

KEYWORD: Financial

DIGEST: Applicant is 56 years old, married with three children, and works for a defense contractor. He filed two bankruptcy actions in the 1990s, bringing only the 1995 Chapter 7 bankruptcy to a final discharge of his \$100,000 in delinquent debts. He currently has six delinquent debts totaling about \$39,000. He has a history from 1997 to the present of incurring delinquent debt loads more than \$15,000 and having past due debts of \$3,000 or more at any one time. Applicant did not mitigate the financial considerations security concerns. Clearance is denied.

CASENO: 05-02733.h1

DATE: 03/31/2006

DATE: March 31, 2006

In re:

SSN: -----

Applicant for Security Clearance

ISCR Case No. 05-02733

DECISION OF ADMINISTRATIVE JUDGE

PHILIP S. HOWE

APPEARANCES

FOR GOVERNMENT

FOR APPLICANT

Pro Se

SYNOPSIS

Applicant is 56 years old, married with three children, and works for a defense contractor. He filed two bankruptcy actions in the 1990s, bringing only the 1995 Chapter 7 bankruptcy to a final discharge of his \$100,000 in delinquent debts. He currently has six delinquent debts totaling about \$39,000. He has a history from 1997 to the present of incurring delinquent debt loads more than \$15,000 and having past due debts of \$3,000 or more at any one time. 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 28, 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 19, 2005. Applicant requested his case be decided on the written record in lieu of a hearing.

On December 30, 2005, 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 did not file a response to the FORM. The 30-day response time allowed expired on February 2, 2006. The case was assigned to me on February 23, 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 56 years old, married with three children, and works for a defense contractor. Applicant petitioned for Chapter 13 bankruptcy in July 1993, but the case was dismissed. He then filed for Chapter 7 bankruptcy in February 1995. That bankruptcy discharged approximately \$100,000 in debts. (Items 3, 8-10)

Applicant owes a lending company about \$15,505 since July 2000, though a payment of \$181 was made in May 2005. He owes a credit card issuer about \$1,846 from at least June 2004. He owes his second mortgage holder about \$12,156 on an account delinquent since June 2004. He owes \$25 to a medical creditor on an account placed for collection in October 2004. Applicant owed approximately \$6,185 to a lienholder on a motor vehicle he bought, though his Answer claims he owes only \$650 because he has been making payments but he submitted nosupporting documentation. Lastly, Applicant owes \$3,900 to a finance company. Again Applicant claims he has been paying on this debt and owes only \$1,179.15, yet he submitted no supporting documentation. Applicant's credit report shows 11 entries of loans by this creditor, all but one of which over the past seven years were refinanced and for which there is no balance owed.(Items 7-11)

Applicant's credit reports show that he has been 30 to 90 days past due on one or more loan payments or credit card debts continuously since 1998. His past due payment totals were \$9,097 in 1997 when he owed \$15,566 in non-mortgage debt in 22 open accounts. The September 2003 credit report shows \$5,734 past due and \$29,671 owed on 17 open accounts. The December 2004 credit report shows \$3,098 past due on \$25,859 in 16 open accounts. Finally, the May 2005 credit report shows \$6,490 past due and \$35,946 owed. He currently owes approximately \$39,000 on the debts alleged in the SOR. (Items 1, 7-11)

Applicant has not filed a bankruptcy action in 2005 or 2006, nor has he been discharged in any bankruptcy action since 1995. Applicant has no plan to pay these delinquent debts in a timely manner.

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 and Applicant's admissions each of the allegations in the SOR concerning these financial considerations security concerns. Applicant has delinquent debts. He has demonstrated a history of not being able to pay them regularly. He filed two bankruptcy actions, one in 1993 that he later dismissed, and the Chapter 7 bankruptcy in 1995. His SOR Answer claims all but one of the debts listed in the SOR are in a new bankruptcy action, but he submitted no proof of any such filing or discharge. 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 claims in his interrogatory answers (Item 11) that he made some payments, but he offered no documents from the creditor or his records to support his position. The credit reports show a seven-year history of past due debt payments of several thousand dollars at any one time, and delinquent debt loads of \$15,000 to \$35,000 over the course of time. There are no Mitigating Conditions (MC) that apply to Applicant's case. The burden of proof is on him to show what MC apply, and he has shown no evidence to persuade me that any do apply. Therefore, I conclude this security concern 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: 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 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).