

KEYWORD: Financial

DIGEST: Applicant seeks a security clearance to work as an aircraft assembler for a defense contractor. He accumulated substantial delinquent debts between about 1997 and 2003. The debts arose largely from circumstances beyond his control, including periods of unemployment, a severe business downturn, and his separation and divorce. Since then, Applicant has not paid the greatest part of his outstanding debts. He has not obtained financial counseling or made a significant effort to resolve his delinquent debts. Applicant did not mitigate the security concerns arising from his financial difficulties. Clearance is denied.

CASENO: 04-06135.h1

DATE: 10/28/2005

DATE: October 28, 2005

In re:

SSN: -----

Applicant for Security Clearance

ISCR Case No. 04-06135

DECISION OF ADMINISTRATIVE JUDGE

MICHAEL J. BRESLIN

APPEARANCES

FOR GOVERNMENT

Sabrina Redd, Esq., Department Counsel

FOR APPLICANT

Pro Se

SYNOPSIS

Applicant seeks a security clearance to work as an aircraft assembler for a defense contractor. He accumulated substantial delinquent debts between about 1997 and 2003. The debts arose largely from circumstances beyond his control, including periods of unemployment, a severe business downturn, and his separation and divorce. Since then, Applicant has not paid the greatest part of his outstanding debts. He has not obtained financial counseling or made a significant effort to resolve his delinquent debts. Applicant did not mitigate the security concerns arising from his financial difficulties. Clearance is denied.

STATEMENT OF THE CASE

On March 15, 2003, Applicant submitted an application for a security clearance. The Defense Office of Hearings and Appeals (DOHA) declined to grant or continue a security clearance for Applicant under Executive Order 10865, *Safeguarding Classified Information Within Industry* (Feb. 20, 1960), as amended and modified, and Department of Defense Directive 5220.6, *Defense Industrial Personnel Security Clearance Review Program* (Jan. 2, 1992), as amended and modified (the "Directive"). On December 8, 2004, DOHA issued a Statement of Reasons (SOR) detailing the basis for its decision. The SOR alleges security concerns raised under Guideline F of the Directive, Financial Considerations.

Applicant answered the SOR in writing by letter received January 26, 2005. He elected to have a hearing before an administrative judge.

The case was assigned to me on August 1, 2005. With the concurrence of Applicant and Department Counsel, I convened the hearing on September 12, 2005. The government introduced Exhibits 1 through 6. Applicant provided Exhibit A and testified on his own behalf. At Applicant's request, I left the record open for additional matters. Applicant

submitted Exhibits B, C, and D which were admitted without objection. DOHA received the final transcript of the hearing (Tr.) on September 28, 2005.

FINDINGS OF FACT

Applicant denied the factual allegations in ¶¶ 1.g and 1.o of the SOR. Applicant's Answer to SOR, undated. He admitted the remaining factual allegations in the SOR. *Id.* 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 48 years old. Ex. 1 at 1. He seeks a security clearance to work as an aircraft assembler for a defense contractor. Tr. at 37.

Applicant's family has a long tradition of service to the United States military. Tr. at 19. Applicant entered active duty in the U.S. Air Force in December 1978. Ex. 1 at 8. During that time he worked in munitions maintenance squadron and successfully held a high-level security clearance. Tr. at 12, 41; Ex. 1 at 12. His supervisors praised his dedication and skill. Ex. A.

Applicant was married in 1980. Tr. at 48. Applicant has three children from that relationship, born in 1983, 1985, and 1988. Ex. 1 at 7.

After separating from the Air Force in December 1982, he worked for a defense contractor as a security officer for about one year. Tr. at 43. During this time he held a secret clearance.

In about 1984, Applicant returned to work in the construction business. Tr. at 44. He worked for a series of companies in a variety of positions: construction superintendent, telecommunications hardware installer, construction foreman, damage estimator, and property superintendent. Ex. 1 at 2-4. Jobs in the construction business were sporadic at times, and his income was such that the family was just able to make ends meet. Tr. at 27.

Applicant's first marriage ended in divorce in 1992. Tr. at 48. After the divorce, Applicant was left with substantial

unpaid bills. Tr. at 49. He remarried in February 1993, but the marriage ended after five months. Tr. at 48-49. Applicant was married for the third time in September 1997. Ex. 1 at 6. Shortly thereafter, he lost his job. Tr. at 50.

In about October 1997, Applicant started his own ceramic tile business. Tr. at 15. He arranged for his third wife, an office manager, to take care of the finances and records for the business. Tr. at 15. The enterprise prospered for several years. Tr. at 32, 51. However, after the attacks of September 11, 2001, building and construction slowed in Applicant's geographical area and his business income declined abruptly. Tr. at 16. At that point, Applicant realized his wife had not kept the records properly or paid the required personal or business debts. Tr. at 15-16, 52.

