

KEYWORD: Financial

DIGEST: Applicant has a history of financial delinquencies and unpaid debts. His long-standing financial problems raise security concerns which he failed to mitigate. Clearance is denied.

CASENO: 05-01784.h1

DATE: 05/31/2006

DATE: May 31, 2006

In Re:

SSN: -----

Applicant for Security Clearance

ISCR Case No. 05-01784

DECISION OF ADMINISTRATIVE JUDGE

JOAN CATON ANTHONY

APPEARANCES

FOR GOVERNMENT

Daniel F. Crowley, Esq., Department Counsel

FOR APPLICANT

Richard Moorhouse, Esq., Hannah Brody, Esq.

SYNOPSIS

Applicant has a history of financial delinquencies and unpaid debts. His long-standing financial problems raise security concerns which he failed to mitigate. 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 August 25, 2005, under the applicable Executive Order ⁽¹⁾ and Department of Defense Directive, ⁽²⁾ DOHA issued a Statement of Reasons (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 17, 2005, and elected to have a hearing before an administrative judge. The case was assigned to me January 30, 2006. On February 27, 2006, I convened a hearing to consider whether it is clearly consistent with the national interest to grant or continue a security clearance for Applicant. The Government offered nine exhibits for admission to the record. The Government's exhibits were identified as Exhibits (Ex.) 1 through 9 and were admitted into evidence without objection. Applicant called two witnesses and offered fourteen exhibits for admission to the record. Applicant's exhibits were identified as Ex. A through N and were admitted into evidence without objection. On March 7, 2006, DOHA received the transcript (Tr.) of the proceeding.

FINDINGS OF FACT

The SOR contains six allegations of disqualifying conduct under Guideline F, Financial Considerations. In his answer to the SOR, Applicant admitted five of the allegations and denied one allegation. His admissions are incorporated as findings of fact.

Applicant is 45 years old and employed as a network engineer by a defense contractor. He has worked for his present employer for approximately eight years. His starting salary was \$50,000 per year. In 2005, he earned \$63,587 in wages from his employer. (Ex. G; Ex. H; Tr. 63; 79.)

From 1986 to 1993, Applicant served in the U.S. Army and was honorably discharged. He was unemployed from October 1993 to January 1994, and he attributes his financial difficulties to that period of time. (Ex. 7.) Since 1994, he has held a security clearance. (Ex. 1; Tr. 43-46.)

Applicant has been married twice. He was married for the first time in 1980. The marriage ended in divorce in 1988. Applicant has two children from his first marriage, a 23-year-old son and a 20-year-old daughter. Applicant married for the second time in 1993. He has a 12-year-old son from his second marriage. (Ex. 2; Tr. 47-48.) In August 2005, Applicant's second wife, who is unemployed, was diagnosed with breast cancer. (Tr. 68.)

After his divorce in 1988, Applicant paid his former wife \$400 per month in child support for their two children. (Tr. 50-51.) He paid child support for approximately five years. When he left the Army in 1993, Applicant stopped paying child support. After he remarried and had another child, he found he did not have enough money to continue paying child support to his first wife. (Tr. 50-51.) In a signed statement, dated August 22, 1994, Applicant averred he would contact his first wife by the end of August 1994 and resume paying her child support thereafter. (Ex. 3 at 2.) In fact, Applicant paid no child support after 1993, and his last attempt to contact his first wife about his child support obligation occurred in 1998. (Tr. 73.)

Applicant's first wife sought help in collecting the child support owed her by Applicant. In about 2002, the collection agency representing Applicant's first wife alleged he was \$72,541 in arrears in his child support payments. This information appeared on Applicant's credit reports. (Ex. 8; Ex. 9; Ex. A.) Applicant was informed that the account had been closed and would be removed from his credit report. (Ex. B.)

Applicant has a history of financial delinquencies. He acknowledged owing a creditor approximately \$1,526 for

telephone services he received in 1998. Before his hearing, Applicant contacted the company and was told it had no record of his debt. He said he would pay the debt if it still existed. (Tr. 57; 75-76.)

