

DATE: October 18, 2004

In Re:

SSN: -----

Applicant for Security Clearance

ISCR Case No. 01-27190

DECISION OF ADMINISTRATIVE JUDGE

ROBERT J. TUIDER

APPEARANCES

FOR GOVERNMENT

Marc Curry, Esq., Department Counsel

FOR APPLICANT

Pro Se

SYNOPSIS

Unable to work after knee surgery and physical therapy, Applicant fell behind on his debts. Shortly after recovering from surgery, Applicant went through a divorce. After these two events, Applicant had incurred ten debts totaling \$9,866.00. Applicant initiated contact with his creditors, set up payment plans and is now current on his debts. Applicant has successfully mitigated this financial considerations concern. 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 July 25, 2003, DOHA issued a Statement of Reasons (SOR) [\(U\)](#) detailing the basis for its decision-security concerns raised under Guideline F (Financial Considerations) of the Directive. Applicant answered the SOR in writing on August 22, 2003 and November 28, 2003, and elected to have a hearing before an administrative judge. The case was assigned to me on April 1, 2004. On May 13, 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.

The government offered five documents, which were admitted without objection as Government Exhibits (GE) 1 through 5. The Applicant offered five documents, which were admitted without objection as Applicant Exhibits (AE) A through E. I left the record open after the hearing to afford Applicant the opportunity to submit additional documents. The Applicant timely submitted eight additional documents, which were admitted without objection as AE F through M. DOHA received the transcript on May 24, 2004.

FINDINGS OF FACT

Applicant's admissions are incorporated herein as facts. After a thorough review of the pleadings and exhibits, I make the following additional findings of fact:

Applicant is 45 years old. He requires a security clearance in connection with his employment as a mail clerk for a

defense contractor where he has worked since March 2000.

Applicant attended college from 1979 to 1981 on a basketball scholarship. He left college to play professional basketball and was unsuccessful in pursuing such a career. His work career has included several custodian jobs, periods of unemployment, van driver, and his current position as mail clerk.

Applicant underwent knee surgery and rehabilitation in 2002. Applicant was unable to work for several months as a result of knee surgery and rehabilitation and thus was unable to earn income during this period. With this loss of income and unable to pay uncovered medical expenses, Applicant got behind on his bills. This setback was further exacerbated when he and his wife divorced in 2004. Applicant's wife worked during their marriage and contributed to the family income and the two of them were able to maintain a level of financial stability during hard times. Applicant lost this safety net when his divorce became final.

Applicant's SOR listed 10 debts totaling \$9,866.00. He has made payment arrangements and is current on his debts or otherwise resolved debts to the satisfaction of his creditors. AE F through M.

Applicant is a valued and trusted employee, who performs his duties in an exemplary manner. AE A through E.

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

Under Guideline F, an individual who is financially overextended is at risk of having to engage in illegal acts to generate funds.

In the SOR, DOHA alleged under Guideline F that Applicant was in arrears for ten debts. Based on the record evidence,

the government has established its case under Guideline F. Applicant has a history of not meeting financial obligations and has experienced an inability to satisfy debts. Disqualifying Conditions applicable under the Directive are contained in ¶ E2.A6.1.2.1, *A history of not meeting financial obligations*; and, ¶ E2.A6.1.2.3, *Inability or unwillingness to satisfy debts*.

Applicant's financial difficulties were in large part due to his unplanned knee surgery and subsequent physical rehabilitation in 2002. The resultant loss of income put him in a financial tailspin, which was compounded by his subsequent divorce in 2004. Applicant has made a good-faith effort to resolve this concern by contacting his creditors, making payment arrangements and remaining current on his debts.

The Mitigating Conditions applicable under the Directive are contained in ¶ E2.A6.1.3.3, *The conditions that resulted in the behavior were largely beyond the person's control (e.g., loss of employment, . . . , unexpected medical emergency, . . . , divorce . . .)*; and, ¶ E2.A6.1.3.6, *The individual initiated a good-faith effort to repay overdue creditors or otherwise resolve debts*. The Mitigating Conditions outweigh the Disqualifying Conditions. On balance, I conclude this Guideline for Applicant.

FORMAL FINDINGS

Formal findings regarding each SOR allegation as required by Directive Section E3.1.25 are as follows:

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

Subparagraph 1.h.: For Applicant

Subparagraph 1.i.: For Applicant

Subparagraph 1.j.: For Applicant

Subparagraph 1.k.: 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.

Robert J. Tuider

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.

