

KEYWORD: Financial; Personal Conduct

DIGEST: Applicant has a history of financial irresponsibility. He owes approximately \$15,000.00 on eight delinquent debts. Although Applicant claims three of the debts were discharged in a previous bankruptcy and two of the debts were paid, he has provided no documents to support his assertions. While many of these debts arose from circumstances beyond his control, he has taken no action towards resolving his delinquent debts. He did not deliberately falsify his security clearance application but failed to mitigate the security concern arising from his financial difficulties. Clearance is denied.

CASENO: 04-06494.h1

DATE: 02/27/2006

DATE: February 27, 2006

In re:

SSN: -----

Applicant for Security Clearance

ISCR Case No. 04-06494

DECISION OF ADMINISTRATIVE JUDGE

ERIN C. HOGAN

APPEARANCES

FOR GOVERNMENT

Nichole Noel, Department Counsel

FOR APPLICANT

Pro Se

SYNOPSIS

Applicant has a history of financial irresponsibility. He owes approximately \$15,000.00 on eight delinquent debts. Although Applicant claims three of the debts were discharged in a previous bankruptcy and two of the debts were paid, he has provided no documents to support his assertions. While many of these debts arose from circumstances beyond his control, he has taken no action towards resolving his delinquent debts. He did not deliberately falsify his security clearance application but failed to mitigate the security concern arising from his financial difficulties. Clearance is denied.

STATEMENT OF THE CASE

On June 22, 2005, the Defense Office of Hearings and Appeals (DOHA) issued to Applicant a Statement of Reasons (SOR) stating they were 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, alleges security concerns under Guideline F, Financial Considerations, and Guideline E, Personal Conduct.

Applicant answered the SOR in writing on October 12, 2005. He admitted the allegations under Guideline F, subparagraphs 1.b, 1.c, and 1.h and denies Guideline F subparagraphs 1.a, 1.d, 1.e, 1.f and 1.g and all the allegations under Guideline E. He elected to have a hearing. This case was assigned to me on November 22, 2005. On January 3, 2006, DOHA issued a Notice of Hearing scheduling the hearing on January 25, 2006. The hearing occurred as scheduled. At the hearing, the Government offered eight exhibits which were admitted and marked as Government Exhibits 1 through 8. Applicant testified and submitted no exhibits. The record was held open until February 8, 2006. No additional exhibits were submitted. DOHA received the transcript on February 6, 2006.

FINDINGS OF FACT

Applicant's admissions in his answer to the SOR and at the hearing are incorporated into my findings of fact. After a complete and thorough review of the evidence in the record, and upon due consideration of the same, I make the following additional findings of fact:

Applicant is a 41-year-old employee of a defense contractor seeking to obtain a security clearance at the SECRET level. [\(2\)](#)

In 1993, Applicant encountered financial difficulties which resulted in a bankruptcy. [\(3\)](#) His financial problems were caused, in part by a medical problem which prevented him from holding steady employment over a five to six year period. [\(4\)](#) From 1987 to sometime in the early 1990s, he had three surgeries on his back which caused him to be out of work. [\(5\)](#) He was unemployed between October 1997 to November 1999. [\(6\)](#)

On July 23, 2003, Applicant submitted a security clearance application. [\(7\)](#) In response to question "37. Your Financial Record - Unpaid Judgments. In the last 7 years, have you had any judgments against you that have not been paid?" he answered, "No." He also answered, "No," to question "38. Your Financial Delinquencies - 180 Days. In the last 7 years, have you been over 180 day(s) delinquent on any debt(s)?" and question "39. Your Financial Delinquencies - 90 Days. Are you currently over 90 days delinquent on any debt(s)?" [\(8\)](#)

A credit report, dated September 30, 2003, revealed three unpaid judgments, two charged off accounts and two collection accounts. [\(9\)](#) The judgments included an April 2002 judgment in the amount of \$2,129.00 which is alleged in SOR subparagraph 1.f; two August 1998 judgments both in the amount of \$759.00 which are alleged in SOR subparagraphs 1.b and 1.c. The two charged off accounts include SOR subparagraph 1.a, charged off in May 1997, with an approximate balance \$498.00 and SOR subparagraph 1.d, charged off in December 1998, with an approximate balance \$4,347.00. The two collection accounts include SOR subparagraph 1.e, with an approximate balance \$6,490.00, turned over for collection in January 2001, and SOR subparagraph 1.g, with an approximate balance \$108.00, turned over for collection in September 2001. A March 21, 2005, credit report listed another collection account which is alleged in SOR subparagraph 1.h, with an approximate balance \$243.00, turned over for collection in January 2003. [\(10\)](#)

