

KEYWORD: Financial Considerations

DIGEST: Applicant is a 31-year-old employee of a federal contractor, employed as a material handler laborer. He had substantial unpaid debts, most of them for medical services, because he went seven years without medical insurance. He and his wife separated for nearly two years which further inhibited his ability to pay debts. He was also unemployed for nearly a year. He has begun a successful debt service agreement and made further efforts to increase his monthly net income evidencing a good-faith effort to resolve debt. Security concerns about financial considerations were mitigated. Clearance is granted.

CASE NO: 05-01920.h1

DATE: 06/08/2006

DATE: June 8, 2006

In re:

SSN: -----

Applicant for Security Clearance

ISCR Case No. 05-01920

DECISION OF ADMINISTRATIVE JUDGE

CHRISTOPHER GRAHAM

APPEARANCES

FOR GOVERNMENT

Braden M. Murphy, Esq., Department Counsel

FOR APPLICANT

Pro Se

SYNOPSIS

Applicant is a 31-year-old employee of a federal contractor, employed as a material handler laborer. He had substantial unpaid debts, most of them for medical services, because he went seven years without medical insurance. He and his wife separated for nearly two years which further inhibited his ability to pay debts. He was also unemployed for nearly a year. He has begun a successful debt service agreement and made further efforts to increase his monthly net income evidencing a good-faith effort to resolve debt. Security concerns about financial considerations were mitigated. Clearance is granted.

STATEMENT OF THE CASE

On August 3, 2005, the Defense Office of Hearings and Appeals (DOHA) issued a Statement of Reasons (SOR) to Applicant pursuant to Executive Order 10865, *Safeguarding Classified Information Within Industry*, dated February 20, 1960, as amended and modified, and Department of Defense Directive 5220.6, *Defense Industrial Personnel Security Clearance Review Program* (Directive), dated January 2, 1992, as amended and modified. The SOR alleged reasons under Guidelines F (financial considerations) why DOHA could not make the preliminary affirmative finding under the Directive that it is clearly consistent with the national interest to grant or continue Applicant's security clearance.

In a written statement dated August 18, 2005, Applicant responded to the allegations in the SOR and requested a hearing. The case was assigned to me on September 27, 2005. A Notice of Hearing was issued September 30, 2005, scheduling the hearing for October 26, 2005. The hearing was held as scheduled. At the hearing, the government offered four exhibits, Applicant submitted nine exhibits, and Applicant testified in his own behalf. I kept the record open until December 2, 2005. Applicant submitted a tenth exhibit, Exhibit J, dated December 1, 2005. Department Counsel offered no objection. Applicant Exhibit J is received in evidence. The transcript (Tr.) was received November 9, 2005.

Thereafter, on February 8, 2006, February 21, 2006, and March 21, 2006, Department Counsel received additional

proposed exhibits from Applicant. Although Department Counsel had no objection to these proposed exhibits they were marked for identification purposes as Applicant's Exhibits K, L, and M. They were rejected as not being timely filed.

FINDINGS OF FACT

Applicant admitted the allegations in the SOR except subparagraphs 1.g., 1.h., 1.m., 1.u., and 1.bb. Those admissions are incorporated herein as findings of fact. I make the following additional findings of fact.

Applicant is a 31-year-old employee of a federal contractor, employed as a material handler laborer. ⁽¹⁾ He is married and has two children. ⁽²⁾ He completed one year of college. ⁽³⁾ He has no prior military service and has never held a security clearance. ⁽⁴⁾

On September 14, 2005, Applicant began using the services of a financial consultant to assist him manage his finances, pay creditors, and to help him analyze his spending to make the best use of his income. ⁽⁵⁾ The debt service agreement consolidated \$15,239.00 of debts and arranged settlements totaling \$6,095.60 to be paid over 36 months. ⁽⁶⁾ On November 30, 2005, the agreement was modified, increasing the debt enrolled to \$22,276.00, settled for \$8,910.40, for a savings of \$13,365.60. ⁽⁷⁾ He is working with the creditors and is paying the remaining debts on his own.

The following table shows the delinquent debts on My 6, 2005, and the current status of each as being either paid, part of the debt service agreement, or unpaid and which he is handling himself.

