

KEYWORD: Financial

DIGEST: Applicant, a welder and ship-fitter for defense contractors for about 30 years, incurred some delinquent debt after a long period of unemployment and a longer period of part-time employment. He also suffered a heart attack in June 2005, and incurred additional expenses. After attempting to pay his delinquent debts on his own, he filed for bankruptcy protection under Chapter 7 to resolve his delinquent debts. I conclude Applicant mitigated the security concerns arising from his financial difficulties. Clearance is granted.

CASENO: 04-09356.h1

DATE: 01/23/2006

DATE: January 23, 2006

In re:

SSN: -----

Applicant for Security Clearance

ISCR Case No. 04-09356

DECISION OF ADMINISTRATIVE JUDGE

MICHAEL J. BRESLIN

APPEARANCES

FOR GOVERNMENT

FOR APPLICANT

Pro Se

SYNOPSIS

Applicant, a welder and ship-fitter for defense contractors for about 30 years, incurred some delinquent debt after a long period of unemployment and a longer period of part-time employment. He also suffered a heart attack in June 2005, and incurred additional expenses. After attempting to pay his delinquent debts on his own, he filed for bankruptcy protection under Chapter 7 to resolve his delinquent debts. I conclude Applicant mitigated the security concerns arising from his financial difficulties. Clearance is granted.

STATEMENT OF THE CASE

On May 6, 2003, Applicant submitted an application for a security clearance. 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 modified, and Department of Defense Directive 5220.6, *Defense Industrial Personnel Security Clearance Review Program* (Jan. 2, 1992), as amended and modified (the "Directive"). On August 2, 2005, DOHA issued a Statement of Reasons (SOR) detailing the basis for its decision. The SOR alleges security concerns raised under Guideline F of the Directive, Financial Considerations.

Applicant answered the SOR in writing on August 18, 2005. He elected to have a hearing before an administrative judge.

The case was assigned to me on October 6, 2005. With the concurrence of Applicant and Department Counsel, I convened the hearing on November 2, 2005. The government introduced Exhibits 1 through 5. Applicant offered Exhibits A through G and testified on his own behalf. I kept the record open to allow Applicant to submit additional matters. On November 9, 2005, Applicant provided, without objection, a document admitted as Ex. H. DOHA received the final transcript of the hearing (Tr.) on November 17, 2005.

FINDINGS OF FACT

Applicant admitted the factual allegations in the SOR. Applicant's Answer to SOR, dated August 18, 2005. 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 is 57 years old. (Ex. 1 at 1.) He has worked for defense contractors for about 30 years, specializing in welding and ship-fitting. (Tr. at 28-29.)

Applicant was born in 1948. (Ex. 1 at 1.) He began working in a service station at age 15, and later obtained his graduate equivalency diploma (GED). (Tr. at 28.)

In 1974 he began working as a welder and ship-fitter for a major defense contractor, building submarines. (Tr. at 29.) He obtained a security clearance for the position, which he held successfully until leaving the position in about 1991. (Tr. at 30.) Between about 1991 and 1994, Applicant worked a series of small jobs, including work as a maintenance mechanic for a pharmaceutical company. (*Id.*)

In 1995, Applicant began working for a regional shipyard. While working, he was injured and obtained medical treatment. The medical expense (SOR, ¶ 1.e) should have been covered by his Worker's Compensation insurance; however, the shipyard did not submit the claim. (Tr. at 25-26; Ex. 2 at 3.)

Work in a shipyard is often sporadic, depending upon whether the company had contracts to work on ships. In 2002, Applicant was laid off. (Ex. 1 at 2; Tr. at 19.) He was unemployed for about 10 months. (Ex. 1 at 2.) During this time, Applicant was unable to pay his debts. (Tr. at 24.) He fell behind on his automobile loan, so he returned the vehicle to the dealer as a voluntary repossession (SOR, ¶ 1.a).

In December 2002, Applicant began working for another defense contractor. (Tr. at 20.) He was initially hired on a full-time basis for a contract to work on a specific ship. He worked in that capacity for about 10 months; when the ship was completed, the contract came to an end. (Tr. at 19-20.) For the next three years, Applicant worked in a part-time status;

he worked about four to eight weeks at a time, about three times each year. (Tr. at 21.) He also received unemployment compensation. In about 2004, he contacted three credit counseling companies by telephone about resolving his debt problems, but they did not handle the type of situation Applicant faced. (Ex. 5 at 4; Tr. at 26.)

In February 2005, Applicant returned to full-time work at the shipyard. (Tr. at 22.) The contract was due for completion a few days after the hearing in this case, but he anticipated beginning a new contract in November 2005. (Tr. at 23.) After returning to full-time employment, Applicant began paying his delinquent debts. (Tr. at 24; Ex. 3 at 1; Ex. 4 at 6.)

In June 2005, Applicant suffered a heart attack. (Tr. at 24.) He incurred substantial medical bills, but most were covered by his medical insurance. (Tr. at 25.) He still faces regular monthly expenses for medication. (Tr. at 25.)

In September 2005, Applicant consulted an paralegal and obtained assistance completing a petition for Chapter 7 bankruptcy. (Ex. A; Ex. E.) The petition, filed in October 2005, includes all the debts listed in the SOR. (*Id.*; Ex. B.) The filing of the petition automatically stayed any collection of the listed debts. (Ex. G.) The first meeting of creditors was scheduled for a date after the hearing in this case.

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 being unable to meet his financial obligations and an inability to satisfy his debts from about 2002 until his bankruptcy petition in 2005. I conclude the available evidence raises both these potentially disqualifying conditions.

Security concerns arising from Applicant's financial difficulties can be mitigated under certain circumstances. Under the Directive, ¶ E2.A6.1.3.1, it may be mitigating where "the behavior was not recent." Applicant's delinquent debts arose after he was laid off from his employment in 2002. His difficult financial situation grew worse when he was placed on part-time status between about 2003 and 2005. However, the behavior in question is his failure to pay or otherwise resolve the delinquent debts. Applicant did not resolve the debts until filing for bankruptcy in 2005; therefore the behavior was recent. I find this 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 had several delinquent debts that arose at different times; therefore, this was not an isolated incident. 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)." Applicant's financial problems arose as a result of conditions beyond his control. First, the unexpectedly long period of unemployment made him unable to pay his debts. Secondly, his financial problems grew worse when he was later placed on part-time status for about three years. Finally, he suffered a heart attack in June 2005 which added to his financial problems. I conclude this 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 financial counseling, but did not enroll in a program or otherwise receive the benefits of counseling. Although he does not meet this portion of the mitigating condition, by filing for bankruptcy, he is taking action to resolve his delinquent debts.

I considered the potentially disqualifying and mitigating circumstances in light of the "whole person" concept. I note Applicant is a mature individual with many years of service to defense contractors and the Department of Defense. He successfully held a security clearance for many years. The unexpectedly long periods of unemployment and part-time employment caused his financial problems. After attempting to pay the debts on his own, Applicant filed for bankruptcy protection, and is resolving his debts through that proceeding. I conclude Applicant has mitigated the security concerns arising from his history of failing to meet his financial obligations and inability to pay debts.

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