

KEYWORD: Financial

DIGEST: Applicant experienced financial difficulties resulting in significant unpaid debts, most which arose while he was in the Navy and for a time after his honorable discharge in 2000. Applicant was severely injured in a car accident in 2004, and has been living primarily off disability payments ever since. He remains unable to pay his debts, but did not present sufficient information to overcome the security concerns about his earlier financial mismanagement. Clearance is denied.

CASENO: 04-12237.h1

DATE: 04/14/2006

DATE: April 14, 2006

In Re:

SSN: -----

Applicant for Security Clearance

ISCR Case No. 04-12237

DECISION OF ADMINISTRATIVE JUDGE

MATTHEW E. MALONE

APPEARANCES

FOR GOVERNMENT

Richard A. Stevens, Esquire, Department Counsel

FOR APPLICANT

Pro Se

SYNOPSIS

Applicant experienced financial difficulties resulting in significant unpaid debts, most which arose while he was in the Navy and for a time after his honorable discharge in 2000. Applicant was severely injured in a car accident in 2004, and has been living primarily off disability payments ever since. He remains unable to pay his debts, but did not present sufficient information to overcome the security concerns about his earlier financial mismanagement. Clearance is denied.

STATEMENT OF THE CASE

After reviewing the results of Applicant's background investigation, adjudicators for the Defense Office of Hearings and Appeals (DOHA) were unable to make a preliminary affirmative finding⁽¹⁾ it is clearly consistent with the national interest to give Applicant a security clearance. On July 6, 2005, DOHA issued to Applicant a Statement of Reasons (SOR) alleging facts that raise security concerns addressed in the Directive under Guideline F (financial considerations). Specifically, the SOR alleged Applicant owed 13 delinquent debts (SOR ¶¶ 1.a - 1.m) consisting of collection accounts, charged-off credit cards, and civil judgments totaling about \$48,000. Applicant timely answered the SOR,⁽²⁾ and requested a hearing.

The case was assigned to me on September 9, 2005, and I convened a hearing on November 16, 2005. The parties appeared as scheduled and the government presented five exhibits (GE 1 through 5), which were admitted without objection. Applicant testified in his own behalf, introduced one exhibit (AE A), which was admitted without objection, and presented the testimony of his supervisor. DOHA received the transcript (Tr) on December 1, 2005.

FINDINGS OF FACT

After a thorough review of the pleadings, transcript, and exhibits, I make the following essential findings of fact:

Applicant is 31 years old and employed as an electronics technician by a defense contractor doing business with the U.S. Navy. Applicant served as an enlisted member in the Navy from 1992 until being honorably discharged in 2000. He has held a security clearance since 1993. Applicant's supervisor regards him as a valuable, reliable worker who has routinely completed overseas work assignments with good results and without incident.

While Applicant was in the Navy, he did not manage his financial affairs responsibly. He amassed several thousand dollars in unpaid credit card bills that have not been addressed since his discharge. When he left the Navy, he was advanced \$900 toward moving expenses from his point of discharge to his home of record on the opposite coast of the U.S. Applicant determined the sum of what the Navy would pay for to move him would not cover his expenses. He decided to keep the advance and stay where he was. He still owes the Navy the advance on expenses, which now totals, with interest, over \$1,200.

After Applicant was discharged, he found work with his current employer (albeit under a different company name), and began to travel extensively as part of his work. He maintained a house in the same area as his employer, and shared rent and expenses with two roommates. The utilities were in Applicant's name. In September 2003, while Applicant was away on temporary duty, his roommates told him they were moving out but would pay the utilities until they left. They failed to pay and Applicant still owes about \$365 for an unpaid water bill, cable bill, and electrical bill. He is now considering taking legal action against one or both of his former roommates.

Later in 2003, Applicant was sent overseas for an extended assignment. In October 2004, he was severely injured in a cart accident. He has been unable to work full time since then due to a degenerative hip condition that will eventually require surgery. Liability for the accident (the other driver was a U.S. service member) has yet to be resolved and Applicant has been left to pay his own medical bills through insurance and other means. He now receives disability compensation that amounts to little more than half what he was making before his accident. While he is meeting his current expenses (rent, utilities, food, car, etc) he is unable to resolve his past debts and has considered filing for bankruptcy protection. (3) The last debts he was able to make any payments on were two credit card accounts totaling about \$2,640, but he has made no payment on these accounts since August 2004.

POLICIES AND BURDEN OF PROOF

The Directive sets forth adjudicative guidelines (4) to be considered in evaluating an applicant's suitability for access to classified information. Security clearance decisions must reflect consideration of both disqualifying and mitigating conditions under each adjudicative issue applicable to the facts and circumstances of each case. Each decision must also reflect a fair and impartial common sense consideration of the factors listed in Section 6.3 of the Directive. (5) The presence or absence of a disqualifying or mitigating condition is not determinative of a conclusion for or against an applicant. However, specific applicable guidelines should be followed whenever a case can be measured against them as they represent policy guidance governing the grant or denial of access to classified information. Having considered the

record evidence as a whole, I conclude the relevant adjudicative guideline to be applied here is Guideline F (financial considerations).

