

KEYWORD: Financial

DIGEST: Applicant is 35 years old and married with two minor children. He has been employed by a defense contractor as a software engineer since December 2002. He has two delinquent consumer credit debts totaling nearly \$9,500.00 that originated nearly ten years ago. Applicant participated in a credit counseling program in 2000-2003, and contends it actually exacerbated his financial problems. He terminated his agreement with the company before completing the program, and has ignored the debts for at least the past three years. Applicant failed to mitigate the security concerns raised by his financial difficulties. Clearance is denied.

CASENO: 04-11078.h1

DATE: 02/17/2006

DATE: February 17, 2006

In re:

SSN: -----

Applicant for Security Clearance

ISCR Case No. 04-11078

DECISION OF ADMINISTRATIVE JUDGE

DAVID S. BRUCE

APPEARANCES

FOR GOVERNMENT

Ray T. Blank, Jr., Esq., Department Counsel

FOR APPLICANT

Pro Se

SYNOPSIS

Applicant is 35 years old and married with two minor children. He has been employed by a defense contractor as a software engineer since December 2002. He has two delinquent consumer credit debts totaling nearly \$9,500.00 that originated nearly ten years ago. Applicant participated in a credit counseling program in 2000-2003, and contends it actually exacerbated his financial problems. He terminated his agreement with the company before completing the program, and has ignored the debts for at least the past three years. Applicant failed to mitigate the security concerns raised by his financial difficulties. Clearance is denied.

STATEMENT OF THE CASE

On July 12, 2005, The Defense Office of Hearings and Appeals (DOHA) pursuant to Executive Order 10865, *Safeguarding Classified Information Within Industry*, dated February 20, 1960, as amended and modified, and Department of Defense Directive 5220.6, *Defense Industrial Review Program*, dated January 2, 1992, as amended and modified (Directive), issued a Statement of Reasons (SOR) to Applicant in response to his application for a security clearance. The SOR detailed why DOHA could not preliminarily determine under the Directive that it is clearly consistent with the national interest to grant or continue Applicant's request for a security clearance.

In a sworn statement dated August 2, 2005, Applicant responded to each of the SOR allegations, and further represented he did not wish to personally present his case at a hearing. Department Counsel subsequently submitted the government's File of Relevant Materials (FORM) on September 6, 2005, which contained eight itemized documents in support of the allegations. The complete file was forwarded to Applicant and received by him on September 20, 2005. Applicant was given thirty days to file objections to the government's case set forth in the FORM, and to submit materials in refutation, extenuation, or mitigation in support of his position. No further response or other materials were submitted by Applicant and the file was assigned to me on December 7, 2005.

FINDINGS OF FACT

Applicant has admitted all of the factual allegations of subparagraphs 1.a. through 1.c. pertaining to financial considerations under Guideline F. The admissions are incorporated herein by reference.

After a complete and thorough review of the evidence in the record, I make the following additional findings of fact:

Applicant is 35 years old and married in 1996. He and his wife have two minor children, ages 11 and 5. ⁽¹⁾ He obtained a MS degree from a state university in ay 1995, and he has worked intermittently for private and federal contractors since completing his higher education. ⁽²⁾ He has not served in the military and has no criminal record of any kind. ⁽³⁾

He has been employed as a computer software engineer for a defense contractor since December 2002, and held a clearance in 1995 while working for a different contractor. He experienced a period of unemployment for about six weeks in early 2002, and held two other jobs between the time he resumed working and securing his present position. ⁽⁴⁾

In the mid-1990's, Applicant used several different credit cards with accumulating balances, and began experiencing financial difficulties in about 1999. He acknowledged at the time it was necessary to pay off the accounts to get his affairs in order. ⁽⁵⁾ In late 2000, he became involved with a credit counseling program designed to eliminate his overall delinquent debt. The program he and the company implemented was to last about 40 months, by first permitting his accounts to become seriously delinquent, and then negotiating reduced payoffs to settle the accounts. The program required Applicant to make monthly payments to the credit counseling company to provide accumulating payoff funds. Several of Applicant's smaller accounts were successfully settled in this manner, however, Applicant became discontent with the credit reporting aspect of the program in about May 2003, and cancelled the remaining portion of the agreement. ⁽⁶⁾

Applicant admits owing the following creditors which were not resolved as a part of the counseling program.

