

KEYWORD: Financial

DIGEST: Applicant is 38 years old and works for a defense contractor. He has 11 delinquent debts, some dating back to 1997. Applicant repaid or settled some of his debts after he filed his security clearance application and the Government expressed its concern, but he has not repaid all of them. Applicant did not mitigate the financial considerations security concerns. Clearance is denied.

CASE NO: 05-01211.h1

DATE: 05/26/2006

DATE: May 26, 2006

In re:

SSN: -----

Applicant for Security Clearance

ISCR Case No. 05-01211

DECISION OF ADMINISTRATIVE JUDGE

PHILIP S. HOWE

APPEARANCES

FOR GOVERNMENT

John Bayard Glendon, Esq., Department Counsel

FOR APPLICANT

Pro Se

SYNOPSIS

Applicant is 38 years old and works for a defense contractor. He has 11 delinquent debts, some dating back to 1997. Applicant repaid or settled some of his debts after he filed his security clearance application and the Government expressed its concern, but he has not repaid all of them. Applicant did not mitigate the financial considerations security concerns. Clearance is denied.

STATEMENT OF THE CASE

The Defense Office of Hearings and Appeals (DOHA) declined to grant or continue a security clearance for Applicant. On September 12, 2005, DOHA issued a Statement of Reasons⁽¹⁾ (SOR) detailing the basis for its decision-security concerns raised under Guideline F (Financial Considerations) of the Directive. Applicant answered the SOR in writing on October 12, 2005. Applicant requested his case be decided on the written record in lieu of a hearing.

On January 25, 2006, Department Counsel submitted the Department's written case. A complete copy of the file of relevant material (FORM) was provided to the Applicant. He was given the opportunity to file objections and submit material in refutation, extenuation, or mitigation. Applicant filed a response to the FORM on February 27, 2006. The case was assigned to me on May 1, 2006.

FINDINGS OF FACT

Applicant's admissions to the SOR allegations are incorporated here as findings of fact. After a complete and thorough review of the evidence in the record, and full consideration of that evidence, I make the following additional findings of fact:

Applicant is 38 years old, separated from his wife, and pays child support for his two children. He works for a defense contractor. His security clearance application (SCA) is dated August 1, 2003. On his SCA he did not disclose his delinquent debts, but he had at that time nine such debts dating back to 1997 as shown on the credit reports (CR) from the credit reporting services and alleged in the SOR. The SOR alleges two delinquent debts from 2004. The total of these delinquent debts is \$17,951. The personal financial statement Applicant submitted with his March 17, 2004, statement to the Government investigator showed a net remainder of \$903 after payment of his monthly obligations. (Items 1, 3-9)

Applicant paid the following delinquent debts, submitting written documentation of his payments in full or by settlement:

SOR Paragraph 1.a. to a debt collector for a hospital, for \$48 from January 1997;

SOR Paragraph 1.f. to a debt collector for medical services in the amount of \$155 dating from July 1999;

SOR Paragraph 1.h. to a debt collector for cable television service for \$271 dating from July 2000;

SOR Paragraph 1.i. to a cellular telephone provider for a \$609 bill Applicant settled this debt for \$365.72 in April 2005;

SOR Paragraph 1.j., denied by Applicant, for \$355 to another cellular telephone provider, dating from March 2004. Applicant settled this debt for \$182.70 and paid with a credit card company's check card, putting the debt on his credit card account;

SOR Paragraph 1.k. for \$14,023 for a car loan on a vehicle that was stolen and burned. When his insurance company would not pay the loan balance under the policy, he negotiated an installment payment plan to pay \$403.18 for 19 months starting in October 2005, evidenced by monthly checks submitted by Applicant. (Items 3-9, FORM Response)

Applicant either disputes the following debts or has no documentation to show that he paid them:

SOR Paragraph 1.b. for \$1,852 for March 1997 for a credit card debt he claims he settled for \$785 in March 2004, but lost his payment receipt when his car was stolen and burned;

SOR Paragraph 1.c. for cable television service for \$102 from June 1997. He denies he owes this debt never having had cable service with this company, but has no documentation to show he disputed this debt with the company or through the credit reporting agencies;

SOR Paragraph 1.d. for \$107 to a debt collection service for a vacuum cleaner he claims he paid in November 1998. He has no documentation corroborating payment;

SOR Paragraph 1.e. for cable television service from a different company for \$307, claiming he disputed debt but has no documentation of payment or the dispute, although his FORM Response has an undated CR showing the debt unpaid and on which Applicant wrote "paid in full" with no supporting documentation again;

SOR Paragraph 1.g. for a hospital bill for \$122 from January 2000 he admitted owing, but claims the hospital has no record of the debt, yet Applicant has no documentation to support his assertions. (Items 3, 5-9, FORM Response)

Applicant has five recent medical bills reported to the credit reporting agencies on December 2005. Applicant paid these

five debts with his credit card, transferring the debt to that account. The annual interest rate on that credit card on the March 2006 statement is 21% and the statement contains a notation that Applicant's account is closed, according to the documents Applicant submitted without any explanation. (FORM Response)

Applicant was aware of the security concerns about his financial delinquencies after he gave a written statement to a Government investigator on March 17, 2004. He had additional time to repay his delinquencies after he answered written interrogatories on April 20, 2005. Applicant's FORM Response is dated February 27, 2006, and he still had five delinquent debts unpaid or no documentation regarding any payments. (Items 1, 4, 5, FORM Response)

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 the national interest to do so." Exec. Or. 10865, *Safeguarding Classified Information with Industry*

§ 2 (Feb. 20, 1960). 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.

