

KEYWORD: Financial

DIGEST: Applicant fell behind on his college tuition payments after he was laid off and unemployed for about nine months, but he paid the debt in full after he found a new job and received a performance bonus. He has done nothing to resolve an unpaid judgment for \$5,050, incurred when he resigned from his job with a defense contractor shortly after completing training and then refused to reimburse his employer for the cost of his background investigation and training as required by his employment contract. The security concern based on financial considerations is not mitigated. Clearance is denied.

CASENO: 04-10538.h1

DATE: 04/18/2006

DATE: April 18, 2006

In re:

SSN: -----

Applicant for Security Clearance

ISCR Case No. 04-10538

DECISION OF ADMINISTRATIVE JUDGE

LEROY F. FOREMAN

APPEARANCES

FOR GOVERNMENT

Daniel F. Crowley, Esq., Department Counsel

FOR APPLICANT

Pro Se

SYNOPSIS

Applicant fell behind on his college tuition payments after he was laid off and unemployed for about nine months, but he paid the debt in full after he found a new job and received a performance bonus. He has done nothing to resolve an unpaid judgment for \$5,050, incurred when he resigned from his job with a defense contractor shortly after completing training and then refused to reimburse his employer for the cost of his background investigation and training as required by his employment contract. The security concern based on financial considerations is not mitigated. Clearance is denied.

STATEMENT OF THE CASE

On July 14, 2005, the Defense Office of Hearings and Appeals (DOHA) issued a Statement of Reasons (SOR) detailing the basis for its preliminary decision to deny Applicant a security clearance. ⁽¹⁾ The SOR alleges security concerns under Guideline F (Financial Considerations). It alleges a delinquent college tuition debt of \$3,030 (SOR ¶ 1.a.) and an unpaid judgment for \$5,050 in favor of a private investigative agency for job training expenses and the cost of a background investigation (SOR ¶ 1.b.).

Applicant answered the SOR in writing on August 26, 2005. He admitted both debts, disputed the amount of the judgment in SOR ¶ 1.b., and requested a hearing. The case was assigned to me on January 12, 2006, and heard as scheduled on February 22, 2006. I kept the record open until March 22, 2006, to enable Applicant to submit evidence the unpaid judgment was resolved. He submitted no additional evidence. DOHA received the transcript (Tr.) on March 1, 2006.

FINDINGS OF FACT

Applicant's admissions in his answer to the SOR and at the hearing are incorporated into my findings of fact. I make the following findings:

Applicant is a 47-year-old consultant for a defense contractor. He is married and has four children. He served on active duty in the U.S. Navy from October 1979 to October 1999 and retired as a petty officer first class (E-6). He received a clearance in August 2000.

After retiring from the Navy, Applicant worked for several employers, including a private investigative company that performed security background investigations for agencies of the U.S. government. When he was hired by the company in August 2000, he believed he was hired to work in a suburban area near his home. As he was nearing the end of his training program, he learned his work site would be in an undesirable area in the city and considerably farther from his home. Dissatisfied with the workload, location, and long commute, he resigned in December 2000. The company invoked a provision in his employment contract requiring him to repay the cost of his training and background investigation if he resigned prematurely.⁽²⁾ In June 2002, the company obtained a default judgment of \$5,000 plus \$50 in court costs.⁽³⁾

Applicant began taking college courses in December 2000 and incurred the tuition debt of \$3,030 alleged in SOR ¶ 1.a. He is only four courses away from obtaining his bachelor's degree.

