

KEYWORD: Financial

DIGEST: Applicant is 42 years old and works for a federal contractor. From 1994 until 2004, he accumulated a significant amount of debt as a result of family matters and unemployment. He contacted all of his creditors. Subsequently, he paid some of the outstanding bills, resolved other debts, and is negotiating a resolution for the remaining obligations. He mitigated the security concerns raised by his financial problems. Clearance is granted.

CASE NO: 04-10363.h1

DATE: 06/09/2006

DATE: June 9, 2006

In re:

SSN: -----

Applicant for Security Clearance

ISCR Case No. 04-10363

DECISION OF ADMINISTRATIVE JUDGE

SHARI DAM

APPEARANCES

FOR GOVERNMENT

Stephanie C. Hess, Esq., Department Counsel

FOR APPLICANT

Bob Schwalls, Personal Representative

SYNOPSIS

Applicant is 42 years old and works for a federal contractor. From 1994 until 2004, he accumulated a significant amount of debt as a result of family matters and unemployment. He contacted all of his creditors. Subsequently, he paid some of the outstanding bills, resolved other debts, and is negotiating a resolution for the remaining obligations. He mitigated the security concerns raised by his financial problems. Clearance is granted.

STATEMENT OF THE CASE

On June 29, 2005, Defense Office of Hearings and Appeals (DOHA) under Executive Order 10865, *Safeguarding Classified Information Within Industry*, as amended, and Department of Defense Directive 5220.6, *Defense Industrial Security Clearance Review Program* (Directive), dated January 2, 1992, as amended, issued a Statement of Reasons (SOR) to Applicant. The SOR detailed reasons under Guideline F (Financial Considerations) why DOHA could not make a preliminary affirmative finding that it is clearly consistent with the national interest to grant a security clearance to Applicant. DOHA recommended the case be referred to an administrative judge to determine whether a clearance should be granted.

On August 22, 2005, Applicant filed his Answer and requested a hearing. On January 23, 2006, the case was assigned to me. On April 11, 2006, a Notice of Hearing was mailed, scheduling the hearing on May 1, 2006. At the hearing the Government entered exhibits (GX) 1-6 into evidence without an objection. Applicant introduced exhibits (AX) A-M into evidence without an objection. Applicant testified in his case-in-chief and called four witnesses. DOHA received the hearing transcript (Tr.) on May 10, 2006. The record was left open until May 25, 2006, to give Applicant an opportunity to submit additional documentation related to his financial status. On May 21, 2006, I received those materials and marked them as AX N. Department Counsel did not object to their admission.

FINDINGS OF FACT

Based on the entire record, including Applicant's admissions in his Answer to the SOR and information presented at the hearing, I make the following findings of fact:

Applicant is 42 years old. He and his wife of 18 years, have two children, age 16 and 10. In October 2000, he began a job with a federal contractor. He filed a security clearance application (SCA) in October 2003. In it, he disclosed that he had financial delinquencies that were more than 180 days old.

Applicant's financial problems began in 1989 when he left a position he worked for five years and started a higher paying job. The new job did not work out, and he was unemployed for a period of time. (GX 2 at 1) In 1990, his mother died and he began helping his father. In 1996, he and his family moved into his father's house, and paid rent in addition to paying his mortgage. While living with his father, he believed that upon his father's death, the house would pass to him. However, when his father died in 1997, he did not receive the house due to legal actions taken by his sister. During the time he cared for his father, he experienced additional financial problems, as a result of paying a mortgage and rent. In 2002, those monetary problems were exacerbated when his wife's salary was reduced about \$15,000 annually for the next few years, and further decreased after she had surgery and was unable to work for several months in 2004. (Tr. 45 & 68)

Applicant's wife testified that she manages the household finances. After learning of the problems with their credit report, she began contacting the creditors in October 2004. (Tr. 72) She paid some of the outstanding debts, and began working with an attorney who specializes in credit problems. (Tr. 72) Subsequently, she resolved several of the debts and disputed others. Presently, they have a combined annual income of approximately \$60,000. (Tr. 71) They are trying to work within a budget, but are unable to establish a firm one until their attorney finalizes the resolution of a couple outstanding debts. (Tr. 79) In response to a question about the status of their mortgage, she submitted documentation indicating that it is current, contrary to the information recorded in the April 2006 credit report. (GX 6 & AX N) She was a very credible witness and presented a detailed account of the debts set forth in the SOR.