On March 11, 2004, Applicant provided a signed, sworn statement to a Special Agent of the Defense Security. [\(11\)](#) He was not aware of the accounts alleged in SOR subparagraphs 1.a, 1.e and 1.f. He believed the accounts alleged in SOR subparagraphs 1.b, 1.c, 1.d were included in his bankruptcy. He states he paid the account alleged in subparagraph 1.g, but provided no supporting documentation reflecting payment. He indicated he would contact his creditors to satisfy his

debts.⁽¹²⁾

In September 2004, Applicant answered a set of interrogatories pertaining to his delinquent debt. Since his March 11, 2004 statement, he discovered the debt alleged in SOR subparagraph 1.d was for a car loan he co-signed for his ex-wife. He is trying to remove this from his credit report.⁽¹³⁾ He stated the debt alleged in SOR subparagraph 1.e was paid off but provided no documentation indicating payment. He explained he did not list the delinquent debts on his credit report because he was either not aware of the debts or thought they were discharged in his bankruptcy.⁽¹⁴⁾

As of the hearing, Applicant took no action towards disputing the accounts alleged in SOR subparagraphs 1.a,⁽¹⁵⁾ and 1.f.⁽¹⁶⁾ He was given the opportunity to submit a copy of his bankruptcy paperwork as well as receipts or other similar documentation verifying the debts that he claimed were paid.⁽¹⁷⁾ No documentation was submitted after the hearing. Applicant made no attempts to contact any of the creditors alleged in the SOR. He did not seek out any sort of credit counseling.⁽¹⁸⁾

Applicant has been married to his current wife since June 2000.⁽¹⁹⁾ He has ten-year-old daughter from a prior marriage.⁽²⁰⁾ He and his first wife divorced in March 1999.⁽²¹⁾ From September 24, 1984 to September 5, 1986, he served on active duty in the United States Army as an E-4.⁽²²⁾ He was medically discharged.⁽²³⁾ He has been employed as a computer technician for the same government contractor since approximately 2004.⁽²⁴⁾ The quality of his work performance has not been characterized.

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, and Guideline E, personal conduct, with their respective DCs and MCs, apply in this case. Additionally, each security clearance decision must be a fair and impartial common sense 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.⁽²⁵⁾ The government has the burden of proving controverted facts.⁽²⁶⁾ The burden of proof is something less than a preponderance of evidence.⁽²⁷⁾ 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.⁽²⁸⁾ Additionally, an applicant has the ultimate burden of persuasion to obtain a favorable clearance decision.⁽²⁹⁾

The clearly consistent standard indicates that security clearance determinations should err, if they must, on the side of denials.⁽³⁰⁾ Any reasonable doubt about whether an applicant should be allowed access to classified information must be resolved in favor of protecting such classified information.⁽³¹⁾ The decision to deny an individual a security clearance is not necessarily a determination as to the loyalty of an applicant.⁽³²⁾ 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 all the evidence, I find the following adjudicative guidelines most pertinent to the evaluation of the facts in this case:

Guideline F - Financial Considerations: An individual who is financially over-extended 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.

Guideline E - Personal Conduct: Conduct involving questionable judgment, untrustworthiness, unreliability, lack of candor, dishonesty, or unwillingness to comply with rules and regulations could indicate that a person may not properly safeguard classified information.

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.

Guideline F- Financial Considerations

With respect to Guideline F, the government has established its case. Applicant encountered financial difficulties approximately 12 years ago which resulted in a bankruptcy filing. Subsequent to the bankruptcy discharge, he continues to incur delinquent debts. He has debts totaling over \$15, 000.00 which have remained unpaid for several years. His actions indicate that he is either unable or unwilling to pay his accounts. His overall attitude and actions towards his finances give rise to 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*).

Several conditions could mitigate the security concerns raised by Applicant's financial delinquencies. Neither Financial Considerations Mitigating Conditions (FC MC) E2.A6.1.3.1 (*The behavior was not recent*); or FC MC E2.A6.1.3.2 (*It was an isolated incident*) applies. Applicant has had a history of financial difficulties since the early 1990s. He continues to struggle with his finances and has several outstanding debts. His inability or unwillingness to pay his delinquent debts is recent. As such neither of these mitigating conditions apply.

Appellant underwent several back surgeries which caused him to have a period of sporadic employment spanning five years. As such 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)*), applies to his situation. Much of the debt was created due to his inability to pay his debts while he was unemployed. However, he has been steadily employed since 1999. His inaction towards resolving his delinquent debt once gainfully employed gives less weight to this mitigating condition.