SOR ¶	DEBTOR	AMOUNT	CURRENT STATUS
1.a.	Collection	\$5,036.00	Unpaid; making payments
1.b.	College loan	\$3,175.00	Unpaid; making payments
1.c.	Medical	\$320.00	Debt service agreement
1.d.	Medical	\$500.00	Debt service agreement
1.e.	X-ray	\$68.00	Debt service agreement
1.f.	Hospital	\$964.00	Debt service agreement
1.g.	Collection	\$30.00	Paid ⁽⁸⁾
1.h.	Hospital	\$74.00	Paid ⁽⁹⁾
1.i.	Credit card	\$2,791.00	Debt service agreement

1.j.	Emergency room	\$500.00	Unpaid; making payments
1.k.	Medical	\$60.00	Debt service agreement
1.l.	Medical	\$600.00	Debt service agreement
1.m.	Medical	\$72.00	Debt service agreement
1.n.	Credit union	\$324.00	Debt service agreement
1.o.	Credit union	\$208.00	Debt service agreement
1.p.	Hospital	\$658.00	Debt service agreement
1.q.	Medical	\$4,848.00	Debt service agreement
1.r.	Hospital	\$188.00	Debt service agreement
1.s.	Credit union	\$288.00	Debt service agreement
1.t.	Credit union	\$208.00	Debt service agreement
1.u.	Collection	\$153.00	Unpaid; making payments
1.v.	Telephone	\$331.00	Unpaid; making payments
1.w.	Hospital	\$77.00	Paid (10)
1.x.	Hospital	\$1,383.00	Debt service agreement
1.y.	Hospital	\$4,444.00	Debt service agreement
1.z.	Hospital	\$774.00	Debt service agreement
1.aa.	Medical	\$91.00	Unpaid; making payments
1.bb.	Satellite TV	\$100.00	Paid (11)
1.cc.	Cell phone	\$503.00	Unpaid (12)

Subparagraphs 1.a. through 1.x. were turned over to collection agencies between January 2001, and December 2003. The total indebtedness which he admitted is \$28,339.00. The debts denied total \$429.00.

Applicant had no medical insurance for seven years which accounts for the large number of delinquent medical accounts. [\(13\)](#) He and his wife separated from January 2003 to October 2004. [\(14\)](#) He was unemployed for almost a year. He found employment with medical insurance benefits in August 2003. [\(15\)](#) The unpaid medical bills were Applicant's. [\(16\)](#) While separated, he had custody of the children, but his wife paid no child support. [\(17\)](#) His wife's employer now pays for their medical insurance. He was reimbursed \$1,300.00 for a stolen computer and he used the insurance proceeds to pay debts. Their landlord reduced their rent \$50.00 per month so they would not move. He paid the remaining amount due for furniture purchased. All of these have increased his net income each month, money he will use to pay debts. [\(18\)](#)

POLICIES

"[No] one has a 'right' to a security clearance."⁽¹⁹⁾ 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."⁽²⁰⁾ 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 coercion, and willingness and ability to abide by regulations governing use, handling, and protection of classified information."⁽²¹⁾ Eligibility for a security clearance may be adjudicated using the security guidelines contained in the Directive.

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 factors listed in ¶ 6.3 of the Directive: nature and seriousness of the conduct and surrounding circumstances; frequency and recency of the conduct; age of the Applicant; motivation of the applicant, and the extent to which the conduct was negligent, wilful, voluntary, or undertaken with knowledge of the consequences involved; absence or presence of rehabilitation; and probability that the circumstances or conduct will continue or recur in the future.

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.⁽²²⁾ 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.⁽²³⁾

Once the Government establishes a disqualifying condition, the burden shifts to the applicant to rebut, explain, extenuate, or mitigate the facts.⁽²⁴⁾ An applicant "has the ultimate burden of demonstrating that it is clearly consistent with the national interest to grant or continue his security clearance."⁽²⁵⁾ 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 judgment, reliability and trustworthiness of one who will protect the national interests as his or his 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.⁽²⁶⁾ Decisions under this Directive include, by necessity, consideration of the possible risk an applicant may deliberately or inadvertently fail to protect or safeguard classified information. Such decisions entail a certain degree of legally permissible extrapolation as to potential, not actual, risk of compromise of classified information.

Applicant's allegiance, loyalty, and patriotism are not at issue in these proceedings. Section 7 of Executive Order 10865 specifically provides industrial security decisions shall be "in terms of the national interest and shall in no sense be a determination as to the loyalty of the applicant concerned." Security clearance decisions cover many characteristics of an applicant other than allegiance, loyalty, and patriotism.

Having considered the evidence as a whole, I find the following guidelines most pertinent to an evaluation of the facts of this case:

Guideline F: *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.*

CONCLUSIONS

The government has established its case under Guideline F. Financial Considerations Disqualifying Condition (FC DC) E2.A6.1.2.1. arises where there is *(A history of not meeting financial obligations.)* Similarly, FC DC E2.A6.1.2.3. applies where the information shows an *(Inability or unwillingness to satisfy debts.)* The available information demonstrates Applicant has a history of not meeting his financial obligations. He has been delinquent in payments on numerous accounts. I conclude that FC DC E2.A6.1.2.1. and FC DC E2.A6.1.2.3. apply.

