

KEYWORD: Financial

DIGEST: Applicant is 63 years old and works as a security officer for a federal contractor. Since 1993 he accumulated approximately \$29,000 of delinquent debt as a result of medical problems and unemployment that he has been unable to pay. He failed to mitigate the security concerns raised by financial considerations. Clearance is denied.

CASENO: 05-03774.h1

DATE: 04/20/2006

DATE: April 20, 2006

In re:

SSN: -----

Applicant for Security Clearance

ISCR Case No. 05-03774

DECISION OF ADMINISTRATIVE JUDGE

SHARI DAM

APPEARANCES

FOR GOVERNMENT

Francisco J. Mendez, Esq., Department Counsel

FOR APPLICANT

Pro Se

SYNOPSIS

Applicant is 63 years old and works as a security officer for a federal contractor. Since 1993 he accumulated approximately \$29,000 of delinquent debt as a result of medical problems and unemployment that he has been unable to pay. He failed to mitigate the security concerns raised by financial considerations. Clearance is denied.

STATEMENT OF THE CASE

On July 12, 2005, Defense Office of Hearings and Appeals (DOHA) under Executive Order 10865, *Safeguarding Classified Information Within Industry*, as amended, and Department of Defense Directive 5220.6, *Defense Industrial Security Clearance Review Program* (Directive), dated January 2, 1992, as amended and modified, issued a Statement of Reasons (SOR) to Applicant. The SOR detailed reasons under Guideline F (Financial Considerations) why DOHA could not make a preliminary affirmative finding under the Directive that it is clearly consistent with the national interest to grant a security clearance to Applicant. DOHA recommended the case be referred to an administrative judge to determine whether a clearance should be granted.

On September 1, 2005, Applicant filed his Answer to the SOR, admitting all of the allegations, and requested a hearing. On January 3, 2006, the case was assigned to me. A Notice of Hearing was mailed on January 31, 2006, and set the case for hearing on March 1, 2006. At the hearing the Government introduced exhibits (GX) 1-8 into evidence. Applicant introduced exhibits (AX) A-B into evidence. He testified in his case-in-chief. DOHA received the Transcript (Tr.) on March 9, 2006.

FINDINGS OF FACT

Based on the entire record, including Applicant's admissions in his Answer to the SOR and at the hearing, I make the following findings of fact:

Applicant is 63 years old and unmarried. In 1961, he enlisted in the armed forces and was discharged in 1971. Since leaving military service he has worked as a security officer for several companies. Prior to beginning a job with his present employer in July 2003, he worked for other companies, one of which went out of business in early 2003, leaving him unemployed for a few months.⁽¹⁾ He filed a security clearance application (SCA) in April 2004.⁽²⁾

Applicant's present financial debts relate to several medical conditions that were not covered by insurance and were exacerbated while he was unemployed for a few months in the spring of 2003. In the early summer of 2003, he suffered his second heart failure and was subsequently out of work for several weeks. During this period of time he did not have medical insurance to cover his medical bills.⁽³⁾ In July 2004, he was again hospitalized for heart problems and had a pacemaker inserted. Many of these bills were not covered by insurance either. As of October 2005, he has received his medical care through the VA.⁽⁴⁾

Paragraph 1 of the SOR alleged that Applicant's delinquent debts total \$54,105, of which \$24,271 represented a tax lien that he paid (SOR ¶ 1.a).⁽⁵⁾ He admitted he owes the following medical bills: SOR ¶ 1.b for \$477; SOR ¶ 1.c for \$7,025; SOR ¶ 1.d for \$5,109; SOR ¶ 1.e for \$70; and SOR ¶ 1.f for \$453. He also admitted owing the credit card debts alleged in SOR ¶¶ 1.g and 1.h for \$2,035 and \$14,655, respectively. He used those cards while he was sick and out of work. He would like to pay these debts, totaling \$29,843, but does not have the money.⁽⁶⁾

Recently, Applicant spoke to a credit counseling service to help him resolve his medical bills.⁽⁷⁾ He also wrote letters to two of the creditors to initiate a resolution of the bills.⁽⁸⁾ Presently, Applicant's net monthly income is approximately \$1,600. After paying his monthly expenses, including rent, car expenses, medicine and other items, he has very little money left for extra items.⁽⁹⁾

POLICIES

Enclosure 2 of the Directive, *Adjudicative Guidelines for Determining Eligibility for Access to Classified Information*, sets forth criteria which must be evaluated when determining security clearance eligibility. Within those adjudicative guidelines are factors to consider in denying or revoking an individual's request for access to classified information (Disqualifying Conditions), and factors to consider in granting an individual's request for access to classified information (Mitigating Conditions). By recognizing that individual circumstances of each case are different, the guidelines provide substantive standards to assist an administrative judge in weighing the evidence in order to reach a fair, impartial and common sense decision.

