

DATE: July 15, 2005

In Re:

SSN: -----

Applicant for Security Clearance

CR Case No. 02-07188

DECISION OF ADMINISTRATIVE JUDGE

MATTHEW E. MALONE

APPEARANCES

FOR GOVERNMENT

Juan J. Rivera, Esquire, Department Counsel

FOR APPLICANT

Pro Se

SYNOPSIS

Applicant accrued over \$100,000 in delinquent debts consisting primarily of medical bills from recent cancer treatment his insurance did not pay and two car repossessions stemming from a 1995 divorce. His efforts to pay or otherwise resolve his debts have been hampered by illness, divorce, child support obligations, multiple moves to remote work sites outside the U.S., and periods of unemployment. However, Applicant has satisfactorily addressed all but six of the 25 debts listed in the SOR despite also financially helping his sister. Applicant's current financial status is sound and he has mitigated the security concerns about his finances by showing he is not likely to generate similar delinquencies in the future. Clearance is granted.

STATEMENT OF THE CASE

After reviewing the results of Applicant's background investigation, adjudicators for the Defense Office of Hearings and Appeals (DOHA) were unable to make a preliminary affirmative finding⁽¹⁾ it is clearly consistent with the national interest to give Applicant a security clearance. On March 2, 2004, DOHA issued to Applicant a Statement of Reasons (SOR) alleging facts that raise security concerns addressed in the Directive under Guideline F (financial considerations). Applicant timely answered the SOR (Answer), admitted ten of the 25 the allegations,⁽²⁾ and requested a hearing.

I convened a hearing on January 10, 2005. The parties appeared as scheduled and the government presented eight exhibits, which were admitted and marked as government's exhibits (GE) 1 through 8. Applicant testified, presented the testimony of two other witnesses, and proffered six exhibits (AE A through F), which were admitted without objection. I also left the record open to allow Applicant time to submit an additional document, which has been admitted into the record without objection by Department Counsel as AE G. DOHA received the transcript (Tr) on January 21, 2005. Issuance of this decision was delayed due to an unusually heavy caseload.

FINDINGS OF FACT

Having personally received Applicant's testimony and observed his demeanor at the hearing in response to questions

from both Department Counsel and myself, I conclude Applicant was credible, sincere, and straightforward in his statements and representations about the facts and issues in this case. Further, after a thorough review of the pleadings, transcript, and exhibits, I make the following essential findings of fact:

Applicant is 38 years old. Since July 2003, he has been employed by a defense contractor at a remote overseas location in support of the war in Iraq. Before that he was unemployed for seven months after he was laid off from his job in radar operations with a different contractor for whom he had worked since about arch 1995. Between January 1999 and his layoff in December 2000, Applicant's work in radar operations required him to work at a tracking sight on a remote island in the central western Pacific Ocean. Applicant had also been laid off by this contractor from October 1998 until January 1999 after working in radar operations in the continental United States.

Applicant has been married twice. Both times the marriage ended in divorce, but he is engaged to be married sometime in 2005. His first marriage began in 1986 and ended in 1990. One child was born of this marriage and Applicant pays \$250 each month for child support. The second marriage lasted from June 1994 to July 1995 and produced one child to whom Applicant pays \$400 each month in child support.

Applicant served in the United States Navy from June 1985 until March 1995, when he received a hardship discharge for personal reasons. He served as an Operations Specialist and advanced to Petty Officer Second Class (E-5). He also served as a classified materials custodian responsible for safeguarding classified warfare publications and cryptographic materials. While he was away on extended deployment in 1994, Applicant's ex-wife handled their finances, but stopped paying their bills when she decided to divorce Applicant. Among the unpaid bills were the loans for their two cars. (SOR ¶¶1.b and 1.c) When Applicant returned in November 1994, he learned both loans were in arrears and tried but failed to salvage the lesser-valued of the two loans. The debts alleged for these cars total about \$26,000. Applicant acknowledges he still owes a deficiency after resale but has challenged the amounts for these loans listed in the SOR. Applicant also specifically challenges the debt at SOR ¶1.b as he insists the car was taken from him even after he made the necessary payment.

