

KEYWORD: Financial

DIGEST: Applicant's financial delinquencies resulted from a divorce, a drop in income when moving from military to civilian life, and the necessity to provide additional support to his former wife, who was unemployed from December 2003 to January 2005. Applicant sought credit counseling and devised payment plans for his debts. He has paid or settled all but two debts alleged in the SOR, and he has definite plans in place for meeting the remaining obligations in a timely manner. He is on a course of conduct that is financially responsible, and he has mitigated the Guideline F security concerns related to his financial delinquencies. Clearance is granted.

CASE NO: 05-07651.h1

DATE: 05/12/2006

DATE: May 12, 2006

In Re:

SSN: -----

Applicant for Security Clearance

ISCR Case No. 05-07651

DECISION OF ADMINISTRATIVE JUDGE

JOAN CATON ANTHONY

APPEARANCES

FOR GOVERNMENT

Stephanie Hess, Esq., Department Counsel

FOR APPLICANT

William F. Savarino, Esq.

SYNOPSIS

Applicant's financial delinquencies resulted from a divorce, a drop in income when moving from military to civilian life, and the necessity to provide additional support to his former wife, who was unemployed from December 2003 to January 2005. Applicant sought credit counseling and devised payment plans for his debts. He has paid or settled all but two debts alleged in the SOR, and he has definite plans in place for meeting the remaining obligations in a timely manner. He is on a course of conduct that is financially responsible, and he has mitigated the Guideline F security concerns related to his financial delinquencies. Clearance is granted.

STATEMENT OF THE CASE

The Defense Office of Hearings and Appeals (DOHA) declined to grant or continue a security clearance for Applicant. Under the applicable Executive Order ⁽¹⁾ and Department of Defense Directive, ⁽²⁾ DOHA issued an undated Statement of Reasons (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 22, 2005, and elected to have a hearing before an administrative judge. The case was assigned to me December 9, 2005. On March 8, 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. The Government offered four exhibits for admission to the record. The Government's exhibits were identified as Exhibits (Ex.) 1 through 4 and admitted into evidence without objection. Applicant offered twelve exhibits, identified as Exhibits (Ex.) A through L, which were admitted into evidence without objection. On March 17, 2006, DOHA received the transcript (Tr.) of the proceeding.

FINDINGS OF FACT

The SOR contains nine allegations of disqualifying conduct under Guideline F, Financial Considerations. In his answer to the SOR, Applicant admitted all nine allegations and noted mitigating conditions. His admissions are incorporated as findings of fact.

Applicant is 32 years old and has been employed for approximately six years as a systems administrator by a government contractor. From June 1991 to February 2000 he served on active duty as a Sergeant (E5) in the U.S. Army. He received an honorable discharge. (Ex. 1.)

In 1994, Applicant married a woman who was also on active duty in the Army. She had a history of financial delinquencies that occurred before her marriage to Applicant. (Ex. 1; Answer to SOR at 1; Tr. 39.) In 1994, Applicant and his wife became the parents of a son. (Tr. 40.)

During their marriage, Applicant and his wife pooled their earnings and paid all their debts on time. (Tr. 40-41.) In 1998, the couple separated. The wife and son moved out of the family apartment. Applicant's wife's income was no longer available to pay debts and meet on-going expenses. Additionally, Applicant paid \$300 a month, approximately ten percent of his salary, in child support. (Tr.41-42.)

Realizing he needed help in managing past marital debts, Applicant sought credit counseling in 1998. The credit counseling service assisted Applicant in consolidating his debts. Applicant paid his debts according to the monthly consolidated payment plan until the latter part of 1999 or the early part of 2000. In early 2000, Applicant left military service and took a civilian job. (Tr. 42-44.)

Applicant and his wife were divorced in December 2001. (Ex. 1.) Because his earnings from his civilian job were fully taxed and he no longer had military benefits such as a housing allowance, Applicant found he had less income to spend than when he served in the military. Applicant was unable to make his monthly debt consolidation payments. (Tr. 44-45.)

In December 2003 Applicant's former wife became unemployed. She continued to be unemployed and without income until January 2005. Voluntarily, Applicant provided her and their son with additional support during this period, reasoning that it was in the best interest of his son to do so. (Tr. 45-46.)

