

KEYWORD: Financial

DIGEST: Applicant had two debts totaling more than \$29,000 placed for collection. Between February 2004 and November 2005, he made less than \$500 in payment on these debts. The record evidence is insufficient to mitigate or extenuate the negative security implications stemming from Applicant's delinquent debts. Clearance is denied.

CASENO: 04-10149.h1

DATE: 03/28/2006

DATE: March 24,2006

In Re:

SSN: -----

Applicant for Security Clearance

ISCR Case No. 04-10149

DECISION OF ADMINISTRATIVE JUDGE

CLAUDE R. HEINY

APPEARANCES

FOR GOVERNMENT

Robert E. Coacher, Department Counsel

FOR APPLICANT

Pro Se

SYNOPSIS

Applicant had two debts totaling more than \$29,000 placed for collection. Between February 2004 and November 2005, he made less than \$500 in payment on these debts. The record evidence is insufficient to mitigate or extenuate the negative security implications stemming from Applicant's delinquent debts. Clearance is denied.

STATEMENT OF THE CASE

On June 20, 2005, the Defense Office of Hearings and Appeals (DOHA) issued a Statement of Reasons (SOR) to Applicant, stating that DOHA could not make the preliminary affirmative finding⁽¹⁾ it is clearly consistent with the national interest to grant or continue a security clearance for Applicant. On August 9, 2005, Applicant answered the SOR and elected to have his case decided on the written record in lieu of a hearing.

On November 8, 2005, Applicant received a complete copy of the government's File of Relevant Material (FORM) dated October 13, 2005. Applicant was given the opportunity to file objections and submit material in extenuation, mitigation, or refutation. On November 18, 2005, Applicant responded to the FORM. On November 28, 2005, I was assigned the case.

FINDINGS OF FACT

The SOR alleges security significant financial considerations. Applicant admits owing the two debts. Those admissions are incorporated herein as findings of fact. After thorough review of the whole record, I make the following additional findings of fact:

Applicant is 57 years old, has worked for a defense contractor as an industrial engineer since April 1979, and is seeking to maintain a secret security clearance.

In 1995, Applicant began to experience financial problems. He took his 401 (k) company retirement plan and put it in a private account. He also used cash from credit cards to make investments anticipating the investments would have sufficient returns to repay the credit card debt. He was wrong. In 1989 and 1999, he went to two different credit counseling services. In 2000, he borrowed \$16,000 from his in-laws and \$10,000 from his wife's aunt to catch up on his delinquent accounts. He was able to bring his payments current, but the credit card debt remained.

A credit service helped Applicant negotiate a settlement of the two accounts placed for collection. The service has previously been successful in settling four other accounts Applicant owed various banks. In 2000, the service negotiated a \$33,000 settlement agreement, which Applicant was able to pay off with a loan from his 401(k) plan. In 2003, he settled with the banks paying: \$6,500 on a debt of \$13,699, \$4,950, \$2,158, and \$250.

In February 2004, Applicant made a sworn statement to the Defense Security Service (DSS). (Item 5) In his statement he said he hoped to pay off the \$9,159 bad debt (SOR 1.a) by the summer of 2004. When he made his statement, his monthly net remainder was \$1,129. In October 2004, when he completed his answer to the written interrogatories, his monthly net remainder was \$49. In August 2004, Applicant relocated with his family to put his two daughters in a different school district. It took nine months for his home to sell in April 2005. During these months, Applicant had to make his mortgage payments as well as rent payments.

As of June 30, 2004, Applicant owed \$20,086.46 on the account place for collection as reflected in SOR paragraph 1.b, which the creditor offered to settle for \$6,025.94. In August 2004, the creditor owed the delinquent debt of \$9,159.88 (SOR 1.a) offered to settle the matter for \$4,579.94. Applicant was unable to accept either of these offers. In his February 2004-statement, he said he hoped to pay off his existing \$9,159 debt (SOR 1.a) by the summer of 2004, but made no payments on this debt until August 8, 2005. As of August 2005, he still owed \$9,159 on this debt. On August 8, 2005, September 8, 2005, and October 8, 2005, Applicant made \$120 payments on a debt.

In September 2005, the second creditor offered to settle his other outstanding debt, which had a balance of \$23,200.21, for \$11,600.11. The offer was for less than half the amount owed. Applicant is unable to accept this offer or even to make any payment on this obligation until the \$9,159.88 debt has been paid.

POLICIES

The Directive sets forth adjudicative guidelines to be considered when evaluating a person's eligibility to hold a security clearance. Disqualifying Conditions (DC) and Mitigating Conditions (MC) are set forth for each applicable guideline. Additionally, each decision must be a fair and impartial commonsense decision based upon the relevant and material facts and circumstances, the whole person concept, and the factors listed in Section 6.3 of the Directive. The adjudicative guidelines are to be applied by administrative judges on a case-by-case basis with an eye toward making determinations that are clearly consistent with the interests of national security. The presence or absence of a particular condition or factor for or against clearance is not determinative of a conclusion for or against an applicant. However, the adjudicative guidelines should be followed whenever a case can be measured against this policy guidance. Considering the evidence as a whole, I conclude the relevant guideline to be applied here is Guideline F, Financial Considerations.