Around the end of 1994, Applicant's mother became ill with cancer and required intensive medical care. Citing his mounting personal and financial demands arising from his pending divorce and his mother's illness, Applicant requested and was granted a hardship discharge from the Navy. Initially, the Navy required repayment of an earlier re-enlistment bonus of nearly \$8,000 (SOR ¶¶1.d); however, when informed of the nature of his discharge, the Defense Finance and Accounting Service (DFAS) forgave the debt.

After his 1995 discharge, Applicant found work with the aforementioned defense contractor. However, when he was laid off from work in October 1998, he moved to another state to care for his mother. He bought a used pick up truck and found part-time work as a roofer after his move. The costs of the move and loss of income, combined with his ongoing child support obligations, hampered his ability to make his car payments and the vehicle was repossessed. (SOR ¶1.a) Applicant still owes about \$2,900 on this debt.

Two credit card debts totaling about \$2,500 remain from Applicant's second marriage. The first was an account with the Navy exchange system. (SOR ¶1.e) Applicant was not initially aware of this delinquency as the bills were being sent to his ex-wife and he was moving periodically after their divorce. The other account is a regular bank-sponsored commercial credit card that appears to have become delinquent just before Applicant went to care for his mother. He acknowledges this debt and intends to pay it.

When Applicant moved to a remote work site in the Pacific in January 1999, several bills for telephone, power, and other minor expenses were either lost in transit. (3) As a result they became delinquent because he did not know about them. He has since either paid those debts (SOR ¶¶1.f, 1.j and its duplicate at 1.q, and ¶¶1.m, 1.x, and 1.y) or, in cases where he does not know what they are for or whether they are actually his as alleged (SOR ¶¶1.p and 1.u), he has been trying to research the debts to determine what, if anything is owed.

Applicant had disputed a collection account for unpaid tuition totaling about \$1,800 (SOR ¶1.v). He enrolled in a long distance learning course when he moved to the Pacific. However, as discussed below, events intervened that took him off the island before he began the classes and he should not have been charged for the course. He has since taken a

student loan to pay the debt and the loan is in good standing. Applicant also challenges a debt for medical services received after a car accident in late 1997. (SOR ¶1.w) Applicant asserts he does not owe the \$1,400 alleged because his insurance either paid or should have paid this debt.

In 2000, Applicant was diagnosed with cancer. The resulting medical bills totaled in excess of \$50,000. (SOR ¶¶1.g, 1.h, 1.k, and 1.l) Due to a mix up in his company sponsored medical insurance, the carrier denied Applicant's claims for coverage. Applicant has been able to pay some of the smaller bills (SOR ¶¶1.g and 1.h), but is still trying to work out a settlement with the medical center creditor.

Since taking his current job overseas in 2003, Applicant has been working with his fiancée to resolve the aforementioned medical debts, research other debts that have been transferred several times, and to establish a payment plan whereby he satisfies debts for which he has the resources. This has been a slow process because his fiancée is not always able to communicate with creditors about Applicant's accounts, so Applicant must correspond from his remote locale. The couple manage their joint finances prudently, to the point where Applicant has been able to establish a modest retirement account. Applicant holds three credit cards, each of which has a low balance and a credit limit less than \$500.

In 1998, Applicant made contact with his sister from whom he had been separated either at birth or as very young children. In late 2003, her husband lost his job and Applicant began sending his sister money to keep food on the table and generally make ends meet. In 2004, his sister and her four children had to flee their home because her husband was physically abusing her. Applicant has been paying most of his sister's rent and is helping with routine expenses while she works at a clerical job during the day and attends school at night to be a computer programmer.

