

KEYWORD: Financial; Personal Conduct

DIGEST: Applicant has \$29,000 in delinquent debt he incurred in the early 1990s. He has not paid it off or made any arrangements to do so. Applicant failed to mitigate financial security concerns. He mitigated personal conduct security concerns by establishing that he did not intend to falsify his security clearance application or mislead security officials. Clearance is denied.

CASENO: 05-03646.h1

DATE: 05/25/20006

DATE: May 25, 2006

In re:

SSN: -----

Applicant for Security Clearance

ISCR Case No. 05-03646

DECISION OF ADMINISTRATIVE JUDGE

JAMES A. YOUNG

APPEARANCES

FOR GOVERNMENT

Francisco J. Mendez, Esq., Department Counsel

FOR APPLICANT

Pro Se

SYNOPSIS

Applicant has \$29,000 in delinquent debt he incurred in the early 1990s. He has not paid it off or made any arrangements to do so. Applicant failed to mitigate financial security concerns. He mitigated personal conduct security concerns by establishing that he did not intend to falsify his security clearance application or mislead security officials. 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. As required by Department of Defense Directive 5220.6 ¶ E3.1.2 (Jan 2, 1992), as amended, DOHA issued a Statement of Reasons (SOR) on 29 July 2005 detailing the basis for its decision—security concerns raised under Guideline F (Financial Considerations) and Guideline E (Personal Conduct) of the Directive. Applicant answered the SOR in writing on 1 September 2005 and elected to have a hearing before an administrative judge. The case was assigned to me on 17 February 2006. On 6 April 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. DOHA received the hearing transcript (R.) on 21 April 2006.

FINDINGS OF FACT

Applicant is a 48-year-old truck driver for a defense contractor. Applicant has had financial difficulties since at least the early 1990s. His employer lost a major contract that resulted in many layoffs. Although he was not laid off, Applicant's pay was reduced by \$2 an hour. Ex. 2 at 2. During the same time period, Applicant invested in a restaurant from which he incurred a \$10,000 loss. The following chart summarizes the status of the delinquent debts alleged in the SOR:

Debt	Status	Record
1.a-collection acct \$7,209	Unresolved. Claims it not his debt but has taken no action to challenge it despite being told to do so	R. 13-14
1.b-charged off debt \$6,491	Unpaid	R. 17
1.c-charged off debt \$10,565	Loan-used to consolidate and pay off some debts, including IRS debt-unpaid	R. 17
1.d-charged off debt \$5,477	Unpaid	R. 17

Applicant did not file for bankruptcy because he was afraid it would affect his wife's security clearance, although he now knows these debts do not show up on her credit report. R. 18. In his Answer to the SOR, Applicant admitted that he had no intent to pay off these delinquent debts because they had been "charged off in 1993-94."

Applicant currently holds 10 credit cards. He does not really know how much he owes on these credit cards but guesses it to be about \$7,000. He has about \$200 in savings that is earmarked for a debt of \$1,300 he owes the IRS for tax year 2004. R. 22. He expects to owe the IRS \$2,000 for tax year 2005. R. 23. He is also paying for two children in college. R. 24. He owns a 2003 and 2004 vehicle. He is paying \$370 a month on each of them. R. 26. He has approximately \$40,000 in his 401(k) plan. He has already taken a loan on it for more than \$5,000. R. 27. Applicant's wife has \$100,000 in her 401(k) and is paying off a \$20,000 loan taken on it. R. 28. He is successfully meeting his current monthly financial obligations.

Applicant asserts he does not have enough money to pay off these delinquent debts. He has not contacted any of these creditors. Because of this security clearance issue, Applicant would like to pay off his delinquent debts if he ever gets in a position where he is financially able to do so.

On 21 January 2003, Applicant filled out by hand an Electronic Personnel Security Questionnaire (EPSQ). In it he listed two credit card debts totaling about \$8,000, dating from 1995. Ex. A at 25. When he tried to enter this information in the computer to complete the electronic security clearance application, it told him not to enter information from before 1996. Applicant ended up entering "no" on the printout of the electronic form he signed on 8 December 2003 to questions 38 and 39. Question 38 asked if, in the previous seven years, Applicant had been delinquent more than 180 days on any debts. Question 39 asked if Applicant was then delinquent more than 90 days on any debts.

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

Guideline F-Financial Considerations

In the SOR, DOHA alleged Applicant has one collection account of more than \$7,200 (¶ 1.a); three delinquent debts totaling more than \$22,000 that were charged off (¶¶ 1.b-1.d); and he does not intend to pay his delinquent debts (¶ 1.e). In his Answer, Applicant admitted ¶¶ 1.b-1.e, but denied ¶ 1.a. 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 the allegations in ¶¶ 1.a-1.d. Applicant has delinquent debts totaling more than \$29,000 most of which have been delinquent since the early 1990s. Applicant failed to refute the allegation in ¶ 1.a. Although Applicant does not believe that debt is his, it appears on his credit report. He has neither inquired as to the nature of the debt nor contested it, despite being advised to do so. The evidence established that 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 demonstrating that the behavior was not recent (MC

E2.A6.1.3.1), the behavior was isolated (MC E2.A6.1.3.2), the conditions resulting in his financial situation were largely beyond his control (MC E2.A6.1.3.3), the applicant has received counseling for the problem or there are clear indications the problem is being resolved or is under control (MC E2.A6.1.3.4), or he has initiated a good-faith effort to repay overdue creditors or otherwise resolve his debts (MC E2.A6.1.3.6).

Of the mitigating conditions listed above, Applicant has only established that the conditions that resulted in his financial situation were largely beyond his control. MC E2.A6.1.3.3. Although he was able to keep his job during company layoffs in the early 1990s, his pay was reduced by \$2 an hour, and his investment in a restaurant did not pan out. But these debts were incurred over 10 years ago, and Applicant has done nothing to pay them off. Even after receiving the SOR and being advised how to contest the debt he claims is not his, Applicant procrastinated. He did not appear to be very engaged with his financial problems nor seem to have any sense of urgency about these debts. I find against Applicant on ¶¶ 1.a-1.d. Applicant now asserts he intends to pay these debts off when he has the money to do so. Therefore, I find for him on ¶ 1.e.

Guideline E-Personal Conduct

In the SOR, DOHA alleged Applicant falsified his SCA by deliberately failing to disclose that, in the previous seven years, he had debts that were delinquent more than 180 days (¶ 2.a) and then had debts that were then delinquent more than 90 days (¶ 2.b). In his answer, Applicant denied both allegations. Conduct involving questionable judgment, untrustworthiness, unreliability, lack of candor, dishonesty, or unwillingness to comply with rules and regulations could indicate the applicant may not properly safeguard classified information. Directive ¶ E2.A5.1.1.

After carefully reviewing Applicant's EPSQ, listening to his testimony, and observing his demeanor, I am convinced he did not intend to falsify his security clearance application or to conceal relevant and material information from security officials. He reported his financial problems on his hand-written EPSQ. I find for Applicant on ¶ 2.

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: For Applicant

Paragraph 2. Guideline E: FOR APPLICANT

Subparagraph 2.a: For Applicant

Subparagraph 2.b: For 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