BURDEN OF PROOF

The sole purpose of a security clearance decision is to decide if it is clearly consistent with the national interest to grant or continue a security clearance for an applicant. Initially, the Government must establish, by substantial evidence, that conditions exist in the personal or professional history of applicant which disqualify, or may disqualify, an applicant from being eligible for access to classified information. The burden of proof in a security clearance case is something less than a preponderance of evidence, although the government is required to present substantial evidence to meet its burden of proof. Substantial evidence is more than a scintilla, but less than a preponderance of the evidence. All that is required is proof of facts and circumstances which indicate an applicant is at risk for mishandling classified information, or that an applicant does not demonstrate the high degree of judgment, reliability, or trustworthiness required of persons handling classified information. Additionally, the government must prove controverted facts alleged in the SOR. Once the government has met its burden, the burden shifts to an applicant to present evidence to refute, extenuate or mitigate government's case. Additionally, an applicant has the ultimate burden of persuasion to obtain a favorable clearance decision. [\(2\)](#)

As noted by the United States Supreme Court in *Department of Navy v. Egan*, 484 U.S. 518, 528 (1988), "no one has a 'right' to a security clearance." 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 judgement, reliability and trustworthiness of one who will protect the national interests. The "clearly consistent with the national interest" standard compels resolution of any reasonable doubt about an applicant's suitability for access to classified information to be resolved in favor of protecting national security. Security clearance determinations should err, if they must, on the side of denials.

CONCLUSIONS

The Government has satisfied its initial burden of proof under Guideline F, financial considerations. A person's relationship with his creditors is a private matter until evidence is uncovered demonstrating an inability or unwillingness to repay debts under agreed upon terms. Absent evidence of strong extenuating or mitigating circumstances, an applicant with a history of serious or recurring financial difficulties is in a position of risk that is inconsistent with the holding of a security clearance. An applicant is not required to be debt free, but is required to manage his finances so as to meet his financial obligations. An applicant who is financially overextended is at risk of having to engage in illegal acts to generate funds. Directive E.2.A.6.1.1.

Additionally, an individual who is financially irresponsible may also be irresponsible, unconcerned, or careless in their obligations to protect classified information. Behaving responsibly or irresponsibly in one aspect of life provides an indication of how a person may behave in other aspects of life.

The Applicant admits owing two debts totaling in excess of \$29,000. Disqualifying Conditions (DC) 1 (E2.A6.1.2.1 *A history of not meeting financial obligations*) and DC 3 (E2.A6.1.2.3 *Inability or unwillingness to satisfy debts*) apply.

Applicant was aware of the government's concern over these two debts in February 2004 when interviewed by the DSS. At that time, he said he hoped to have the \$9,159 debt paid by summer 2004. This he did not do. In fact, he made no payments on this debt until August 2005 and since that time has paid \$480 on this debt. He never explained why he could not make payment between February 2004 and August 2004 when he moved to a new location and had to make both rent and mortgage payments. This was a voluntary move. It was not a factor beyond his control. Mitigating Condition (MC) 3 (E2.A6.1.3.3 *The 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)*) does not apply.

Applicant has made no payments on the second \$23,200.21 debt (SOR 1.b) and does not intend to do so until the other debt has been paid. Each creditor has offered to settle for less than the full amount, but an offer is not valid unless accepted and paid, neither of which Applicant has done.

None of the mitigating conditions apply in the Applicant's favor. MC 1 (E2.A6.1.2.1 *The behavior was not recent*) does not apply because the conduct is recent since the debts remain unpaid. MC 2 (E2.A6.1.2.2 *It was an isolated incident*) does not apply because there were numerous debts incurred of which two remain unpaid. As previously stated, there was no showing the debts were caused by factors beyond Applicant's control. There has been no showing Applicant has received financial counseling nor is there any indication his financial difficulties are under control.

As to the second debt (SOR 1.b), for MC 6 (E2.A6.1.2.6 *The individual initiated a good-faith effort to repay overdue creditors or otherwise resolve debts*) to apply there must be an "ability" to repay the debts, the "desire" to repay, and evidence of a good-faith effort to repay. A systematic, concrete method of handling his debts is needed, which is not

present here.

In reaching my conclusions I have also considered: the nature, extent, and seriousness of the conduct; Applicant 's age and maturity at the time of the conduct; the circumstances surrounding the conduct; Applicant 's voluntary and knowledgeable participation; the motivation for the conduct; the frequency and recency of the conduct; presence or absence of rehabilitation; potential for pressure, coercion, exploitation, or duress; and the probability that the circumstance or conduct will continue or recur in the future.

From February 2004 until November 2005, Applicant was able to pay less than \$500 on the two debts totaling \$29,000. There is no showing of financial counseling nor is there a demonstration Applicant has changed in his methods of financial management. After weighing the disqualifying and mitigating conditions and evaluating the evidence in the context of the "whole person," I conclude Applicant has not mitigated the security concern based on financial considerations.

FORMAL FINDINGS

Formal Findings as required by Section 3., Paragraph 7., of Enclosure 1 of the Directive are hereby rendered as follows:

Paragraph 1 Financial Considerations: AGAINST APPLICANT

Subparagraph 1.a.: Against Applicant

Subparagraph 1.b.: Against Applicant

DECISION

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

Claude R. Heiny

Administrative Judge

1. Required by Executive Order 10865, as amended, and Department of Defense Directive 5220.6 (Directive), dated January 2, 1992, as amended.
2. ISCR Case No. 93-1390 (January 27, 1995) at pp. 7-8; Directive, Enclosure 3, Item E3.1.15