

DATE: May 8, 2003

In Re:

SSN: -----

Applicant for Security Clearance

ISCR Case No. 01-19104

DECISION OF ADMINISTRATIVE JUDGE

BURT SMITH

APPEARANCES

FOR GOVERNMENT

Jonathan Beyer, Esq., Department Counsel

FOR APPLICANT

Pro Se

SYNOPSIS

Applicant extended himself financially by purchasing a home in order to move his family out of a crime-ridden neighborhood into a safer area. Applicant's cost of living rose, but his income fell due to a job-related injury, causing missed payments on his mortgage. To stay foreclosure proceedings, Applicant filed Chapter 13 bankruptcy proceedings three times. He avoided foreclosure and he is now current on his mortgage payments and other financial obligations. Clearance is granted.

STATEMENT OF THE CASE

On August 7, 2002, the Defense Office of Hearings and Appeals (DOHA), pursuant to Executive Order 10865, dated February 20, 1960, as amended, and Department of Defense Directive 5220.6, dated January 2, 1992, as amended, issued a Statement of Reasons (SOR) to Applicant. The SOR details reasons why DOHA could not make the preliminary affirmative finding under the Directive that it is clearly consistent with the national interest to grant or continue a security clearance for Applicant. It recommended referral to an Administrative Judge to determine whether a clearance should be granted or denied.

The Applicant responded to the SOR in a written answer notarized on September 19, 2002, in which he requested a hearing. The case was assigned to me on November 27, 2002. On December 9, 2002, a Notice of Hearing was issued scheduling the hearing on January 9, 2003. At the hearing, the Government submitted nine documentary exhibits. Applicant testified, and he submitted eleven documentary exhibits. A post-hearing letter submitted by Applicant was not accepted into evidence. (App. Ex. M for identification.) The transcript was received by DOHA on January 17, 2003.

FINDINGS OF FACT

Applicant is 44 years old, and he is a high school graduate, married, with two children. He is employed by a defense contractor as a truck driver.

In 1994 Applicant and his family lived in an apartment in a neighborhood with a growing population of drug dealers and other criminal elements. Applicant wanted a better environment for his children and he purchased a home in a suburban neighborhood. (Tr. 49-50.) Applicant and his wife were both employed, and with their joint incomes they qualified for a home mortgage. However, their monthly payments were double their former rent costs. Moreover, Applicant's move to an outlying area increased his commuter travel, and this resulted in expensive repairs to his older car.

Applicant's home ownership was important to him, but as time went on he developed more financial problems due to his higher cost of housing, car repairs, and other unexpected costs. In 1996 Applicant realized his current employment would not provide a sufficient income to meet his costs of living, and he obtained a commercial driver's license to become a truck driver. (Tr. 54.) Better paying jobs in this occupation are acquired by seniority, and Applicant had to start at the bottom, thus earning less than he earned before.

With his financial situation deteriorating, Applicant began to miss some house payments as well as payments on a home improvement loan. To make matters worse, in February 1997 Applicant suffered a torn rotator cuff due to an on-the-job injury, and during the next year his ability to drive trucks slowly diminished. Applicant testified "As I worked it got worse and worse but I had to continue working. I worked and worked until I couldn't work any more." (Tr. 38.) Although not set forth as a concern in the SOR, Applicant briefly filed a Chapter 13 bankruptcy in November 1997, solely as a legal means of halting foreclosure proceedings until he could pay his arrearage. (Tr. 58.) Within a week Applicant paid the arrearage in full and withdrew his Chapter 13 petition.

In February 1998 Applicant's employment was terminated because his arm injury had worsened, and he could no longer drive. (Tr. 41-42.) In September 1998, Applicant was awarded unemployment compensation, to include the cost of surgery needed to repair his rotator cuff. (App. Exs. D and E.) Applicant had his shoulder surgically repaired, and after several months of recovery he began to look for another job. His unemployment compensation was less than his former salary, and his debts grew. Foreclosure was again threatened.

On October 13, 1998, Applicant filed for Chapter 13 bankruptcy a second time. However, he could not make the required payments, and the bankruptcy was converted to Chapter 7. Applicant was discharged in Chapter 7 bankruptcy on October 4, 1999. This discharge relieved Applicant of his unsecured debts, but Applicant remained responsible for paying the large arrearage that had developed in his mortgage payments. Applicant's options were to pay the arrearage or lose his home.

Applicant tried to negotiate with the mortgage company to accept incremental payments toward his arrearage, now approximately \$16,000, in addition to his current payments. The mortgage holder would not accept a gradual paydown and insisted upon a single payment of the entire amount. When Applicant could not pay the entire amount, the mortgage holder again threatened foreclosure. Once again trying to protect his home ownership, Applicant entered Chapter 13 bankruptcy on April 25, 2000, and gained a stay of foreclosure proceedings.

