

KEYWORD: Financial Considerations; Personal Conduct

DIGEST: Applicant is a married, 35-year-old employee of a federal contractor. He had a significant amount of unpaid debts. Of five delinquent debts, three are paid, another is being paid subject to a payment agreement with the creditor, and the last one is still unresolved because of bank mergers and the inability of the successor bank to find his records. He made honest and earnest efforts to resolve his financial problems. He was unaware of liens and therefore did not falsely answer questions on his security clearance application. He successfully mitigated the security concerns about financial considerations and personal conduct. Clearance is granted.

CASE NO: 04-07335

DATE: 05/31/2006

DATE: May 31, 2006

In re:

SSN: -----

Applicant for Security Clearance

ISCR Case No. 04-07335

DECISION OF ADMINISTRATIVE JUDGE

CHRISTOPHER GRAHAM

APPEARANCES

FOR GOVERNMENT

James B. Norman, Esq., Department Counsel

FOR APPLICANT

Pro Se

SYNOPSIS

Applicant is a married, 35-year-old employee of a federal contractor. He had a significant amount of unpaid debts. Of five delinquent debts, three are paid, another is being paid subject to a payment agreement with the creditor, and the last one is still unresolved because of bank mergers and the inability of the successor bank to find his records. He made honest and earnest efforts to resolve his financial problems. He was unaware of liens and therefore did not falsely answer questions on his security clearance application. He successfully mitigated the security concerns about financial considerations and personal conduct. Clearance is granted.

STATEMENT OF THE CASE

On May 12, 2005, the Defense Office of Hearings and Appeals (DOHA) issued a Statement of Reasons (SOR) to Applicant 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. The SOR alleged reasons under Guidelines F (financial considerations) and E (personal conduct) 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 Applicant's security clearance.

In a written statement dated June 29, 2005, Applicant responded to the allegations in the SOR and requested a hearing. The case was assigned to me on September 29, 2005. Notice of Hearing was issued October 6, 2005, scheduling the hearing for October 19, 2005. The hearing was held as scheduled. The transcript (Tr.) was received November 1, 2005. At the hearing, the government offered four exhibits, Applicant submitted thirteen exhibits, and Applicant gave testimony.

FINDINGS OF FACT

Applicant admitted the SOR allegations in subparagraphs 1.a. through 1.e. He admitted he had state tax liens but denied knowing about them when he executed his Standard Form 86 - Security Clearance Application (subparagraphs 2.a.i. through 2.a.iii.). He made no response to the allegation in subparagraph 2.b. I make the following findings of fact:

Applicant is a divorced 35-year-old employee of a federal contractor, working as a technician. ⁽¹⁾ He has two associates degrees in electronics, communications and computer repair. ⁽²⁾ He served in the U.S. Navy for 4 ½ years. He served on an aircraft carrier during the entire Gulf War, and is a disabled veteran. ⁽³⁾

SOR paragraphs 1.a. through 1.e. listed unpaid debts totaling \$19,641.00 as of April 4, 2005. The debts listed in subparagraphs 1.a., 1.b., and 1.e. are paid. ⁽⁴⁾ The financial institution debt of \$9,916.00 listed in 1.c. is being paid under an agreement to make two payments of \$375.00 each, then \$200.00 per month beginning in November 2005, until he can accumulate enough funds to pay the amount in full. ⁽⁵⁾ A credit card debt of \$2,841.00 is unpaid. The bank issuing the card was acquired by a larger bank. When he attempted to contact them to establish a payment agreement, the new bank could find no record of his credit card. He sent the bank copies of his documents and is continuing to try and reach a settlement. ⁽⁶⁾

During 2001 and 2002, Applicant and his then wife were in the process of a divorce. At some point in 2002, she moved into her own house. The mail was forwarded to her. He moved to another city with his employment. He was unemployed for several months and established a small business to attempt to generate income. This resulted in an income tax lien in a different state. Because of his reduced income, he fell behind on the mortgage payments (in which taxes were escrowed), the bank stopped making real property tax payments due to his reduced payments, and real estate property tax liens were placed on the home. The house was sold on August 27, 2003. The tax liens were paid on that date. He had an income tax lien by another state. It was filed in that state and appeared on his credit report. He owned no real property in that state. He paid the lien on March 23, 2004. ⁽⁷⁾

In answering questions on his SF 86, Applicant answered "No" to **Question 36. Your Financial Record - Tax Lien** "In the last 7 years, have you had a lien placed against your property for failing to pay taxes or other debts." ⁽⁸⁾ Applicant did not remember receiving notice of the property tax or income tax liens because his mail was being forwarded to his wife. She told him she did not bother looking for him to give him his mail. ⁽⁹⁾ He did not learn of these liens until his interview with a DSS agent on October 29, 2003. ⁽¹⁰⁾

In answer to **Question 38. Your Financial Delinquencies - 180 Days** "In the last 7 years, have you ever been over 180 days delinquent on any debt(s)?," he stated "No." ⁽¹¹⁾ He did not learn of these delinquencies until the DSS interview.

[\(12\)](#)

A personal financial statement prepared by Appellant in October 2003, showed sufficient income to pay outstanding debts, with a surplus over \$400.00 per month.[\(13\)](#) He has one credit card and operates on a cash basis.[\(14\)](#)

The chief operating officer of his employer stated that in the five years Applicant has been with the company, he had proven to be trustworthy and reliable. He is aware of Applicant's financial situation, and although he makes no excuses for this conduct, believes that these issues would not interfere with his ability to perform his duties.[\(15\)](#)

POLICIES

"[No] one has a 'right' to a security clearance."[\(16\)](#) 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."[\(17\)](#) 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."[\(18\)](#) 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.[\(19\)](#) The Directive presumes a nexus or rational connection between proven conduct under any of the disqualifying

[\(20\)](#)

conditions listed in the guidelines and an applicant's security suitability.