Applicant acknowledges missing some child support payments at times while he was either unemployed or under employed. He managed to keep paying support to one child but missed several payments to the other. An arrearage of about \$3,500 for eight months of missed payments has since been paid. (SOR ¶1.t)

POLICIES

A security clearance decision is intended to resolve whether it is clearly consistent with the national interest⁽⁴⁾ for an Applicant to either receive or continue to have access to classified information. The government bears the initial burden of producing admissible information on which it based the preliminary decision to deny or revoke a security clearance for the Applicant. Additionally, the government must be able to prove controverted facts alleged in the SOR. If the government meets its burden, it establishes that it is not clearly consistent with the national interest for the Applicant to have access to classified information. The burden then shifts to the Applicant to refute, extenuate or mitigate the government's case. Because no one has a "right" to a security clearance, the Applicant bears a heavy burden of persuasion.⁽⁵⁾ A person who has access to classified information enters into a fiduciary relationship with the government based on trust and confidence. The government, therefore, has a compelling interest in ensuring each Applicant possesses the requisite judgement, reliability and trustworthiness of one who will protect the national interests as his or her own. The "clearly consistent with the national interest" standard compels resolution of any reasonable doubt about an Applicant's suitability for access in favor of the government.⁽⁶⁾

To that end, the Directive sets forth adjudicative guidelines⁽⁷⁾ for consideration when evaluating an Applicant's suitability for access to classified information. Security clearance decisions must reflect consideration of disqualifying and mitigating conditions under each adjudicative issue applicable to the facts and circumstances of each case. Each decision must also reflect a fair and impartial common sense consideration of the factors listed in Section 6.3 of the Directive. The presence or absence of a disqualifying or mitigating condition is not determinative of a conclusion for or against an Applicant. However, specific applicable guidelines should be followed whenever a case can be measured against them as they represent policy guidance governing the grant or denial of access to classified information. Having considered the record evidence as a whole, I conclude the relevant adjudicative guideline to be applied here is Guideline F (financial considerations).

CONCLUSIONS

The security concern under Guideline F is that someone who is financially overextended through delinquent debt and poor personal financial management may be at risk of engaging in illegal acts to generate funds to resolve their fiscal difficulties. Here, the government's concerns about Applicant's suitability to hold a clearance are based on an apparent record of delinquent debts totaling over \$100,000. The government has produced sufficient admissible information through its exhibits and Applicant's admissions to support the preliminary decision as expressed in the SOR that Applicant should be denied a security clearance. Available information shows Applicant has yet to pay about two-thirds of his debts, some of which have been delinquent for almost ten years. Guideline F disqualifying condition (DC) 1 [\(8\)](#) and DC 3 [\(9\)](#) apply here.

By way of mitigation or extenuation, Applicant's debts were not incurred recently and he has been financially sound for several years. He has also made efforts since he left the Navy to pay or otherwise resolve many of his debts. Granted, his efforts have been somewhat disjointed; however, in light of all the circumstances surrounding his illness, job changes and relocations, loss of records, and competing family obligations, I credit Applicant with not shirking his financial responsibilities. Further, it is apparent that many of the debts listed in the SOR did not arise through any wrongdoing or irresponsibility by Applicant. His vehicles were repossessed after his wife stopped paying on them when he was on deployment. Another vehicle was repossessed after he was laid off and moved to be with his ailing mother, thus suffering loss of income. In addition to his mother's illness, Applicant was obliged to keep up with \$700 in monthly child support payments. Given the totality of the circumstances, it is laudable he only missed eight payments and kept paying what he could.

More than half the debts at issue here resulted from treatment for a life-threatening illness. Most if not all of that treatment should have been paid for by his company's medical plan. However, due to a clerical error of which Applicant was not previously aware, the insurer denied Applicant's claims. I am satisfied Applicant will do what he can to pay or otherwise resolve these debts. Other debts went bad when Applicant moved and did not receive the bills. Applicant has paid or settled most of them. Applicant has been working for nearly two years under less-than-ideal circumstances to resolve all of his past delinquencies. He has also exhibited fiscal responsibility by saving his money and living well within his means. His fiancée has been instrumental in organizing these issues and assisting in their resolution. Based on all of the foregoing, Guideline F mitigating condition (MC) 3 [\(10\)](#) and MC 6 [\(11\)](#) apply.