Applicant also acknowledged responsibility for a credit card account, in the amount of approximately \$1,173, charged off as a bad debt in about July 2002. He offered the creditor two payments of \$107.26 and made an oral agreement to pay off the debt at the rate of \$50 per month. (Ex. M; Ex. N; Tr. 59-60; 76-78.)

Applicant owed a creditor approximately \$304 on an account placed for collection in about October 2002. Approximately five days before his hearing, Applicant purchased a money order for the full amount of the debt. (Ex. D.) Applicant provided no evidence to show that the money order had been sent to or received by the creditor.

Applicant owed approximately \$135 to a creditor for an account placed for collection in about November 2003. Several days before his hearing, Applicant purchased a money order for the amount of the debt. He provided no evidence to show that the money order had been sent to or received by the creditor. (Ex. E.)

In June 2004, Applicant prepared a statement of his monthly income and expenses. He reported that after paying his monthly debts, he had a net remainder of \$832. (Ex. 7 at 4.) In his answer to the SOR, Applicant denied he had sufficient income remaining after monthly expenses to resolve his financial delinquencies. (Answer to SOR at 2.) He claimed a family expense of \$1,000 in 2005 prevented him from having sufficient funds to pay his outstanding debts. (Tr. 71.) Applicant's personal monthly budget statement projected a monthly net remainder after expenses of \$646. (Ex. K.)

Nothing in the record indicated Applicant had pursued credit counseling in an effort to resolve his current financial difficulties and prevent them from recurring in the future.

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 restricted eligibility for access to classified information to United States citizens "whose personal and professional history affirmatively indicates loyalty to the United States, strength of character, trustworthiness, honesty, reliability, discretion, and sound judgment, as well as freedom from conflicting allegiances and potential for coercion, and willingness and ability to abide by regulations governing the use, handling, and protection of classified information." Exec. Or. 12968, *Access to Classified Information* § 3.1(b) (Aug. 4, 1995). Eligibility for a security clearance is predicated upon the applicant meeting the security guidelines contained in the Directive.

Enclosure 2 of the Directive sets forth personal 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 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. *See Egan*, 484 U.S. at 531. 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. May 2, 1996).

Once the Government establishes a disqualifying condition by substantial evidence, the burden shifts to the applicant to rebut, explain, extenuate, or mitigate the facts. ISCR Case No. 01-20700 at 3 (App. Bd. Dec. 19, 2002); *see* Directive ¶ 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 security clearance." ISCR Case No. 01-20700 at 3.

CONCLUSIONS

Guideline F-Financial Considerations

The Government's concern under Guideline F, Financial Considerations, is that individuals who are financially overextended and unable or unwilling to pay their just debts may try to generate funds by engaging in illegal acts. Applicant has a history of not meeting his financial obligations, and his financial history suggests an inability or

unwillingness to satisfy his debts, conditions which raise security concerns under subparagraphs E2.A6.1.2.1. and E2.A6.1.2.3. of Guideline F. DOHA's Appeal Board has concluded that "[a] person who is unwilling to fulfill his legal obligations does not demonstrate the high degree of good judgment and reliability required of persons granted access to classified information." ISCR Case No. 98-0810 at 4 (App. Bd. June 8, 2000).

In the SOR, DOHA alleged Applicant owed a debt of \$72,541 on an account placed for collection in about April 2002, and, as of July 19, 2005, the debt had not been satisfied (§ 1.a.); that he owed a debt of approximately \$1,526 on an account placed for collection in about May 2002, and, as of June 15, 2004, the debt had not been satisfied (§ 1.b.); that he owed a creditor approximately \$1,173 on an account charged off as a bad debt in about 2002, and, as of July 19, 2005, the debt had not been satisfied (§ 1.c.); that he owed a debt of approximately \$304 on an account placed for collection in about October 2002, and, as of July 19, 2005, the debt had not been satisfied (§ 1.d.); that he owed a debt of \$135 on an account placed for collection in about November 2003, and, as of July 19, 2005, the debt had not been satisfied (§ 1.e.); and that despite his personal financial statement of June 15, 2004, indicating he had a monthly net remainder of \$832 and was thus financially capable of paying his delinquent debts, he had made little effort to resolve his indebtedness (§ 1.f.). An applicant who is financially overextended is at risk of having to engage in illegal acts to generate funds. Directive § E2.A6.1.1.

