

KEYWORD: Financial

DIGEST: Applicant is a retired chief petty officer working as a crew manager for a shipping company handling defense contracts. Due to circumstances beyond his control, including an unexpected medical retirement, an extended period of under-employment, and expenses resulting from a divorce, Applicant was unable to meet his financial obligations. In 2001, a Chapter 7 bankruptcy action discharged his debts, except for unpaid federal and state taxes. In following years, the tax repayment burden and consumer debts resulted in further financial strain. In 2005, he filed for Chapter 13 bankruptcy and began a repayment plan addressing all the debts listed in the SOR. He has the financial means to execute the plan. Applicant mitigated the security concerns relating to financial considerations. Clearance is granted.

CASE NO: 04-07596.h1

DATE: 04/25/2006

DATE: April 25, 2006

In re:

SSN: -----

Applicant for Security Clearance

ISCR Case No. 04-07596

DECISION OF ADMINISTRATIVE JUDGE

MICHAEL J. BRESLIN

APPEARANCES

FOR GOVERNMENT

FOR APPLICANT

Pro Se

SYNOPSIS

Applicant is a retired chief petty officer working as a crew manager for a shipping company handling defense contracts. Due to circumstances beyond his control, including an unexpected medical retirement, an extended period of under-employment, and expenses resulting from a divorce, Applicant was unable to meet his financial obligations. In 2001, a Chapter 7 bankruptcy action discharged his debts, except for unpaid federal and state taxes. In following years, the tax repayment burden and consumer debts resulted in further financial strain. In 2005, he filed for Chapter 13 bankruptcy and began a repayment plan addressing all the debts listed in the SOR. He has the financial means to execute the plan. Applicant mitigated the security concerns relating to financial considerations. Clearance is granted.

STATEMENT OF THE CASE

On September 26, 2003, Applicant submitted a security clearance application. 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 Department of Defense Directive 5220.6, *Defense Industrial Personnel Security Clearance Review Program* (Jan. 2, 1992), as amended (the "Directive"). On May 24, 2005, DOHA issued a Statement of Reasons (SOR) detailing the basis for its decision. The SOR alleges a security concern raised under the Directive, specifically Guideline F, Financial Considerations.

Applicant answered the SOR in writing on June 22, 2005. He elected to have a hearing before an administrative judge.

I received the case assignment on January 3, 2006. With the concurrence of Applicant and Department Counsel, I convened the hearing on February 7, 2006. At the hearing, the government introduced Exhibits 1 through 8. Applicant presented Exhibits A and B and testified on his own behalf. At Applicant's request, I kept the record open to allow submission of additional documents. On March 7, 2006, Applicant provided nine additional documents which were admitted as Exhibits C through K, without objection. (The second page of the cover letter was missing; repeated attempts to obtain the missing page were fruitless.) DOHA received the final transcript of the hearing (Tr.) on February 15, 2006.

FINDINGS OF FACT

Applicant admitted the factual allegations in ¶¶ 1.a through 1.e, and ¶ 1.o of the SOR. (Applicant's Answer to SOR, dated June 22, 2005, at 1-2.) Those admissions are incorporated herein as findings of fact. He denied the factual allegations in ¶¶ 1.f through 1.n of the SOR. (*Id.*) After a complete and thorough review of the evidence in the record, I make the following additional findings of fact.

Applicant was born in July 1959. (Ex. 1 at 1.) After completing high school he joined the U.S. Navy. (Tr. at 16; Ex. B.) He served on active duty for 21 years, including five years in submarines before transferring to surface ships. (Ex. B.) Applicant held a security clearance while on active duty.

He was married in 1985. (Ex. 1 at 3.) One child was born of the marriage—a son born in 1986. (Ex. 1 at 4.)

Applicant served in Operation Desert Shield. (Tr. at 16.) When he returned from that deployment, his wife decided to leave the marriage. (Tr. at 18.) They were divorced shortly thereafter. (Tr. at 28, 39.) According to Applicant, he was responsible for paying child support, legal fees, and all the marital bills. (Tr. at 18, 40.)

Applicant married again in about 1991. (Tr. at 40.) His wife had two children from a prior relationship. (Ex. 1 at 4.)

In 1996, the Navy medically retired Applicant. (Tr. at 16-17; Ex. B.) According to Applicant, it was only three months between the time he was diagnosed with diabetes and the date he was discharged, leaving him little time to find another position. (Tr. at 17; Ex. B.) He retired as a chief petty officer (E-7). (Tr. at 16-17; Ex. B.)

Applicant's unexpected discharge from active duty, the resulting loss of income, and his difficulty in finding lucrative employment led to financial problems. (Ex. 1 at 9; Ex. 2 at 5.) His diabetes made it impossible to stand for long periods of time, making it difficult to work in a power plant which was his area of expertise. (Tr. at 25.) Between about 1996 and 1999, he worked ten different jobs, sometimes holding two jobs at once. (Tr. at 17, 25; Ex. 1 at 2.) Even so, he did not earn as much as he had before. (Tr. at 25.)

