

DATE: December 8, 2004

In Re:

SSN: -----

Applicant for Security Clearance

ISCR Case No. 02-11826

DECISION OF ADMINISTRATIVE JUDGE

LEROY F. FOREMAN

APPEARANCES

FOR GOVERNMENT

Kathryn Antigone Trowbridge, Esq., Department Counsel

FOR APPLICANT

Pro Se

SYNOPSIS

Applicant has been in financial difficulty for more than 20 years. He received a Chapter 7 discharge in bankruptcy in 1983. By 2001, he was again in financial difficulty. In 2002, he suffered a house fire, and in 2003 his spouse lost her job. After refinancing his home and using his equity to resolve some debts, he still has delinquent debts to four creditors, and his monthly obligations exceed his income by more than \$1,000.00. He has mitigated some security concerns and settled several delinquent accounts, but he remains financially overextended. Clearance is denied.

STATEMENT OF THE CASE

On June 25, 2003, the Defense Office of Hearings and Appeals (DOHA) issued a Statement of Reasons (SOR) detailing the basis for its decision to not grant a security clearance to Applicant. This action was taken under Executive Order 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). The SOR alleges security concerns under Guideline F (Financial Considerations) of the Directive. It alleges Applicant owes more than \$33,000.00 on 16 delinquent accounts with 12 creditors. It also alleges Applicant previously received a Chapter 7 discharge in bankruptcy, he has made little effort to pay his debts, and he has had difficulty meeting his financial obligations for 20 years. Applicant answered the SOR in writing on November 24, 2003. He admitted owing five debts, offered explanations, denied the remaining debts, admitted the discharge in bankruptcy, denied being financially overextended, and requested a hearing.

The case was assigned to me on August 11, 2004. On August 23, 2004, DOHA issued a notice of hearing setting the case for September 15, 2004. Applicant appeared as scheduled. At the hearing, I granted Department Counsel's motion to amend the SOR to add ¶ 1.t., alleging that Applicant failed to file federal and state income tax returns for tax years 2002 and 2003. I kept the record open for 15 days to allow Applicant to submit documentation supporting his testimony. I received Applicant's documentation (Applicant's Exhibits A through J) on September 30, 2004. DOHA received the transcript on October 12, 2004.

FINDINGS OF FACT

Applicant's admissions in his answer to the SOR and at the hearing are incorporated into my findings of fact. I also make the following findings:

Applicant is a 49-year-old electronics testing technician who has worked for the same defense contractor for more than 25 years. He has held a security clearance since June 1980, and his clearance has never been suspended or revoked. He enjoys a reputation among his supervisors and colleagues for integrity, honesty, and dependability. He is married and has five children.

In 1981-82, Applicant was hospitalized for five months and in a rehabilitation hospital for five more months after being inflicted with Guillain-Barre syndrome. During this time, he was unable to work and could not pay his debts. In July 1983, Applicant filed for Chapter 7 bankruptcy, listing assets of \$1,900.00 and liabilities of \$10,557.00. He received a discharge in December 1983.

In 2002 Applicant was diagnosed with a form of arthritis, which makes it very difficult for him to stand or walk. He appeared on crutches at the hearing and walked with great difficulty. He will be eligible for disability retirement at age 55.

Applicant's wife manages most of the family finances. During the hearing, Applicant was unable to answer a number of questions about his debts, and much of his testimony was based on what his wife had told him about their finances. He has not sought help from any financial or credit counselors. He disputed several items on his credit report; but as of the date of the hearing he had not attempted to have his credit record corrected, even though he had known since November 2001 that his financial situation raised security concerns. I gave him additional time to dispute the debts and obtain a corrected credit report. He submitted a corrected report on September 30, 2004.

Applicant's home was damaged by fire on February 3, 2002, and was uninhabitable for about 10 months. Applicant and his family lived in a hotel while their home was being repaired, at a cost of approximately \$17,000.00. His insurance reimbursement for temporary lodging was only \$5,700.00. Repair of the home was delayed because the contractors were unwilling to work for the amount the insurance company was willing to pay.

The debts alleged in the SOR ¶¶ 1.k., 1.l., 1.m., 1.n., 1.o., and 1.p. were already delinquent before the fire. While Applicant and his family were living in a hotel and trying to repair their home, they fell behind on the payments on two motor vehicles, and the vehicles were repossessed, resulting in the debt alleged in the SOR ¶ 1.a. Applicant did not terminate his cable service or surrender the cable box, resulting in the \$222.00 debt alleged in the SOR ¶ 1.h.