Once the Government establishes a disqualifying condition, the burden shifts to the applicant to rebut, explain, extenuate, or mitigate the facts. ⁽²¹⁾ An applicant "has the ultimate burden of demonstrating that it is clearly consistent with the national interest to grant or continue his security clearance." ⁽²²⁾ 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. ⁽²³⁾ 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, not 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 evidence as a whole, I find the following guidelines most pertinent to an evaluation of the facts of this case:

Guideline F: 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: 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

Financial Considerations. The government has established its case under Guideline F. Financial Considerations Disqualifying Condition (FC DC) E2.A6.1.2.1. arises where there is *A history of not meeting financial obligations.*

Similarly, FC DC E2.A6.1.2.3. applies where the information shows an *Inability or unwillingness to satisfy debts*. The available information demonstrates Applicant has a history of not meeting his financial obligations. He has been delinquent in payments on numerous accounts. I conclude that FC DC E2.A6.1.2.1. and FC DC E2.A6.1.2.3. apply.

Various conditions can mitigate the security concerns arising from financial difficulties. The Directive sets out Financial Considerations Mitigating Condition (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 or a death or divorce)*) that applies. A contentious divorce, his former wife's irresponsibility in not forwarding his mail to him, and loss of regular employment with decreased income are all mitigating factors that apply to Applicant.

FC MC E2.A6.1.3.6. may apply where (*The individual initiated a good-faith effort to repay overdue creditors or otherwise resolve bad debts*). Applicant has worked with his creditors to resolve his debts. Three are paid, another is in a payment agreement with the creditor, and the last one is still unresolved because of bank mergers and the inability of the successor bank to find his records. He is actively pursuing getting a settlement with this creditor. He has made honest and earnest efforts to resolve his financial problems. His financial statement indicates adequate income to keep current his obligations. FC MC E2.A6.1.3.6. applies. I conclude Guideline F for Applicant.

Personal Conduct. The government has established its case under Guideline E. Personal Conduct Disqualifying Conditions (PC DC) include 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*).

Mitigating factor include Personal Conduct Mitigating Condition (PC MC) E2.A5.1.3.1. (*the information was unsubstantiated*). Applicant was alleged to have given false answers to questions 36 and 38 of the SF 86. His explanation of why he did not know about these until his DSS interview is credible. Going through a divorce and contending with job changes and fluctuating income is a challenging time. Further, his wife refused to forward his mail. If he did not know about the liens and the delinquencies then he cannot have falsified his answers. His answers were true to the best of his knowledge and belief. I conclude PC MC E2.A5.1.3.1. is applicable. I further find that he has mitigated the security concerns arising from his personal conduct.

After considering all the evidence in its totality and as an integrated whole to focus on the whole person of Applicant, I conclude that Applicant has made considerable efforts to change his habits regarding finances and I believe that this type conduct is not likely to occur in the future. I have carefully weighed all of the available evidence, and I have applied the appropriate disqualifying and mitigating conditions. This record raises no reasonable or persistent doubts about Applicant's ability to protect classified information and to exercise the requisite good judgment and discretion expected of one in whom the government entrusts its interests. Clearance is granted.

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: FOR APPLICANT

Subparagraph 1.a. For Applicant

Subparagraph 1.b. For Applicant

Subparagraph 1.c. For Applicant

Subparagraph 1.d. For Applicant

Subparagraph 1.e. For Applicant

Paragraph 2. Guideline E: FOR APPLICANT

Subparagraph 2.a. For Applicant

Subparagraph 2.a.i. For Applicant

Subparagraph 2.a.ii. For Applicant

Subparagraph 2.a.iii. For Applicant

Subparagraph 2.b. For Applicant

DECISION

In light of all the circumstances presented by the record in this case, it is clearly consistent with the national interest to grant or continue Applicant's security clearance. Clearance is granted.

Christopher Graham

Administrative Judge

1. Government Exhibit 1, (Standard Form 86, *Security Clearance Application*, dated August 12, 2003) at 2-3; Tr. at 10.
2. Tr. at 11.
3. *Id.*
4. Tr. at 12, 14.
5. Tr. at 13.
6. Tr. at 14.
7. Tr. at 15-19; Applicant's Exhibit J (Letter of Lien Release, dated March 23, 2004) at 1-2.
8. Government Exhibit 1, *supra*, at 7.
9. Tr. at 41.
10. Tr. at 42.
11. Government Exhibit 1, *supra*, at 7.
12. Tr. at 8.
13. Government Exhibit 2 (Applicant's Statement, dated October 29, 2003) at 2.
14. Tr. at 52.
15. Applicant's Exhibit L (Letter from Chief Operating Officer, undated) at 1.
16. *See Department of the Navy v. Egan*, 484 U.S. 518, 528 (1998).
17. *Id.* at 527.
18. Exec. Or. 12968, *Access to Classified Information*, § 3.1(b) (Aug. 4, 1995).

19. *Egan, supra*, at 531.

20. *See* ISCR Case No. 95-0611 at 2 (App. Bd. May 2, 1996).

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

22. *Id.*, at 3.

23. *See Egan*; Directive ¶ E2.2.2.