Applicant presented two financial statements showing monthly net remainders of \$832 and \$646, respectively, that could have been used to satisfy his long-standing financial delinquencies. His failure to use some of the money he had left over at the end of a month to resolve his outstanding debts demonstrates a history of not meeting financial obligations and suggests an unwillingness to satisfy his debts. Applicant provided no credible evidence to explain his failure to use some of his resources to pay his debts. The Government has established, through Applicant's admissions and the record evidence, a *prima facie* case that Applicant is financially overextended. Applicant provided no persuasive evidence to rebut the financial concerns specified in the SOR and identified as disqualifying conditions under §§ E2.A6.1.2.1. and E2.A6.1.2.3. of Guideline F.

We turn to a review of the several conditions that could mitigate the security concerns raised by Applicant's financial delinquencies. While Applicant's acknowledged child support delinquencies date to 1993, his debts that have been referred for collection or identified as bad debts date to 2002 and 2003, demonstrating that Applicant's financial delinquencies are not isolated incidents. Several debts are recent and continue to be unsatisfied to this day. Thus, neither mitigating condition E2.A.6.1.3.1. nor mitigating condition E2.A6.1.3.2. applies. [\(3\)](#)

The record shows that Applicant was divorced from his first wife in 1988. He has worked steadily for his present employer for eight years. While the record evidence suggests that Applicant's divorce and brief episode of unemployment in 1993-1994 might have contributed in part to his past financial difficulties and were largely beyond his control, they do not explain his inability or unwillingness to meet his financial obligations since 1998, a time when he has been steadily employed and his income has been increasing. Nothing in the record suggests he sought a court

order reducing or modifying his child support payments to reflect a change in circumstances. Thus, I conclude mitigating condition E2.A6.1.3.3. does not apply.⁽⁴⁾

Applicant has not sought counseling for his financial problems. There is little indication in the evidentiary record that he has developed and implemented a practical plan for resolving debts and avoiding further indebtedness. Thus, mitigating conditions E2.A6.1.3.4. and E2.A6.1.3.6. do not apply⁽⁵⁾, and the Guideline F allegations in the SOR are concluded against the Applicant.

In all adjudications, the protection of our national security is the paramount concern. Security clearance decisions are not intended to assign guilt or to impose further punishment for past transgressions. Rather, the objective of the security clearance process is the fair-minded, common sense assessment of a person's trustworthiness and fitness for access to classified information. Indeed, the "whole person" concept recognizes we should view a person by the totality of his or her acts and omissions, including all disqualifying and mitigating conduct. Having done so, I conclude Applicant should not be entrusted with a security clearance. In reaching my decision, I have considered the evidence as a whole, including the appropriate factors and guidelines in Department of Defense Directive, 5220.6., as amended.

FORMAL FINDINGS

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

Paragraph 1. Guideline F: 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

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.

Joan Caton Anthony

Administrative Judge

1. Exec. Or. 10865, *Safeguarding Classified Information within Industry* (Feb. 20, 1960), as amended and modified.
2. Department of Defense Directive 5220.6, *Defense Industrial Personnel Security Clearance Review Program* (Jan. 2, 1992), as amended and modified.
3. Mitigating condition E2.A6.1.3.1. reads: "The behavior was not recent." Mitigating condition E2.A6.1.3.2. reads: "It was an isolated incident."
4. Mitigating condition E2.A6.1.3.3. reads: "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)."

5. Mitigating condition E2.A6.1.3.4. reads: "The person has received or is receiving counseling for the problem and there are clear indications that the problem is being resolved or is under control." Mitigating condition E2.A6.1.3.6. reads: "The individual initiated a good-faith effort to repay overdue creditors or otherwise resolve debts."