

KEYWORD: Financial

DIGEST: Applicant incurred more than \$44,000 in delinquent debts. He has no plan to pay these debts and is waiting for them to drop off his credit report. Applicant failed to mitigate financial security concerns. Clearance is denied.

CASENO: 05-01415.h1

DATE: 01/30/2006

DATE: January 30, 2006

In re:

SSN: -----

Applicant for Security Clearance

ISCR Case No. 05-01415

DECISION OF ADMINISTRATIVE JUDGE

JAMES A. YOUNG

APPEARANCES

FOR GOVERNMENT

Robert E. Coacher, Esq., Department Counsel

FOR APPLICANT

SYNOPSIS

Applicant incurred more than \$44,000 in delinquent debts. He has no plan to pay these debts and is waiting for them to drop off his credit report. Applicant failed to mitigate financial 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. Pursuant to Department of Defense Directive 5220.6 ¶ E3.1.2 (Jan. 2, 1992), as amended, DOHA issued a Statement of Reasons (SOR) on 1 August 2005 detailing the basis for its decision-security concerns raised under Guideline F (Financial Considerations) of the Directive. Applicant answered the SOR in writing on 26 August 2005 and elected to have a hearing before an administrative judge. The case was assigned to me on 27 October 2005. On 7 December 2005, I convened a hearing to consider whether it is clearly consistent with the national interest to grant or continue a security clearance for Applicant. DOHA received the hearing transcript (Tr.) on 16 December 2005.

FINDINGS OF FACT

Applicant is a 35-year-old systems analyst for a defense contractor. He was valedictorian of his high school class. He received an outstanding rating on his most recent performance review and has received high praise from his superiors for his dedication and motivation.

Applicant married his first wife in 1997. The following year, he became a minority owner of an audio store near a military installation in State 1. That year, the couple grossed \$28,000 a year-he made \$19,000 and his wife \$9,000. In June 1999, Applicant's wife suffered a breakdown and was diagnosed as bipolar. She decided to move home to be with her mother, and the couple divorced in June 2000.

With his wife's illness and subsequent unemployment, Applicant's income was reduced by 25 percent. The majority of the debts he owes now were incurred between September and December 1999. In 2000, his salary was eliminated, and he worked on straight commission. Over the next three years, he earned only about \$7,000 a year. He was living in a trailer on land he had purchased in 1999.

The audio store closed in October 2002, and Applicant became a galley hand on marine barges. He had to pay \$1,000 to the agency that found him the job. In ay 2003, Applicant married his current wife. In June 2003, he went to work for his current employer as a systems analyst working with the military.

Applicant's current wife is originally from State 2, which is adjacent to State 1. She divorced her first husband and moved to State 1. Her first husband retained custody of the three children in State 2. About the time of their marriage, Applicant and his new wife learned her ex-husband would be moving to State 3 which was several hundred miles away. They decided to fight for custody of the children. To better the chances of gaining custody, Applicant received a loan of \$8,400 from family members so he could pay off his wife's child-support arrearage. They won custody of the children, subject to them moving to State 2. Applicant and his wife left the trailer and lot Applicant owned outright and rented a home in a town in State 2, just over the border from State 1, so they could still commute to their old jobs.

In 2003, the couple's household income was \$33,000. In 2004, the household income was \$54,000. In 2004, Applicant paid the attorney who handled the custody issue and paid off the family members who had loaned Applicant and his wife \$8,400 to settle her child-support arrearage. Applicant expects his household income for 2005 to be significantly less, only \$39,000, as his wife had two surgeries and has been unable to work. They did not incur any debts as a result of these surgeries. He expects she will be able to find a job and go back to work in the new year.

Applicant sold his property in State 1 and used the money from the sale to buy land in State 2. Applicant's vehicles are old and paid for, but he purchased an \$800 vehicle for his stepson when he turned 16 years old. Applicant's wife receives \$200 a month in child support from her ex-husband.

In the SOR, DOHA alleged Applicant had a judgment entered against him for more than \$3,145 (¶ 1.j); three accounts totaling more than \$18,500 in collection status (¶¶ 1.g-1.i); two past due accounts totaling more than \$6,000 (¶¶ 1.d-1.e); and four debts totaling more than \$16,500 that had been charged off (¶¶ 1.a-1.c, 1.f). In his Answer, Applicant admitted each of these debts, with the exception of ¶ 1.h, a collection account for \$9,882. In his interrogatories, he did not dispute that debt (Ex. 3 at 3), but disputed a charged off account for \$6,123 alleged in ¶ 1.f.

Applicant admitted he has not paid any of these debts. Nor has he established any plan to resolve these debts by either

payment plan or bankruptcy. He has thought about bankruptcy, but has not consulted an attorney or filed a petition.

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 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). 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.

Enclosure 2 of the Directive sets forth personnel security guidelines, as well as the disqualifying conditions (DC) and mitigating conditions (MC) under each guideline. 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. 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.

CONCLUSIONS

In the SOR, DOHA alleged Applicant had a judgment entered against him for more than \$3,145 (¶ 1.j); three accounts totaling more than \$18,500 in collection status (¶¶ 1.g-1.i); two past due accounts totaling more than \$6,000 (¶¶ 1.d-1.e); and four debts totaling more than \$16,500 that had been charged off (¶¶ 1.a-1.c, 1.f). In his Answer, Applicant admitted each of the allegations, except ¶ 1.h, which he had admitted in interrogatories. An applicant who is financially overextended is at risk of having to engage in illegal acts to generate funds. Directive ¶ E2.A6.1.1.

The Government's evidence established by substantial evidence each of the allegations in the SOR and potentially disqualifying conditions under Guideline F. Applicant has a history of not meeting his financial obligations (DC

E2.A6.1.2.1) and is unable or unwilling to satisfy his debts (DC E2.A6.1.2.3).

An applicant may mitigate such financial security concerns by establishing his financial situation was largely beyond his control (MC E2.A6.1.3.3), he is receiving counseling and there are clear indications the problem is being resolved or under control (MC E2.A6.1.3.4), or he initiated good-faith effort to repay overdue creditors or otherwise resolve his debts (MC E2.A6.1.3.6). Applicant's debts may have been incurred, in part, because of a business downturn. But as Applicant admits, he used poor judgment in remaining in a job for three years that paid only \$7,000 a year when he could have made substantially more money by taking a minimum-wage job. Furthermore, Applicant has no plans to receive any financial counseling or to pay off these debts. He wants to reactivate some of these delinquent accounts and believes he will have to repay those debts before he can do so. But he realizes many of these debts will fall off his credit report within six months. He fears that making payments on these debts will cause them to be reactivated and remain on his credit report longer. After carefully considering all the circumstances of this case, I conclude Applicant failed to mitigate the security concerns raised by his delinquent debts. I find against Applicant.

FORMAL FINDINGS

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

Paragraph 1. Guideline F: AGAINST APPLICANT

Subparagraphs 1.a- 1.j: Against Applicant

DECISION

In light of all of the circumstances in this case, it is not clearly consistent with the national interest to grant or continue a security clearance for Applicant. Clearance is denied.

James A. Young
Administrative Judge