

DATE: January 21, 2004

In re:

SSN: -----

Applicant for Security Clearance

ISCR Case No. 02-31499

DECISION OF ADMINISTRATIVE JUDGE

JAMES A. YOUNG

APPEARANCES

FOR GOVERNMENT

Jennifer I. Campbell, Esq., Department Counsel

FOR APPLICANT

Pro Se

SYNOPSIS

Applicant is approximately \$23,000 in arrears on child support payments for his seven children and was convicted of food-stamp fraud in 1996. Although his arrearages are slowly being reduced by the state garnishing his wages, Applicant failed to sufficiently mitigate the financial considerations security concerns. 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 25 June 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 1 August 2003 and elected to have a hearing before an administrative judge. The case was assigned to me on 12 November 2003. On 11 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 31 December 2003.

FINDINGS OF FACT

Applicant is 39 years old. He owed approximately \$28,000 in child support for seven children when the SOR was issued. Answer. Applicant had four children with his girlfriend before marrying someone else. He had three children with his wife. They have since divorced and he is now married to someone else. Applicant is making child support payments and paying on the arrearages through garnishment of his pay. Applicant is unsure of many of the details of his support obligation. At the time of the hearing, it appeared Applicant still owed approximately \$23,000. Ex. J.

In 1996, in accordance with his guilty plea, Applicant was convicted of food-stamp fraud. The imposition of a sentence was suspended for three years, he was ordered to pay restitution, earn a high school diploma or GED, and perform community service. Ex. 5 at 9-10

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 had three delinquent debts to the county government totaling over \$28,000 (¶¶ 1.a.-1.c.); he is not capable of paying these debts (¶ 1.d.); and he was convicted of food-stamp fraud in 1996 (¶ 1.e.). 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 contained in the SOR. Applicant has a history of not meeting his financial obligations (DC E2.A6.1.2.1) and being unable or unwilling to satisfy his debts (DC E2.A6.1.2.3.). Furthermore, his conviction for food-stamp fraud demonstrates a deceptive or illegal financial practice. DC E2.A6.1.2.2. Applicant failed to establish that any of the mitigating factors under the guideline apply. It appears the child support debt is being slowly reduced only because Applicant's wages are being garnished. There is no evidence of a good-faith effort to repay or resolve the debts. Applicant believes his child support arrearages are "like almost paying for a car. Everybody is paying for cars now. At the rate I'm going right now it says it will roughly be about eight years to pay it back." Tr. 34. Applicant has not established it is in the national interest to grant or continue a security clearance for him.

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

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.