In November 2001, before the fire, Applicant's monthly take-home pay was about \$1,800.00 and his wife's was about \$4,200.00. After monthly expenses and loan payments, they had a net remainder of about \$1,200.00. (Government Exhibit 2, p. 6) In February 2003, after they had moved back into their repaired home, Applicant's monthly take-home pay was about \$2,024.00, his wife's was about \$3,000.00, and they had a net remainder of about \$2,700.00 (Government Exhibit 7, p. 4) At the hearing in September 2004, Applicant's take-home pay remained at about \$2,024.00 per month, but his wife had lost her job. She had been working a restaurant, but it went out of business. As of the hearing date, she had not yet found other employment. Applicant's monthly expenses were then about \$3,000.00, leaving a shortfall of about \$976.00 per month.

At the time of the hearing, Applicant had received a conditional approval from a lender to refinance his home mortgage. (Applicant's Exhibit E) On September 29, 2004, the refinancing was completed, and Applicant used some of his equity to pay off a federal tax lien not listed in the SOR and the auto loan listed in the SOR ¶ 1.a. As a result of refinancing, his monthly payments on his home mortgage will be increased by about \$200.00 per month. (Government Exhibit 7, p. 4; Applicant's Exhibit F, p. 4, 8)

The following chart summarizes my findings regarding the debts alleged in the SOR [\(1\)](#):

SOR/Type of	Applicant's Response	Record	Finding of Fact
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Debt Amount			
¶ 1.a./Auto Loan \$10,784.00	Admit	App Ex F, p. 4	Debt paid
¶ 1.b./Credit Card \$1,329.00	Admit	App Ex G, p. 3	Delinquent
¶ 1.c./Credit Card \$2,709.00	Admit	Govt Ex 8	Delinquent; same account as ¶ 1.e.
¶ 1.d./Dental Bill \$178.00	Deny; debt paid	Govt Ex 5, p. 1; App Ex G, p. 4; Tr. 43	Delinquent
¶ 1.e./Credit Card \$1,335.00	Deny	Tr. 95	Delinquent; same account as ¶ 1.c.
¶ 1.f./Credit Card \$5,349.00	Deny; does not have an account with this creditor	Govt Ex 5, p. 2; App Ex G; Tr. 43	Disputed; not proven
¶ 1.g./Charge Acct. \$2,300.00	Deny; does not have an account with this creditor	Govt Ex 5, p. 2; App Ex G; Tr. 43-44	Disputed; not proven
¶ 1.h./TV Cable \$222.00	Admit	Tr. 50	Delinquent
¶ 1.i./Food Bill \$20.00	Deny; debt paid	Debt listed on Govt Ex 5, p. 3; not listed on Govt Ex 6 (credit report of 5-18-04)	Debt paid
¶ 1.j./Home Loan \$2,809.00	Deny; account is now current	App Ex F	Debt resolved
¶ 1.k./Judgment \$223.36	Deny	Govt Ex 9, p. 1	Debt resolved
¶ 1.l./Judgment \$100.00	Deny; debt paid	Govt Ex 9; Tr. 64-66	Debt resolved

¶ 1.m./Judgment \$198.00	Deny; debt paid	Govt Ex 9; Tr. 64-66	Debt resolved
¶ 1.n./Judgment \$1,024.38	Deny; debt paid	Govt Ex 9, Tr. 64-66	Debt resolved
¶ 1.o./Judgment \$1,720.16	Deny; debt paid	Govt Ex 9; Tr. 66	Debt resolved
¶ 1.p/ State tax lien \$4,218.81	Admit	Govt Ex 2; Tr. 67; App Ex K, L, and	Delinquent taxes paid

At the hearing, Applicant testified he was relying on a federal income tax refund to pay some of his delinquent debts, but he had not received it because he had not filed his federal and state income tax returns for 2002 and 2003. I granted Department Counsel's motion to amend the SOR by adding ¶ 1.t., alleging failure to file federal and state income tax returns for those two tax years. (Tr. 88-89) Applicant filed his returns for both years on September 30, 2004, 15 days after the hearing. They indicate he owed \$223.00 for tax year 2002 and was entitled to a refund of \$8,063.00 for tax year 2003. (Applicant's Exhibits N and O). There is no evidence Applicant filed his state tax returns for those two years.