A security clearance decision is intended to resolve whether it is clearly consistent with the national interest⁽⁶⁾ for an applicant to either receive or continue to have access to classified information. The government bears the initial burden of producing admissible information on which it based the preliminary decision to deny or revoke a security clearance for an applicant. Additionally, the government must be able to prove controverted facts alleged in the SOR. If the government meets its burden, it establishes that it is not clearly consistent with the national interest for the applicant to have access to classified information. The burden then shifts to the applicant to refute, extenuate or mitigate the government's case. Because no one has a "right" to a security clearance, an applicant bears a heavy burden of persuasion.⁽⁷⁾ 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 as his or her own. The "clearly consistent with the national interest" standard compels resolution of any reasonable doubt about an applicant's suitability for access in favor of the government.⁽⁸⁾

CONCLUSIONS

The government alleged Applicant should be disqualified because he is delinquent on several credit card or other personal credit accounts totaling about \$27,770 (SOR ¶¶ 1.a - 1.m). These allegations reflect security concerns under Guideline F; specifically, that one who is financially overextended through delinquent debt and poor personal financial management may be at risk of engaging in illegal acts to generate funds to resolve their fiscal difficulties.⁽⁹⁾ Additionally, how one manages his personal finances is also indicative of one's overall judgment and reliability. The government has presented sufficient information to support the SOR allegations regarding Applicant's finances. Further, Applicant has admitted all of the SOR allegations. These facts, in turn, support the preliminary decision to deny Applicant's request for a clearance.

In response, Applicant asserts he is unable to pay his debts because he has been disabled most of the past two years. His income has been markedly reduced, and while he is up to date on his current obligations, he does not have the resources to begin to address the debts alleged in the SOR, some of which have been delinquent since about January 2000. Based on the foregoing, Guideline F disqualifying condition (DC) 1⁽¹⁰⁾ and DC 3⁽¹¹⁾ apply here.

By contrast, of the Guideline F mitigating conditions (MC), only MC 3⁽¹²⁾ has any application here. Applicant's initial financial problems certainly did not arise because of his auto accident in 2004, but his ability to pay has arguable been hindered. However, any benefit Applicant receives from MC 3 is attenuated by the fact most of his debts were delinquent even before his accident and he was not doing anything to resolve them even when he was healthy and

working full time. The Directive allows for a balancing of Applicant's poor financial health against the circumstances that are currently intervening to prevent him from resolving his debts. However, on the facts presented here, it is probable Applicant would have continued to neglect his finances even if he had not been injured. I conclude Applicant has failed to mitigate the security concerns under Guideline F presented by available information about his finances.

I have carefully weighed all of the evidence, and I have applied the disqualifying and mitigating conditions as listed under the applicable adjudicative guideline. A fair and commonsense assessment⁽¹³⁾ of Applicant's financial problems, taken in the context of all of the information before me shows that reasonable doubts persist about Applicant's ability to protect classified information and to exercise the requisite good judgment and discretion expected of one in whom the government entrusts its interests. Absent substantial information to mitigate these doubts, which Applicant failed to provide, I cannot conclude he has otherwise overcome the government's case.

FORMAL FINDINGS

Formal findings regarding each SOR allegation are as follows:

Paragraph 1, Guideline F (Financial): AGAINST THE APPLICANT

Subparagraph 1.a: Against the Applicant

Subparagraph 1.b: Against the Applicant

Subparagraph 1.c: Against the Applicant

Subparagraph 1.d: Against the Applicant

Subparagraph 1.e: Against the Applicant

Subparagraph 1.f: Against the Applicant

Subparagraph 1.g: Against the Applicant

Subparagraph 1.h: Against the Applicant

Subparagraph 1.i: Against the Applicant

Subparagraph 1.j: Against the Applicant

Subparagraph 1.k: Against the Applicant

Subparagraph 1.l: 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 the Applicant. Clearance is denied.

Matthew E. Malone

Administrative Judge

1. Required by Executive Order 10865, as amended, and by DoD Directive 5220.6 (Directive), as amended.
2. Applicant admitted all of the SOR allegations except for SOR ¶ 1.i, which alleged he owed a delinquent debt of \$22,411 to a credit card company. The record evidence showed this allegation was a typographical error and that, as Applicant admitted at hearing, he actually owed \$2,241. In accordance with paragraph E3.1.17 of the Directive, I amended this allegation to conform to the evidence.
3. When interviewed by a government investigator in June 2004 about his finances, Applicant averred he expected to file for Chapter 7 bankruptcy liquidation of his debts by July 2004.
4. Directive, Enclosure 2.
5. Commonly referred to as the "whole person" concept, these factor are as follows:
 1. Nature and seriousness of the conduct and surrounding circumstances.
 2. Frequency and recency of the conduct.
 3. Age of the applicant.
 4. Motivation of the applicant, and the extent to which the conduct was negligent, willful, voluntary, or undertaken with knowledge of the consequences involved.
 5. Absence or presence of rehabilitation.
 6. Probability that the circumstances or conduct will continue or recur in the future;
6. *See Department of the Navy v. Egan*, 484 U.S. 518 (1988).

7. *See Egan*, 484 U.S. at 528, 531.

8. *See Egan*; Directive E2.2.2.

9. Directive, E2.A6.1.1.

10. Directive, E2.A6.1.2.1. A history of not meeting financial obligations;

11. Directive, E2.A6.1.2.3. Inability or unwillingness to satisfy debts;

12. Directive, 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). (emphasis added)

13. Directive, E2.2.3.