

DATE: March 5, 2003

In Re:

SSN: -----

Applicant for Security Clearance

ISCR Case No. 01-27178

DECISION OF ADMINISTRATIVE JUDGE

JAMES A. YOUNG

APPEARANCES

FOR GOVERNMENT

Kathryn D. MacKinnon, Esq., Department Counsel

FOR APPLICANT

Pro Se

SYNOPSIS

Applicant, a 28-year-old employee of a defense contractor, has several debts which he has not paid and has no means of paying in the near future. Applicant failed to mitigate the security concerns resulting from his financial situation. Clearance is denied.

STATEMENT OF THE CASE

Applicant, an employee of a defense contractor, applied for a security clearance. The Defense Office of Hearings and Appeals (DOHA), the federal agency tasked with determining an applicant's eligibility for access to classified information, declined to grant the Applicant a clearance. In accordance with the applicable Executive Order⁽¹⁾ and Department of Defense Directive,⁽²⁾ DOHA issued a Statement of Reasons (SOR) on 3 October 2002 detailing why a clearance was not granted and recommending Applicant's case be referred to an administrative judge to determine whether the clearance should be denied/revoked. In the SOR, DOHA alleged Applicant failed to meet the financial considerations (Guideline F) security guideline.

Applicant answered the SOR in writing on 28 October 2002. The case was assigned to me on 27 December 2002. On 21 February 2003, I convened a hearing to consider whether it is clearly consistent with the national interest to grant Applicant's security clearance. The Government's case consisted of five exhibits. Applicant testified on his own behalf and submitted 26 exhibits. A transcript (Tr.) of the proceeding was received on 3 March 2003.

FINDINGS OF FACT

Applicant's financial difficulties began in the early 1990s. Since then, he has not been able to dig himself out of debt. The following debts are the subject of the SOR:

(a) Northwest Chase for approximately \$3,589.00. Applicant admits that he did not pay this debt, but it no longer

appears on his credit report. Tr. 21. Although the debtor offered to settle his claim for approximately \$1,200.00, Applicant has not settled this debt. Tr. 23-24; Ex 3 at 6.

(b) Northwest First Union for approximately \$2,664.00. Applicant admits that he did not pay this debt, but it no longer appears on his credit report. Tr. 21. Applicant has not acted on the debtor's offer to settle this claim for approximately \$900. Tr. 23-24; Ex 3 at 6.

(c) First USA Bank, NA, for approximately \$486.00. Although Applicant believes he paid this debt, he was unable to provide any substantiation. Tr. 29.

(d) Auburn Associates for approximately \$203.00 for damages to an apartment when he was in the military. Applicant paid the debt in full on 2 May 2001. Ex. Y; Tr. 31-32.

(e) Chrysler Credit Corporation for approximately \$5,465.00 as a result of a judgment against Applicant. This appears to represent the debt noted in (f) below with the addition of attorneys' fees. Applicant has not paid this debt. Tr. 34.

(f) Chrysler Financial for approximately \$4,704.00. This is part of the debt in (e) above.

Applicant is attending school. Once he graduates from school, he will be eligible for a better paying job at his current firm, subject to availability. However, within six months of his graduation, he will be required to start making payments on deferred student loans. This will significantly impair his ability to make any payments on the other outstanding debts. Despite his situation, he has not taken advantage of the free financial counseling services offered at his workplace. Tr. 49.

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.

An evaluation of whether the applicant meets the security guidelines includes consideration of the following factors: (1) the nature, extent, and seriousness of the conduct; (2) the circumstances surrounding the conduct; (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 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. Directive ¶ E2.2.1. Security clearances are granted only when "it is clearly consistent with the national interest to do so." Exec. Or. 10865 § 2. *See* Exec. Or. 12968 § 3.1(b).

Initially, the Government must establish, by substantial evidence, that conditions exist in the personal or professional history of the applicant which disqualify, or may disqualify, the applicant from being eligible for access to classified information. *See Egan*, 484 U.S. at 531. All that is required is proof of facts and circumstances that indicate an applicant is at risk for mishandling classified information, or that an applicant does not demonstrate the high degree of judgment, reliability, or trustworthiness required of persons handling classified information. ISCR Case No. 00-0277, 2001 DOHA LEXIS 335 at **6-8 (App. Bd. 2001). Once the Government has established a *prima facie* case by substantial evidence, the burden shifts to the applicant to rebut, explain, extenuate, or mitigate the facts. *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 (App. Bd. 2002). "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 ¶

E2.2.2. "[S]ecurity clearance determinations should err, if they must, on the side of denials." *Egan*, 484 U.S. at 531. *See* Exec. Or. 12968 § 3.1(b).

CONCLUSIONS

In the SOR, DOHA alleged under Guideline F that Applicant had five debts which he had not paid.

Under Guideline F, an applicant who is financially overextended may be a security risk because his financial condition may cause him to engage in illegal acts to generate funds. Conditions that could raise a security concern in this case are as follows:

- (1) A history of not meeting financial obligations. Directive ¶ E2.A6.1. 2.1.
- (2) Inability or unwillingness to satisfy debts. Directive ¶ E2.A6.1.2.3.

An applicant's good-faith efforts to repay overdue creditors or otherwise resolve debts could mitigate the security concern. Directive, ¶ E2.A6.1.3.6.

Applicant is currently in debt and will not be able to settle these debts in the near future. In fact, unless he gets promoted to a job that pays substantially more, he will become deeper in debt, as a result of his student loans coming due six months after he completes his education. He seems rather nonchalant about his financial condition. Applicant has not mitigated the security concerns that exist as a result of his delinquent financial situation.

FORMAL FINDINGS

Conclusions as to each of the allegations in the SOR as required by Executive Order No. 10865 § 3, ¶ 7 and the Directive ¶ E3.1.25, are as follows:

Paragraph 1. Guideline G: AGAINST APPLICANT

Subparagraph 1.a.: Against Applicant

Subparagraph 1.b.: Against Applicant

Subparagraph 1.c.: Against Applicant

Subparagraph 1.d.: For Applicant

Subparagraph 1.e.: Against Applicant

Subparagraph 1.f.: 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.

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.