

KEYWORD: Financial

DIGEST: Applicant is a mature individual with a long record of excellent service working for a defense contractor. His financial difficulties arose in part from mismanagement of his finances and in part from circumstances beyond his control. Rather than declaring bankruptcy, Applicant chose to repay his delinquent debts over time. Ultimately, Applicant paid, settled, or arranged a payment plan for all the debts listed in the SOR. I conclude Applicant mitigated the security concerns arising from his financial difficulties. Clearance is granted.

CASENO: 04-09060.h1

DATE: 03/30/2006

DATE: March 30, 2006

In re:

SSN: -----

Applicant for Security Clearance

ISCR Case No. 04-09060

DECISION OF ADMINISTRATIVE JUDGE

MICHAEL J. BRESLIN

APPEARANCES

FOR GOVERNMENT

FOR APPLICANT

Pro Se

SYNOPSIS

Applicant is a mature individual with a long record of excellent service working for a defense contractor. His financial difficulties arose in part from mismanagement of his finances and in part from circumstances beyond his control. Rather than declaring bankruptcy, Applicant chose to repay his delinquent debts over time. Ultimately, Applicant paid, settled, or arranged a payment plan for all the debts listed in the SOR. I conclude Applicant mitigated the security concerns arising from his financial difficulties. Clearance is granted.

STATEMENT OF THE CASE

On April 3, 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 June 13, 2005, DOHA issued a Statement of Reasons (SOR) detailing the basis for its decision. The SOR alleges security concerns raised under the Directive, Guideline F, Financial Considerations.

Applicant answered the SOR in writing by letter dated June 27, 2005. He elected to have a hearing before an administrative judge.

I received the case assignment on September 22, 2005. With the concurrence of Applicant and Department Counsel, I convened the hearing on December 14, 2005. The government introduced Exhibits 1 through 6. Applicant provided Exhibits A through TT, and testified on his own behalf. At Applicant's request, I kept the record open for 30 days to allow time to submit additional matters. Between December 20, 2005, and January 9, 2006, Applicant submitted

Exhibits UU through BBB, which were admitted without objection. DOHA received the transcript of the hearing (Tr.) on December 28, 2005.

FINDINGS OF FACT

Applicant admitted the factual allegations in the SOR. (Applicant's Answer to SOR, June 27, 2005, at 1.) 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 was born in September 1956. (Ex. 1 at 1.) After high school he attended a polytechnic institute and studied computer science between 1974 and 1975. He was married in July 1979. (Ex. 1 at 3.)

In 1979, he began working for a telecommunications company. (Tr. at 59.) In 1984, he began going to college at night. (*Id.*) After earning an associate's degree in engineering science in 1988, he went to college full-time and obtained a bachelor of science degree in electrical engineering in 1990. (Ex. 1 at 2; Ex. BB; Tr. at 59.)

Applicant began working in his current position as a software engineer for a defense contractor in July 1990. (Ex. 1 at 2.) He later completed most of the work required for a master's degree in electrical engineering. (Ex. BB.) Applicant has worked for the defense contractor for about 15 years. (Tr. at 42.) His history of job performance reports reflect consistently excellent work. (Exs. BB-JJ; LL-OO.) He received several performance-related awards. (Exs. KK, PP, and QQ.)

In 1994, Applicant purchased a home. The mortgage payment was substantially more than he had been paying in rent. (Tr. at 34, 70; Ex. Y.) Also, Applicant and his wife incurred substantial debt furnishing the home. His wife decided to work in a different city, and only came home to their residence every second or third weekend. She did not contribute to the mortgage or utility expenses. (Tr. at 34.) In January 1997, the mortgage company reevaluated the escrow account and raised the monthly mortgage payment from \$1,161.08 to \$1,706.97 a month, to make up for a shortfall caused by increased tax rates. (Ex. Z.) In April 1997, the monthly payment was readjusted to \$1,477.73. (Tr. at 36; Ex. AA.)

In 1997, Applicant was convicted for Driving Under the Influence of Alcohol. (Tr. at 70.) The court costs and fees amounted to about \$2,000.00 in additional expense. (Tr. at 71.)

As a result of all these circumstances, Applicant had difficulty paying his bills. (Tr. at 34.) He fell behind on a telephone service account (SOR, ¶ 1.d; Tr. at 49) credit union debts (SOR, ¶¶ 1.e and 1.f; Tr. at 48-49), a gasoline credit card (SOR, ¶ 1.b; Tr. at 49), and credit card debts.

In 1998, Applicant separated from his wife and moved into an apartment. (Tr. at 61.) Applicant is still separated; he pays support to his wife. (*Id.*) She lives in the marital home with one of Applicant's sons. (Tr. at 72.)

Applicant sought out credit counseling. (Tr. at 36, 65-66.) The counselor recommended bankruptcy, but Applicant did not want to resolve his debts that way. (*Id.*) Beginning in January 2000, Applicant began the process of repaying his debts. (Tr. at 25.) He decided on a strategy of paying off one debt at a time. (Tr. at 67.)

