

DATE: September 15, 2003

In re:

SSN: -----

Applicant for Security Clearance

ISCR Case No. 01-25376

DECISION OF ADMINISTRATIVE JUDGE

JAMES A. YOUNG

APPEARANCES

FOR GOVERNMENT

Juan R. Rivera, Esq., Department Counsel

FOR APPLICANT

Pro Se

SYNOPSIS

Applicant has a history of not meeting his financial obligations. Despite two bankruptcies, Applicant still has delinquent debts. He is currently over 30 days' behind in paying off some of his credit cards. Applicant failed to sufficiently mitigate the security concerns resulting from his financial condition. 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 13 January 2003, DOHA issued a Statement of Reasons (SOR) under the applicable Executive Order⁽¹⁾ and Department of Defense Directive⁽²⁾ detailing the basis for its decision-failure to meet the financial considerations (Guideline F) personnel security guideline of the Directive. Applicant answered the SOR in writing on 10 February 2003 and elected to have a hearing before an administrative judge. The case was originally heard on 24 April 2003 by another administrative judge. After the hearing, but before an opinion was written, it was determined that the administrative judge was disqualified from hearing the case. The case was assigned to me on 1 July 2003. On 21 August 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 2 September 2003.

FINDINGS OF FACT

Applicant is a 49-year-old electronics technician for a defense contractor. Ex. 1 at 1. In 1990, Applicant was going through a divorce. He and his estranged wife were financially overextended. She was planning to file for bankruptcy which would have left him responsible for the joint debts. Applicant joined the petition for bankruptcy under Chapter 7. Ex. 12 at 27; Ex. at 1. The couples' debts were discharged. Ex. 12 at 29. In March 1998, Applicant again had his debts discharged under Chapter 7. Ex. 12 at 30. Since the discharge of his debts in 1998, Applicant has accumulated the following delinquent debts

¶	Nature and Amount	Status	Record
1.a.	Acct to collection-\$1,150	Current wife's debt; not satisfied, but making payments	Tr. 26-27
1.b.	Acct to collection \$737	Not satisfied; making payments, but not regularly	Tr. 27
1.c.	Telephone acct to collection \$691	Claims he paid it; no evidence to support claim	Tr. 27
1.d.	Acct to collection \$157	Never owed-incorrect credit report entry	Ex. H; Tr. 18
1.e.	Acct to collection \$140	Paid	Ex. 11
1.f.	Acct to collection from Med Center for \$107	Unclear; appears to be paid	Ex. 12 at 45
1.g.	Acct to collection from Med Center for \$96	Unclear; appears to be paid	Ex. 12 at 45
1.h.	Acct to collection \$87	Unclear; appears to be paid	Ex. 12 at 45
1.i.	Acct to collection \$25	Paid	Ex. 11 at 1
1.j.	Car-civil judgment for \$500	Paid by garnishment	Tr. 29-30
1.k.	Apt eviction-civil judgment \$624	Satisfied Dec 2001	Ex. 9 at 1
1.l.	Civil judgment-\$2,076	Not satisfied; making payments	Tr. 30

Applicant is now "a little behind on a couple of credit cards." Tr. 32-33.

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 under Guideline F that Applicant had several delinquent debts he had not satisfied (§ 1.a. - 1.i.), three civil judgments against him that had not been satisfied (§ 1.j. - 1.l), two bankruptcies (§ 1.m. - 1.n.), and had failed to satisfy his debts despite having sufficient assets to do so (§ 1.o.). 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 that Applicant has a history of not meeting his financial obligations (DC 1) and an inability or unwillingness to satisfy his debts (DC 3). Although several of the delinquent debts listed in the SOR have been paid (*see* MC 6), and the debts alleged in §§ 1.a. and 1.d. may not be his, Applicant is still having financial difficulties. He has not paid off his civil judgment (§ 1.l) and has started to fall behind on his credit card payments. Tr. 33. Applicant reported on his personal financial statement that he had a net remainder each month of over \$520. Ex. 2 at 5. Apparently things have changed, but Applicant seems unsure of his financial condition. Under the circumstances, none of the mitigating conditions apply. Applicant does not have a firm understanding of his debts or his finances. Applicant has not demonstrated that it is in the national interest to grant or continue a security clearance for him. Finding is 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.: Against Applicant

Subparagraph 1.d.: For 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.l.: Against Applicant

Subparagraph 1.m.: Against Applicant

Subparagraph 1.n.: Against Applicant

Subparagraph 1.o.: 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

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.