Applicant separated from his third wife in October 2002. Tr. at 53. He worked in a home improvement store and took occasional construction jobs. A court ordered Applicant to pay spousal support during his separation. Tr. at 57-58. Applicant was divorced from his third wife in October 2003. Tr. at 57.

In about March 2003, Applicant applied for a position as an aircraft assembler with a major defense contractor. The defense contractor is interested in hiring Applicant if he can obtain a security clearance. Tr. at 53.

In February 2005, Applicant sought medical attention for persistent fatigue. Tr. at 33. After conducting a sleep study, his doctors diagnosed sleep apnea. *Id.* Apparently Applicant has suffered from this condition since he was a teenager. *Id.*

Presently, Applicant works as a long-haul trucker. Ex. 2 at 1. He is entrusted to transport cargo of extremely high value on a daily basis. Tr. at 18-19. His current income allows him to pay his minimal living expenses, but it does not provide for any funds to apply toward Applicant's delinquent debts. Tr. at 36.

Applicant admitted most of the debts listed in the SOR are his and remain unpaid. He testified he paid the debt to the telephone service company listed in ¶ 1.d of the SOR. Tr. at 25. For the debt listed in ¶ 1.b of the SOR, the creditor has collected between \$2,500.00 and \$3,000.00 through payments and garnishments, but a balance of about \$2,000.00 remains due. Tr. at 23. Applicant believes the sale of a repossessed automobile extinguished the debt listed in ¶ 1.g of the SOR. In his Answer to the SOR, Applicant denied the debt for \$292.00 listed in ¶ 1.o, and that alleged debt does not appear on the credit bureau reports admitted into evidence. Taking into consideration the accounts he disputes, Applicant has at least 12 delinquent debts totaling more than \$25,000.00.

Applicant admits he is not good with finances. Tr. at 19. He has not sought financial counseling since 1987. Tr. at 55-56. He has no concrete plan to resolve his delinquent debts. Tr. at 37. When initially interviewed in February 2003, Applicant indicated his intention of filing for personal bankruptcy, however he has not done so. Ex. 2 at 2; Tr. at 37-38,

55. He believes that if he gets a security clearance and the position with the defense contractor, and secures overtime work, he could pay off his overdue obligations. Tr. at 54. He insists that financial problems would never make him compromise his integrity or jeopardize the security of this country. Tr. at 20-21, 56-57. Several of Applicant's friends and acquaintances submitted statements attesting to his integrity and dependability. Exs. B, C, and D.

POLICIES

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." *Department of the Navy v. Egan*, 484 U.S. 518, 527 (1988). In Executive Order 10865, *Safeguarding Classified Information Within Industry* (Feb. 20, 1960), the President set out guidelines and procedures for safeguarding classified information within the executive branch.

To be eligible for a security clearance, an applicant must meet the security guidelines contained in the Directive. Enclosure 2 of the Directive sets forth personnel security guidelines, as well as the disqualifying conditions and mitigating conditions under each guideline. The adjudicative guideline at issue in this case is:

Guideline F, Financial Considerations - An individual who is financially overextended is at risk of having to engage in illegal acts to generate funds. Directive ¶ E2.A6.1.1.

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

"The adjudicative process is an examination of a sufficient period of a person's life to make an affirmative determination that the person is eligible for a security clearance." Directive, ¶ E2.2.1. An administrative judge must apply the "whole person concept," and consider and carefully weigh the available, reliable information about the person. *Id.* An administrative judge should consider the following factors: (1) the nature, extent, and seriousness of the conduct; (2) the circumstances surrounding the conduct, to include knowledgeable participation; (3) the frequency and recency of the conduct; (4) the individual's age and maturity at the time of the conduct; (5) the voluntariness of participation; (6) the presence or absence of rehabilitation and other pertinent behavioral changes; (7) the motivation for the conduct; (8) the potential for pressure, coercion, exploitation, or duress; and (9) the likelihood of continuation or recurrence. *Id.*

Initially, the Government must present evidence to establish controverted facts in the SOR that disqualify or may disqualify the applicant from being eligible for access to classified information. Directive, ¶ E3.1.14. Thereafter, the applicant is responsible for presenting evidence to rebut, explain, extenuate, or mitigate the facts. Directive, ¶ E3.1.15.

An applicant "has the ultimate burden of demonstrating that it is clearly consistent with the national interest to grant or continue his security clearance." ISCR Case No. 01-20700 at 3 (App. Bd. Dec. 19, 2002). "Any doubt as to whether access to classified information is clearly consistent with national security will be resolved in favor of the national security." Directive, ¶ E2.2.2.

A person granted access to classified information enters into a special relationship with the government. 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. The decision to deny an individual a security clearance is not a determination as to the loyalty of the applicant. Exec. Ord. 10865, § 7. It is merely an indication that the applicant has not met the strict guidelines the President has established for issuing a clearance.