1. Credit card account - \$1,685.00, charged off as a bad debt in November 2000.

2. Credit card account - \$7,758.00, charged off as a bad debt in about March 2002.

The total delinquent debt is \$9,443.00. Applicant has not contacted either of the creditors since December 2002. ⁽⁷⁾

Applicant completed his Security Clearance Application (SF 86) on March 12, 2003. In response to Question 38 concerning delinquent debts incurred in the past seven years, Applicant listed the two accounts that were settled as a result of the counseling program. He did not list either of the SOR debts. In response to Question 43 offering space for general remarks, Applicant noted the counseling program as about 75% completed and the reason why the two listed accounts on his SF 86 were not paid. ⁽⁸⁾ No explanation was provided why the debts listed in the SOR were not referenced in any part of the SF 86. ⁽⁹⁾

At the time Applicant submitted his financial statement to the DSS Special Agent on February 17, 2004, he owned car/boat assets he valued at \$30,000.00, encumbered by loans against two vehicles in the same amount. He indicated his gross salary to be about \$64,000.00 per year, and showed two new credit card accounts as current, along with the two car loans. He listed the credit status of the debt listed as No. 1 above as unknown, and did not reference the debt listed above as No. 2 at all. The statement showed positive net income of \$660.00 per month. ⁽¹⁰⁾

POLICIES

Enclosure 2 of the Directive, *Adjudicative Guidelines For Determining Eligibility For Access To Classified Information*, sets forth the criteria which must be evaluated when determining security clearance eligibility. The adjudicative guidelines specifically distinguish between those factors that are considered in denying or revoking an employee's request for access to classified information (disqualifying conditions), together with those factors that are considered in granting an employee's request for access to classified information (mitigating conditions). By acknowledging that individual circumstances of each case are always different, the guidelines provide substantive standards to assist an administrative judge in reaching fair and impartial common sense decisions.

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 well-informed decisions. 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 conduct of the applicant and the circumstances in any case, the factors an administrative judge should consider pursuant to the concept are: (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 the 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.

Protecting national security is the paramount concern in reaching a decision in any case, and is dependent upon the primary standard that issuance of a clearance must be clearly consistent with the interests of national security. Granting an applicant's clearance for access to classified information is predicated on a high degree of trust and confidence in the individual. Accordingly, decisions under the Directive must include consideration of not just the *actual* risk of disclosure of such information, but also consideration of any *possible* risk an applicant may deliberately or inadvertently compromise classified information in any aspect of his or her life. Any doubt about whether an applicant should be allowed access to classified information must be resolved in favor of protecting classified information.⁽¹¹⁾ The decision to deny a security clearance request to an individual is not necessarily a determination of the loyalty of the applicant.⁽¹²⁾ It is merely an indication the applicant has not met the strict guidelines established by the Department of Defense for issuing a clearance.

In accordance with the Directive, the government bears the burden of proof in the adjudicative process to first establish by substantial evidence conditions which indicate it is not clearly consistent with the national interest to grant or continue an applicant's access to classified information.⁽¹³⁾ The legal standard for the burden of proof is something less than a preponderance of the evidence.⁽¹⁴⁾ When the government meets this burden, the corresponding heavy burden of rebuttal then falls on the applicant to present evidence in refutation, explanation, extenuation or mitigation sufficient to overcome the position of the government, and to ultimately demonstrate it is clearly consistent with the national interest to grant or continue the applicant's clearance.⁽¹⁵⁾

Upon consideration of all the evidence submitted in this matter, the following adjudicative guideline is appropriate for evaluation with regard to the facts of this case:

Guideline F - Financial considerations are a security concern because an individual who is financially overextended is at risk of having to engage in illegal or unethical acts to generate funds to meet financial obligations. Unexplained affluence is often linked to proceeds from financially profitable criminal acts. A security concern exists when a person has significant delinquent debts. An individual who is financially irresponsible may also be irresponsible, unconcerned or careless in their obligation to protect classified information.

CONCLUSIONS

I have thoroughly considered all the facts in evidence in this case and the legal standards required by the Directive. The government has established its case for disqualification under Guideline F - Financial Considerations.

Considering all the evidence, Financial Considerations Disqualifying Conditions (FC DC) E2.A6.1.2.1. (*a history of not meeting financial obligations*), and FC DC E2.A6.1.2.3. (*Inability or unwillingness to satisfy debts*), apply in this case. Applicant admits having two outstanding debts that accrued over a lengthy period, but he has made no effort to resolve them for at least three years. His irresponsible inattention to his financial affairs causes great concern.

I have considered all the Financial Considerations Mitigating Conditions (FC MC), and specifically FC MC E2.A6.1.3.1. (*The behavior was not recent*), and FC MC E2.A6.1.3.2. (*It was an isolated incident*).

