

DATE: December 30, 2003

In re:

SSN: -----

Applicant for Security Clearance

ISCR Case No. 02-30946

DECISION OF ADMINISTRATIVE JUDGE

JAMES A. YOUNG

APPEARANCES

FOR GOVERNMENT

Catherine Engstrom, Esq., Department Counsel

FOR APPLICANT

Pro Se

SYNOPSIS

Applicant had substantial financial problems paying his debts when he was an employee of the federal government. He left government service and became a computer technician for a defense contractor. It is a temporary position and Applicant has been laid off for nine of the approximately 22 months he has been employed there. Applicant failed to sufficiently mitigate the financial security concerns alleged in the statement of reasons. 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 30 April 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 7 August 2003 and elected to have a hearing before an administrative judge. The case was assigned to another administrative judge on 6 November 2003, but was transferred to me on 26 November 2003. On 17 December 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 29 December 2003.

FINDINGS OF FACT

Applicant is 41 years old, married, and paying child support on one child. He served four years in the military during the early 1980s. He worked for a government agency from 1986 until 2002. He now works as a computer technician for a defense contractor. He is a temporary employee and has been laid off when there is no work-five times in less than two years for periods totaling approximately nine months. Ex. B. He was unemployed from June - November 2003.

In his security clearance application (SCA) signed on 15 April 2002, Applicant denied that, in the previous seven years, he had any property repossessed or debts delinquent for more than 180 days. He also denied having any current debts

delinquent more than 90 days. The chart below summarizes the status of the financial issues alleged in the SOR:

¶	Nature and Amount	Status	Record
1.a.	Chap 13 dismissal \$33,432	Dismissed at Applicant's request; could not make payments	Tr. 15
1.b.	Home foreclosure	VA loan-VA paid loan off	Tr. 20
1.c.	Voluntary car repossession \$10,000 still owed	Unpaid	Tr. 21
1.d.	Charged off credit acct \$1,179	Unpaid	Tr. 21, 23
1.e.	Charged off acct \$722	Paid \$200; still owes remainder	Tr. 22
1.f.	Delinq acct \$1,030	Unpaid	Tr. 23
1.g.	Collection acct \$832	Unpaid	Tr. 23
1.h.	Delinq acct \$1,140	Unpaid	Tr. 23

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

In the SOR, DOHA alleged Applicant petitioned for Chapter 13 bankruptcy in 2000, but it was dismissed because he failed to pay (¶ 1.a.); had his house foreclosed on (¶ 1.b.); and has several delinquent debts totaling approximately \$15,000 (¶¶ 1.c.-1.h.). 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 that Applicant has a history of not meeting his financial obligations (DC E2.A7.1.2.1.) and has been unable or unwilling to satisfy his debts (DC E2.A7.1.2.3.). Although he claims to have made a few payments totaling \$200, he produced no evidence to support these claims.

Applicant claims his financial problems are due in large part to his periods of unemployment-conditions beyond his control. MC E2.A6.1.3.3. However, most of his financial difficulties arose before he switched to the temporary job with the defense contractor. He commenced his Chapter 13 bankruptcy on 24 February 2000 and it was dismissed at Applicant's request on 9 August 2000 because it was not in his "best interests at the time." Tr. 15. His auto loan was 60 days past due within two months of his switch from government employee to contractor employee. Ex. 3 at 6. Applicant failed to establish that his poor financial condition was as a result of his layoffs at the new job. Although he was out of work for one period of approximately five months in 2003, he presented no evidence that he tried to ameliorate his condition by taking another job. Applicant failed to sufficiently mitigate the security concerns alleged in the SOR.

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.

James A. Young

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.