Paragraph 1 of the SOR alleged that Applicant's delinquent debts total \$15,548, of which the following have been paid: ¶ 1.a for \$20; ¶ 1.d for \$92; ¶ 1.e for \$312; and ¶ 1.i for \$67, totaling \$2,347. (AX A, D, E & I) After challenging some of the debts, five of them have been removed from his credit report: ¶ 1.c for \$548; ¶ 1.g for \$1,082; ¶ 1.h for \$959; ¶ 1.k for \$1,083; and ¶ 1.l for \$773, totaling \$4,445. SOR ¶ 1.j for \$3,711 remains unresolved despite Applicant's written attempt to do so in November 2004. (AX J) SOR ¶ 1.b for \$1,129 is also unresolved despite written communication to the collection agency in November 2004, and April 2006. (AX B) Since November and December 2004, Applicant has attempted to work out a repayment agreement for monies owed on a car that was repossessed and sold, as alleged in SOR ¶ 1.f for \$5,772. He is willing to pay the debt, but has not heard from the creditor. (Tr. 76) According to his attorney, he does not want to file bankruptcy, and intends to pay the bills that he owes. (AX M at 2)

One of Applicant's co-workers testified. He has held a security clearance for 23 years. He has known Applicant for almost three years and has never witnessed any situation that would raise a security concern for Applicant. He considers Applicant to be trustworthy. (Tr. 98) Applicant's supervisor for the last two and a half year has held a security clearance for 25 years. He also considers Applicant to be a very responsible and conscientious employee. (Tr. 104) The lead security representative for Applicant's employer has known Applicant for three years. He does not have any concerns about Applicant's ability to handle classified information, and noted that he has competently handled such matters during the time he held an interim clearance. He also considers Applicant to be trustworthy. (Tr. 110)

POLICIES

Enclosure 2 of the Directive, *Adjudicative Guidelines for Determining Eligibility for Access to Classified Information*, sets forth criteria which must be evaluated when determining security clearance eligibility. Within those adjudicative guidelines are factors to consider in denying or revoking an individual's request for access to classified information (Disqualifying Conditions), and factors to consider in granting an individual's request for access to classified information (Mitigating Conditions). By recognizing that individual circumstances of each case are different, the guidelines provide substantive standards to assist an administrative judge in weighing the evidence in order to reach a fair, impartial and common sense decision.

The adjudicative process requires thorough consideration and review of all available, reliable information about the applicant, past and present, favorable and unfavorable, to arrive at a balanced decision. Section E2.2. of Enclosure 2 of the Directive describes the essence of scrutinizing all appropriate variables in a case as the "whole person concept." In evaluating the disqualifying and mitigating conduct an administrative judge should consider: (1) the nature, extent, and seriousness of the conduct; (2) the circumstances surrounding the conduct; (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 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.

Granting an applicant's clearance for access to classified information is based on a high degree of trust and confidence in the individual. Accordingly, decisions under the Directive must include consideration of not only the *actual* risk of disclosure of classified information, but also consideration of any *possible* risk an applicant may deliberately or inadvertently compromise classified information. Any doubt about whether an applicant should be allowed access to classified information must be resolved in favor of protecting classified information. Directive, Enclosure 2, ¶ E2.2.2. The decision to deny an individual a security clearance is not necessarily a judgment about an applicant's loyalty. Executive Order 10865, § 7. Instead, it is a determination that an applicant has not met the strict guidelines established by the Department of Defense for issuing a clearance.