Applicant and his wife separated and lived apart for a time period not reflected in the record. While he was living separately from his wife, he incurred additional expenses to maintain two households. He became involved with another woman and had a child by her, for whom he pays child support. He and his wife have since reconciled.⁽⁴⁾

Applicant was laid off in August 2002 when his employer lost its contract with the U.S. government. He was unemployed until May 2003. As a result of his unemployment, he fell behind on child support payments and was unable to pay the tuition debt and the judgment.⁽⁵⁾ At the hearing, he produced evidence the tuition debt was paid in full on November 2, 2005.⁽⁶⁾ He has now re-enrolled at the university to complete his education.⁽⁷⁾

Applicant now works part-time for a defense contractor, and full-time for a private telecommunications company. He used a performance bonus from his full-time job and some of his savings to pay off the tuition bill.⁽⁸⁾

Applicant did not appear in court to contest the amount he owed the investigative company, because the summons was sent to his wife's address while they were living apart, and she did not forward it to him.⁽⁹⁾ He testified he initially intended to pay the judgment in full, but his attorney suggested trying to negotiate a settlement for a lesser amount.⁽¹⁰⁾ He believes he should not be required to pay the entire cost of the training and background investigation, because he completed several investigations for his employer before resigning.⁽¹¹⁾

Applicant testified his attorney has been trying to negotiate a settlement of the unpaid judgment for about three years without success.⁽¹²⁾ He testified all negotiations with the company have been oral, and his attorney offered a settlement for \$1,000 in early 2006, but the offer was rejected. He testified he would be willing to settle the debt for between \$2,500 and \$3,000, but an offer for that amount has not been tendered to the company.⁽¹³⁾ I held the record open for 30 days to enable him to produce documentary evidence the debt was settled or provide evidence showing the status of the negotiations if a settlement was not reached within that 30-day period.⁽¹⁴⁾ Applicant did not produce any additional evidence.

Applicant's current household net income, including his spouse's income, is about \$8,600 per month. He has monthly expenses of about \$6,000, leaving a remainder of about \$2,600. He owns a home worth about \$350,000. He is financially able to pay or settle the unpaid judgment.

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 has 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), as amended and modified. 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 (App. Bd. Dec. 19, 2002).

The Directive sets forth adjudicative guidelines for determining eligibility for access to classified information, and it lists the disqualifying conditions (DC) and mitigating conditions (MC) for each guideline. Each clearance decision must be a fair, impartial, and commonsense decision based on the relevant and material facts and circumstances, the whole person concept, and the factors listed in the Directive ¶¶ 6.3.1 through 6.3.6.

In evaluating an applicant's conduct, an administrative judge should consider: (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 applicant'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. Directive ¶¶ E2.2.1.1 through E2.2.1.9.

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.

Initially, the government must establish, by substantial evidence, conditions in the personal or professional history of the applicant which disqualify, or may disqualify, the applicant from being eligible for access to classified information. *See Egan*, 484 U.S. at 531. "[T]he Directive presumes there is a nexus or rational connection between proven conduct under any of the Criteria listed therein and an applicant's security suitability." ISCR Case No. 95-0611 at 2 (App. Bd. May 2, 1996) (quoting DISCR Case No. 92-1106 (App. Bd. Oct. 7, 1993)).

Once the government establishes a disqualifying condition by substantial evidence, the burden shifts to the applicant to rebut, explain, extenuate, or mitigate the facts. ISCR Case No. 01-20700 at 3; *see* 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). "[S]ecurity clearance determinations should err, if they must, on the side of denials." *Egan*, 484 U.S. at 531; *see* Directive ¶ E2.2.2.

CONCLUSIONS

Under Guideline F (Financial Considerations), "[a]n individual who is financially overextended is at risk of having to engage in illegal acts to generate funds." Directive ¶ E2.A6.1.1. A person who fails or refuses to pay long-standing debts or is financially irresponsible may also be irresponsible or careless in his or her duty to protect classified information. Similarly, a person who is unconcerned about financial obligations may also be unconcerned about other obligations such as protecting classified information.

Two disqualifying conditions (DC) under Guideline F could raise a security concern and may be disqualifying in this case. DC 1 applies where an applicant has a history of not meeting his or her financial obligations. Directive ¶

E2.A6.1.2.1. DC 3 applies where an applicant has exhibited inability or unwillingness to satisfy debts. Directive ¶ E2.A6.1.2.3. Applicant's financial history establishes DC 1 and DC 3. With respect to DC 3, he has the ability to satisfy the unpaid judgment but is unwilling to do so.

