

DATE: December 17, 2004

In re:

SSN: -----

Applicant for Security Clearance

ISCR Case No. 02-07857

DECISION OF ADMINISTRATIVE JUDGE

JAMES A. YOUNG

APPEARANCES

FOR GOVERNMENT

Marc E. Curry, Esq., Department Counsel

FOR APPLICANT

Pro Se

SYNOPSIS

Applicant became financially overextended during his final years in the U.S. Army. He received counseling and entered a payment plan with a credit counseling service, but he failed to demonstrate a track record of payment on that plan. Applicant failed to mitigate security concerns raised by his financial condition. 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 5 January 2004, DOHA issued a Statement of Reasons⁽¹⁾ (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 3 February 2004 and elected to have the case decided on the written record in lieu of a hearing. Department Counsel submitted the Government's written case on 16 September 2004. A complete copy of the file of relevant material (FORM) was provided to Applicant, who was afforded an opportunity to file objections and submit material to refute, extenuate, or mitigate the disqualifying conditions. Applicant received the FORM on 26 October 2004 but did not timely respond. The case was assigned to me on 30 November 2004.

FINDINGS OF FACT

Applicant is a 49-year-old instructor for a defense contractor. Applicant served 22 years in the U.S. Army, retiring in the grade of E-7 in 1999. He was granted a security clearance in 1990.

Applicant became financially overextended toward the end of his Army career when he was performing temporary duty away from his family. His wife⁽²⁾ failed to make the necessary payments on accounts due. Applicant was co-signer for his son's automobile. The son failed to make all his payments and was then involved in an accident that damaged the vehicle. As Applicant's son failed to make payments on his insurance, the vehicle was not covered. The car has since been repossessed by the creditor.

Applicant admits charged off debts of more than \$21,000, an unpaid judgment of more than \$5,000, a debt in collection status of more than \$7,400, and another delinquent debt of more than \$9,000. Applicant signed an agreement with a credit counseling service that requires he pay \$699 a month to pay towards his bad debts. Applicant submitted with his Answer a statement from the credit counseling service showing he had made payments from October-December 2003.

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 personnel 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

In the SOR, DOHA alleged Applicant had a delinquent debt of \$8,974 resulting from an involuntary repossession (¶ 1.a), delinquent debts totaling more than \$21,000 that had been charged off (¶¶ 1.b-1.d), a delinquent debt of more than \$7,400 that had been turned over for collection (¶ 1.e), and a delinquent judgment for \$5,064 (¶ 1.f). An applicant who is financially overextended is at risk of having to engage in illegal acts to generate funds. Directive ¶ E2.A6.1.1.

The Government established by substantial evidence and Applicant's admissions each of the allegations in the SOR. Applicant has a history of not meeting his financial obligations (DC E2.A6.1.2.1.) and is unable or unwilling to satisfy his debts (DC E2.A6.1.2.3.). On the other hand, Applicant received counseling for his problem and appears to be resolving his debts (MC E2.A6.1.3.4) through a good-faith effort to pay them off (MC E2.A6.1.3.6) with the help of the credit counseling service. But the record shows only the first couple of months of payments. Because he failed to respond to the FORM, there is no evidence of payment in the past 11 months. Thus, Applicant has not established a sufficient track record to mitigate the financial considerations security concerns.

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

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.

James A. Young

Administrative Judge

1. Pursuant to Exec. Or. 10865, *Safeguarding Classified Information within Industry* (Feb. 20, 1960), as amended and modified, and Department of Defense Directive 5220.6, *Defense Industrial Personnel Security Clearance Review Program* (Jan. 2, 1992), as amended and modified (Directive).

2. Applicant and his wife divorced in July 2003.