

KEYWORD: Financial

DIGEST: Applicant is 26 years old and works as a systems administrator for a federal contractor. He married in 2001, and became unemployed for four months in 2002. His wife was unemployed from April 2002 to May 2003. During this time they had a child in July 2002. Applicant made some poor and immature financial decisions and has many delinquent debts that remain unpaid. Based on Applicant and his wife's combined incomes they have very little money remaining at the end of each month to pay off their debts. Applicant has made minimal efforts to resolve his delinquent debts. Clearance is denied.

CASENO: 05-08996.h1

DATE: 04/18/2006

DATE: April 18, 2006

In re:

SSN: -----

Applicant for Security Clearance

ISCR Case No. 05-08996

DECISION OF ADMINISTRATIVE JUDGE

CAROL G. RICCIARDELLO

APPEARANCES

FOR GOVERNMENT

Edward W. Loughran, Esq., Department Counsel

FOR APPLICANT

Pro se

SYNOPSIS

Applicant is 26 years old and works as a systems administrator for a federal contractor. He married in 2001, and became unemployed for four months in 2002. His wife was unemployed from April 2002 to May 2003. During this time they had a child in July 2002. Applicant made some poor and immature financial decisions and has many delinquent debts that remain unpaid. Based on Applicant and his wife's combined incomes they have very little money remaining at the end of each month to pay off their debts. Applicant has made minimal efforts to resolve his delinquent debts. Clearance is denied.

STATEMENT OF THE CASE

On January 3, 2006, the Defense Office of Hearings and Appeals (DOHA) issued to Applicant Statement of Reason (SOR) stating it was unable to find that it is clearly consistent with the national interest to grant or continue a security clearance. [\(1\)](#) The SOR, which is in essence the administrative complaint, alleged security concerns under Guideline F (financial considerations).

In a sworn statement, dated January 25, 2006, Applicant responded to the SOR allegations and requested a hearing. In his SOR response, Applicant admitted all the allegations in the SOR except ¶¶ 1.b and 1.e. The case was assigned to me on February 14, 2006. A notice of hearing was issued on March 7, 2006, scheduling the hearing for March 30, 2006. The hearing was conducted as scheduled. The government submitted five exhibits that were marked as Government Exhibits (GE) 1-5. The exhibits were admitted into the record without objection. Applicant testified on his own behalf, had three character witnesses testify, and submitted five exhibits that were marked as Applicant's Exhibits A-E. The exhibits were admitted without objection. DOHA received the hearing transcript (Tr.) on April 10, 2006.

FINDINGS OF FACT

Applicant's admissions to the allegations in the SOR, are incorporated herein. In addition, after a thorough and careful review of the pleadings, exhibits, and testimony, I make the following findings of fact:

Applicant is 26 years old, has an associates degree, and works as a systems administrator for a federal contractor. He married in 2001, and he and his wife had a child in July 2002.

At the time he married, Applicant was not making a lot of money. From June 2002 to September 2002, Applicant was unemployed.⁽²⁾ From April 2002 to May 2003, Applicant's wife was unemployed. The couple struggled financially after their child was born and he admitted they made some poor and immature financial decisions.⁽³⁾ While unemployed Applicant looked for full-time work and did technical work on a part-time basis. He attempted to take care of his family's basic necessities.

Applicant provided proof he paid the debt alleged in SOR ¶ 1.e. He claimed he paid SOR ¶ 1.b, but failed to provide documentation.⁽⁴⁾ He has approximately \$13,250 in undisputed, unpaid delinquent debts alleged in the SOR that he has not made any payments on nor set up payment plans.⁽⁵⁾ With regard to SOR ¶ 1.c, a credit card debt for \$2,305, he claims he has contacted the company and offered to pay \$100 a month, but he has not received confirmation of his proposed plan, nor made any payments. The debt remains unpaid. SOR ¶ 1.j is a state income tax debt for partial tax years 2003 and 2004, totaling \$514. Applicant claims there were issues with his wife's past taxes and discrepancies that they disputed with the state. He claims he has contacted the state to resolve the issues, but is still waiting for paperwork.⁽⁶⁾

Applicant has four debts not listed on the SOR, one with an approximate balance of \$600 that he has made payments on.⁽⁷⁾ He owes \$245 on a telephone bill that has been delinquent for seven to eight months.⁽⁸⁾ He has a payday loan that was due four to five months ago for \$500, that remains unpaid.⁽⁹⁾ Applicant has had two cars repossessed. One is listed in SOR ¶ 1.f that he owes a balance on of \$8,200, and the other is not part of the SOR that he owes a balance on of approximately \$6,000.⁽¹⁰⁾ The total amount of undisputed delinquent debt that Applicant owes which also includes debts not listed on the SOR is approximately \$20,500.