In order to make ends meet, Applicant used his credit card accounts to pay bills. (Tr. at 25.) Eventually he fell behind in his payments on his mortgage, his car loan, and his credit card accounts. (*Id.*) He did not pay his state or federal taxes for several years. In 1999, after falling three months behind in his mortgage payment and facing foreclosure, he returned his home to the lender. (Tr. at 30.)

In about 1999, Applicant began working for his present employer, a defense contractor that operates a major shipping company. (Tr. at 17.) Applicant works as a crew manager. (Tr. at 17.) He is on call at all times to locate and assign necessary crew members for the company's ships worldwide. (*Id.*) His co-workers praise his dedication and trustworthiness. (Ex. J; Ex. K.)

In July 2001, Applicant filed for bankruptcy protection under Chapter 7 of the bankruptcy code. (Tr. at 24; Ex. 5.) The court discharged his debts in November 2001. (Ex. 6.) The bankruptcy court did not discharge the debts to the Internal Revenue Service (I.R.S.) for unpaid taxes in 1996, 1999, 2000, and 2001. (Ex. 7.)

In 2001 or 2002, one of Applicant's step-sons persuaded Applicant's wife to give him about \$5,000.00 of Applicant's funds, and used the money to support an illegal drug habit. (Tr. at 20-21, 49.) This loss caused further financial hardship. Applicant and his wife were able to get him into a rehabilitation program and he is now recovered and leading a productive life. (Tr. at 21.)

Applicant submitted a security clearance application in September 2003. (Ex. 1 at 1.) He reported his financial difficulties, including his earlier bankruptcy.

In November 2003, Applicant entered into an agreement with the I.R.S. to pay off his tax debt at the rate of \$1,000.00 per month. Applicant's wife later lost her job-because of the loss in income, the agreed payment to the I.R.S. was reduced to \$500.00 per month. (Answer to SOR, *supra*, at 1; Tr. at 48.)

In May 2005, DOHA initiated this action to deny Applicant's security clearance. Applicant sought credit counseling to help manage his finances. (Tr. at 58-59.) In October 2005, Applicant and his wife filed for protection under Chapter 13 of the bankruptcy code. (Tr. at 45; Ex. A.) For the sake of completeness, his counsel included in the bankruptcy filing all creditors appearing on the SOR and his credit bureau reports, even though Applicant believed many were previously paid or discharged in bankruptcy. In January 2006, the bankruptcy court approved a plan for resolving the listed debts, including the unpaid taxes. (Ex. F.) Under the plan, Applicant is required to pay \$800.00 per month for six months, then \$1,592.00 per month for 30 months. (*Id.*) Applicant has made the payments required to date, and has the means to make the payments required in the future. (Ex. C.)

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. Financial difficulties led to a Chapter 7 bankruptcy action discharged in November 2001. Even after receiving a fresh start, he found himself unable to pay his debts, making it necessary to file for Chapter 13 bankruptcy in October 2005. I find Applicant has shown both a history of failing to meet his financial obligations; therefore, ¶ E2.A6.1.2.1 is raised. I also find Applicant is currently able to pay his debts, therefore ¶ E2.A6.1.2.3 does not apply.

The security concerns arising from Applicant's financial difficulties can be mitigated. Under the Directive, ¶ E2.A6.1.3.1, it may be mitigating where "the behavior was not recent." Applicant resolved most of his overdue obligations through the bankruptcy action in 2001; these debts are not recent. A portion of his debts for unpaid state and federal taxes remain unsatisfied, however, along with debts accrued since the first bankruptcy. I find the unpaid obligations are recent. This potentially mitigating condition applies only in part.

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 several 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 his unexpected medical discharge from the Navy, his divorce, and his inability to obtain lucrative employment for several years. 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 sought and received financial counseling, and filed for personal bankruptcy under Chapter 13 to resolve his delinquent debts. He is properly making payments on the approved plan. I find his debt problem is being resolved. I conclude this mitigating condition applies.

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 is in the process of resolving his debts through the Chapter 13 bankruptcy. I conclude this mitigating condition applies.

I considered carefully all the potentially disqualifying and mitigating conditions in this case in light of the "whole person" concept, keeping in mind that any doubt as to whether access to classified information is clearly consistent with national security must be resolved in favor of the national security. Applicant is a mature individual with years of service as a noncommissioned officer. He has strong ties to this country. He developed significant financial problems arising largely from circumstances beyond his control, but has acted responsibly to resolve his debts to the best of his ability. He arranged a repayment plan under the Chapter 13 bankruptcy action addressing all the debts listed in the SOR, and has the financial means to execute the plan. I conclude Applicant mitigated the security concerns arising under the guideline for financial considerations.

FORMAL FINDINGS

My conclusions as to each allegation in the SOR are:

Paragraph 1, Guideline F: FOR APPLICANT

Subparagraph 1.a-1.o: For Applicant

DECISION

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

Michael J. Breslin

Administrative Judge