

DATE: October 10, 2003

In Re:

SSN: -----

Applicant for Security Clearance

ISCR Case No. 02-04500

DECISION OF ADMINISTRATIVE JUDGE

CLAUDE R. HEINY

APPEARANCES

FOR GOVERNMENT

Kathryn D. MacKinnon, Esquire, Department Counsel

FOR APPLICANT

Pro Se

SYNOPSIS

In 1999, the Applicant and his wife began to experienced financial difficulties when his wife was laid off from her job. In 2000, they filed for Chapter 13 bankruptcy protection. Since filing, all required monthly payments have been made. The Applicant has one year remaining on the four-year repayment plan. The record evidence is sufficient to mitigate or extenuate the negative security implications stemming from the Applicant's financial difficulties. Clearance is granted.

STATEMENT OF THE CASE

On March 24, 2003, the Defense Office of Hearings and Appeals (DOHA) issued a Statement of Reasons (SOR) to the Applicant stating DOHA could not make the preliminary affirmative finding it is clearly consistent with the national interest to grant or continue a security clearance for Applicant. ⁽¹⁾ On April 11, 2003, the Applicant answered the SOR and requested a hearing. The case was assigned to me on May 9, 2003. A Notice of Hearing was issued on June 5, 2003, scheduling the hearing, which was held on June 25, 2003.

The Government's case consisted of five exhibits (Gov Ex). The Applicant relied on his own testimony and one exhibit (App Ex). Following the hearing, additional documents were received, provisions having been made for their submission following the hearing. Department Counsel (DC) having no objection to their admission, the submissions were admitted as Applicant's exhibit B. The transcript (Tr.) of the hearing was received on July 3, 2003.

FINDINGS OF FACT

The SOR alleges financial considerations, Guideline F. The Applicant admits some of the debts and denies the remainder. 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 46-years-old, has worked for a defense contractor since August 1996, and is seeking to maintain a

secret security clearance.

During 1993-19 94, the Applicant experienced financial difficulties. At that time, he sought the services of the Consumer Credit Counseling Service (CCCS), enrolled in a repayment plan, and completed the repayment plan within two years. All creditors listed with CCCS were paid in full. (Gov Ex 2)

The Applicant and his wife moved to a new location to secure a well-paying job. They made some improvements to their home including new windows and a swimming pool. In June 1999, his wife was laid off from her job. She had been employed for four years at a salary of \$65,000 a year, prior to her unemployment. Without his wife's income, the Applicant struggled to pay his bills and was able to do so for a while. However, some of the bills became two to three months delinquent. In April 2000, with the loss of his spouse's income, the Applicant and his wife were forced to file for bankruptcy protection under Chapter 13, wage earners plan. (Gov Ex 4, App Ex A) It was suggested to the Applicant that he file Chapter 7, straight liquidation, but he decided to go with Chapter 13 because he wanted to pay his debts. Chapter 13 allowed him to pay for his vehicles, his home, and a student loan. (Tr. 23)

At the time of filing, Applicant and his wife had combined monthly income of approximately \$5,000. The bankruptcy forms reflected assets of approximately \$154,000 and liabilities of approximately \$193,000. Applicant's house was valued at \$110,000 with mortgages totaling \$112,500. Excluding the real estate, the Applicant had additional assets of \$44,000 and additional liabilities of \$80,000. His assets include approximately \$8,000 in a 401(k) retirement plan.

The Chapter 13 plan required repayment of \$56,916 over a 48-month period with payments to be made through June 2004. The Applicant is currently paying \$309 per week totaling \$1,236 per month. This payment is automatically deducted from the Applicant's income and forwarded to the bankruptcy trustee. (Tr. 45)

The creditors listed in the Chapter 13 include the debt listed in SOR subparagraphs 1.a, 1.b., 1.c., and 1.e. The Applicant had two accounts listed in SOR subparagraph 1.d. as "slow pays." His May 2003 credit report (Gov Ex 5, page 10/20) shows one account to be current and closed. The other account, a gasoline company credit card, listed \$583 as owed. The debt was in collection and the Applicant stated he would pay it soon. (App Ex B) The Applicant had three gasoline company credit card accounts listed in SOR subparagraph 1.d. as 60 days past due. The Applicant has closed one of the accounts and is current on the other two.

