

DATE: November 19, 2007

---

In re: )  
 )  
 )  
 ----- ) ISCR Case No. 06-22950  
 SSN: ----- )  
 )  
 Applicant for Security Clearance )  
 )  
 )

---

**DECISION OF ADMINISTRATIVE JUDGE  
PHILIP S. HOWE**

**APPEARANCES**

**FOR GOVERNMENT**

Caroline H. Jeffreys, Esq., Department Counsel

**FOR APPLICANT**

*Pro Se*

**SYNOPSIS**

Applicant is 39 years old, married, and has four children. He works for a defense contractor as a metal fabricator. He has \$50,633 in delinquent debt from tax liens and medical debts. He resolved some of the tax liens, but none of the medical debts by his own initiative. He failed to mitigate the financial considerations security concern. Clearance is denied.

## STATEMENT OF THE CASE

The Defense Office of Hearings and Appeals (DOHA) declined to grant or continue a security clearance for Applicant. On April 16, 2007, DOHA issued a Statement of Reasons<sup>1</sup> (SOR) detailing the basis for its decision—security concerns raised under Guideline F (Financial Considerations) of the revised Adjudicative Guidelines (AG) issued on December 29, 2005, and implemented by the Department of Defense effective September 1, 2006. Applicant answered the SOR in writing on May 24, 2007, and elected to have a hearing before an administrative judge. The case was assigned to me on July 23, 2007. On September 20, 2007, 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 and the Applicant submitted exhibits that were admitted into evidence. DOHA received the hearing transcript (Tr.) on October 3, 2007.

## PROCEDURAL MATTERS

The Government moved to amend the SOR by deleting subparagraphs 1.c to 1.h, and then substituting new wording for each of those subparagraphs pertaining to tax lien liabilities. The amendment also added subparagraphs 1.tt to 1.ww. Applicant had no objection to the amendment, and I granted the motion. Applicant then stated his answers to each of the amendments on the record. The Government also moved during the hearing to withdraw subparagraph 1.ff because this debt was paid. Applicant had no objection to the motion, and I granted the motion. (Tr. 7-10, 46)

Applicant submitted additional exhibits after the close of the hearing. The Government had no objection to these exhibits. I marked them as Exhibits E to I and admitted them into evidence. (Tr. 68, 69)

## FINDINGS OF FACT

Applicant's admissions to the SOR allegations regarding his medical services delinquent debts are incorporated here as findings of fact. Applicant denied the allegations concerning tax liens. After a complete and thorough review of the evidence in the record, and full consideration of that evidence, I make the following additional findings of fact:

Applicant is 39 years old, married, and has four children. One child has cerebral palsy. Applicant works for a defense contractor as a metal fabricator, and has been at that location for the past nine years. He has a high school degree with no further education. He does not have health insurance through his employer because he claims it will cost him about \$1,400 a month. Instead, he and his wife do not have health insurance for themselves, and use a state program to provide insurance for their four children. Applicant earns about \$3,000 after taxes monthly, and his monthly expenses nearly equal that amount of income. He had two cars repossessed in the 1990s, and his

---

<sup>1</sup>Pursuant to Exec. Or. 10865, *Safeguarding Classified Information within Industry* (Feb. 20, 1960), as amended and modified, and Department of Defense Directive 5220.6, *Defense Industrial Personnel Security Clearance Review Program* (Jan. 2, 1992), as amended and modified (Directive).

current automobiles have no debt on them. His wife does not work outside the home. (Tr. 27-29, 53, 57-63, 66; Exhibits 1-5)

Applicant has 48 delinquent debts listed in the SOR. They total \$50,633. SOR subparagraph 1.ss alleges Applicant did not file his 2003 and 2004 federal and state income tax returns. That allegation is the 49<sup>th</sup> allegation in the SOR. Applicant's delinquent debts fall into two main categories, state tax liens and medical bills which are unpaid. Applicant's repayment plan for any or all of these debts is to allow a judgment be entered against him in court, then have the garnishment process take the money from his paycheck. He claims he paid \$14,000 in debts over the past three years using this method. Applicant's attitude is if he does not have the money in his paycheck, he will not miss it or spend it. He also claims he does not have money available in his paycheck to repay these delinquent debts each month. Applicant has household repair expenses to replace windows and a furnace in his 100-year-old house this winter. Applicant is not certain which debts have been paid and which remain unpaid. He filed Chapter 7 bankruptcy in the 1990s to eliminate medical debts arising from his first child's birth when his employer's insurance plan did not pay for those expenses. (Tr. 41-46, 49, 63-65)

