

DATE: March 17, 2004

In Re:

SSN: -----

Applicant for Security Clearance

ISCR Case No. 02-00772

DECISION OF ADMINISTRATIVE JUDGE

JOAN CATON ANTHONY

APPEARANCES

FOR GOVERNMENT

Jennifer I. Campbell, Esq., Department Counsel

FOR APPLICANT

Pro Se

SYNOPSIS

Applicant has had financial difficulties for nearly 15 years, including bad debts, a tax lien,

and a civil judgment. He filed for Chapter 7 bankruptcy twice, once in 1993 and once in 2000. On both occasions his debts were discharged. He has not sought counseling for his on-going financial difficulties. Applicant's unmitigated history of financial overextension raises serious security concerns. 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 August 11, 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-security concerns raised under Guideline F (Financial Considerations) of the Directive. Applicant answered the SOR in writing on September 9, 2003, and requested that his case be determined on the record in lieu of a hearing. The Government compiled its File of Relevant Material (FORM) on November 13, 2003. The FORM contained documents identified as Items 1 through 16. By letter dated November 13, 2003, a copy of the FORM was forwarded to Applicant, with instructions to submit additional information and/or objections within 30 days of receipt. He was informed that if he did not submit additional material within 30 days of receiving the FORM, an administrative judge would render a decision based on the FORM as submitted by the Government. Applicant received the file on November 26, 2003. He did not submit any additional material within the 30-day time period. On February 20, 2004, the case was assigned to me for a decision.

FINDINGS OF FACT

The SOR contains eight allegations of disqualifying conduct under Guideline F, Financial Considerations. Applicant admitted four of the allegations and denied four of the allegations. His admissions are incorporated as findings of fact.

Applicant is 48 years old and employed as a computer scientist by a government contractor. He is married and the father of three children, two of whom are minors. In 1989, he was laid off and unemployed for a time. He obtained a new job in January 1990, and he has remained employed ever since, but asserts that he had difficulty paying his bills after his unemployment.

Applicant has a history of financial overextension. Twice he and his wife have sought protection from their creditors by filing for bankruptcy under Chapter 7 of the United States Bankruptcy Code. On May 27, 1993, they filed for Chapter 7 bankruptcy protection and listed total assets of \$147,710 and total liabilities of \$153,800. The bankruptcy was discharged on September 28, 1993. Seven years later, on November 7, 2000, Applicant and his wife again filed for Chapter 7 bankruptcy protection and listed liabilities of \$139,383.98. (Item 3, at 2.) The second bankruptcy was discharged on February 21, 2001. ⁽³⁾

Applicant admits the debts alleged at ¶¶ 1.c and 1.d of the SOR. In his answer to the SOR he stated that the debts would be satisfied on or before September 30, 2003 and that he would be provided with receipts of satisfaction. The debt alleged at SOR ¶1.c. appears on a statement issued to Applicant dated May 9, 2000 (Item 8) and on a credit report, dated March 5, 2003, identified as Item 15 of the FORM. Applicant provided no evidence to show that he had paid the debt. Similarly, the debt alleged at SOR ¶1.d. appears on the March 5, 2003 credit report (Item 15) and Applicant provided no evidence to show the debt had been paid.

Applicant denies a state tax lien in the amount of approximately \$1,287. Records of the state franchise tax board dated August 31, 2001 indicate that Applicant filed personal income tax returns for the years 1990 to 2000. The tax board record shows a current balance due of \$4,020.90 for Applicant's wife as of August 31, 2001. The report also states as to Applicant's status: "No liens or agency offsets found." (Item 13, at 1.) Applicant states in his answer to the SOR that the debt identified in ¶ 1.a. of the SOR was incurred as a result of his 2001 tax return and was satisfied on April 2, 2002. The tax lien did not appear on a credit report prepared January 8, 2003 (Item 16); however, the tax lien was duly reported as on the public record in a credit report dated March 5, 2003. (Item 15.) Applicant provided no credible evidence of satisfaction. ⁽⁴⁾

Applicant denied an unpaid civil judgment in the amount of \$7,000, which he said was satisfied in the discharge of his debts by the bankruptcy court on February 21, 2001. In his signed, sworn statement of August 8, 2000, he stated he had been making payments of \$150 on the judgment for the previous three years. (Item 5, page 3) The judgment, which was rendered in 1998, appears on the list of creditors holding unsecured nonpriority claims submitted by Applicant to the bankruptcy court on November 7, 2000. The judgment appears on the credit report dated March 5, 2003.

Applicant denied a delinquent debt to a bank of approximately \$1,352 and stated that he had settled the account in April 2003. (Item 3, at 1.) The credit report dated March 5, 2003 shows that the account was unpaid and Applicant was 150 days delinquent in paying it. Applicant provides no credible evidence of satisfaction.

