

KEYWORD: Financial

DIGEST: Applicant is 33 years old and works as a network engineer for a federal contractor. From the mid-1990's to the present, he accumulated a significant amount of delinquent debt that remains unpaid and unresolved. Although he submitted a repayment schedule for some of the debts, to-date, he has not provided any evidence indicating that he has made a payment or established a consistent program to attain financial stability. He failed to mitigate the security concerns raised by his financial problems. Clearance is denied.

CASENO: 05-04010.h1

DATE: 03/29/2006

DATE: March 29, 2006

In re:

SSN: -----

Applicant for Security Clearance

ISCR Case No. 05-04010

DECISION OF ADMINISTRATIVE JUDGE

SHARI DAM

APPEARANCES

FOR GOVERNMENT

Kathryn D. MacKinnon, Esq.

FOR APPLICANT

Pro Se

SYNOPSIS

Applicant is 33 years old and works as a network engineer for a federal contractor. From the mid-1990's to the present, he accumulated a significant amount of delinquent debt that remains unpaid and unresolved. Although he submitted a repayment schedule for some of the debts, to-date, he has not provided any evidence indicating that he has made a payment or established a consistent program to attain financial stability. He failed to mitigate the security concerns raised by his financial problems. Clearance is denied.

STATEMENT OF THE CASE

On July 19, 2005, the Defense Office of Hearings and Appeals (DOHA) under Executive Order 10865, *Safeguarding Classified Information Within Industry*, as amended and modified, 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 August 10, 2005, Applicant filed his Answer and requested a hearing. He admitted many of the allegations in the SOR and denied others. The case was assigned to me on September 22, 2005. A Notice of Hearing was mailed on November 9, 2005, setting the case for hearing on December 14, 2005. At the commencement of the hearing, Applicant moved for a continuance in order to obtain representation. His motion was granted over the objection of the Government. The hearing was rescheduled to January 17, 2006. At the hearing the Government entered Exhibits (GX) 1-7 into evidence. Applicant, representing himself, entered Applicant Exhibits (AX) A-D into evidence and testified in his case-in-chief. At the conclusion of the hearing the record was left open until February 21, 2006, to give Applicant an opportunity to submit additional evidence. On or about February 3, 2006, I received Applicant's supplemental exhibits that I labeled as AX's E-J. Applicant also submitted audio files, documenting recent communication with several creditors, which Department Counsel subsequently transferred to a CD disc. The Government objected to the introduction to those files, and her objection is sustained. Applicant's Exhibits E through I are admitted and AX J (audio

files) is not admitted. DOHA received the Transcript (Tr.) on January 26, 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 33 years old. He was separated from his wife in 2000 and later divorced. He has four children, three of whom live with him. From 1992 until 1997, he served on active military duty. After leaving the military service he worked for various employers until he was laid off in December 2001. He was unemployed from that time until January 2003, when he started his present position as a network engineer for a federal contractor.⁽¹⁾ He applied for a security clearance (SCA) in August 2003.⁽²⁾

Applicant's financial problems began in the middle 1990's, and resulted in the filing of a petition for a Chapter 13 bankruptcy in July 1997. Subsequently, he was unable to maintain the payment plan established by the court, and in November 1998, the case was dismissed.⁽³⁾ (SOR¶ 1.a.).

After being laid off in 2001, Applicant's delinquent debts significantly increased and continued to accumulate into 2005, as reflected on a April 2004 and December 2005 credit report.⁽⁴⁾

In July 2004, Applicant met with a Government investigator to discuss some of the matters contained in the SCA. He admitted that he owed the majority of the debts, subsequently alleged in the SOR. He completed a monthly budget worksheet outlining his monthly income as \$4,161, and living expenses at \$4,000, leaving a net remainder of \$161. He stated, "as soon as I have some discretionary income to work with, I intend to contact each and every creditor to establish workable payment plans to pay all debts in full."⁽⁵⁾