Applicant's tax delinquencies arose from two types of taxes. The first is his local city income tax. His employer does not withhold money for that tax, so Applicant has to pay it directly to the city government. He has not done so, and the city filed tax liens against him. He has now paid those debts, and plans on paying a portion of the tax debt every six months. The second type of tax lien Applicant incurred was for a business he tried to start and operate. It did not operate, and he had no liability for taxes, but he did not clear his tax record with his state taxing agency. Now he has resolved those liens and convinced the state to withdraw them. Applicant paid the city tax by garnishment as listed in Subparagraph 1.a. Examining the exhibits, and comparing the amounts in the SOR alleged to the releases offered by Applicant, the tax liens in Subparagraphs 1.d, 1.e, 1.f, 1.g, 1.j, 1.tt, and 1.uu were business taxes mistakenly assessed against him. The judgements and liens were released by the state government. (Tr. 24-37, 52, 53; Exhibits 2-5, A-E)

Applicant's remaining delinquent debts listed in the SOR are unpaid medical bills, except for a \$482 medical debt in Subparagraph 1.ff which the Government withdrew, an unpaid credit card debt for \$722 in Subparagraph 1.pp, an unpaid telephone bill for \$141 in Subparagraph 1.qq, and a deficiency on a repossessed vehicle from the 1990s for \$1,470 in Subparagraph 1.rr. Applicant has no repayment plan in effect or contemplated to repay any of these debts. (Tr. 33-53; Exhibits 2-5, F-I)

Applicant filed his 2003 and 2004 tax returns, with amendments because he and his wife were separated for a while in those tax years, and the filing status needed to be adjusted in April 2006. Applicant set aside his tax forms for those years, and when they were out of sight, they were out of his mind, having been overwhelmed by his financial problems, as he claims. (Tr. 55, 56)

## **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 authorized the Secretary of Defense or his designee to grant applicants eligibility for access to classified information “only upon a finding that it is clearly consistent the national interest to do so.” Exec. Or. 10865, *Safeguarding Classified Information with Industry* § 2 (Feb. 20, 1960). Eligibility for a security clearance is predicated upon the applicant meeting the security guidelines contained in the Directive. 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.

The adjudication process is based on the whole person concept. All available, reliable information about the person, past and present, is to be taken into account in reaching a decision as to whether a person is an acceptable security risk. Enclosure 2 of the Directive sets forth personnel security guidelines, as well as the disqualifying conditions (DC) and mitigating conditions (MC) under each guideline that must be carefully considered in making the overall common sense determination required.

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. Those assessments include: (1) the nature, extent, and seriousness of the conduct; (2) the circumstances surrounding the conduct, and the extent of knowledgeable participation; (3) how recent and frequent the behavior was; (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 pertinent 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 (See Directive, Section E2.2.1. of Enclosure 2). Because each security case presents its own unique facts and circumstances, it should not be assumed that the factors exhaust the realm of human experience or that the factors apply equally in every case. Moreover, although adverse information concerning a single condition may not be sufficient for an unfavorable determination, the individual may be disqualified if available information reflects a recent or recurring pattern of questionable judgment, irresponsibility, or other behavior specified in the Guidelines.

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. 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). All that is required is proof of facts and circumstances that indicate an applicant is at risk for mishandling classified information, or that an applicant does not demonstrate the high degree of judgment, reliability, or trustworthiness required of persons handling classified information. ISCR Case No. 00-0277, 2001 DOHA LEXIS 335 at \*\*6-8 (App. Bd. 2001). Once the Government has established a *prima facie* case by substantial evidence, the burden shifts to the applicant to rebut, explain, extenuate, or mitigate the facts. *See* Directive ¶ E3.1.15. An applicant “has the ultimate burden of

demonstrating that is clearly consistent with the national interest to grant or continue his security clearance. ISCR Case No. 01-20700 at 3 (App. Bd. 2002). “Any doubt as to whether access to classified information is clearly consistent with national security will be resolved in favor of the national security.” Directive ¶ E2.2.2. “[S]ecurity clearance determinations should err, if they must, on the side of denials.” *Egan*, 484 U.S. at 531. *See* Exec. Or. 12968 § 3.1(b).

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

Guideline F: Financial Considerations: The Concern: Failure or inability to live within one’s means, satisfy debts, and meet financial obligations may indicate poor self-control, lack of judgment, or unwillingness to abide by rules and regulations, all of which could raise questions about an individual’s reliability, trustworthiness and ability to protect classified information. An individual who is financially overextended is at risk of having to engage in illegal acts to generate funds. Compulsive gambling is a concern as it may lead to financial crimes including espionage. Affluence that cannot be explained by known sources of income is also a security concern. It may indicate proceeds from financially profitable criminal acts.

## CONCLUSIONS

The Government established by substantial evidence and Applicant’s admissions each of the allegations in the SOR.

