

DATE: September 3, 2003

In re:

SSN: -----

Applicant for Security Clearance

ISCR Case No. 01-20752

DECISION OF ADMINISTRATIVE JUDGE

JAMES A. YOUNG

APPEARANCES

FOR GOVERNMENT

Kathryn A. Trowbridge, Department Counsel

FOR APPLICANT

Pro Se

SYNOPSIS

Applicant had his debts discharged in bankruptcy in 1992 and had a Chapter 13 bankruptcy wage earner plan dismissed in 1998 for failing to make the necessary payments. Several delinquent debts remained outstanding. These financial considerations security concerns were mitigated. Applicant and his wife now have steady, good-paying jobs. They have paid off all but one of their delinquencies and are current on an installment plan to repay the remaining delinquency. Clearance is granted.

STATEMENT OF THE CASE

The Defense Office of Hearings and Appeals (DOHA) declined to grant or continue a security clearance for Applicant. On 14 April 2003, under the applicable Executive Order ⁽¹⁾ and Department of Defense Directive, ⁽²⁾ DOHA issued a Statement of Reasons (SOR) detailing the basis for its decision-Applicant failed to meet the financial considerations (Guideline F) personnel security guideline of the Directive. Applicant answered the SOR in writing on 30 April 2003 and elected to have a hearing before an administrative judge. The case was transferred to me on 26 June 2003 from another judge who had been rotated to another region. On 29 July 2003, I convened a hearing to consider whether it is clearly consistent with the national interest to grant Applicant's security clearance. DOHA received the transcript (Tr.) of the proceeding on 6 August 2003. I kept the record open and Applicant submitted several documents, through Department Counsel, regarding the judgment against him noted in ¶ 1.d. The documents were admitted as Ex. F.

FINDINGS OF FACT

Applicant is 38 years old. Tr. 12. In 1992, he was a single parent in a job that did not pay sufficient money for him to raise his child and pay the bills. He filed for Chapter 7 bankruptcy and had over \$58,000 of his debts discharged in January 1993. Ex. 6 at 1. Despite the discharge in bankruptcy, Applicant continued to struggle financially. He married a woman with children, and they were unable to meet all of their financial obligations. He filed a Chapter 13 bankruptcy wage earner plan in 1997. The Chapter 13 bankruptcy was dismissed in 1998 because Applicant and his wife were laid

off from their jobs and unable to make the payments required by the plan. Ex. 4 at 3-6. Applicant has since been hired by a defense contractor as an electrical engineer technician to install weapons systems in Navy ships. Tr. 12. His wife is also gainfully employed. They paid all their delinquencies except one which they arranged to pay in installments. The chart below summarizes the allegations in the SOR, the current status of those financial obligations.

¶	Nature and amount	Current Status	Record
1.a.	Hospital collection \$110	Paid Nov 2002	Ex. B
1.b.	Hospital collection \$43	Paid Nov 2002	Ex. B
1.c.	City sanitation services \$29	Paid Apr 2003	Ex. D
1.d.	Judgment \$8,222	Current-negotiated payment plan	Ex. F
1.e.	Judgment \$657	Satisfied Nov 2002	Ex. C; Tr. 18
1.f.	Chapter 13 Bankruptcy Sep 1997	Dismissed Nov 1997-Failure to pay	Ex. 4 at 3-5
1.g.	Chapter 7 Bankruptcy Oct 1992	Debts discharged Jan 1993	Tr. 22

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 was delinquent on debts that had been sent to collection (¶¶ 1.a. - 1.c.), failed to pay off judgments (¶¶ 1.d. - 1.e.), and filed for bankruptcy protection (¶¶ 1.f. - 1.g.). 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 through its evidence and Applicant's admissions that Applicant has a history of not

meeting his financial obligations (DC 1) and has been unable or unwilling to satisfy his debts (DC 3). On the other hand, Applicant has demonstrated that some of his difficulties resulted from conditions that were largely beyond his control as both he and his wife were laid off from their jobs. MC 3. Applicant is making good-faith efforts to resolve his financial difficulties. MC 6. He paid off all but one of the delinquent debts and is current on a negotiated agreement to pay that one in installments. After carefully reviewing all of the evidence in this case, I do not believe Applicant's financial condition represents a security concern. Finding is for Applicant.

FORMAL FINDINGS

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

Paragraph 1. Guideline F: FOR APPLICANT

Subparagraph 1.a.: For Applicant

Subparagraph 1.b.: For 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

DECISION

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

James A. Young

Administrative Judge

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