Meanwhile, Applicant's salary increased. In December 2003 he earned an associate degree which enabled him to acquire additional certifications in his job. In July 2004, he received a significant raise . (Tr. 45-46.) After his former wife became employed in January 2005, Applicant no longer felt obligated to supply her with additional support, and he

began to address the financial obligations he had set aside earlier. He contacted his creditors to negotiate settlement and payment plans. (Tr. 46-47.)

Before receiving the SOR, Applicant negotiated a payment plan for one of the outstanding debts listed on the SOR. (Tr. 80-81.) Between September and December 2005, he contacted the other creditors listed on the SOR, and, as of the date of his hearing, Applicant had paid in full or settled seven of the nine debts alleged in the SOR. He and his creditors established payment plans to pay or settle the remaining two debts, which totaled \$2,800. (Tr. 82-84.)

Applicant's monthly income from his employment is approximately \$4,000. Because he is enrolled for six credit hours per semester in a college degree program, he receives an education benefit of \$717 per month from the Veterans Administration. (Tr. 61-63.)

Applicant's major monthly obligatory expenses are approximately \$2,650. He shares an apartment and pays \$825 per month in rent. Additionally, he pays \$700 in child support and has a monthly car payment of \$479. He pays approximately \$500 on three credit card accounts. He has not used the three cards to charge any expenses in more than a year. (Tr. 66-72.) Applicant's education expenses are approximately \$150 per month. (Tr. 75.) He has been using the money he has left over at the end of each month to pay down the delinquencies listed on the SOR. (Tr. 75-76.)

Applicant's 401k account contains approximately \$12,000 and his savings account has a balance of \$1,200. (Tr. 85.)

Applicant's daily supervisor, who worked with Applicant for approximately four years, appeared as a witness at his hearing and testified on his behalf. The daily supervisor testified that she has confidence in Applicant's trustworthiness, skills and abilities, and "can-do" work ethic. She said she assigns work to him when she wants a job done quickly and well. (Tr. 32-33.)

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 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 for coercion, and willingness and ability to abide by regulations governing the use, handling, and protection of classified information." Exec. Or. 12968, *Access to Classified Information* § 3.1(b) (Aug. 4, 1995). Eligibility for a security clearance is predicated upon the applicant meeting the security guidelines contained in the Directive.

Enclosure 2 of the Directive sets forth personal 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 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. *See Egan*, 484 U.S. at 531. 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. May 2, 1996).

Once the Government establishes a disqualifying condition by substantial evidence, the burden shifts to the applicant to rebut, explain, extenuate, or mitigate the facts. ISCR Case No. 01-20700 at 3 (App. Bd. Dec. 19, 2002); *see* Directive ¶ 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 security clearance." ISCR Case No. 01-20700 at 3.

CONCLUSIONS

Guideline F-Financial Considerations

In the SOR, DOHA alleged Applicant owed creditors on three accounts, totaling approximately \$9,300, which were charged off as bad debts and which had not been satisfied as of September 27, 2005 (¶¶ 1.c., 1.d., and 1.e.); that he owed

creditors on five collection account debts, totaling approximately \$7,500, which had not been satisfied as of September 27, 2005 (¶¶ 1.a., 1.b., 1.f., 1.g., and 1.h.); and that he was indebted in the amount of \$4,273 to a creditor on an account that was either 120 days past due or had been placed for collection and had not been paid as of September 27, 2005 (¶ 1.i.).

The Government's concern under Guideline F, Financial Considerations, is that individuals who are financially overextended and unable or unwilling to pay their just debts may try to generate funds by engaging in illegal acts. *See* Directive ¶ E2.A6.1.1. Applicant has a history of not meeting his financial obligations, and his financial history suggests an inability or unwillingness to satisfy his debts, conditions which raise security concerns under subparagraphs E2.A6.1.2.1. and E2.A6.1.2.3. of Guideline F. DOHA's Appeal Board has concluded that "[a] person who is unwilling to fulfill his legal obligations does not demonstrate the high degree of good judgment and reliability required of persons granted access to classified information." ISCR Case No. 98-0810 at 4 (App. Bd. Jun. 8, 2000.)