**Financial Considerations:** Applicant has \$50,633 of alleged delinquent debts. He has no repayment plan in effect nor does he contemplate implementing a plan. He has not taken the initiative to repay his debts, probably because he does not have the income to repay the debts. He has done nothing to repay his medical bills, despite having a state medical plan based on the number of his children and his income, he incurred thousands of dollars of medical bills which he cannot repay on his income.

The disqualifying conditions (DC) applicable are ¶19.a. (inability or unwillingness to satisfy debts), and ¶19.c. (a history of not meeting financial obligations). Applicant prefers to allow himself to be sued and to have his wages garnished to repay his delinquent debts. He is unable to repay his debts on his own initiative based on his limited income. His history of not paying his medical debts dates from the 1990s.

The Mitigating Condition (MC) which might be applicable is ¶20.b (the conditions that resulted in the financial problem 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 the person acted responsibly under the circumstances). Applicant’s educational limitations, and his job classification, coupled with having four children to raise on a limited income, complicates his ability to repay his debts. Apparently, his wife cannot work because she cares for their child who has cerebral palsy. To an extent his situation is beyond his control due to these facts. However, this MC does not overcome the DC because he did not show any efforts to resolve his medical expenses, or repay on his own initiative the 31 medical debts which are under \$500 individually. He has been

employed for the past nine years, and he did not show any business downturn adversely affected him. Therefore, this MC has limited application.

### **Whole Person Analysis**

“The adjudicative process is an examination of a sufficient period of a person’s life to make an affirmative determination that the person is eligible for a security clearance.” AG ¶ 2(a). “Each security clearance decision must be a fair and impartial common sense determination based upon consideration of all the relevant and material information and the pertinent criteria and adjudication policy.” Directive ¶ 6.3. “Available, reliable information about the person, past and present, favorable and unfavorable, should be considered in reaching a determination.” AG ¶ 2(a). In evaluating Applicant’s case, I have considered the adjudicative process factors listed in the AG ¶ 2(a).

I considered all nine factors in relationship to Applicant and his situation. Applicant was a parent and an adult when all these debt liabilities were incurred. They occur frequently and are likely to be repeated based on the debt history presented. He has not made a good-faith or timely effort to repay his debts. The use of garnishment proceedings is not a good-faith effort on the part of Applicant to voluntarily repay his delinquent debts. In summary, none of the “whole person concept” factors are applicable to result in a favorable resolution for Applicant.

Applicant’s struggles on a low income and with family health care issues were factors I evaluated. Applicant should have attempted to establish a debt reduction plan and a family budget with the assistance of a reputable debt counselor through his bank or credit union, or a community organization. Also, Applicant should have been pro-active in his efforts to resolve his financial obligations. Applicant should examine his health care debt history, and seek ways to repay the past debts, and minimize incurring additional debt through the use of state programs, a primary care physician instead of the hospital emergency room for ordinary illnesses, and similar procedures the state or community programs may provide him and his family.

Therefore, based on all the evidence and the guidelines, I conclude the financial considerations security concern against Applicant. I also conclude the “whole person concept” against Applicant.

### **FORMAL FINDINGS**

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

Paragraph 1. Guideline F:	AGAINST APPLICANT
Subparagraph 1.a:	For Applicant
Subparagraph 1.b:	Against 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:	Against Applicant
Subparagraph 1.i:	Against Applicant
Subparagraph 1.j:	For Applicant
Subparagraph 1.k:	Against Applicant
Subparagraph 1.l:	Against 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:	Against 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
Subparagraph 1.bb:	Against Applicant
Subparagraph 1.cc:	Against Applicant
Subparagraph 1.dd:	Against Applicant
Subparagraph 1.ee:	Against Applicant
Subparagraph 1.ff:	Withdrawn
Subparagraph 1.gg:	Against Applicant
Subparagraph 1.hh:	Against Applicant
Subparagraph 1.ii:	Against Applicant
Subparagraph 1.jj:	Against Applicant
Subparagraph 1.kk:	Against Applicant
Subparagraph 1.ll:	Against Applicant
Subparagraph 1.mm:	Against Applicant
Subparagraph 1.nn:	Against Applicant
Subparagraph 1.oo:	Against Applicant
Subparagraph 1.pp:	Against Applicant
Subparagraph 1.qq:	Against Applicant
Subparagraph 1.rr:	Against Applicant
Subparagraph 1.ss:	For Applicant
Subparagraph 1.tt:	For Applicant
Subparagraph 1.uu:	For Applicant
Subparagraph 1.vv:	Against Applicant
Subparagraph 1.ww:	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 or continue a security clearance for Applicant. Clearance is denied.

Philip S. Howe  
Administrative Judge