

KEYWORD: Financial Considerations

DIGEST: Applicant failed to mitigate financial concerns related to over \$10,000.00 in delinquent debts incurred during an 18 month period of unemployment after resigning from the Army. He failed to show payments or a plan to resolve the debts despite employment for the past two years. Clearance is denied.

CASENO: 04-07005.h1

DATE: 04/17/2006

DATE: April 17, 2006

In Re:

SSN: -----

Applicant for Security Clearance

ISCR Case No. 04-07005

DECISION OF ADMINISTRATIVE JUDGE

CHARLES D. ABLARD

APPEARANCES

FOR GOVERNMENT

Kathryn MacKinnon, Esq. , Department Counsel

FOR APPLICANT

Pro Se

SYNOPSIS

Applicant failed to mitigate financial concerns related to over \$10,000.00 in delinquent debts incurred during an 18 month period of unemployment after resigning from the Army. He failed to show payments or a plan to resolve the debts despite employment for the past two years. Clearance is denied.

STATEMENT OF CASE

On May 27, 2005, the Defense Office of Hearings and Appeals (DOHA), pursuant to Executive Order 10865, *Safeguarding Classified Information Within Industry*, 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 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. DOHA recommended the case be referred to an administrative judge to determine whether a clearance should be granted, continued, denied, or revoked.

On July 19, 2005, Applicant responded to the SOR allegations, and requested a hearing. The matter was assigned to me on September 20, 2005. A notice of hearing was issued on November 8, 2005, for a hearing on December 13, 2005, and held that day. The government offered five exhibits in evidence and Applicant offered two. All were accepted. The transcript was received on December 28, 2005.

FINDINGS OF FACT

Applicant admitted all eight of the SOR allegations. After a complete review of the record, I make the following additional findings of fact:

Applicant is a 39-year-old employee of a contractor working for the Department of State. He incurred the eight delinquent debts cited in the SOR totaling a little over \$14,000.00. Most of the debts were incurred after he left active duty in the Army in February, 2002 after 17 years of service. He resigned from the service to avoid charges relating to a romantic relationship with a military person of lower rank. By resigning he forfeited the opportunity to serve long enough to qualify for a military pension. During the following 18-month period he was either unemployed or underemployed and his home was foreclosed. Applicant has made very few payments on the delinquent debts and does not have the means to pay them either in full or substantially.

Applicant considered credit counseling from his employer but rejected it because he was concerned that information about his financial situation might be circulated among fellow employees (Tr. 40). His wages have been garnished for child support for two children in amounts of \$315.00 and \$175.00 per month (Tr. 30).

His largest delinquent debts arose from credit cards. Others were for household expenses. He contacted the three largest creditors whose combined delinquent debts total almost \$10,000.00 (SOR 1.a., 1.b., and 1.c.) who insisted on monthly payments in excess of the \$50.00 payments to each that Applicant could pay (Tr. 20). He purchased a one-year-old car for \$25,000.00 in 2004 on which he makes monthly payments of \$474.00. He intends to pay the debts but no payments have been made and his budget indicates he has very little left over after his expenses.

Applicant has declined to take bankruptcy under the impression that it would preclude him from receiving a security clearance (Tr. 50). He contributes \$82.00 monthly to his 401k plan in which he now has approximately \$1,500.00 invested.

Applicant has a good record with his employer with whom he has been employed since August, 2003. Since he began work he has been promoted to a supervisory position. Applicant holds a security clearance and this matter arose because he has applied for a top secret clearance.

POLICIES

"[N]o one has a 'right' to a security clearance." *Department of the Navy v. Egan*, 484 U.S. 518, 528 (1988). 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." *Id.* at 527.

An evaluation of whether the applicant meets the security guidelines includes consideration of the following factors: (1) the nature, extent, and seriousness of the conduct; (2) the circumstances surrounding the conduct; (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 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. Directive, ¶ E2.2.1. Security clearances are granted only when "it is clearly consistent with the national interest to do so." Executive Order No. 10865 § 2. *See* Executive Order No. 12968 § 3.1(b).

Initially, the Government must establish, by something less than a preponderance of the evidence, that conditions exist in the personal or professional history of the applicant which disqualify, or may disqualify, the applicant from being eligible for access to classified information *See Egan*, 484 U.S. at 531. The applicant then bears the burden of demonstrating it is clearly consistent with the national interest to grant or continue a security clearance. "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. "[S]ecurity clearance determinations should err, if they must, on the side of denials." *Egan*, 484 U.S. at 531. *See* Executive Order No. 12968 § 3.1(b).

CONCLUSIONS

Upon consideration of all the facts in evidence, and after application of all appropriate adjudicative factors, I conclude the following with respect to all allegations set forth in the SOR:

Applicant's delinquent debts prompted the allegation of security concerns under Guideline F in that an individual who is financially overextended is at risk of having to engage in illegal acts

to generate funds. (E2.A6.1.1.) Conditions that could raise a security concern and may be disqualifying include a history

of not meeting financial obligations (E2.A6.1.2.1.), and evidence of

inability or unwillingness to satisfy debts. (E2.A6.1.2.3.) Mitigating Conditions (MC) might include the fact that the conditions that resulted in the behavior were largely beyond the person's control (E2.A6.1.3.3.), or the person has initiated a good faith effort to repay overdue creditors or otherwise

resolve debts. (E2.A6.1.3.6.).

Although he incurred most of the debts during his period of low or no income after he left the army, there is no showing that the situation was beyond his control. He has been employed by his present employer for almost two years and, while his income is not large, nothing has been done to pay his delinquent debts. He did not follow through with debt counseling and declines bankruptcy. No mitigating conditions are applicable.

In all adjudications the protection of our national security is of paramount concern. Persons who have access to classified information have an overriding responsibility for the security concerns of the nation. The objective of the security clearance process is the fair-minded, commonsense assessment of a person's trustworthiness and fitness for access to classified information.

The "whole person" concept recognizes we should view a person by the totality of their acts and omissions. Each case must be judged on its own merits taking into consideration all relevant circumstances, and applying sound judgment, mature thinking, and careful analysis. Applicant has declined counseling and bankruptcy and has offered no evidence of either an ability to or serious efforts to resolve the debts.

After considering all the evidence in its totality, and as an integrated whole to focus on the whole person of Applicant, I conclude that a security clearance should not be granted. Clearance is denied.

FORMAL FINDINGS

Formal findings as required by the Directive (Par. E3.1.25) are as follows:

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

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 renew a security clearance for Applicant. Clearance is denied.

Charles D. Ablard

Administrative Judge