Since the government produced substantial evidence to establish DC 1 and DC 3, the burden shifted to Applicant to produce evidence to rebut, explain, extenuate, or mitigate the facts. Directive ¶ E3.1.15. Applicant has the burden of proving a mitigating condition, and the burden of disproving it is never shifted to the government. *See* ISCR Case No. 02-31154 at 5 (App. Bd. Sep. 22, 2005).

Security concerns arising from financial problems can be mitigated by showing they are the result of conditions beyond the person's control (MC 3). Directive ¶ E2.A6.1.3.3. Even if Applicant's financial difficulties initially arose due to circumstances outside his control, it is appropriate to consider whether he acted in a reasonable manner when dealing with his or her financial difficulties. ISCR Case No. 02-02116 at 4 (App. Bd. Sep. 25, 2003). Applicant's loss of employment in August 2002 was a condition beyond his control. However, the debts that became delinquent during his unemployment have since been resolved. His resignation from employment giving rise to the debt alleged in SOR ¶ 1.b. was a voluntary decision and not a condition beyond his control. I conclude MC 3 is not applicable to this case.

A mitigating condition (MC 4) applies when an applicant "has received or is receiving counseling for the problem and there are clear indications that the problem is being resolved or is under control." Directive ¶ E2.A6.1.3.4. Applicant has consulted with an attorney regarding the debt alleged in SOR ¶ 1.b., but no progress has been made in resolving the debt. I conclude MC 4 is not established.

A security concern arising from financial problems can be mitigated by showing a good-faith effort to resolve debts (MC 6). Directive ¶ E2.A6.1.3.6. The concept of good faith "requires a showing that a person acts in a way that shows reasonableness, prudence, honesty, and adherence to duty or obligation." ISCR Case No. 99-0201, 1999 WL 1442346 at *4 (App. Bd. Oct. 12, 1999). Evidence of past irresponsibility is not mitigated by payment of debts only under pressure of qualifying for a security clearance. Applicant used a performance bonus and some savings to resolve the tuition debt alleged in SOR ¶ 1.a. I am satisfied from the evidence that he resolved this debt as soon as he was financially able, and MC 6 is established for this debt.

I conclude MC 6 is not established for the debt alleged in SOR ¶ 1.b. The unpaid judgment has languished for three years. Applicant's lawyer made one "low ball" offer that was rejected. He has never offered to pay the amount he admits is reasonable, i.e., \$2,500 to \$3,000. Even when I allowed him an additional 30 days to produce evidence of efforts to settle the debt, he produced nothing.

Applicant is not financially overextended. Hence, the concern that he may engage in illegal acts to generate funds is not applicable to his case. Nevertheless, his refusal to make reasonable efforts to satisfy the unpaid judgment raises a serious concern about his financial responsibility and his attitude about fulfilling obligations. I have considered his entire career, including his military service, as part of my evaluation of the whole person, and I find his recent conduct inconsistent with his earlier service. However, his recent conduct is more relevant than his earlier service in predicting

future behavior. After weighing the disqualifying and mitigating conditions and evaluating all the evidence in the context of the whole person, I conclude Applicant has not mitigated the security concern based on financial considerations.

FORMAL FINDINGS

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

Paragraph 1. Guideline F (Financial Considerations): AGAINST APPLICANT

Subparagraph 1.a.: For 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 Applicant a security clearance. Clearance is denied.

LeRoy F. Foreman

Administrative Judge

1. This action was taken 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 (Directive).
2. Government Exhibit (GX) 8 at 1.
3. GX 3, 4.
4. Tr. 32-33.
5. GX 5 at 2; GX 6.
6. Applicant's Exhibit (AX) A.
7. Tr. 25.
8. Tr. 39-40.
9. Tr. 30.
10. Tr. 30.
11. *Id.*
12. Tr. 28, 42. The same attorney entered an appearance in this case but withdrew on January 19, 2006.
13. Tr. 55-56.
14. Tr. 57-59.