The Government established, through Applicant's admissions and the record evidence, a *prima facie* case that Applicant was financially overextended. Applicant provided persuasive evidence to mitigate the Government's allegations that his history of not meeting his financial obligations and his inability or unwillingness to satisfy debts raised disqualifying conditions under ¶¶ E2.A6.1.2.1. and E2.A6.1.2.3. of Guideline F.

We turn to a review of the several conditions that could mitigate the security concerns raised by Applicant's financial delinquencies. Applicant's financial delinquencies date to the period between 1998 and 2001, when he and his wife separated, he left military service, and he and his wife were divorced. Before this period, Applicant and his wife pooled their salaries and paid their debts on time. In 1998, after he and his wife separated, Applicant found he could not carry the marital debts alone. He sought credit counseling and began a program of paying his delinquent debts through debt consolidation. After leaving military service and taking a civilian job, Applicant found he was taking home less pay from his civilian job than when he was in the military. In late 1999 or early 2000, finding himself financially strapped, Applicant abandoned his plan to pay his delinquent marital debts and concentrated on honoring his current financial responsibilities and his child support.

At the same time, Applicant pursued higher education and obtained job certifications so that he could increase his salary. In December 2003, he acquired an associate's degree. That same month, his former wife lost her job, and she remained unemployed until January 2005. During this time, Applicant provided her and his son with additional support, which Applicant reasoned was necessary for the well-being of his son. Once his former wife acquired a job and was back on her financial feet, Applicant turned to resolving the financial delinquencies remaining from his marriage. He contacted his creditors and negotiated settlements and payment plans. At the time of his hearing, he had satisfied seven of the nine debts alleged in the SOR, and he had definite plans in place to timely satisfy the remaining two debts.

I have weighed these facts against the mitigating conditions set out in Guideline F of the Directive. I conclude that Applicant's behavior in not satisfying his financial obligations was recent, and his inability or unwillingness to satisfy his debts was not an isolated incident. Accordingly, Mitigating Conditions E2.A6.1.3.1. and E2.A6.1.3.2. are inapplicable. Additionally, I conclude the conditions that caused him to fail to pay his marital debts (separation and

divorce, drop in real income upon leaving military service, his wife's prolonged unemployment) were largely beyond his control. I also conclude that Applicant sought financial counseling in order to resolve his financial problems, and he initiated a good faith effort to repay or settle his delinquent debts.⁽³⁾ Accordingly, the following Mitigating Conditions apply to Applicant's case: E2.A6.1.3.3., E2.A6.1.3.4., and E2.A6.1.3.6.

Applicant admitted he had attempted to resolve only one of the delinquencies alleged in the SOR before receiving the SOR. The record showed that most of the alleged debts were resolved between September 2005 and February 2006. However, it is also clear from the record that at the time of his divorce in 2001, Applicant had determined to resolve his debts by pursuing an education that would, in time, result in additional certifications and higher pay. Additionally, he has pursued a work ethic in his job that has resulted in salary increases. He then used his salary increases to pay his delinquent marital debts. His conduct suggests responsibly setting long-range goals and working steadily to fulfill them.

In ISCR Case No. 98-071 at 3 (App. Bd. Dec. 27, 1999), DOHA's Appeal Board states that an administrative judge, in deciding an Applicant's security worthiness, "must consider the record as a whole (Directive Section F.3.) and decide whether the favorable evidence outweighs the unfavorable evidence, or *vice versa*." I have considered the record as a whole and have evaluated Applicant's conduct under the whole person concept of the Directive. I conclude that Applicant has mitigated the security concerns raised by the allegations in the SOR, and he has demonstrated that it is clearly consistent with the national interest to grant him a security clearance.

FORMAL FINDINGS

The following are my conclusions as to each allegation in the SOR:

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

DECISION

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

Joan Caton Anthony

Administrative Judge

1. Exec. Or. 10865, *Safeguarding Classified Information within Industry* (Feb. 20, 1960), as amended.
2. Department of Defense Directive 5220.6, *Defense Industrial Personnel Security Clearance Review Program* (Jan. 2, 1992), as amended.
3. *See* ISCR Case No. 04-10671 at 3-4 (App. Bd. May 1, 2006).