

KEYWORD: Financial

DIGEST: Although he has received financial counseling and has filed for Chapter 7 bankruptcy, Applicant does not have a track record of financial stability sufficient to mitigate security concerns raised by his more than \$79,000 in delinquent debt. Clearance is denied.

CASENO: 04-09688.h1

DATE: 01/27/2006

DATE: January 27, 2006

In re:

SSN: -----

Applicant for Security Clearance

ISCR Case No. 04-09688

DECISION OF ADMINISTRATIVE JUDGE

JAMES A. YOUNG

APPEARANCES

FOR GOVERNMENT

Robert E. Coacher, Esq., Department Counsel

FOR APPLICANT

Pro Se

SYNOPSIS

Although he has received financial counseling and has filed for Chapter 7 bankruptcy, Applicant does not have a track record of financial stability sufficient to mitigate security concerns raised by his more than \$79,000 in delinquent debt. Clearance is denied.

STATEMENT OF THE CASE

The Defense Office of Hearings and Appeals (DOHA) declined to grant or continue a security clearance for Applicant. In accordance with Department of Defense Directive 5220.6 ¶ E3.1.2 (Jan 2, 1992), as amended, DOHA issued a Statement of Reasons (SOR) on 25 July 2005 detailing the basis for its decision-security concerns raised under Guideline F (Financial Considerations) of the Directive. Applicant answered the SOR in writing on 9 August 2005 and elected to have a hearing before an administrative judge. The case was assigned to me on 27 October 2005. On 9 December 2005, I convened a hearing to consider whether it is clearly consistent with the national interest to grant or continue a security clearance for Applicant. DOHA received the hearing transcript (Tr.) on 22 December 2005.

FINDINGS OF FACT

Applicant is a 51-year-old security officer for a defense contractor. His work history includes stints in the U.S. Navy and as a city police officer. He is divorced and has alimony/spousal support payments of \$400 per month. He is now paying \$450 a month, the extra \$50 a month to pay off an arrearage. Applicant has the support of his supervisors who find him to be a dedicated and professional member of the security team.

Applicant and his wife were married from November 1989 until March 2000. His wife had two children prior to this marriage. Applicant supported the children while the marriage lasted and has continued to provide some financial assistance to them.

Applicant admits 17 delinquent debts totaling more than \$60,000 that were placed for collection and four delinquent accounts totaling more than \$19,800 that were charged off. Included in these delinquent debts are alimony/spousal support payments.⁽¹⁾ His wife claims he still owes her more than \$11,000. He claims the debt is only \$7,000, but his October 2005 credit report still reports the debt as over \$20,000. Although not alleged in the SOR, Applicant admits he owed the IRS some \$6,000 for tax years 2000-2002. Applicant failed to file timely tax returns in those years. He did file his 2003 return and has resolved his taxes for the years he did not file. Applicant blames his wife for not filing the returns while they were separated. He now has an agreement with the IRS to repay the debt. He has been making payments for the last 18 months.

In July 2005, Applicant sought assistance from a credit counseling service. His counselor provided financial training and assistance in setting up budgets, but recommended he file a Chapter 7 bankruptcy. In August 2005, Applicant filed a Chapter 7 bankruptcy that should result in the discharge of all his debts except the alimony payments and the debt to the IRS.

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. The President authorized the Secretary of Defense or his designee to grant applicants eligibility for access to classified information "only upon a finding that it is clearly consistent with the national interest to do so." Exec. Or. 10865, *Safeguarding Classified Information within Industry* § 2 (Feb. 20, 1960). Eligibility for a security clearance is predicated upon the applicant meeting the security guidelines contained in the Directive. 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.

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 process factors listed in ¶ 6.3 of the Directive. The decision to deny an individual a security clearance is not necessarily a determination as to the loyalty of the applicant. *See* Exec. Or. 10865 § 7. It is merely an indication the applicant has not met the strict guidelines the President and the Secretary of Defense have established for issuing a clearance.

CONCLUSIONS

In the SOR, DOHA alleged Applicant had 17 delinquent debts totaling more than \$60,000 that were placed for collection (§§ 1.a-1e, 1.h, 1.j-1.o, 1.q-1.u); and four delinquent accounts totaling more than \$19,800 that were charged off (§§ 1.f, 1.g, 1.i, 1.p). Applicant admitted each of the allegations. An applicant who is financially overextended is at risk of having to engage in illegal acts to generate funds. Directive ¶ E2.A6.1.1.

The Government's evidence established potentially disqualifying conditions under Guideline F. Applicant has a history of not meeting his financial obligations (DC E2.A6.1.2.1) and is unable or unwilling to satisfy his debts (DC E2.A6.1.2.3). An applicant may mitigate such disqualifying conditions by showing, among other things, that the debts resulted from conditions that were largely beyond his control (MCE2.A6.1.3.3), he has received counseling and there are clear indications the problem is being resolved (MC E2.A6.1.3.4), and he initiated a good-faith effort to resolve his debts (MC E2.A6.1.3.6). Applicant's divorce caused him some financial difficulties, but occurred about five years ago. Applicant made an effort, through counseling and by filing for bankruptcy, to resolve his delinquent debts. But the applicability of these mitigating conditions is tempered by the fact Applicant waited so long to seek assistance for his financial problems. He waited until September 2004 to contact an attorney to file for bankruptcy and until July 2005 to see a financial counselor. The bankruptcy is not final and Applicant does not have a track record of financial stability sufficient to overcome the disqualifying conditions. After considering all the circumstances, I find against Applicant.

FORMAL FINDINGS

The following are my conclusions as to each allegation in the SOR:

Paragraph 1. Guideline F: AGAINST APPLICANT

Subparagraph 1.a-1.u: Against Applicant

DECISION

In light of all of the circumstances in this case, it is not clearly consistent with the national interest to grant or continue a security clearance for Applicant. Clearance is denied.

James A. Young

Administrative Judge

1. In ¶ 1.q of the SOR, DOHA alleged Applicant had a delinquent child support debt to a county "Child Support Enforcement Agency." In his Answer, Applicant admitted this delinquent debt. Nevertheless, it appears the delinquent debt owed to the "Child Support Enforcement Agency" is actually for spousal support. Applicant was not misled by the reference to child support in the SOR.