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.

The Directive sets out the adjudicative guidelines for making decisions on security clearances. Enclosure 2 of the Directive sets forth adjudicative guidelines for determining eligibility for access to classified information, and it lists the disqualifying conditions (DC) and mitigating conditions (MC) for each guideline. Each clearance decision must be a fair, impartial, and commonsense decision based on the relevant and material facts and circumstances, the whole person concept, and the factors listed in the Directive ¶ 6.3.1 through ¶ 6.3.6.

In evaluating an applicant's conduct, an administrative judge should consider: (1) the nature, extent, and seriousness of the conduct; (2) the circumstances surrounding the conduct, to include knowledgeable participation; (3) the frequency and recency of the conduct; (4) the applicant's age and maturity at the time of the conduct; (5) the voluntariness of participation; (6) the presence or absence of rehabilitation and other pertinent behavioral changes; (7) the motivation for the conduct; (8) the potential for pressure, coercion, exploitation, or duress; and (9) the likelihood of continuation or recurrence. Directive ¶¶ E2.2.1.1 through E2.2.1.9.

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, that conditions exist in the personal or professional history of the applicant which disqualify, or may disqualify, the applicant from being eligible for access to classified information. *See Egan*, 484 U.S. at 531. "[T]he Directive presumes there is a nexus or rational connection between proven conduct under any of the Criteria listed therein and an applicant's security suitability." ISCR Case No. 95-0611 at 2 (App. Bd. May 2, 1996) (quoting DISCR Case No. 92-1106 (App. Bd. Oct. 7, 1993)).

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 (App. Bd. Dec. 19, 2002). "[S]ecurity clearance determinations should err, if they must, on the side of denials." *Egan*, 484 U.S. at 531; *see* Directive ¶ E2.2.2.

CONCLUSIONS

Under Guideline F (Financial Considerations), "[a]n individual who is financially overextended is at risk of having to engage in illegal acts to generate funds." Directive ¶ E2.A6.1.1. Two disqualifying conditions (DC) under Guideline F could raise a security concern and may be disqualifying in this case. DC 1 applies where an applicant has a history of not meeting his or her financial obligations. Directive ¶ E2.A6.1.2.1. DC 3 applies where an applicant has exhibited inability or unwillingness to satisfy debts. Directive ¶ E2.A6.1.2.3.

The evidence establishes Applicant's financial problems began shortly after his hospitalization in 1981. Although he has paid off or settled a number of delinquent accounts, the debts alleged in the SOR ¶¶ 1.b., 1.c., 1.d., and 1.h. remain delinquent. Applicant did not file his overdue federal income tax returns for 2002 and 2003 until after the hearing, and there is no evidence that he filed his overdue state tax returns for those years. While Applicant sincerely wants to satisfy his debts, he is unable because his monthly obligations exceed his income. I conclude DC 1 and DC 3 are established.

Applicant disputed the debts in the SOR ¶¶ 1.f. and 1.g., asserting he did not have accounts with those creditors. These debts appear on Applicant's credit report dated April 14, 2003, but they do not appear on a later report. The debts were less than seven years old, suggesting they were removed from Applicant's credit record because they could not be substantiated. ⁽²⁾ Department Counsel has the burden of proving controverted facts. Directive ¶ E3.1.14. I conclude these two debts have not been proven.

Security concerns under Guideline F can be mitigated by showing the conditions causing financial problems were largely beyond the person's control (MC 1). Directive ¶ E2.A6.1.3.3. Applicant's hospitalization and period of rehabilitation as a result of Guillen-Barre syndrome made him unable to work and resulted in his filing for and receiving the discharge in bankruptcy alleged in the SOR ¶ 1.q. I conclude security concerns based on Applicant's 1983 bankruptcy have been mitigated.

Applicant's house fire and the financial burdens resulting from it also establish MC 1 for the car loan (SOR ¶ 1.a), which has since been paid off. However, the house fire does not mitigate the credit card debts alleged in the SOR ¶¶ 1.b. and 1.c., because they were already delinquent before the fire. Furthermore, the fire does not mitigate Applicant's continued failure to resolve the delinquent dental bill (SOR ¶ 1.d.) and the cable bill (SOR ¶ 1.h.), because Applicant's February 2003 financial statement shows a net monthly remainder of about \$2,700.00 available to pay past due debts.