The two credit debts under the SOR allegations total almost \$9,500.00. The amount is substantial when considering it is credit card consumer debt that took time to accumulate. He either abused his credit to permit his family and him to live beyond their means, or he seriously neglected his credit budget for a lengthy period. Applicant failed to recognize his escalating debt until it reached serious dimensions. To his credit, he voluntarily participated in credit counseling, but discontinued it due to an ancillary matter. He has virtually ignored both debts for the last three years until security concerns related to his present job became an issue. Nonetheless, he still refuses to make any payments or contact the creditors.⁽¹⁶⁾ Accordingly, I consider the debts recent in the sense they remain unpaid. They also cannot be considered an isolated event because they accumulated during a time when Applicant also progressively incurred other debts he did not keep current.

I have also considered 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)*) and FC MC E2.A6.1.3.4. (*The person is receiving counseling for the problem and there is a clear indication that the problem is being resolved or is under control*), and conclude neither apply.

Applicant experienced financial difficulties about the time he was married and a few years afterward before entering into the credit counseling agreement. He was gainfully employed throughout the period. He contends the counseling program itself has been the cause of his continuing financial hardship with respect to the SOR debts. He decided before its completion his objectives of participating in it were not being met with respect to immediate reinstatement of a good credit rating by the creditor when a debt was finally paid.⁽¹⁷⁾ Applicant failed to comprehend the object of credit counseling assistance is not only to restore credit worthiness, but also to satisfy the financial obligations in a way acceptable to the creditors. Ultimate payment of the debt does not obligate the creditor to re-write its payment history, particularly after the debt has been charged off as seriously delinquent and a bad debt. While he may have been misled and may be correct the program did not meet expectations, Applicant cannot solely rely upon placing blame on the counseling service for his continuing failure to pay or otherwise resolve his debts. Applicant's misplaced reliance is heightened by the fact he has paid nothing against either account for the past three years. I cannot conclude that failure

to pay the two debts listed in the SOR was due to a condition largely beyond his control.

I have also considered FC MC E2.A6.1.3.6. (*The individual initiated a good-faith effort to repay overdue creditors or otherwise resolve debts*), and conclude it does not apply as well. Applicant has been consistently employed for the last 10 years, except for about a six week period. His outstanding debts are relatively small, and it appears he has chosen to ignore certain past debts, in spite of having had a modest ability to accomplish at least partial repayment. He has not elected bankruptcy, presumably upon recognition of his consistent positive income. It is clear Applicant has intentionally ignored and avoided paying selected debts. His priority in seeking credit counseling was misplaced in believing he could avoid paying a large part of the debt, and still have no negative inferences on his credit report. A different conclusion might be appropriate had Applicant actually paid some significant portion of the debt since he filed his SF 86 in arch 2003. Applicant's approach missed the mark. His failure to satisfy any portion of his debts in a timely manner when he had modest available income to do so questions his judgment, reliability and trustworthiness.

I have further reviewed all the record evidence under the "whole person" concept required by the Directive in evaluating Applicant's vulnerability in protecting our national security. An applicant with a good or even exemplary work history may engage in conduct that has negative security implications. Although Applicant's loyalty to the United States is not in question, I am persuaded by the totality of the evidence that it is not clearly consistent with the national interest to grant Applicant a security clearance. For the reasons stated, Applicant has not met the strict guidelines for issuance of a clearance, and he has failed to mitigate the security concerns regarding his financial matters. Accordingly, Guidelines F is decided against Applicant.

FORMAL FINDINGS

In accordance with Section E3.1.25 of Enclosure 3 of the Directive, the following are the formal findings as to each allegation in the SOR:

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

Subparagraph 1.a. Against the Applicant

Subparagraph 1.b. Against the Applicant

Subparagraph 1.c. Against the 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.

David S. Bruce

Administrative Judge

1. Item 4 (Applicant's Security Clearance Application dated March 13, 2003), at 1 and 5.
2. *Id.* at 2-4.
3. *Id.* at 6-8.
4. *Id.* at 3, 4 and 8.
5. Item 8 (Applicant's sworn statement to Defense Security Service (DSS) Special Agent dated February 17, 2004) at 1-2.
6. *Id.* at 2-3.
7. Item 3 (Applicant's Response to Statement of Reasons dated August 2, 2005) at 1.
8. Item 4, *supra* note 1, at 9.
9. Note: It is acknowledged that disqualification under Guideline E - Personal Conduct, is not alleged in the SOR. The omissions noted above are for factual background purposes only, and have not been considered in determining the outcome of the case.
10. Item 8, *supra* note 1, at 9.
11. Directive, Enclosure 2, Para. E2.2.2.

12. Executive Order 10865 § 7.
13. ISCR Case No. 96-0277 (July 11, 1007) at p. 2.
14. *Department of the Navy v. Egan*, 484 U.S. 518, 531 (1988).
15. ISCR Case No. 94-1075 (August 10, 1995) at pp. 3-4; Directive, Enclosure 3, Para. E3.1.15.
16. Item 8, *supra* note 1, at 3.
17. *Id.* at 2-4.