Applicant denied that he had been 30 days delinquent six times in paying on an account. He stated that the debt had been discharged in his 2001 bankruptcy. The creditor appears on the list of unsecured nonpriority claims submitted to the bankruptcy court on November 7, 2000. The credit report of March 5, 2003 shows the account as open.

In his signed sworn statement of August 8, 2000, Applicant stated: "Currently my financial situation is stable. We are able to live within our means and are current with our other financial obligations." (Item 5, at 4.) Three months later, on November 7, 2000, Applicant filed for bankruptcy for the second time.

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

Guideline F-Financial Considerations

The Government's concern under Guideline F, Financial Considerations, is that individuals who are financially overextended and unable or unwilling to pay their just debts may try to generate funds by engaging in illegal acts. Directive ¶ E2.A6.1.1. Applicant has a history of not meeting his financial obligations, and his financial history suggests an inability or unwillingness to satisfy his debts, conditions which raise security concerns under subparagraphs E2.A6.1.2.1. and E2.A6.1.2.3. of Guideline F. DOHA's Appeal Board has concluded that "[a] person who is unwilling to fulfill his legal obligations does not demonstrate the high degree of good judgment and reliability required of persons granted access to classified information." ISCR Case No. 98-0810 at 4 (App. Bd. June 8, 2000).

In the SOR, DOHA alleged Applicant had a delinquent state tax lien (¶ 1.a.), an unpaid judgment (¶ 1.b.), delinquent debts that had been referred for collection (¶¶ 1.c., 1.d., 1.e., and 1.f.), had filed for bankruptcy protection on May 27, 1993 and his debts had been discharged under Chapter 7 bankruptcy on September 28, 1993 (¶ 1.g.), and had filed for bankruptcy protection on November 7, 2000 and his debts had been discharged under Chapter 7 bankruptcy on February 21, 2001 (¶ 1.h.).

In his answer to the SOR, Applicant admitted his two bankruptcies and stated that he had satisfied, settled or been discharged of the debts identified at ¶¶ 1.a, 1.b., 1.e., and 1.f. of the SOR. He provided no conclusive credible evidence that the debts had been paid, satisfied, or discharged and his assertions were inconsistent with the credit report of March 5, 2003. While Applicant's two bankruptcy filings were legal and legitimate ways to handle his financial problems, they do not preclude an examination and consideration of his history of financial difficulties from a security risk perspective. ISCR Case No. 97-0016 at 3-4 (App. Bd. Dec. 31, 1997.) The Government has established, through the FORM and Applicant's admissions, a *prima facie* case that Applicant is financially overextended. Applicant provided no persuasive evidence to rebut the financial concerns specified in the SOR and identified as disqualifying conditions under ¶¶ E2.A6.1.2.1. and E2.A6.1.2.3. of Guideline F.

We turn to a review of the several conditions that could mitigate the security concerns raised by Applicant's financial delinquencies. Applicant's acknowledged delinquencies involve long-standing debts, some of which continue to be unsatisfied to this day. Thus, neither mitigating condition E2.A.6.1.3.1. nor mitigating condition E2.A6.1.3.2. applies.

While Applicant was unemployed briefly in 1989, the record also shows that Applicant's financial difficulties were not the result of circumstances beyond his control, and thus, mitigating condition E2.A6.1.3.3. does not apply.

Applicant has not sought counseling for his financial problems, and he submits no persuasive evidence that he has developed and implemented a practical plan for resolving his indebtedness. While Applicant provided some evidence that he had contacted or attempted to contact his creditors, he failed to produce sufficient persuasive records to demonstrate that payment plans he proposed had actually been accepted by the creditors. Thus, neither mitigating condition E2.A6.1.3.4. nor E2.A6.1.3.6. applies to the facts of Applicant's case. Accordingly, the allegations of debt in subparagraphs 1.a., 1.b., 1.c., 1.d., 1.e., 1.f., 1.g. and 1.h of the SOR are concluded against the Applicant.

FORMAL FINDINGS

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

Paragraph 1. Guideline F: AGAINST APPLICANT

Subparagraph 1.a.: Against Applicant

Subparagraph 1.b.: Against Applicant

Subparagraph 1.c.: Against Applicant

Subparagraph 1.d.: Against Applicant

Subparagraph 1.e.: Against Applicant

Subparagraph 1.f.: Against Applicant

Subparagraph 1.g.: Against Applicant

Subparagraph 1.h.: 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 denied.

Joan Caton Anthony

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.
3. The record shows that Applicant listed \$51,700 in unsecured nonpriority claims by creditors in his 2000 bankruptcy filing.
4. A financial statement provided by Applicant on August 8, 2000 shows it was his plan to pay \$100 per month on the lien.