At the hearing in January 2006, Applicant said he obtained credit counseling, and was consolidating the bills and establishing a payment plan for many of the debts.⁽⁶⁾ He submitted an unsigned Debt Management Agreement and another Budget Analysis Worksheet, dated August 2005. The worksheet listed his monthly net income as \$4,100, and allocated \$336 a month toward the payment of his unpaid bills. However, the budget did not include a child support payment for one of his children, which he acknowledged should have been included.⁽⁷⁾ When asked why he has not arranged to make minimum payments on some of the small medical bills, he said he is waiting until he earns more money.⁽⁸⁾ On February 3, 2006, he submitted the same budget, dated February 2, 2006, along with a list of the

outstanding debts that were included in the repayment plan and recent correspondence indicating other debts would be added to the plan.⁽⁹⁾ Although the repayment plan is scheduled to begin March 1, 2006, he did not submit documentation verifying that he executed the agreement.⁽¹⁰⁾

Paragraph 1 of the SOR alleged that Applicant's delinquent debts totaled \$147,027, which included a \$122,000 delinquent mortgage bill. However, that debt (SOR ¶ 1.h.) has been released through a foreclosure.⁽¹¹⁾ The remaining \$15,027 consists of \$2,370 in utility bills (SOR ¶¶ 1.j., 1.k., 1.q., 1.r., 1.x., and 1.y.), \$1,599 in medical bills (SOR ¶¶ 1.c., 1.d., 1.e., 1.f., 1.n., 1.p., 1.u., 1.v., 1.w., 1.z., and 1.aa.), \$3,000 to credit card companies (SOR ¶¶ 1.i. and 1.m.), \$1,914 in outstanding judgments (SOR ¶¶ 1.g. and 1.o.), \$277 to miscellaneous creditors (SOR ¶¶ 1.b., 1.l. and 1.s.), and \$15,867 on a defaulted car loan (SOR ¶ 1.t.). As of February 2006, all of these debts remain unpaid or unresolved, except SOR ¶¶ 1.l. (\$66) and 1.s. (\$64) which have been resolved.

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 have considered all of the facts in evidence, legal standards, including the "whole person" concept and Applicant's credibility. The Government has 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*). Starting in the middle 1990's, Applicant began accumulating debt. From that time through 2005, he continued to incur debts that he could not repay as noted in a Petition for Bankruptcy filed in 1997, his 2004 statement, and a 2004 and a 2005 credit report.

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. Applicant provided evidence that during the time he accumulated the debts, he separated from his wife, assumed care of his three children, and was unemployed for a period of time, all of which were factors outside of 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 FC MC E2.A6.1.3.6 (*The individual initiated a good-faith effort to repay overdue creditors or otherwise resolve debts*), and conclude neither applies. After being confronted with the problem in July 2004, Applicant waited until August 2005 to contact a credit counseling company and work out a monthly repayment schedule. As of February 3, 2006, he indicated that he intends to incorporate the additional debts into the repayment schedule, but as of that date there is no evidence that he executed a final repayment agreement or made a payment. Although he has repeatedly expressed his concern and desire to settle his financial problems, only recently did he take any affirmative steps to initiate a solid resolution. At this time, many of the debts are unpaid and unresolved, and based on his financial statement it is unclear whether he will be able to repay his debts without a viable plan.

I have further considered the totality of the evidence in this case, including Applicant's age, his role as a single father, and his years in the military service. While Applicant has initiated some action, he has not yet established a consistent track record of financial management and responsibility sufficient to warrant a security clearance. Hence, he has not mitigated the financial concerns raised in the SOR and all allegations, except ¶¶ 1.h., 1.l, and 1.s., are concluded against him. 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: 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: For Applicant

Subparagraph 1.i: Against Applicant

Subparagraph 1.j: Against Applicant

Subparagraph 1.k: Against Applicant

Subparagraph 1.l: For Applicant

Subparagraph 1.m: Against Applicant

Subparagraph 1.n: Against Applicant

Subparagraph 1.o: Against Applicant

Subparagraph 1.p: Against Applicant

Subparagraph 1.q: Against Applicant

Subparagraph 1.r: Against Applicant

Subparagraph 1.s: For Applicant

Subparagraph 1.t: Against Applicant

Subparagraph 1.u: Against Applicant

Subparagraph 1.v: Against Applicant

Subparagraph 1.w: Against Applicant

Subparagraph 1.x: Against Applicant

Subparagraph 1.y: Against Applicant

Subparagraph 1.z: Against Applicant

Subparagraph 1.aa: 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. 43-44.

2. GX 1.

3. Tr. 46-48.

4. GX 4 and 7.

5. GX 2 at 6-8.

6. Tr. 74-75.

7. AX B at 9; Tr. 72-73.

8. Tr. 75.

9. AX H.

10. AX G.

11. GX 7 at 2.