

DATE: November 30, 2004

In Re:

SSN: -----

Applicant for Security Clearance

ISCR Case No. 02-00255

DECISION OF ADMINISTRATIVE JUDGE

CLAUDE R. HEINY

APPEARANCES

FOR GOVERNMENT

Jason Perry, Department Counsel

FOR APPLICANT

Pro Se

SYNOPSIS

The Applicant admits owing three debts totaling approximately \$15,000 and has failed to show they have been paid or discharged in bankruptcy. In 1994, he issued three worthless checks, which have not been paid. His mother-in-law and five brothers-in-law are residents and citizens of a foreign country. The record evidence is insufficient to mitigate or extenuate the negative security implications stemming from the debts and foreign influence. Clearance is denied.

STATEMENT OF THE CASE

On October 21, 2003, the Defense Office of Hearings and Appeals (DOHA) issued a Statement of Reasons (SOR) to Applicant, stating that DOHA could not make the preliminary affirmative finding [\(U\)](#) it is clearly consistent with the national interest to grant or continue a security clearance for Applicant. On December 22, 2003, Applicant answered the SOR and elected to have his case decided on the written record in lieu of a hearing.

On June 8, 2004, the Applicant received a complete copy of the file of relevant material (FORM) dated May 26, 2004, and was given the opportunity to file objections and submit material in extenuation, mitigation, or refutation. In the FORM, Department Counsel (DC) presented ten exhibits (Items). The Applicant's response to the FORM was due on July 8, 2004. No response has been received and no exhibits were received from Applicant. I was assigned the case on July 28, 2004.

FINDINGS OF FACT

The SOR alleges Financial Considerations and Foreign Influence. The Applicant admits to the following: he filed for bankruptcy protection in 2002, in 1994 a warrant had been issued for simple worthless check, he owed three debts including mortgage arrearage of \$12,661.00, he asserts two of the debts were included in his bankruptcy, and he had made restitution on two checks. He admits his wife is a legal resident alien and has relatives living in a foreign country. Those admissions are incorporated herein as findings of fact. After a complete and thorough review of the evidence in the record, and upon due consideration of same, I make the following additional findings of fact.

The Applicant is 45-years-old, has worked for a defense contractor since January 2000, and is seeking to maintain a secret security clearance. Applicant served 22 years in the U.S. Marines, retiring at the grade of E-8.

In August 2000, Applicant stated (Item 5) he was paying the credit card debt listed in SOR paragraph 1.b. His credit reports indicate the account was charged off. He indicates he had financial problems due to his wife's medical problems. Those problems and related expenses are not further described.

In February 2002, Applicant filed for bankruptcy protection under Chapter 13 (Item 6) of the Bankruptcy Code, i.e., the wage earner's plan. The plan was for 23 months and required a monthly payment of \$1,058. One of the monthly entries showing Applicant's payments is annotated as NSF, i.e., non sufficient funds. As of August 2002, he was \$808.80 behind in his payments to the plan. The Notice of Intent to Pay Claims includes the debtor listed in SOR paragraph 1.b and the mortgage company listed in 1.c. There is no evidence to indicate any of the debts were discharged.

In December 2003, Applicant again filed for Chapter 13 protection (Item 10). He listed assets of \$282,000 and liabilities of \$166,000. The only creditors listed were his mortgage company and a medical bill.

In September 1994, Applicant was charged with two counts of Simple Worthless Checks and order to pay restitution of \$53.00 and \$53.50, which he admits. In December 1994, a warrant was issued for his arrest for the charge of Simple Worthless Check in the amount of \$40.39. As of December 2003, he was in the process of "having this taken care of." (Item 3) Applicant admits he owes a communications debt (SOR paragraph 1.a) of \$284.

Applicant's wife is a legal resident alien. Her mother and five brothers are citizens and residents of Chile. His wife's sister is a naturalized U.S. citizen, living in the U.S.

