

DATE: December 17, 2003

In Re:

SSN: -----

Applicant for Security Clearance

ISCR Case No. 02-30923

DECISION OF ADMINISTRATIVE JUDGE

JOAN CATON ANTHONY

APPEARANCES

FOR GOVERNMENT

Catherine Engstrom, Esq., Department Counsel

FOR APPLICANT

Pro Se

SYNOPSIS

Applicant owes over \$20,000 in debts. His financial problems date back several years. Applicant admits the existence of the bad debts and has expressed an intention to satisfy them. However, despite his expressed intention to take action in the future, he has failed to put forward specific plans for payment or to demonstrate that he has paid the debts. 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 March 18, 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). Applicant answered the SOR in writing on April 21, 2003 and elected to have a hearing before an administrative judge. The case was assigned to me on July 2, 2003. A Notice of Hearing was issued on July 9, 2003, scheduling Applicant's hearing for July 28, 2003. On July 28, 2003, I convened a hearing to consider whether it is clearly consistent with the national interest to grant or continue a security clearance for Applicant. DOHA received the transcript (Tr.) of the proceeding on August 7, 2003.

FINDINGS OF FACT

The SOR contains 13 allegations of disqualifying conduct under Guideline F, Financial Considerations. In his answer to the SOR, Applicant admitted the debts alleged in the SOR at subparagraphs 1.a., 1.b., 1.c., 1.d., 1.e., 1.f., 1.g., 1.h., 1.i., 1.j., 1.k., and 1.l., and the allegation of financial over-extension alleged at subparagraph 1.m. With his answer, he presented proof of payment for the debts alleged in subparagraphs 1.e., 1.i., 1.k., and 1.l. (Ex. B, C, D, and E.) Applicant's admissions are included as findings of fact.

Applicant, who is 47 years old, served on active duty for 19 years in the United States Navy and for three years in the

inactive Navy Reserve. He was eligible for retirement in July of 1994, but elected an early separation with a separation bonus of approximately \$54,000 in 1993. (Tr. 42-43.) Upon leaving military service, Applicant was unemployed for 18 months, from October 1993 to May 1995. (Ex. 1; Tr. 42-43.) During the period of unemployment, Applicant was undergoing a divorce from his first wife, with whom he had one child. He received a final decree of divorce in 1996. (Tr. 45.) Applicant found employment in 1995, and he has been working for his present employer since 1997. His job title is senior electronics technician. (Tr. 40.) In December 2000, he remarried and came a stepfather to three young girls. (Ex. 3.)

In February 1998, Applicant completed a security clearance application (SF-86). Question 38 on the SF-86 asked that an applicant list debts incurred during the past 7 years that were over 180 days delinquent. In response to the question, Applicant listed 10 delinquent debts, totaling \$30,462, which he stated were incurred in 1995. (Ex. 1.) In response to Question 34 on the SF-86, Applicant acknowledged that as of January 1998, his wages were garnished for failure to pay child support. In response to Question 35 on the SF-86, Applicant stated that in July 1995 he had a property repossessed. On May 21, 1998 Applicant was interviewed regarding his indebtedness by an agent of the Defense Investigative Service. In a signed, sworn statement, Applicant attributed his debts to his period of unemployment from 1993 to 1995 after leaving military service. He further stated that he had "all intentions of fulfilling [his] financial obligation in paying off all just debts as income and time will permit, without placing [himself] in a repeat of the situation." (Ex. 5, at 1.) Six months later, on November 19, 1998, Applicant prepared another signed sworn statement after he was interviewed again by the special agent and asked whether he had taken any action to remedy his debt situation. Applicant acknowledged that he had not taken timely action to consult with a credit counseling service within two weeks of his May 1998 interview, as he had promised the special agent he would do. He attributed his failure to set up an appointment with a credit counselor to procrastination and the press of daily events. He reported that he had a meeting scheduled with a credit counseling service on November 30, 1998, and he restated his intention to pay his overdue debts. (Ex. 4, at 1-2.)

On April 26, 2001, Applicant was interviewed again by the special agent and provided another signed sworn statement about his financial situation. He stated that he had visited the credit counseling service at the end of November 1998 and had been told that he lacked sufficient income to sustain the minimum payments required if he were to enter into a repayment schedule with this creditors. He also reported that in 1998 his income was being garnished to pay for delinquent child support. The child support obligation was satisfied in September 2000, and Applicant began making payments to the U.S. Department of the Treasury on his outstanding tax liabilities. He estimated that the tax liabilities would be paid off in 18 to 24 months. He stated that after the tax liabilities were satisfied, he would begin to address his remaining debts from 1995. He appended a current financial statement to his signed sworn statement showing a net income of \$2305 per month and monthly expenses of \$1731 per month. His financial statement showed that he had budgeted \$300 each month toward repayment of his tax liability of \$10,067. His financial statement also showed that he was providing voluntary support in the amount of \$150 per month to his daughter for her college expenses.⁽³⁾ (Ex. 3, at 3.) Applicant's financial statement showed no plan or schedule for paying the remaining debts he identified on his SF-86 as delinquent for more than 180 days in 1998.