Applicant has approximately \$18,000 in student loans that he is scheduled to start making payments on in December 2006.⁽¹¹⁾ He is unsure of what the payments will be. He estimates that at the end of the month after paying expenses he and his wife have approximately \$300-500 remaining. Applicant claims he and his wife have a budget, but they have not really been following it.⁽¹²⁾

Applicant's character witnesses believe him to be a trustworthy and honest person with impeccable character. They would trust him with money, and personal and confidential information.

POLICIES

Enclosure 2 of the Directive sets forth adjudicative guidelines to be considered in evaluating a person's eligibility to hold a security clearance. Included in the guidelines are disqualifying conditions (DC) and mitigating conditions (MC) applicable to each specific guideline. Additionally, each security clearance decision must be a fair and impartial commonsense decision based on the relevant and material facts and circumstances, the whole-person concept, along with the factors listed in the Directive. Specifically these are: (1) the nature and seriousness of the conduct and surrounding circumstances; (2) the frequency and recency of the conduct; (3) the age of the applicant; (4) the motivation of the applicant, and the extent to which the conduct was negligent, willful, voluntary, or undertaken with knowledge of the consequences; (5) the absence or presence of rehabilitation; and (6) the probability that the circumstances or conduct will continue or recur in the future. Although the presence or absence of a particular condition or factor for or against clearance is not outcome determinative, the adjudicative guidelines should be followed whenever a case can be measured against this policy guidance.

The sole purpose of a security clearance determination is to decide if it is clearly consistent with the national interest to grant or continue a security clearance for an applicant.⁽¹³⁾ The government has the burden of proving controverted facts.⁽¹⁴⁾ The burden of proof is something less than a preponderance of evidence.⁽¹⁵⁾ Once the government has met its burden, the burden shifts to an applicant to present evidence of refutation, extenuation, or mitigation to overcome the case against

him.⁽¹⁶⁾ Additionally, an applicant has the ultimate burden of persuasion to obtain a favorable clearance decision.⁽¹⁷⁾

No one has a right to a security clearance⁽¹⁸⁾ and "the clearly consistent standard indicates that security clearance determinations should err, if they must, on the side of denials."⁽¹⁹⁾ Any reasonable doubt about whether an applicant should be allowed access to sensitive information must be resolved in favor of protecting such sensitive information.⁽²⁰⁾ The decision to deny an individual a security clearance is not necessarily a determination as to the loyalty of an applicant.⁽²¹⁾ 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.

Based upon consideration of the evidence, I find the following adjudicative guideline most pertinent to the evaluation of the facts in this case:

Guideline F- Financial Considerations-a security concern exists when a person has significant delinquent debts. An individual who is financially overextended is at risk of having to engage in illegal or unethical acts to generate funds to meet financial obligations. Similarly, an individual who is financially irresponsible may also be irresponsible, unconcerned, or careless in their obligation to protect classified information. Behaving responsibly or irresponsibly in one aspect of life provides an indication of how a person may behave in other aspects of life.

Conditions that could raise a security concern and may be disqualifying, as well as those which would mitigate security concerns, pertaining to the adjudicative guideline are set forth and discussed in the conclusions below.

CONCLUSIONS

I have carefully considered all the facts in evidence and the legal standards. The government has established a *prima facie* case for disqualification under Guideline F.

Based on all the evidence, Financial Considerations Disqualifying Condition (FC DC) E2.A6.1.2.1 (*A history of not meeting financial obligations*), and FC DC E2.A6.1.2.3 (*Inability or unwillingness to satisfy debts*), apply in this case. Applicant has accumulated delinquent debts that remain unpaid. With the amount of money he and his wife have left over at the end of each month they are unable to significantly reduce their debt. Applicant has made minimal effort to resolve his delinquent debts.

I have considered all the Financial Considerations Mitigating Conditions (FC MC) and especially considered FC MC E2.A6.1.3.1 (*The behavior was not recent*), FC MC E2.A6.1.3.2 (*It was an isolated incident*), 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)*), and FC MC E2.A6.1.3.6 (*The individual initiated a good-faith effort to repay overdue creditors or otherwise resolve debts*). Applicant owes approximately \$13,250 in undisputed debts listed in the SOR. He also has approximately another \$7,300 in delinquent debts that are not alleged. The debts remain unpaid and because there are many debts, FC C E2.A6.1.3.1 and FC MC E2.A6.1.3.2 do not apply.