POLICIES

The Adjudicative Guidelines in the Directive are not a set of inflexible rules of procedure. Instead they are to be applied by Administrative Judges on a case-by-case basis with an eye toward making determinations that are clearly consistent with the interests of national security. In making overall common sense determinations, Administrative Judges must consider, assess, and analyze the evidence of record, both favorable and unfavorable, not only with respect to the relevant Adjudicative Guidelines, but in the context of factors set forth in section E 2.2.1. of the Directive. The government has the burden of proving any controverted fact(s) alleged in the SOR, and the facts must have a nexus to an Applicant's lack of security worthiness.

The adjudication process is based on the whole person concept. All available, reliable information about the person, past and present, is to be taken into account in reaching a decision as to whether a person is an acceptable security risk. Although the presence or absence of a particular condition for or against clearance is not determinative, the specific adjudicative guidelines should be followed whenever a case can be measured against this policy guidance.

Considering the evidence as a whole, this Administrative Judge finds the following adjudicative guidelines to be most pertinent to this case:

Financial Considerations, Guideline F, the Concern: An individual who is financially overextended is at risk of having to engage in illegal acts to generate funds. Unexplained affluence is often linked to proceeds from financially profitable criminal acts. E2.A6.1.1.

Conditions that could raise a security concern and may be disqualifying include:

1. A history of not meeting financial obligations. (E2.A6.1.2.1.)
3. Inability or unwillingness to satisfy debts. (E2.A6.1.2.3.)

Conditions that could mitigate security concerns include:

None Apply.

Foreign Influence, Guideline B, the Concern: A security risk may exist when an individual's immediate family, including cohabitants, and other persons to whom he or she may be bound by affection, influence, or obligation are not citizens of the United States or may be subject to duress. These situations could create the potential for foreign influence that could result in the compromise of classified information. Contacts with citizens of other countries or financial interests in other countries are also relevant to security determinations if they make an individual potentially vulnerable to coercion, exploitation, or pressure.

Conditions that could raise a security concern and may be disqualifying include:

1. An immediate family member, or a person to whom the individual has close ties of affection or obligation, is a citizen of, or resident or present in, a foreign country. (E2.A2.1.2.1.)

Conditions that could mitigate security concerns include:

None Apply.

BURDEN OF PROOF

As noted by the United States Supreme Court in *Department of Navy v. Egan*, 484 U.S. 518, 528 (1988), "no one has a 'right' to a security clearance." 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." Executive Order 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.

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 which 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. Where the facts proven by the Government raise doubts about an applicant's judgment, reliability or trustworthiness, then the applicant has the ultimate burden of establishing his security suitability with substantial evidence in explanation, mitigation, extenuation, or refutation, sufficient to demonstrate that despite the existence of guideline conduct, it is clearly consistent with the national interest to grant or continue his security clearance.

Security clearances are granted only when "it is clearly consistent with the national interest to do so." *See* Executive Orders 10865 § 2 and 12968 § 3.1(b). "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 "The clearly consistent standard indicates that security clearance determinations should err, if they must, on the side of denials." *See Egan*, 484 U.S. at 531. Doubts are to be resolved against the applicant.

CONCLUSIONS

The Government has satisfied its initial burden of proof under Financial Considerations, Guideline F. A person's relationship with his creditors is a private matter until evidence is uncovered demonstrating an inability or unwillingness to repay debts under agreed upon terms. Absent evidence of strong extenuating or mitigating circumstances, an applicant with a history of serious or recurring financial difficulties is in a position of risk that is inconsistent with the holding of a security clearance. Under Guideline F, an individual is not required to be debt free, but is required to manage his finances in such a way as to meet his financial obligations. The Applicant's financial history provides concern. Disqualifying conditions (DC) 1. (A history of not meeting financial obligations) and 3. (Inability or

unwillingness to satisfy debts.) apply.

Applicant owes three debts, i.e., SOR paragraph 1.a (\$284), SOR paragraph 1.b (\$2,197.00) and SOR paragraph 1.c (\$12,661). He says he will make arrangement to pay the first debt and the second two debts were included in his bankruptcy. His bankruptcy does list the two creditors, but Applicant has failed to establish these debts were discharged in bankruptcy. Mere filing of bankruptcy is insufficient. It must be established the debts have been paid, have been discharged in bankruptcy, or a satisfactory repayment arrangement has been made with the creditor, which Applicant has failed to establish. An allegation of payment having been made without documents to support the assertion is not enough. I find against Applicant as to SOR paragraphs 1.a, 1.b, and 1.c.