Applicant reported that the debts listed on his SF-86 in 1998 no longer showed on the credit report, dated April 2, 2003, that he appended to his answer to the SOR. (Ex. A.) He argued that the debts were old, had not been presented for payment by his creditors, and were thus no longer a legal obligation of his. He averred that while he believed he had no legal obligation to pay the debts, he did feel an ethical and moral obligation to pay the debts at some unspecified time in the future. (Answer, at 2-3.)

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 and mitigating conditions 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

In the SOR, DOHA alleged Applicant had 10 delinquent debts (¶¶ 1.a.-1.j.); a wage garnishment for failure to pay child support (¶ 1.1.); a Federal tax delinquency (¶ 1.k.); and a property repossession. (¶ 1.m.) An applicant who is financially overextended is at risk of having to engage in illegal acts to generate funds. Directive ¶ E2.A6.1.1.

Applicant provided evidence to show that the debts alleged in subparagraphs 1.e. and 1.i. of the SOR had been settled or paid. He also provided evidence to show that he no longer owed child support as alleged in subparagraph 1.1 of the SOR and that he had satisfied his Federal tax liability as alleged in subparagraph 1.k. of the SOR. The settlement of these 4 debts notwithstanding, the Government has established, through Applicant's own admissions, a *prima facie* case that Applicant is financially overextended. Applicant provided no evidence to rebut 9 of the 13 financial concerns specified in the SOR and identified as disqualifying conditions under ¶¶ E2.A.6.1.2.1 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 which continue to be unpaid to this day. Thus, neither mitigating condition E2.A.6.1.3.1, nor mitigating condition E3.A.6.1.3.2 applies.

Applicant argued that his financial delinquencies were beyond his control and caused by unemployment after leaving military service in 1993 and reduced circumstances resulting from his 1996 divorce. The record shows a pattern of financial instability going back several years before the Applicant's unemployment and divorce, when Applicant was employed, and continuing to the present. Five of the nine unpaid delinquencies identified in the SOR and admitted by Applicant occurred on accounts opened between 1986 and 1991, when Applicant was serving in the military and before the unemployment occurred and the divorce took place.

While I find persuasive Applicant's argument that mitigating condition E2.A6.1.3.3 applies in part to the facts of his case, I also find that mitigating condition E2.A6.1.3.6 is inapplicable because 8 of Applicant's debts remain outstanding, and nothing in the record indicates that he has initiated a good-faith effort to repay his creditors or to otherwise resolve his debts.

In his signed, sworn statements of May 1998, November 1998, and April 2001, Applicant indicated that he intended to pay debts for which he believed he was ethically and morally responsible. He provided a financial statement showing that he had resources to begin repayment of some of the debts. However, the record does not show that he has taken any

action to pay or otherwise resolve his indebtedness. A promise to take action in the future, however sincere, is not a substitute for evidence that the Applicant is taking specific and timely steps to address his delinquent debts. *See* ISCR Case No. 01-03055 (App. Bd. Mar. 21, 2002).

Applicant presents evidence to show that his child support obligation, as alleged in SOR ¶ 1.1., was satisfied as of September 8, 2000; that his Federal tax liability, as alleged in SOR ¶ 1.k., was satisfied in April 2002, and that the debts alleged in SOR ¶¶ 1.e and 1.i. were satisfied in March 2003. These allegations are therefore concluded for the Applicant. However, Applicant provided no evidence to show that the other debts alleged in the SOR had been satisfied or that he had a plan to pay them. Accordingly, the allegations of debt in subparagraphs 1.a., 1.b., 1.c., 1.d., 1.f., 1.g., 1.h., and 1.j. of the SOR are concluded against the Applicant. The allegation in subparagraph 1.m. of financial over-extension is also concluded against the Applicant.

In my evaluation of the record, I have carefully considered each piece of evidence in the context of the totality of evidence and under all of the Directive guidelines that were generally applicable or might be applicable under the facts of the case. Under the whole person concept, I conclude that Applicant has not successfully overcome the Government's case opposing his request for a DoD security clearance.

FORMAL FINDINGS

Formal findings For or Against Applicant on the allegations set forth in the SOR, as required by Section E3.1.25 of Enclosure 3 of the Directive are:

Paragraph 1, Financial Considerations (Guideline F): **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.: For the Applicant

Subparagraph 1.f.: Against the Applicant

Subparagraph 1.g.: Against the Applicant

Subparagraph 1.h.: Against the Applicant

Subparagraph 1.i.: For the Applicant

Subparagraph 1.j.: Against the Applicant

Subparagraph 1.k.: For the Applicant

Subparagraph 1.l.: For the Applicant

Subparagraph 1.m.: 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.

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. At his hearing, Applicant testified that he had provided his daughter with assistance in meeting her college expenses for approximately 5 months, but stopped helping her when she failed to maintain a B average in her studies. (Tr. 70-71.)