Applicant's financial problems started in 2002, when he had a period of unemployment and at the same time his wife was unemployed. This was also during the same time their child was born. These events were largely beyond their control. Security concerns arising from financial problems can be mitigated by showing they are the result of conditions beyond the person's control. However, even if Applicant's financial difficulties initially arose due to circumstances

outside his control, it is appropriate to consider whether he acted in a reasonable manner when dealing with his or her financial difficulties. (22) It has been over three and a half years since Applicant was unemployed for approximately four months. He resumed work in September 2002 and his wife resumed work in May 2003. Although Applicant did have intervening events that affected his finances, he has not made attempts to set up payment plans with most of his creditors and has not paid most of his debts, even the small ones. He and his wife have a small amount of money left over at the end of the month, but with a child and unanticipated intervening events it is unlikely that amount will remain constant. At this point, it is apparent that he does not have the ability to repay his debts and, based on the minimal efforts he has made in the past since both he and his wife went back to work, I find he has not initiated a good faith effort to repay his creditors or resolve most of his debts. I also find that, although he had financial set backs beyond his control, he did not make reasonable efforts to resolve his debts once he and his wife resumed work. Therefore, I find FC MC E2.A6.1.3.3 and FC MC E2.A6.1.3.6 do not apply. In considering the totality of the circumstances, I find Applicant has failed to mitigate the security concerns under Guideline F.

In all adjudications, the protection of our national security is the paramount concern. The objective of the security-clearance process is the fair-minded, commonsense assessment of a person's life to make an affirmative determination that the person is eligible for a security clearance. Indeed, the adjudicative process is a careful weighing of a number of variables in considering the "whole person" concept. It recognizes that we should view a person by the totality of their acts, omissions, motivations and other variables. Each case must be adjudged on its own merits, taking into consideration all relevant circumstances, and applying sound judgment, mature thinking, and careful analysis.

I considered the whole person and I find Applicant failed to mitigate the security concerns regarding Guideline F, financial considerations. Therefore, I am persuaded by the totality of the evidence in this case, that it is not clearly consistent with the national interest to grant Applicant a security clearance. Accordingly, Guideline F is decided against Applicant.

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:

Paragraph 1. Guideline F: AGAINST APPLICANT

Subparagraph 1.a: Against Applicant

Subparagraph 1.b: For Applicant

Subparagraph 1.c: Against Applicant

Subparagraph 1.d: Against Applicant

Subparagraph 1.e: For Applicant

Subparagraph 1.f: Against Applicant

Subparagraph 1.g: Against Applicant

Subparagraph 1.h: Against Applicant

Subparagraph 1.i: Against Applicant

Subparagraph 1.j: Against 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.

Carol G. Ricciardello

Administrative Judge

1. This action was taken under Executive Order 10865, dated February 20, 1960, as amended, and DoD Directive 5220.6, dated January 2, 1992, as amended and modified (Directive).

2. AE E.

3. Tr. 19.

4. Tr. 17.
5. Included in this total amount is \$8,600 for the balance due on a repossessed car.
6. Tr. 37-38.
7. AE B and C; Tr.16-17.
8. Tr. 38-39.
9. *Id.*
10. Tr. 29-33; The debts not listed in the SOR are not considered for disqualifying purposes, but are considered when evaluating the "whole person" and Applicant's ability to repay his debts.
11. Tr. 39-40.
12. Tr. 42.
13. ISCR Case No. 96-0277 at. 2 (App. Bd. Jul 11, 1997).
14. ISCR Case No. 97-0016 at 3 (App. Bd. Dec. 31, 1997); Directive, Enclosure 3, ¶ E3.1.14.
15. *Department of the Navy v. Egan*, 484 U.S. 518, 531 (1988).
16. ISCR Case No. 94-1075 at 3-4 (App. Bd. Aug. 10, 1995); Directive, Enclosure 3, ¶ E3.1.15.
17. ISCR Case No. 93-1390 at 7-8 (App. Bd. Jan. 27, 1995); Directive, Enclosure 3, ¶ E3.1.15.
18. *Egan*, 484 U.S. at 531.
19. *Id.*
20. *Id.*; Directive, Enclosure 2, ¶ E2.2.2.
21. Executive Order 10865 § 7.
22. ISCR Case No. 02-02116 at 4 (App. Bd. Sep. 25, 2003).