At the present time, Applicant pays his arrearage in incremental amounts through Chapter 13 bankruptcy, and he pays his agreed mortgage obligation each month as well. Applicant's Chapter 13 payment is \$615 per month, and his mortgage payment is \$963 per month. Applicant and his wife are both employed, and their combined income is approximately \$52,000 per year. Applicant's Chapter 13 records indicate he has made timely payments for about 30 months of the 60 month payment plan. (App. Ex. L.) Applicant is now steadily employed and solvent, and the evidence indicates he has overcome his debt problems of the past.

In support of his case in mitigation, Applicant presented five letters of character reference from persons who know him well. Applicant's supervisor states Applicant is a hard worker who shows initiative. (App. Ex. H.) Another acquaintance describes Applicant as reliable and trustworthy. A military senior NCO writes that Applicant's integrity is unquestioned, and he displays the highest level of professionalism on the job. (App. Ex. J.)

POLICIES

Enclosure 2 of the Directive, as amended by DepSecDef Memorandum dated June 7, 2001, sets forth adjudicative guidelines which must be considered in the evaluation of security suitability. The guidelines are divided into those that may be considered in deciding whether to deny or revoke an Applicant's eligibility for access to classified information

(Disqualifying Conditions) and those that may be considered in deciding whether to grant access to classified information (Mitigating Conditions).

Based upon a consideration of the entire record, I find the following adjudicative guidelines have application in this case:

Guideline F - Financial Considerations. *The concern.* An individual who is financially overextended is at risk of having to engage in illegal acts to generate funds.

Disqualifying Conditions applicable:

1. A history of not meeting financial obligations;
3. Inability or unwillingness to satisfy debts.

Mitigating Conditions applicable:

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);
6. The individual initiated a good-faith effort to repay overdue creditors or otherwise resolve debts.

The whole person concept. In addition to the above guidelines, the Directive provides in Para. E.2.2.1. that under the "whole person concept" the Administrative Judge shall also consider (1) the nature, extent, and seriousness of the conduct; (2) the circumstances surrounding the conduct, to include knowledgeable participation; (3) the frequency and recency of the conduct; (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.

CONCLUSIONS

In the defense industry, the security of classified information is entrusted to civilian workers who must be counted upon to safeguard sensitive information twenty-four hours a day. The Government is therefore appropriately concerned where reliable information indicates an Applicant for clearance may have serious financial problems or mismanagement of funds demonstrating a lack of trustworthiness and personal reliability. On a commonsense basis, financial problems might also lead to Applicant's vulnerability in security matters

With regard to burden of proof in DOHA cases, the Government must prove all controverted facts that tend to demonstrate Applicant is ineligible for clearance. Once this burden is met, the Applicant must overcome the Government's case, if he or she is to prevail, by persuasive evidence in refutation, mitigation, or changed circumstances. However, the Applicant always bears the ultimate and overall burden of proving it is clearly consistent with the national interest to grant him or her a security clearance. Furthermore, the Directive provides "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, Para. E2.2.2.) Thus, the Applicant's burden is a heavy one.

To summarize the facts, Applicant is a truck driver who bought a house in 1994 in order to take his wife and children away from a drug-infested neighborhood. Although Applicant and his wife qualified for a mortgage, their upward move caused a substantial escalation in expenses. Also,

Applicant's job change and a work-related injury resulted in a low income for a year or two. Applicant's debts grew, and the mortgage company threatened foreclosure. Applicant twice filed for Chapter 13 protection from foreclosure, and on the second occasion the Chapter 13 was converted to Chapter 7. Applicant's Chapter 7 discharge did not extend to his home mortgage, and Applicant then filed a third Chapter 13 to protect his home from foreclosure due to arrearage. The bankruptcy court scheduled a 60-month payment plan for Applicant's arrearage, and for the last two years Applicant has

remained current on this plan.

Applicant's financial situation is now stable. His arm injury is generally healed, he holds a full time job, and his wife is also employed. Applicant has a good track record for repayment of his Chapter 13 obligations. He is regarded as an effective and reliable employee on the job, and his character references vouch for his character and trustworthiness.

With regard to DoD policies and guidelines, DC 1 and DC 3 apply because Applicant has a history of not meeting his financial obligations, primarily because he was unable to do so. MC 3 and MC 6 apply because the conditions causing the indebtedness were largely beyond Applicant's control. Applicant extended himself financially to take his family out of a crime-ridden area, and in so doing he incurred a much higher cost of living, made worse by an injury. Applicant used the Chapter 13 bankruptcy process three times to avoid foreclosure, but he is now solvent and current with his debts.

Upon a review of the "whole person concept" I conclude Applicant has brought himself favorably with these adjudication factors, based upon evidence discussed above. On balance, it is concluded the Government has met its burden of proof, and Applicant has presented convincing evidence in mitigation to offset or outweigh the Government's case against him.

FORMAL FINDINGS

Formal findings For or Against the 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. Financial Considerations: For the Applicant.

Subparas. 1.a.-1.b.: For the Applicant.

DECISION

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

Burt Smith

Administrative Judge