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*) does not apply since he never sought financial counseling. Since he has not taken any action towards resolving his financial problems, either by payment or by formally disputing the debts, it is unlikely his financial problems will be resolved in the near future.

Although Applicant claims he has paid the debts alleged in SOR subparagraphs 1.e and 1.g, he has not provided any documentation verifying payment. He claims most of the other debts alleged were included in his previous bankruptcy which he claims was completed in 1993 or 1994. He had the opportunity to provide his bankruptcy paperwork and receipts after the hearing, but did not submit anything. He has made no attempts to research the debts (SOR subparagraphs 1.a, 1.d) that he claims to have no knowledge. For these reasons, I cannot apply FC MC E2.A6.1.3.6 (*The individual initiated a good-faith effort to repay overdue creditors or otherwise resolve debts*) since he has not demonstrated that he has made a good-faith effort to resolve these debts. He was first put on notice regarding these debts in March 2004. He took no steps to resolve his delinquent debt even though he had over a year and eight months to

work on resolving his financial situation prior to the hearing. He has failed to mitigate the security concerns raised under Guideline F. Guideline F is decided against Applicant.

Guideline E, Personal Conduct

Personal conduct under Guideline E is always a security concern because it asks the central question if a person's past conduct justifies confidence the person can be trusted to properly safeguard classified information. Deliberate omission, concealment, or falsification of a material fact in any written document or oral statement to the government when applying for a security clearance or in other official matters is a security concern. It is deliberate if it is done knowingly and willfully.

In this case, the record evidence fails to establish Applicant deliberately omitted or concealed information about his unpaid judgments and delinquent debts. Although his answers to question 37, 38 and 39 were incorrect, Applicant successfully rebutted the allegations that he deliberately provided a false answer. I find credible his explanation that he either forgot about these debts or was under the mistaken belief that the debts were discharged in bankruptcy. Applicant did list a wage garnishment in response to question 34 on his security clearance application. The fact that he listed this wage garnishment undercuts the implicit assumption that he was trying to hide his derogatory financial history. Guideline E is decided for Applicant.

In all adjudications, the protection of our national security is the paramount concern. The objective of the security-clearance process is the fair-minded, common sense 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 all the evidence provided and also considered the "whole person" concept in evaluating Applicant's risk and vulnerability in protecting our national interests. I find Applicant has failed to mitigate the security concerns raised by the financial considerations. Therefore, I am persuaded by the totality of the evidence in this case, that it is not clearly consistent with the national interest to grant Applicant a security clearance.

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 AGAINST APPLICANT

Subparagraph 1.a. Against 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. Against Applicant

Subparagraph 1.h. Against Applicant

Paragraph 2., Guideline E FOR APPLICANT

Subparagraph 2.a. For Applicant

Subparagraph 2.b. For Applicant

Subparagraph 2.c. For 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. Clearance is denied.

Erin C. Hogan
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. Gov Ex 1; Tr. at 5.
3. Tr. at 10; Gov Ex 2.
4. Tr. at 11.
5. Tr. at 29-31.
6. Gov Ex 1, p.2; Tr. at 32-33.
7. Gov Ex 1.
8. *Id.*
9. Gov Ex 4.
10. Gov Ex 6.
11. Gov Ex 2.
12. *Id.*
13. Gov Ex 3.
14. *Id.*
15. Tr. at 24.
16. Tr. at 38.
17. Tr. at 37-38.

18. Tr. at 44.
19. Gov Ex 1, p.3; Tr. at 49.
20. Tr. at 49.
21. Gov Ex 1, p.3.
22. Gov Ex 1, p. 5.
23. Tr. at 54.
24. Tr. at 51.
25. ISCR Case No. 96-0277 (July 11, 1997) at p. 2.
26. ISCR Case No. 97-0016 (December 31, 1997) at p. 3; Directive, Enclosure 3, ¶ E3.1.14.
27. *Department of the Navy v. Egan*, 484 U.S. 518, 531 (1988).
28. ISCR Case No. 94-1075 (August 10, 1995) at pp.3-4; Directive, Enclosure 3, ¶ E3.1.15.
29. ISCR Case No. 93-1390 (January 27, 1995) at pp. 7-8; Directive, Enclosure 3, ¶ E3.1.15
30. *Egan*, 484 U.S. at 531.
31. *Id.*; Directive, Enclosure 2, ¶ E2.2.2.
32. Executive Order 10865 § 7.