The Applicant's wife is currently full-time employed in a stable job in earning approximately \$35,000 per year. (Tr. 47) Her net income is approximately \$1,500 to \$1,600 every two weeks. (Tr. 27) In August 2001, when the Applicant completed a monthly income and expense statement his monthly remainder was a negative \$171. At the time of the hearing, the Applicant had \$100 per week remaining after his expenses, which include his mortgage and the weekly Chapter 13 amount, were paid. (Tr. 30) The couple are current on the one credit card and gasoline company credit cards they have. The Applicant has his 401(k) retirement plan and the savings account at credit union. In the Applicant's household, the finances are handled by his wife. (Tr. 49) The Applicant is active in church and spends a good deal of time volunteering his services. The Applicant does not feel he is vulnerable to bribery and states he would never risk a breach of security. (Tr. 64)

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:

3. The conditions that resulted in the behavior were largely beyond the person's control (e.g., loss of employment, a business downturn, unexpected medical emergency, or a death, divorce or separation). (E2.A6.1.3.3.)
6. The individual initiated a good-faith effort to repay overdue creditors or otherwise resolve debts. (E2.A6.1.3.6.)

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 Guideline F, (Financial Considerations). 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 applicant is not required to be debt free, but is required to manage his finances in such a way as to meet his financial obligations.

In June 1999, the Applicant's wife lost her job, having previously been employed four years at a salary of \$65,000 a year. The loss of his wife's job is a factor beyond his control making mitigating condition (MC) 3-⁽²⁾ applicable. It is important to consider what action the Applicant has taken since June 1999.

Following loss of her job, the Applicant in his wife's struggled to make their payments in a timely manner. They were able to meet their financial obligations, but fell two to three months behind in their payments. By April 2000, the Applicant's financial situation had reached the point where he and his wife were forced to file for bankruptcy protection under Chapter 13, wage earners plan. The plan required the Applicant to repayment of \$56,916 over a 48-month period. The Applicant automatically has \$309 per week deducted from his income and forwarded to the bankruptcy trustee. He is current on his payments. He has completed 75% of the plan, which will end in June 2004. The debts listed in SOR subparagraphs 1.a, 1.b., 1.c., and 1.e. are being automatically paid through the wage earners plan. As such, the wage earners plan is a good-faith effort to repay overdue creditors or otherwise resolve the debt such that MC 6-⁽³⁾ applies. I find for the Applicant as to SOR subparagraphs 1.a, 1.b., 1.c., 1.e., and 1.g.

The Applicant owes a gasoline company \$583, SOR subparagraph 1.d, which the Applicant says he will soon pay. Although the Applicant has failed to provide evidence of having paid this debt, he has sufficient funds in his 401(k) retirement plan to do so. The other debt listed as "slow pay" in this allegation has been brought current and the account closed. I find for the Applicant as to SOR subparagraph 1.d

The Applicant was once 60 days past due on three gasoline company credit cards. He has closed one of the accounts on his current on the other two. I find for the Applicant as to SOR subparagraph 1.f.

In August 2001, when the Applicant completed a monthly income and expense statement his monthly remainder was a negative \$171. Currently the Applicant has \$100 per week remaining after paying his expenses. I find for the Applicant as to SOR subparagraph 1.g.

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, Guideline F.: FOR THE APPLICANT

Subparagraph 1.a.: For the Applicant

Subparagraph 1.b.: For the Applicant

Subparagraph 1.c.: For the Applicant

Subparagraph 1.d.: For the Applicant

Subparagraph 1.e.: For the Applicant

Subparagraph 1.f.: For the Applicant

Subparagraph 1.g.: For the Applicant

Subparagraph 1.h.: For the Applicant

DECISION

In light of all 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 the Applicant. Clearance is granted.

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. MC 3. The conditions that resulted in the behavior were largely beyond the person's control (e.g., loss of employment, a business downturn, unexpected medical emergency, or a death, divorce or separation). (E2.A6.1.3.3.)
3. MC 6. The individual initiated a good-faith effort to repay overdue creditors or otherwise resolve debts. (E2.A6.1.3.6.)