In 1994, Applicant was charged with two counts of simple worthless check and an arrest warrant being issued for simple worthless check. Applicant says these checks have been paid, but has provided no supporting evidence. Without evidence these debts have been paid, or otherwise resolved, I find against Applicant as to SOR paragraphs 1.d and 1.e.

Applicant had filed for bankruptcy protection in February 2002. I do not find against Applicant merely because he had to file bankruptcy. Even though he was behind on his payments to the trustee, I find for him as to SOR paragraphs 1.f and 1.g.

The Government has satisfied its initial burden of proof under Guideline B, Foreign Influence. Under Guideline B, a security risk may exist when an individual's immediate family, or other persons to whom he may be bound by affection, influence, or obligation are not citizens of the U.S., reside in a foreign country, or may be subject to duress. These situations could create the potential for foreign influence that could result in the compromise of classified information. The Government established the Applicant's spouse is a legal resident alien, citizen of Chile, living in the U.S. and her mother and five brothers are citizens and residents of Chile. Disqualifying Condition (DC) 1-⁽²⁾ applies.

The Applicant's wife, a legal resident alien living in the U. S., does not represent a credible security risk to this nation and is not in a position she could be exploited by a foreign power such that the Applicant would be forced to choose between his loyalty to his family and the U.S. MC 1-⁽³⁾ applies. I find for Applicant as to SOR paragraph 2.a.

Applicant's mother-in-law and five brothers-in-law are citizens and residents of Chile. The record is silent as to the occupation of these individuals and the amount of contact Applicant has with them. Without such evidence, I cannot determine these individuals are not employees of a foreign intelligence service, are not agents of a foreign power, or in a position to be exploited by a foreign power in a way that could force the individual to choose between loyalty to the persons involved and the United States. Nor can I determine his contact and correspondence with these foreign citizens is casual and infrequent. I find against Applicant as to SOR paragraphs 2.b and 2.c.

In reaching my conclusions I have also considered: the nature, extent, and seriousness of the conduct; the Applicant's age and maturity at the time of the conduct; the circumstances surrounding the conduct; the Applicant's voluntary and knowledgeable participation; the motivation for the conduct; the frequency and recency of the conduct; presence or absence of rehabilitation; potential for pressure, coercion, exploitation, or duress; and the probability that the circumstance or conduct will continue or recur in the future.

FORMAL FINDINGS

Formal Findings as required by Section 3., Paragraph 7., of Enclosure 1 of the Directive are hereby rendered as follows:

Paragraph 1 Financial Considerations: AGAINST THE APPLICANT

Subparagraph 1.a.: Against the Applicant

Subparagraph 1.b.: Against the Applicant

Subparagraph 1.c.: Against the Applicant

Subparagraph 1.d.: Against the Applicant

Subparagraph 1.e.: Against the Applicant

Subparagraph 1.f.: For the Applicant

Subparagraph 1.g.: For the Applicant

Paragraph 2 Foreign Influence: AGAINST THE APPLICANT

Subparagraph 2.a.: For the Applicant

Subparagraph 2.b.: Against the Applicant

Subparagraph 2.c.: Against the Applicant

DECISION

In light of all 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 the Applicant. Clearance is denied.

Claude R. Heiny

Administrative Judge

1. Required by Executive Order 10865, as amended, and Department of Defense Directive 5220.6 (Directive), dated January 2, 1992, as amended.
2. DC 1. An immediate family member, or a person to whom the individual has close ties of affection or obligation, is a citizen of, or resident or present in, a foreign country. E2.A2.1.2.1.
3. MC 1. A determination that the immediate family member(s), (spouse, father, mother, sons, daughters, brothers, sisters), cohabitant, or associate(s) in question are not agents of a foreign power or in a position to be exploited by a foreign power in a way that could force the individual to choose between loyalty to the person(s) involved and the United States. E2.A2.1.3.1.