CONCLUSIONS

I considered carefully all the facts in evidence and the legal standards discussed above. I reach the following conclusions regarding the allegations in the SOR.

Paragraph E2.A6.1.2.1 of the Directive provides that it may be a disqualifying condition if the evidence reveals "[a] history of not meeting financial obligations." Similarly, ¶ E2.A6.1.2.3 indicates that an "[i]nability or unwillingness to satisfy debts" may be disqualifying. Applicant has a history of not meeting his financial obligations. He has unpaid debts totaling over \$25,000.00 that have remained unpaid for many years. Applicant has been unable to resolve his delinquent debts, or arrange a repayment plan. I find Applicant has shown both a history of failing to meet his financial obligations and an inability to satisfy his debts. I conclude both these potentially disqualifying conditions apply.

The security concerns arising from Applicant's financial difficulties can be mitigated under certain circumstances. Under the Directive, ¶ E2.A6.1.3.1, it may be mitigating where "the behavior was not recent." The bulk of Appellant's delinquent debts arose between 1997 and 2003 and remain unresolved. I find most of the unpaid obligations are recent. This mitigating condition does not apply.

Paragraph E2.A6.1.3.2 of the Directive provides that it may be mitigating where the financial difficulty "was an isolated incident." Applicant's numerous delinquent debts arose over many years because of a variety of reasons. I conclude this mitigating condition does not apply.

Under ¶ E2.A6.1.3.3, it may be mitigating where, "[t]he 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)." Several conditions beyond Applicant's control contributed to his financial problems, including periods of unemployment, a severe downturn resulting in the loss of his business, and a separation and divorce. I conclude this potentially mitigating condition applies.

Proof that "[t]he 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," may be mitigating, under ¶ E2.A6.1.3.4 of the Directive. Applicant has not sought or received financial counseling since 1987. He paid at least one debt, and creditors have taken action to satisfy some accounts, but Applicant has not begun a formal plan to repay or resolve his delinquent debts. I cannot find that his debt problem is under control or is being resolved. I conclude this mitigating condition does not apply.

Finally, it may be mitigating where "[t]he individual initiated a good-faith effort to repay overdue creditors or otherwise resolve debts." Directive, ¶ E2.A6.1.3.6. As noted above, Applicant has not begun repaying the bulk of his delinquent debts listed in the SOR. I conclude this mitigating condition does not apply.

I considered the potentially disqualifying and mitigating circumstances in light of the "whole person" concept. Applicant is a mature individual. He served the United States in positions of trust⁵ for several years and successfully held a security clearance. His financial difficulties arose largely from circumstances beyond his control, such as his business failure and divorce, rather than his own malfeasance. At the same time, Applicant was somewhat inattentive to his financial circumstances, which contributed to his problems. After the problems arose, Applicant did not make a concerted effort to resolve the debts, principally because his job did not provide surplus funds to pay the debts. Applicant is unable to resolve the delinquent debts that have existed for such a long time.

As noted above, the President established the criteria for eligibility for a security clearance. In Executive Order 12968, *Access to Classified Information*, § 3.1(b), the President 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 for coercion, and willingness and ability to abide by regulations governing the use, handling and protection of classified information." Considering all the evidence, I find Applicant's personal and professional history indicates unwavering loyalty to the United States, strength of character, trustworthiness, honesty, discretion and sound judgment. I also find he is willing and able to abide by regulations governing the use, handling, and protection of classified information. However, I also find Applicant is not presently free from potential for coercion. The Directive provides that "an individual who is financially overextended is a risk of having to engage in illegal acts to generate funds." Directive, ¶ E2.A6.1.1. Balancing the disqualifying conditions and the mitigating conditions, I conclude Applicant has not mitigated the security concerns arising from his history of failing to meet his financial obligations and his inability to pay his debts.

FORMAL FINDINGS

My conclusions as to each allegation in the SOR are:

Paragraph 1, Guideline F: AGAINST APPLICANT

Subparagraph 1.a: Against Applicant

Subparagraph 1.b: Against Applicant

Subparagraph 1.c: Against Applicant

Subparagraph 1.d: For Applicant

Subparagraph 1.e: Against Applicant

Subparagraph 1.f: Against Applicant

Subparagraph 1.g: For Applicant

Subparagraph 1.h: Against Applicant

Subparagraph 1.i: Against Applicant

Subparagraph 1.j: Against Applicant

Subparagraph 1.k: Against Applicant

Subparagraph 1.l: Against Applicant

Subparagraph 1.m: Against Applicant

Subparagraph 1.n: Against Applicant

Subparagraph 1.o: For Applicant

DECISION

In light of all of 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.

Michael J. Breslin
Administrative Judge