearance is not necessarily a determination as to the loyalty of an applicant.⁽²⁴⁾ It is merely an indication that the applicant has not met the strict guidelines the President and the Secretary of Defense have established for issuing a clearance.

Based upon consideration of the evidence, I find the following adjudicative guideline most pertinent to the evaluation of the facts in this case:

Guideline F-Financial Considerations-a security concern exists when a person has significant delinquent debts. An individual who is financially overextended is at risk of having to engage in illegal or unethical acts to generate funds to meet financial obligations. Similarly, an individual who is financially irresponsible may also be irresponsible, unconcerned, or careless in their obligation to protect classified information. Behaving responsibly or irresponsibly in one aspect of life provides an indication of how a person may behave in other aspects of life.

Conditions that could raise a security concern and may be disqualifying, as well as those which would mitigate security concerns, pertaining to the adjudicative guideline are set forth and discussed in the conclusions below.

CONCLUSIONS

I have carefully considered all the facts in evidence and the legal standards. The government has established a *prima facie* case for disqualification under Guideline F.

Based on all the evidence, 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*), apply in this case. Applicant had a tax lien and other debts that were delinquent and unpaid for a period of time.

I have considered all the Financial Considerations Mitigating Conditions (FC MC), and especially considered FC MC E2.A6.1.3.1 (*The behavior was not recent*), FC MC E2.A6.1.3.2 (*It was an isolated incident*), FC MC 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 medical emergency, or a death, divorce or separation)*), FC MC E2.A6.1.3.4 (*The person has received or is receiving counseling for the problem and there are clear indications that the problem is being resolved or is under control*), and FC MC E2.A6.1.3.6 (*The individual initiated a good-faith effort to repay overdue creditors or otherwise resolve debts*).

Applicant's debts are no longer recent because he has resolved them. FC MC E2.A6.1.3.1 applies. He had numerous debts so they were not isolated. FC MC E2.A6.1.2.2 does not apply. Applicant was unaware of his tax debt because he had left the state and it was not until later he became aware of it. At the time he had credit debt and to resolve his tax liability he had his debts discharged in bankruptcy. During the same period he was involved in an accident and incurred medical bills and issues with the insurance company. Because of the insurance company's unwillingness to pay all of his bills when they were due, some of his medical debts became delinquent. Applicant has paid or resolved all of those bills. I find the combination and timing of these events exacerbated Applicant's financial situation and were beyond his control. FC MC E2.A6.1.3.3 applies. Applicant received financial counseling and has resolved the debts alleged in the SOR either by paying them or through bankruptcy. Bankruptcy is a legitimate and legal means to resolve debt. In this case, Applicant realized he had an unpaid tax debt that he could not pay because of the high interest rates he had on his consumer debt. The interest rates were raised due to the tax lien. The amount of the tax lien was inflated due to his employer submitting the tax forms in triplicate. He has since paid his tax debt, is current on his other debts and lives within his means. FC MC E2.A6.1.3.4 applies. Applicant had a period in his life where there was a convergence of unanticipated events that left him in a difficult financial situation. He has made a good faith effort to resolve his financial problems and is financially healthy again. FC MC D2.A6.1.3.6 applies. Applicant has successfully mitigated the security concerns regarding his Guideline F.

In all adjudications, the protection of our national security is the paramount concern. The objective of the security-clearance process is the fair-minded, commonsense assessment of a person's life to make an affirmative determination that the person is eligible for a security clearance. Indeed, the adjudicative process is a careful weighing of a number of variables in considering the "whole person" concept. It recognizes that we should view a person by the totality of their acts, omissions, motivations and other variables. Each case must be adjudged on its own merits, taking into consideration all relevant circumstances, and applying sound judgment, mature thinking, and careful analysis.

I considered the whole person and I find Applicant successfully mitigated the security concerns regarding financial considerations under Guideline F. Therefore, I am persuaded by the totality of the evidence in this case that it is clearly consistent with the national interest to grant Applicant a security clearance. Accordingly, Guideline F is decided for Applicant.

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: FOR THE APPLICANT

Subparagraph 1.a: For the Applicant

Subparagraph 1.b: For the Applicant

Subparagraph 1.c: For the Applicant

Subparagraph 1.d: For the Applicant

Subparagraph 1.e: For the Applicant

Subparagraph 1.f: For the Applicant

Subparagraph 1.g: For the 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.

Carol G. Ricciardello

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. Tr. 39.
3. *Id.*
4. Tr. 49.
5. Tr. 50.
6. Tr. 52-53.
7. Tr. 53.
8. Tr. 52-54.
9. Tr. 50-51.
10. AE B.
11. Answer to SOR (response to Item 1.e).
12. AE A.
13. Answer to SOR (response to Item 1.d).
14. GE 8.
15. Answer to SOR (response to Item 1.f and Item 1.g).
16. ISCR Case No. 96-0277 at p. 2 (App. Bd. Jul 11, 1997).
17. ISCR Case No. 97-0016 at p. 3 (App. Bd. Dec. 31, 1997); Directive, Enclosure 3, ¶ E3.1.14.
18. *Department of the Navy v. Egan*, 484 U.S. 518, 531 (1988).
19. ISCR Case No. 94-1075 at pp. 3-4 (App. Bd. Aug. 10, 1995); Directive, Enclosure 3, ¶ E3.1.15.
20. ISCR Case No. 93-1390 at pp. 7-8 (App. Bd. Jan. 27, 1995); Directive, Enclosure 3, ¶ E3.1.15.
21. *Egan*, 484 U.S. at 531.
22. *Id.*
23. *Id.*; Directive, Enclosure 2, ¶ E2.2.2.
24. Executive Order 10865 § 7.