Applicant's wife's unexpected loss of employment also was a condition beyond Applicant's control under MC 1. However, it does not mitigate the debts alleged in the SOR ¶¶ 1.b., 1.c., 1.d., and 1.h., because they were delinquent before she lost her job.

Security concerns also can be mitigated by showing a good-faith effort to repay or otherwise resolve overdue debts (MC 3). Directive ¶ E2.A6.1.3.6. Applicant has paid or resolved the debts alleged in the SOR ¶¶ 1.a., 1.i., 1.j., 1.k., 1.l., 1.m., 1.n., 1.o, and 1.p. I conclude security concerns based on those debts have been mitigated.

After I granted Department Counsel's motion to amend the SOR, I gave Applicant 15 days to file his federal and state tax returns and give me documentary proof of filing. He filed his federal returns for 2002 and 2003 and submitted copies of his returns, but he submitted nothing showing he had filed his state tax returns. Thus, I must conclude the allegation

in the SOR ¶ 1.t. is not rebutted or mitigated.

This is a sad case. Applicant has given his employer more than 25 years of service and has held a security clearance for 24 years. He suffers from a debilitating form of arthritis, and his working years are numbered. He needs to work for approximately five more years to qualify for medical retirement. Unfortunately, he has not mitigated the security concerns arising from the allegations in the SOR ¶¶ 1.b., 1.c., 1.d., 1.h., 1.r., 1.s., and 1.t. He has a long history of financial difficulties and tax delinquencies. To his credit, he has reduced his delinquent debts from over \$33,000.00 alleged in the SOR to about \$4,400.00. If his federal income tax returns were accurately prepared, he will receive a refund of about \$8,000.00, which will enable him to pay off his remaining delinquent debts and give him a financial cushion for a few months.

However, Applicant's monthly expenses were increased when he refinanced his home, and they now exceed his monthly income by more than \$1,000.00. He remains financially overextended with little hope of recovery, unless his income increases or his expenses decrease significantly.

Applicant's financial situation will improve if his wife finds a new job. However, I must decide this case on the record before me, not a future contingency. *See* ISCR Case No. 99-0109 (App. Bd. Mar.1, 2000), 2000 WL 288429 at 3 (Administrative Judge does not have authority to grant conditional clearance). If Applicant's wife finds employment and he is able to right his financial ship, he can reapply for a security clearance when he is no longer financially overextended. *See* Directive ¶¶E3.1.37-E3.1.38 (providing for reapplication after one year).

FORMAL FINDINGS

The following are my findings as to each allegation in the SOR:

Paragraph 1. Guideline F (Financial): AGAINST APPLICANT

Subparagraph 1.a.: For Applicant

Subparagraph 1.b.: Against Applicant

Subparagraph 1.c.: Against Applicant

Subparagraph 1.d.: Against Applicant

Subparagraph 1.e.: For Applicant

Subparagraph 1.f.: For Applicant

Subparagraph 1.g.: For Applicant

Subparagraph 1.h.: Against Applicant

Subparagraph 1.i.: For Applicant

Subparagraph 1.j.: For Applicant

Subparagraph 1.k.: For Applicant

Subparagraph 1.l.: For Applicant

Subparagraph 1.m.: For Applicant

Subparagraph 1.n.: For Applicant

Subparagraph 1.o.: For Applicant

Subparagraph 1.p.: For Applicant

Subparagraph 1.q.: For Applicant

Subparagraph 1.r.: Against Applicant

Subparagraph 1.s.: Against Applicant

Subparagraph 1.t.: Against 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 a security clearance to Applicant. Clearance is denied.

LeRoy F. Foreman

Administrative Judge

1. ' " " " " " "

2. Congress enacted the Fair Credit Reporting Act to protect consumers from inaccurate adverse information. *See Williams v. Equifax Credit Information Services*, 892 F. Supp. 951 (E.D.Mich. 1995); *Wiggins v. District Cablevision, Inc.*, 853 F. Supp. 484 (D.C. 1994). When a consumer disputes the accuracy of information in a credit report, the consumer reporting agency must reinvestigate the information. If the information is found to be inaccurate or incomplete or cannot be verified, it must be modified or deleted. 15 U.S.C. §1681i (a)(1) and (5). 15 U.S.C. § 1681c prohibits, with certain exceptions not applicable to this case, a credit reporting agency from reporting "accounts placed for collection or charged to profit and loss which antedate the report by more than seven years."