The adjudication process is based on the whole person concept. All available, reliable information about the person, past and present, is to be taken into account in reaching a decision as to whether a person is an acceptable security risk. Enclosure 2 of the Directive sets forth personnel security guidelines, as well as the disqualifying conditions (DC) and mitigating conditions (MC) under each guideline that must be carefully considered in making the overall common sense determination required.

In evaluating the security worthiness of an applicant, the administrative judge must also assess the adjudicative process factors listed in ¶ 6.3 of the Directive. Those assessments include: (1) the nature, extent, and seriousness of the conduct; (2) the circumstances surrounding the conduct, and the extent of knowledgeable participation; (3) how recent and frequent the behavior was; (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 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 (See Directive, Section E2.2.1. of Enclosure 2). Because each security case presents its own unique facts and circumstances, it should not be assumed that the factors exhaust the realm of human experience or that the factors apply equally in every case. Moreover, although adverse information concerning a single condition may not be sufficient for an unfavorable determination, the individual may be disqualified if available information reflects a recent or recurring

pattern of questionable judgment, irresponsibility, or other behavior specified in the Guidelines.

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 that 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 that disqualify, or may disqualify, the applicant from being eligible for access to classified information. The Directive presumes a nexus or rational connection between proven conduct under any of the disqualifying conditions listed in the guidelines and an applicant's security suitability. *See* ISCR Case No. 95-0611 at 2 (App. Bd. ay 2, 1996). All that is required is proof of facts and circumstances that indicate an applicant is at risk for mishandling classified information, or that an applicant does not demonstrate the high degree of judgment, reliability, or trustworthiness required of persons handling classified information. ISCR Case No. 00-0277, 2001 DOHA LEXIS 335 at **6-8 (App. Bd. 2001). Once the Government has established a *prima facie* case by substantial evidence, the burden shifts to the applicant to rebut, explain, extenuate, or mitigate the facts. *See* Directive ¶ E3.1.15. An applicant "has the ultimate burden of demonstrating that is clearly consistent with the national interest to grant or continue his security clearance. ISCR Case No. 01-20700 at 3 (App. Bd. 2002). "Any doubt as to whether access to classified information is clearly consistent with national security will be resolved in favor of the national security." Directive ¶ E2.2.2. "[S]ecurity clearance determinations should err, if they must, on the side of denials." *Egan*, 484 U.S. at 531. *See* Exec. Or. 12968 § 3.1(b).

Based upon a consideration of the evidence as a whole, I find the following adjudicative guidelines most pertinent to an evaluation of the facts of this case:

Guideline F:Financial Considerations: *The Concern*: An individual who is financially overextended is at risk of having to engage in illegal acts to generate funds. E2.A6.1.1

CONCLUSIONS

The Government established by substantial evidence countering Applicant's denials, and then by Applicant's admissions, each of the allegations in the SOR. Applicant's conduct giving rise to the security concerns under Guideline F shows a person who has a history of delinquent debts, most being less than \$1,000, who has a monthly net remainder income in 2004 of \$903, yet expended effort only since April 2004 to repay some of the delinquent debts alleged in the

SOR. Even with that effort, he was unable to provide documentation to show he paid some of the debts or disputed them. In short, he had the time and the money to pay his delinquent debts, but did not satisfy his obligations or provide proof of payment sufficient to meet his burden of proof and persuasion that the guideline's mitigating conditions should apply to him.

The Disqualifying Conditions (DC) 1 (A history of not meeting financial obligations. E2.A6.1.2.1) and DC 3 (Inability or unwillingness to satisfy debts. E2.A6.1.2.3) apply. Applicant's delinquent debts date back to 1997 and he only started paying some of them after he filed his SCA.

There are no Mitigating Conditions (MC) applicable on these facts. Applicant's repayment efforts are late in relation to the age of the debts, and he has five new debts owed. While he contends he paid them by putting them on his credit card, that method merely transfers the debt to another mechanism and does not repay it. Furthermore, Applicant does not have documentation to support his repayment efforts, or his debt disputes. There is no way of knowing whether his assertions are true or not, but based on the totality of the evidence, I am not persuaded he has met his burden nor has he repaid certain delinquent debts. Therefore, I conclude this financial considerations guideline against Applicant.

FORMAL FINDINGS

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

Paragraph 1. Guideline F: AGAINST APPLICANT

Subparagraph 1.a: For Applicant

Subparagraph 1.b: Against Applicant

Subparagraph 1.c: Against Applicant

Subparagraph 1.d: Against Applicant

Subparagraph 1.e: Against Applicant

Subparagraph 1.f: For Applicant

Subparagraph 1.g: Against Applicant

Subparagraph 1.h: For Applicant

Subparagraph 1.i: For Applicant

Subparagraph 1.j: For Applicant

Subparagraph 1.k: For 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 or continue a security clearance for Applicant. Clearance is denied.

Philip S. Howe

Administrative Judge

1. Pursuant to Exec. Or. 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).