

DATE: June 30, 2006

In Re:

SSN: -----

Applicant for Security Clearance

CR Case No. 05-12830

DECISION OF ADMINISTRATIVE JUDGE

PAUL J. MASON

APPEARANCES

FOR GOVERNMENT

Julie R. Edmunds, Esq., Department Counsel

FOR APPLICANT

Pro Se

SYNOPSIS

Applicant has a history of not meeting his financial obligations that date to early 2003. He owes five creditors more than \$39,000.00. Although his unemployment for up to five months in 2002 and 2003 contributed to his financial indebtedness, Applicant has done nothing to repay his creditors. While he claimed he had one of the delinquent credit accounts renegotiated with another bank, he provided no documentation. Even if he was successful in renegotiating one of his old debts, Applicant fails to mitigate the security concerns associated with his delinquent debts. Clearance is denied.

STATEMENT OF CASE

The Defense Office of Hearings and Appeals (DOHA) declined to grant or continue a security clearance for Applicant. On December 19, 2005, under Executive Order 10865 and Department of Defense Directive 5200.6, DOHA issued a Statement of Reasons (SOR) detailing the reasons for its security concerns raised under the financial considerations guideline (Guideline F) of the Directive. In his answers dated January 17 and February 11, 2006, Applicant requested a decision be made on the record in lieu of a hearing. A copy of the Government's File of Relevant Material (FORM, the Government's evidence in support of the SOR) was sent to Applicant on April 6, 2006. Applicant received the FORM on April 12, 2006. Applicant's response to the FORM is dated ay 10, 2006. The case was assigned to me for decision on June 14, 2006.

FINDINGS OF FACT

The SOR alleges five debts under the financial considerations guideline. The total amount of delinquency is \$39,313.00; the debt identified in subparagraph 1.b. became delinquent in February 2003 while the debt in 1.e. became delinquent in December 2005. The other debts became delinquent in 2003. Applicant admitted all debts. Though he provided no explanations or reasons for his indebtedness in his answer to the SOR, his response to the FORM identifies three months of unemployment in 2002 and two months of unemployment in 2003 as the cause of his current debt delinquencies. Applicant is 44 years old and employed as a cost analyst with a defense contractor. He seeks a secret security clearance.

Applicant's response to the FORM also makes two additional claims. His first claim is that prior to his three months of unemployment in 2002, his credit rating was considered excellent; the period of unemployment in 2003 encumbered his efforts even more to maintain a good credit rating. Next, he claims he had the debt in l.e. renegotiated by another bank who reduced the delinquency amount from \$12,924.00 to \$5,000.00, and issued a new credit card to him. Applicant provided no documentation supporting his claim of rewriting the account in l.e. Further, there is no confirmation in the credit bureau report (CBR) dated December 2005, or in any other documentation, that the account was rewritten by the new creditor. Applicant's overall credibility is undermined by the absence of evidence substantiating (1) his outstanding credit rating, (2) his unemployment, and (3) his renegotiated credit card arrangements advanced under l.d. Applicant provided no character evidence regarding his job performance or his reputation in the community.

POLICIES

Enclosure 2 of the Directive sets forth guidelines containing disqualifying conditions (DC) and mitigating conditions (MC) that should be given binding consideration in making security clearance determinations. These conditions must be considered in every case along with the general factors of the whole person concept. However, the conditions are not automatically determinative of the decision in any case nor can they supersede the Administrative Judge's reliance on his own common sense.

Burden of Proof

Initially, the government must establish, by substantial evidence, that conditions exist in the personal or professional history of the applicant which disqualifies, or may disqualify, the applicant from being eligible for access to classified information. *See Department of the Navy v. Egan*, 484 U.S. 518, 531 (1988) "[T]he Directive presumes there is a nexus or rational connection between proven conduct under any of the Criteria listed therein and an applicant's security suitability." ISCR Case No. 95-0611 at 2 (App. Bd. May 2, 1996) (quoting DISCR Case No. 92-1106 (App. Bd. Oct. 7, 1993)).

Once the government establishes a disqualifying condition by substantial evidence, the burden shifts to the applicant to rebut, explain, extenuate, or mitigate the facts. "[S]ecurity clearance determinations should err, if they must, on the side of denials." *See Egan*, 481 U.S. at 531; *see* Directive E2.2.2.

Financial Considerations (Guideline F)

An individual who is financially overextended is at risk of having to engage in illegal acts to generate funds.

CONCLUSIONS

The government has established its case under the financial considerations (FC) as Applicant has accumulated more than \$39,000.00 in delinquent debt to five creditors or collection agencies since February 2003. FC disqualifying condition (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*) applies.

There are five mitigating conditions (MC) that are potentially applicable to financial problems. The first two conditions depend on when the debt occurred and the number of overdue debts involved. Neither FC MC E2. A6.1.3.1. (*the behavior was not recent*) nor FC MC E2.A6.1.3.2. (*it was an isolated incident*) applies due to the recency of the indebtedness and the number of past due debts involved.

FC MC E2.A6.1.3.3. (*the conditions that resulted in the behavior were largely beyond the person's control*) extenuates delinquent debts when events, e.g., loss of employment, a business downturn, medical emergency, marital problems, unexpectedly hamper an individual's ability to pay their bills. Applicant has mentioned unemployment in 2002 and 2003 as the major reason for his financial problems. While unemployment is undeniably a credible reason for financial trouble, an applicant still has an obligation to notify his creditors. Even though he may not be able to pay the creditor because of his unemployment, he can inform the creditor about the nature and extent of his unemployment, and negotiate/settle with the creditor where achievable. The record discloses no action by Applicant to notify his creditors.

FC MC E2.A6.1.3.4. (*the person has received counseling for the problem and there are clear indications the problem is being resolved or is under control*) does not apply here, as there are no clear indications the problem is either resolved or under control. First, having an excellent credit rating means more than simply paying off the minimum amount due on the credit card while the principal amount of the debt soars. Having an excellent credit rating also may mean reducing or eliminating credit altogether to ensure financial responsibility over credit and overall financial health.

Applicant's claim of having worked a rewritten credit contract with a new creditor at a drastically reduced debt amount, along with a new credit card, receives no consideration under FC MC E2.A6.1.3.6. (*the individual initiated a good-faith effort to repay overdue creditors or otherwise resolve debts*), even if he had provided documentation to support his claim. Any favorable consideration due under FC MC E2.A6.1.3.6. would be dispelled by Applicant's poor judgment in creating new debt when he has yet to act on his current, delinquent debt. Given his history of financial indebtedness without a demonstrated plan to repay his creditors, I find against Applicant under the financial considerations guideline. My decision in this case has also included an evaluation of these circumstances under the general factors of the whole person concept. Taking on new credit card debt when he owes more than \$39,000.00 in delinquent debt indicates Applicant's current financial problems will persist in the future.

FORMAL FINDINGS

Paragraph 1 (Financial Considerations, Guideline F): AGAINST THE APPLICANT

Subparagraph a. Against the Applicant.

Subparagraph b. Against the Applicant.

Subparagraph c. Against the Applicant.

Subparagraph d. Against the Applicant.

Subparagraph e. Against the Applicant.

DECISION

In light of all the circumstances presented by the record in this case, it is not clearly consistent with the national interest to grant or continue a security clearance for Applicant. Clearance is denied.

Paul J. Mason

Administrative Judge