

DATE: April 8, 2004

In re:

SSN: -----

Applicant for Security Clearance

ISCR Case No. 02-09209

DECISION OF ADMINISTRATIVE JUDGE

JAMES A. YOUNG

APPEARANCES

FOR GOVERNMENT

Francisco J. Mendez, Esq., Department Counsel

FOR APPLICANT

Pro Se

SYNOPSIS

Applicant accumulated substantial debt while in the U.S. Army. After being ordered to get financial counseling, Applicant put a financial plan into effect that seemed to produce results. When he separated from the Army, Applicant still had outstanding debts of about \$7,000. He could not find a civilian job that allowed him to continue making payments to his creditors. Applicant continued to make poor financial choices by purchasing vehicles he could not afford. He filed for Chapter 7 bankruptcy after receiving the SOR. Applicant failed to demonstrate that his financial problems are under control. 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 29 September 2003, DOHA issued a Statement of Reasons (SOR)⁽¹⁾ detailing the basis for its decision-security concerns raised under Guideline F (Financial Considerations) of the Directive. Applicant answered the SOR in writing on 8 October 2003 and elected to have a hearing before an administrative judge. The case was assigned to me on 27 January 2004. On 1 March 2004, I convened a hearing to consider whether it is clearly consistent with the national interest to grant or continue a security clearance for Applicant. DOHA received the hearing transcript (Tr.) on 11 March 2004.

FINDINGS OF FACT

Applicant is a 28-year-old internal communications center operator for a defense contractor. He entered the U.S. Army in 1995 and was honorably discharged 1999. He married in 1998 and has one child. He is currently facing substantial financial difficulties because of medical costs incurred because of Applicant's ulcer and kidney stones and his son's chronic ear infections. Tr. 35.

While he was in the Army, Applicant became financially overextended by charging more purchases on his credit cards

than he could afford to pay at the end of each month. Applicant's first sergeant discovered the financial difficulties and convinced Applicant to enroll in credit counseling at his military installation. With the counselors' assistance, Applicant set up a financial plan and began paying his debts.

When he left the Army in 1999, Applicant was still approximately \$7,000 in debt. He was unable to find employment that would permit him to continue payments on his financial plan. His financial problems were exacerbated when he and his wife purchased a second car. After two months, they were forced to turn the car back to the dealer because they were unable to make the payments. They still owe \$4,500 on this car. Ex. A at 5.

In 2003, Applicant traded his truck in for a newer automobile. The payments were almost \$400 per month. The vehicle was repossessed in May 2003. Ex. A at 5. Applicant and his wife now own two older vehicles.

Applicant filed a Chapter 7 bankruptcy petition on 10 December 2003 claiming liabilities of over \$66,000 and assets of \$3,500. (2) Applicant no longer uses credit cards.

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

In the SOR, DOHA alleged Applicant had 16 delinquent debts totaling over \$12,000 (¶¶ 1.a. - 1.p.) and he has been unable or unwilling to satisfy his delinquent debts (¶ 1.q.). An applicant who is financially overextended is at risk of having to engage in illegal acts to generate funds. Directive E2.A6.1.1.

The Government established by substantial evidence and Applicant's admissions each of the delinquent debts alleged in ¶¶ 1.a. - 1.p. Applicant has a history of not meeting his financial obligations (DC E2.A6.1.2.1.) and is unable or unwilling to satisfy these debts (DC E2.A6.1.2.3.). Although Applicant appeared to be on the road to financial recovery,

once he separated from the Army, his financial situation deteriorated. He could not find adequate employment to keep paying on his debt plan, he made injudicious purchases of vehicles, and he had higher medical expenses than he anticipated.

Applicant's case raises two mitigating conditions: (1) The applicant received counseling and there are clear indications the problem is being resolved or is under control (MC E2.A6.1.3.4.); and (2) the applicant initiated a good-faith effort to resolve the debts (MC E2.A6.1.3.6.). Applicant received financial counseling in the Army and made good-faith efforts to resolve his debts. He managed to reduce his debt to \$7,000. But once he separated from the service, he stopped paying on the plan. It appears he took no further action to resolve these debts until after the SOR was issued. Applicant's financial situation is still unsettled. Applicant's debts have not been discharged, yet. Although Applicant destroyed his credit cards and has purchased more affordable motor vehicles, he admits he is still not comfortable handling his financial matters. While I have no doubt Applicant is a loyal American citizen, as he states, Applicant has not sufficiently resolved the financial security concerns raised in the SOR. I find against Applicant on ¶¶ 1.a.-1.p.

In ¶ 1.q. of the SOR, DOHA alleged a disqualifying condition without alleging any facts. Therefore, I find for Applicant on ¶ 1.q.

FORMAL FINDINGS

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

Paragraph 1. Guideline F: 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.: Against Applicant

Subparagraph 1.i.: Against Applicant

Subparagraph 1.j.: Against 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.: For 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.

James A. Young

Administrative Judge

1. 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.
2. Applicant provided the original receipt showing he paid the bankruptcy filing fee. I examined the document and found it to be authentic. I returned the document to Applicant for his records and asked that he provide me a copy. Although he failed to do so, I still considered that he had in fact paid the appropriate filing fee for his bankruptcy.