Initially, the Government must establish, by substantial evidence, conditions in the personal or professional history of the applicant that disqualify, or may disqualify, the applicant from being eligible for access to classified information. *Department of the Navy v. Egan*, 484 U.S. 518, 531 (1988). The Directive presumes a rational connection between past proven conduct under any of the disqualifying conditions listed in the guidelines and an applicant's security suitability. ISCR Case No. 95-0611 at 2 (App. Bd. May 2, 1996).

Once the Government establishes a disqualifying condition by substantial evidence, the corresponding burden of rebuttal shifts to the applicant to present evidence in refutation, extenuation, or mitigation sufficient to overcome the position of the government. ISCR Case No. 01-20700 at 3 (App. Bd. Dec. 19, 2002); Directive, Enclosure 3, ¶ 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 clearance." *Id.*

Based upon the allegations contained in the SOR and a consideration of the evidence as a whole, the following adjudicative guideline is pertinent to an evaluation of the facts of this case:

Guideline F - Financial Considerations: A security concern may exist when an individual who is financially overextended is at risk of having to engage in illegal acts to generate funds. Unexplained affluence is often linked to proceeds from financially profitable criminal acts.

The disqualifying and mitigating conditions, raising either security concerns or mitigating security concerns applicable to this case, are discussed in the Conclusions section below.

CONCLUSIONS

I considered all of the facts in evidence, legal standards, including the "whole person" concept and Applicant's credibility.

The Government established a potential case for disqualification under Guideline F. Based on the evidence, two disqualifying conditions apply: (1) Financial Consideration Disqualifying Condition (FC DC) E2.A6.1.2.1 (*A history of not meeting financial obligations*), and (2) FC DC E2.A6.1.2.3 (*Inability or unwillingness to satisfy debts*). From the middle 1990's to approximately 2004, Applicant accumulated a significant amount of delinquent debt that he was unable to pay, some of which remain unresolved as of today.

The Government having raised a security concern, the burden shifted to Applicant to mitigate or rebut the allegations. After reviewing all of the mitigating conditions, I conclude Financial Consideration Mitigating Condition (FC MC) 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)*) applies. Applicant provided evidence that his delinquent debts accumulated as a result of a period of unemployment for him, family issues, and a substantial reduction in his wife's salary. All were factors outside of his control.

As that mitigating condition standing alone is insufficient to overcome the Government's present concern, I also considered FC MC E2.A6.1.3.4 (*The person has received or is receiving counseling for the problem and there are clear indications that the problem is being resolved or under control*), and FC MC E2.A6.1.3.6 (*The individual initiated a good-faith effort to repay overdue creditors or otherwise resolve debts*), and conclude both apply. Applicant and his wife began contacting their creditors in October 2004, and later hired an attorney to assist in the resolution of the problems. Since then he has paid \$2,347 of the outstanding bills, resolved \$4,445 of the debts, and attempted to resolve the remaining \$10, 612. Based on his actions, along with his wife's diligent efforts to investigate the debts, he demonstrated that the problems are being resolved through good faith efforts.

I further considered the totality of the evidence in this case, including the circumstances underlying the financial problems, Applicant's initial disclosure of the debts on his SCA, his present job performance, a desire to pay his bills, as well as his and his wife's candid testimony about their finances, and the steps they have taken to resolve the problem. Given his expressed intention to manage his financial obligations, coupled with the assistance of his attorney, I concluded that the security concerns related to his finances are unlikely to recur, and I found him to be sufficiently trustworthy to warrant a security clearance. Hence, all allegations are concluded for him. Accordingly, Guideline F is decided for Applicant and he is eligible for access to classified information.

FORMAL FINDINGS

Formal Findings for or against Applicant on the allegations set forth in the SOR, as required by Section E3.1.25 of Enclosure 3 of the Directive, are as follows:

Paragraph 1: Guideline F (Financial Considerations) FOR APPLICANT

Subparagraphs 1.a through 1.l: 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 Applicant a security clearance. Clearance is granted.

Shari Dam

Administrative Judge