Various conditions can mitigate the security concerns arising from financial difficulties. The Directive sets out Financial Considerations 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 or a death or divorce).* He was unemployed for almost a year. He had sole custody of his two children for two years after he and his wife separated, but he received no child support from his wife. Most of his unpaid debts were for medical services received during the seven years when he could not afford medical insurance. These events exacerbated his already tenuous financial situation. FC MC E2.A6.1.3.3. applies.

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 is under control)* also applies. Applicant and his wife received and are receiving counseling. He is actively working with his credit consultant. Two months after beginning his debt resolution program, he added additional creditors which will save him a total of \$13,365.60. FC MC E2.A6.1.3.4. is applicable because he followed the advice of his consultant and his financial delinquencies are being reduced.

FC MC E2.A6.1.3.6. may apply where *(The individual initiated a good-faith effort to repay overdue creditors or otherwise resolve bad debts).* He has made efforts to increase his monthly net income to pay debts. Although he has only fully paid 4 of 29 debts, the apparent success of his debt service agreement indicates that it has been a positive step in his debt reduction efforts. By submitting his monthly expenditures to his consultant for analysis, he is providing further proof that he is making a good-faith effort to resolve debt. FC MC E2.A6.1.3.6. applies.

I have carefully weighed all of the available evidence, and I have applied the appropriate disqualifying and mitigating conditions. Further, I have tried to make a fair and commonsense assessment of the record before me as required by Directive Section E2.2.3. While his debt service agreement is recent, its early success and his over-all perseverance at increasing his monthly net income demonstrate a sincere effort at debt reduction. Therefore, I conclude Guideline F for Applicant.

FORMAL FINDINGS

Formal findings For or Against Applicant on the allegations set forth in the SOR, as required by E3.1.25 of Enclosure 3 of the Directive, are:

Paragraph 1. Guideline F: FOR APPLICANT

Subparagraph 1.a. For Applicant

Subparagraph 1.b. For Applicant

Subparagraph 1.c. For Applicant

Subparagraph 1.d. For Applicant

Subparagraph 1.e. For Applicant

Subparagraph 1.f. For Applicant

Subparagraph 1.g. For Applicant

Subparagraph 1.h. For Applicant

Subparagraph 1.i. For Applicant

Subparagraph 1.j. For Applicant

Subparagraph 1.k. For Applicant

Subparagraph 1.l. For Applicant

Subparagraph 1.m. For Applicant

Subparagraph 1.n. For Applicant

Subparagraph 1.o. For Applicant

Subparagraph 1.p. For Applicant

Subparagraph 1.q. For Applicant

Subparagraph 1.r. For Applicant

Subparagraph 1.s. For Applicant

Subparagraph 1.t. For Applicant

Subparagraph 1.u. For Applicant

Subparagraph 1.v. For Applicant

Subparagraph 1.w. For Applicant

Subparagraph 1.x. For Applicant

Subparagraph 1.y. For Applicant

Subparagraph 1.z. For Applicant

Subparagraph 1.aa. For Applicant

Subparagraph 1.bb. For Applicant

Subparagraph 1.cc. For Applicant

DECISION

In light of all the circumstances presented by the record in this case, it is clearly consistent with the national interest to grant or continue Applicant's security clearance. Clearance is granted.

Christopher Graham

Administrative Judge

1. Tr. at 10.

2. *Id.*

3. *Id.*

4. Tr. at 11; Government Exhibit 1 (Applicant's Standard Form 86, *Security Clearance Application*, dated August 12, 2003) at 7.

5. Tr. at 28-41.

6. Applicant's Exhibit A (Debt Service Agreement, dated September 14, 2005) at 2-8.

7. Applicant's Exhibit A (Debt Service Agreement, dated November 30, 2005) at 15-16.

8. Tr. at 17.

9. Applicant's Exhibit J (Paid Receipt, dated November 22, 2005) at 25

10. Applicant's Exhibit J (Paid Receipt, dated November 22, 2005) at 26.

11. Tr. at 22; Applicant's Exhibit G (Paid Receipt, dated June 13, 2005).

12. Tr. at 23.

13. *Id.* at 25.

14. *Id.*

15. *Id.* at 26.

16. *Id.*

17. *Id.* at 27.

18. Tr. at 35-40.

19. *See Department of the Navy v. Egan*, 484 U.S. 518, 528 (1998).

20. *Id.* at 527.

21. Exec. Or. 12968, *Access to Classified Information*, § 3.1(b) (Aug. 4, 1995).

22. *Egan, supra*, at 531.

23. *See* ISCR Case No. 95-0611 at 2 (App. Bd. May 2, 1996).

24. *See* ISCR Case No. 01-20700 at 3 (App. Bd. Dec. 19, 2002).

25. *Id.*, at 3.

26. *See Egan*; Directive ¶ E2.2.2.