The adjudicative process requires thorough consideration and review of all available, reliable information about the applicant, past and present, favorable and unfavorable, to arrive at a balanced decision. Section E2.2. of Enclosure 2 of the Directive describes the essence of scrutinizing all appropriate variables in a case as the "whole person concept." In evaluating the disqualifying and mitigating conduct an administrative judge should consider: (1) the nature, extent, and seriousness of the conduct; (2) the circumstances surrounding the conduct; (3) the frequency and recency of the conduct; (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 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.

Granting an applicant's clearance for access to classified information is based on a high degree of trust and confidence in the individual. Accordingly, decisions under the Directive must include consideration of not only the *actual* risk of disclosure of classified information, but also consideration of any *possible* risk an applicant may deliberately or inadvertently compromise classified information. Any doubt about whether an applicant should be allowed access to classified information must be resolved in favor of protecting classified information. Directive, Enclosure 2, ¶ E2.2.2. The decision to deny an individual a security clearance is not necessarily a judgment about an applicant's loyalty. Executive Order 10865, § 7. Instead, it is a determination that an applicant has not met the strict guidelines established by the Department of Defense 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. *Department of the Navy v. Egan*, 484 U.S. 518, 531 (1988). The Directive presumes a rational connection between past proven conduct under any of the disqualifying conditions listed in the guidelines and an applicant's security suitability. ISCR Case No. 95-0611 at 2 (App. Bd. May 2, 1996).

Once the Government establishes a disqualifying condition by substantial evidence, the corresponding burden of rebuttal shifts to the applicant to present evidence in refutation, extenuation, or mitigation sufficient to overcome the position of the government. ISCR Case No. 01-20700 at 3 (App. Bd. Dec. 19, 2002); Directive, Enclosure 3, ¶ 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 clearance." *Id.*

Based upon the allegations contained in the SOR and a consideration of the evidence as a whole, the following adjudicative guideline is pertinent to an evaluation of the facts of this case:

Guideline F - Financial Considerations: A security concern may exist when 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.

The disqualifying and mitigating conditions, either raising security concerns or mitigating security concerns applicable to this case, are discussed in the Conclusions section below.

CONCLUSIONS

I considered all of the facts in evidence, legal standards, including the "whole person" concept and Applicant's credibility. The Government established a *prima facie* case for disqualification under Guideline F.

Based on the evidence, two disqualifying conditions under this guideline apply: (1) Financial Consideration Disqualifying Condition (FC DC) E2.A6.1.2.1 (*A history of not meeting financial obligations*), and (2) FC DC E2.A6.1.2.3 (*Inability or unwillingness to satisfy debts*). From 2003 to the present, Applicant accumulated a significant amount of delinquent debt. Based on his testimony and a current budget he is unable to pay that debt.

The Government having established its case, the burden shifted to Applicant to mitigate or rebut the allegations. After reviewing all of the mitigating conditions, I conclude Financial Consideration 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, a business downturn, unexpected medical emergency, or a death, divorce or separation)*) applies in this case. Applicant's financial difficulties are the result of unexpected medical expenses and the lack of insurance to cover them, in addition to a period of unemployment, all of which were factors beyond his control.

As that mitigating condition standing alone is insufficient to overcome the Government's present concern, I also considered 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 under control*), and conclude it does not apply. Although Applicant testified that he recently received credit counseling in order to resolve his some of his financial difficulties and wrote letters to a couple creditors, he did not present any evidence that those problems are being resolved or under control, as required by this mitigating condition.

I further considered the totality of the evidence in this case, including Applicant's ten years of military service, the resolution of his tax lien, his recent communication with a credit counselor, and his candid testimony about his finances. While Applicant expressed a sincere willingness to resolve his financial obligations, he was unable at this time to present a plan to resolve his debts and establish a track record of financial management sufficient to mitigate the security concerns raised by a history of unresolved debts. As of March 2006, the tax lien has been paid (SOR ¶ 1.a), but the remaining debts listed in the SOR are unpaid and unresolved. Hence, all allegations are concluded against him, except ¶ 1.a. Accordingly, Guideline F is decided against Applicant.

For the reasons stated, I conclude Applicant is not eligible for access to classified information.

FORMAL FINDINGS

Formal Findings for or against Applicant on the allegations set forth in the SOR, as required by Section E3.1.25 of Enclosure 3 of the Directive, are as follows:

Paragraph 1: Guideline F (Financial Considerations) AGAINST APPLICANT

Subparagraph 1.a: For 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 Applicant a security clearance. Clearance is denied.

Shari Dam

Administrative Judge

1. Tr. 26.
2. GX 1 at 1.
3. Tr. 21.
4. Tr. 24.
5. AX A.
6. Answer at 3.
7. Tr. 19.
8. Tr. 20.
9. Tr. 37.