In 2001, Applicant suffered a heart attack. (Tr. at 61.) His medical insurance covered most of the costs for his health care. (*Id.*) However, since that time he has been required to pay about \$100.00 per month for medication. (*Id.*)

He submitted the security clearance application in April 2003. (Ex. 1 at 1.) Before doing so, Applicant obtained a credit bureau report showing his financial status. (Ex. B; Tr. at 15.)

In November 2003, a security investigator interviewed Applicant regarding his security clearance application, including his financial situation. (Ex. 5; Tr. at 29.) During the interview, they discussed Applicant's delinquent debts, including some that were over seven years old and therefore likely to drop off the credit bureau reports. (Tr. at 29.) After the discussion, Applicant understood that it was not necessary for him to pay the debts over seven years old, but that he needed to pay off the delinquent debts less than seven years old. (Ex. 5 at 2; Ex. V at 5-8; Tr. at 29-30, 32, 51.)

He arranged a repayment plan with a collection agency for the credit card debt listed as ¶ 1.c of the SOR in the amount of \$3,424.00. (Ex. U; Tr. at 31.) Applicant made numerous payments totaling \$2,900.00, reducing the debt to about \$2,500.00. (Ex. U at 29; Tr. at 31.)

Applicant also paid delinquent debts not listed on the SOR. (Exs. R, S; Tr. at 25-28.) For example, after a bank began legal action over a debt, Applicant negotiated a settled and resolved the claim. (Tr. at 63-64.) Similarly, he arranged and executed a repayment agreement with another lender before the initiation of this action.

At the hearing in this case, Applicant submitted a series of credit reports showing a steady reduction in his overall indebtedness since 2003. (Tr. at 18-25; Exs. B through P.) He also summarized the data in a chart and table admitted as Exhibit Q. He submitted exhibits designed to show his overall favorable financial condition, including Exhibit W, a recent credit report dated July 6, 2005, reflecting a credit score of 751, which lenders consider as indicating a dependable borrower. (Tr. at 32-33.) He also maintains he has significant equity in his home, reflecting financial solvency. (Tr. at 33-34; Ex. X.) The value of his automobile is greater than the loan balance. (Tr. at 42; Exs. RR, SS.)

Applicant indicated that, as a result of his interview with the security investigator, he believed unpaid debts more than seven years old were not a security concern. (Tr. at 51-53.) However, Applicant indicated he still intended to pay the debts when possible. (Tr. at 73.)

After the hearing, Applicant submitted documents showing that he paid, settled, or arranged a repayment plan for all the debts listed in the SOR. (Ex. UU.) Specifically, Applicant settled the \$9,174.00 credit card debt listed in ¶ 1.a of the SOR for a single payment of \$6,422.00. (Ex. BBB.) He paid the \$284.00 collection account for the gasoline credit card. (Ex. XX.) He previously negotiated a repayment plan for the \$3,424.00 debt to a retailer listed as ¶ 1.c of the SOR, and paid over \$2,900.00 pursuant to that agreement. (Ex. U at 29; Tr. at 31.) He paid in full the \$272.00 debt for telephone services listed at ¶ 1.d of the SOR. (Ex. YY.) Finally, Applicant provided a letter from the creditor (Ex. WW at 3) which, in conjunction with Exhibit 4 at pages 4-5 and 7, indicate the accounts listed in ¶ 1.e and ¶ 1.f were paid or settled.

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 disqualifying 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 accrued several substantial unpaid debts between about 1994 and 2000, and many

remained unpaid for many years. Presently, he has demonstrated both a willingness and an ability to pay his debts, either outright, through a settlement, or pursuant to a repayment plan. I find Applicant has a history of failing to meet his financial obligations. The evidence does not indicate Applicant is presently unable or unwilling to pay his debts.

The Directive provides that security concerns arising from financial difficulties can be mitigated. Under the Directive, ¶ E2.A6.1.3.1, it may be mitigating where "the behavior was not recent." Although Applicant's delinquent debts arose between about 1994 and 2000, they remain unresolved for many years. Some of the debts were paid only after the hearing in this case. I find the unpaid obligations are recent. This potentially 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 the dissolution of his marriage, and unexpected medical bills. However, a substantial part of his delinquent debts arose from circumstances which were not beyond his control, such as poor management of his finances after buying a new house and the financial penalties arising from his criminal conduct. I conclude this potentially mitigating condition applies, in part.

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. Similarly, 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.) Applicant sought out financial counseling but declined to pursue the only recommended course-bankruptcy. He subsequently paid, settled, or arranged a payment plan for his delinquent debts. I conclude these potentially mitigating conditions apply.

I considered the potentially disqualifying and mitigating circumstances in light of the "whole person" concept. Applicant is a mature individual with a long record of excellent service to a defense contractor. His financial difficulties arose in part from mismanagement of his finances and in part from circumstances beyond his control. Rather than declaring bankruptcy, Applicant chose to repay his delinquent debts. Although it took some time (several accounts were paid only after the hearing) Applicant paid, settled, or arranged a payment plan for all the debts listed in the SOR. Additionally, his overall financial situation is stable. I conclude Applicant mitigated the security concerns arising from his financial difficulties.

FORMAL FINDINGS

My conclusions as to each allegation in the SOR 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

Subparagraph 1.f: 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