

KEYWORD: Financial

DIGEST: Applicant is 36 years old and has worked as a computer operator for a federal contractor since 2003. From 1997 to 2005, he has accumulated a significant amount of delinquent debt. Applicant recently made payments on one of his credit card debts, however, all of the debts remain unpaid or unresolved. At this time he has not established a consistent record of financial responsibility, and therefore, he has failed to mitigate the security concerns raised by his financial problems. Clearance is denied.

CASENO: 04-12568.h1

DATE: 03/27/2006

DATE: March 27, 2006

In re:

SSN: -----

Applicant for Security Clearance

ISCR Case No. 04-12568

DECISION OF ADMINISTRATIVE JUDGE

SHARI DAM

APPEARANCES

FOR GOVERNMENT

Jeff A. Nagel, Esq.

FOR APPLICANT

Pro Se

SYNOPSIS

Applicant is 36 years old and has worked as a computer operator for a federal contractor since 2003. From 1997 to 2005, he has accumulated a significant amount of delinquent debt. Applicant recently made payments on one of his credit card debts, however, all of the debts remain unpaid or unresolved. At this time he has not established a consistent record of financial responsibility, and therefore, he has failed to mitigate the security concerns raised by his financial problems. Clearance is denied.

STATEMENT OF THE CASE

On August 17, the Defense Office of Hearings and Appeals (DOHA) under Executive Order 10865, *Safeguarding Classified Information Within Industry*, as amended and modified, and Department of Defense Directive 5220.6, *Defense Industrial Security Clearance Review Program* (Directive), dated January 2, 1992, as amended and modified, 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 under the Directive 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 September 6, 2005, Applicant filed an incomplete Answer to the SOR. On October 10, 2005, he filed a complete Answer, admitting all of the allegations, and elected to have the case decided on the written record in lieu of a hearing. On November 1, 2005, Department Counsel prepared a File of Relevant Material (FORM) and provided Applicant with a complete copy on November 12, 2005. Applicant had 30 days from receipt of the FORM to file objections and submit material in refutation, extenuation or mitigation. Applicant received the FORM on November 17, 2005. He did not submit any additional information. The case was assigned to me on January 11, 2006.

FINDINGS OF FACT

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

Applicant is 36 years old. Since April 2003, he has worked as a computer operator for a federal contractor. Prior to this position, he worked for other federal contractors starting in 1997. ⁽¹⁾ He was married in February 1995, and divorced in June 1999. He has four children. ⁽²⁾ He filed two security clearance applications (SCA) in 2003. ⁽³⁾

In May 2004, Applicant met with a Government investigator to discuss some of the matters contained in the SCA. According to a 2003 credit report, Applicant's financial problems began in 1997. ⁽⁴⁾ He admitted he owed the majority of the debts, subsequently alleged in the SOR. He completed a monthly budget worksheet outlining his gross income as \$3,250, minus \$2,275 for taxes and child support, leaving him with \$975 for living expenses, and a net remainder of \$20 as discretionary income.

In a subsequent July 2004 statement, Applicant attributed his financial difficulties to a divorce and period of unemployment. ⁽⁵⁾ However, in reviewing the two applications he submitted, there is no documented period of unemployment since June 1997. ⁽⁶⁾ In response to the outstanding delinquent debts, he stated, "I am currently unable to payoff my delinquent debts but I do intend to satisfy these debts in the future. By the end of 2004 I should start making payment to satisfy these debts." ⁽⁷⁾

Paragraph 1 of the SOR alleged that Applicant's delinquent debts, totaling \$21, 480, consist of \$539 in utility bills (SOR ¶¶ 1.a., 1.b. and 1.g.); \$155 in a dental bill (SOR ¶ 1.c.); \$2,724 to credit card companies (SOR ¶¶ 1.d., 1.e. and 1.f.); \$4,208 in a personal bank loan (SOR ¶ 1.h.); and \$13, 854 on a defaulted car loan (SOR ¶ 1.i.). As of September 2005, he reduced the credit card debt by \$560; ⁽⁸⁾ however, all of the debts remain unpaid or unresolved.

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

CONCLUSIONS

I have considered all of the facts in evidence and legal standards, including the "whole person" concept. The Government has established a *prima facie* case for disqualification under Guideline F.

Based on the evidence, two disqualifying conditions under this guideline 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*). Starting in 1997, Applicant began accumulating significant debt. Based on his 2004 statements and budget worksheet, and a 2003 and 2005 credit report, he continued to incur debts through 2005 that he could not repay.

The Government having established its case, the shifted the burden 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 during the time he accumulated his debts, he was divorced and began paying child support, a factor beyond 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 neither applies. After being

confronted with the financial concerns in May and July 2004, Applicant waited until the summer of 2005 to begin repaying any of the debts. Although he previously expressed a concern and desire to settle his financial problems, it has taken him over a year to initiate minimal action. To date there is no evidence that he sought credit counseling or considered a payment plan, if feasible. At this time all of the debts are unpaid and unresolved.

I have further considered the totality of the evidence in this case, including Applicant's age, his child support obligations, and overall economic circumstances. While Applicant has taken a positive step toward financial accountability, he has not yet demonstrated a consistent track record of financial management and responsibility sufficient to mitigate security concerns. Hence, all allegations contained in the SOR are concluded against him. Accordingly, Guideline F is decided against Applicant.

For the reasons stated, I conclude Applicant is not 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) AGAINST APPLICANT

Subparagraph 1.a: Against Applicant

Subparagraph 1.b: Against Applicant

Subparagraph 1.c: Against Applicant

Subparagraph 1.d: Against Applicant

Subparagraph 1.e: Against Applicant

Subparagraph 1.f: Against Applicant

Subparagraph 1.g: Against Applicant

Subparagraph 1.h: Against Applicant

DECISION

In light of all of 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.

Shari Dam

Administrative Judge

1. Tr. 43-44.
2. GX 5 at 3-4.
3. GX 5 and 6.
4. GX 7 at 5.
5. GX 12 at 1.
6. GX 5 and 6.
7. GX 12 at 2.
8. GX 3 at 4.