It is clear to me Applicant has addressed his debts responsibly and as best he could given available resources. Yet it is unlikely he will be able to repay his medical bills in the near future. The fact money is still owed or the amount of the debt should not be the end of the analysis here. The government is rightly concerned about the risk Applicant would turn to illegal acts to generate funds, but the government is not a bill collector. The fact Applicant still owes significant debt must be weighed against his response to such difficult circumstances. This Applicant has generally tried to meet his financial responsibilities as a father, as a son, and, more recently, as a brother despite the obvious adverse impact on his ability to satisfy his overdue bills, many of which were not of his making. I can imagine other circumstances in which the debts involved are a fraction of what is at issue here, yet the applicant evades his responsibilities and does not approach them with the same integrity this Applicant has demonstrated. As far as his recent financial status is concerned, Applicant has demonstrated he has his affairs in order, but needs more time to resolve past debts. The Directive contemplates the "whole person" as a factor in weighing a person's suitability for access to classified information. Here, I have considered not only the amount of money owed, I have also tried to make a fair and commonsense assessment of the entire record before me as required by Directive Section E2.2.3. I conclude the government's information supported the allegations in the SOR, but the record evidence as a whole supports resolution of Guideline F in Applicant's favor.

FORMAL FINDINGS

Formal findings regarding each SOR allegation are as follows:

Paragraph 1, Guideline F (Financial): FOR THE APPLICANT

Subparagraph 1.a: Against the Applicant

Subparagraph 1.b: Against the Applicant

Subparagraph 1.c: For the Applicant

Subparagraph 1.d: For the Applicant

Subparagraph 1.e: Against the Applicant

Subparagraph 1.f: For the Applicant

Subparagraph 1.g: For the Applicant

Subparagraph 1.h: For the Applicant

Subparagraph 1.i: For the Applicant

Subparagraph 1.j: For the Applicant

Subparagraph 1.k: Against the Applicant

Subparagraph 1.l: Against the Applicant

Subparagraph 1.m: For the Applicant

Subparagraph 1.n: Against the Applicant

Subparagraph 1.o: For the Applicant

Subparagraph 1.p: For the Applicant

Subparagraph 1.q: For the Applicant

Subparagraph 1.r: For the Applicant

Subparagraph 1.s: For the Applicant

Subparagraph 1.t: For the Applicant

Subparagraph 1.u: For the Applicant

Subparagraph 1.v: For the Applicant

Subparagraph 1.w: For the Applicant

Subparagraph 1.x: For the Applicant

Subparagraph 1.y: 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.

Matthew E. Malone

Administrative Judge

1. Required by Executive Order 10865, as amended, and by DoD Directive 5220.6 (Directive), as amended.

2. Applicant admitted with explanation the allegations in SOR ¶¶1.a - 1.c, 1.e, 1.i, 1.j, 1.m, 1.n, 1.r, and 1.t.
3. It appears Applicant's belongings, including personal financial records, were lost by the shipper during his change of station move to the Pacific.
4. *See Department of the Navy v. Egan*, 484 U.S. 518 (1988).
5. *See Egan*, 484 U.S. at 528, 531.
6. *See Egan*; Directive E2.2.2.
7. Directive, Enclosure 2.
8. Directive, E2.A6.1.2.1. A history of not meeting financial obligations;
9. Directive, E2.A6.1.2.3. Inability or unwillingness to satisfy debts;
10. Directive, E2.A6.1.3.3. 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);
11. Directive, E2.A6.1.3.6. The individual initiated a good-faith effort to repay overdue creditors or otherwise resolve debts.