

DATE: May 24, 2004

In Re:

SSN: -----

Applicant for Security Clearance

ISCR Case No. 02-14293

DECISION OF ADMINISTRATIVE JUDGE

JOAN CATON ANTHONY

APPEARANCES

FOR GOVERNMENT

Marc E. Curry, Department Counsel

FOR APPLICANT

Pro Se

SYNOPSIS

Applicant admits numerous financial delinquencies, some of which date back to the period of 1996 to 1999. His unmitigated history of financial overextension raises serious 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 August 11, 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 20 February 2003, and requested that his case be determined on the record in lieu of a hearing. The Government compiled its File of Relevant Material (FORM) on December 29, 2003. The FORM contained documents identified as Items 1 through 6. By letter dated December 30, 2003, a copy of the FORM was forwarded to Applicant and he was instructed to file any objections or to supply additional information for consideration by an administrative judge within 30 days. He received the FORM on January 12, 2004. A response was due on February 11, 2004. Applicant did not submit any information within the time period of 30 days after receiving a copy of the FORM. On February 24, 2004, the case was assigned to me for a decision.

FINDINGS OF FACT

The SOR contains 12 allegations of disqualifying conduct under Guideline F, Financial Considerations. Applicant admitted all 12 allegations. His admissions are incorporated as findings of fact.

Applicant is 42-years old, married, and the father of two children. He is employed as a junior designer by a defense contractor. He has worked for his present employer since September 2000. Applicant's security clearance application (SF-86) shows he was unemployed from February 1996 to December 1999, and from April to September 2000. In his answer to the SOR, Applicant stated that the debts identified in the SOR at 1.a., 1.e., 1.f., 1.i., 1.j., and 1.k. were

incurred from February 1996 through December 1999, and the debts identified in the SOR at 1.f. and 1.g. were incurred in April and May 1999. He stated further that the debts identified in the SOR at 1.b., 1.c., 1.d., and 1.h. were incurred from September 2000 to October 2001. The total amount of the debts alleged in the SOR is \$4,609.

In his signed sworn statement, executed April 8, 2002, Applicant acknowledged five of the debts later alleged in the SOR and also acknowledged approximately \$7,500 in additional debts. (3)

He provided a statement showing his monthly income and expenses and stated that he could not afford to make payments on his debts. He also stated that he had not been in recent contact with his creditors but hoped at some unspecified time in the future to pay or settle his debts.

From March 1996 to September 1996, Applicant underwent a medical procedure in preparation for donating one of his kidneys to a cousin. From November 1997 to December 1999, he attended a vocational school and obtained a degree in drafting and design. During this time, he held a part-time job. Applicant's wife was laid off twice from her work during the period September 2000 to October 2001.

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

The Government's concern under Guideline F, Financial Considerations, is that individuals who are financially overextended and unable or unwilling to pay their just debts may try to generate funds by engaging in illegal acts. Directive ¶ E2.A6.1.1. Applicant has a history of not meeting his financial obligations, and his financial history suggests an inability or unwillingness to satisfy his debts, conditions which raise security concerns under ¶¶ E2.A6.1.2.1. and

E2.A6.1.2.3. of Guideline F. DOHA's Appeal Board has concluded that "[a] person who is unwilling to fulfill his legal obligations does not demonstrate the high degree of good judgment and reliability required of persons granted access to classified information." ISCR Case No. 98-0810 at 4 (App. Bd. June 8, 2000).

In the SOR, DOHA alleged Applicant had delinquent accounts (§§ 1.a. through 1.h.); accounts charged off as bad debts (§§ 1.i., 1.j., and 1.k.); and an account placed in collection (§ 1.l.).

The Government has established, through the FORM and Applicant's admissions, a *prima facie* case that Applicant is financially overextended. Applicant provided no persuasive evidence to rebut the financial concerns specified in the SOR and identified as disqualifying conditions E2.A6.1.2.1. 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, many of which continue to be unsatisfied to this day. Thus, neither mitigating condition E2.A.6.1.3.1. nor mitigating condition E2.A6.1.3.2. applies. Applicant was unemployed between February 1996 and December 1999. Sometime during this period, he donated one of his kidneys to a cousin. His wife suffered two job layoffs between September 2000 and October 2001. The unemployment and job layoffs would appear to be beyond the Applicant's control, and thus mitigating condition E2.A6.1.3.3. applies.

Applicant has not sought counseling for his financial problems, and he submits no persuasive evidence that he has developed and implemented a practical and comprehensive plan for resolving his indebtedness. He has not initiated a good-faith effort to repay overdue debts. Thus mitigating conditions E2.A6.1.3.4. and E2.A6.1.3.6 do not apply. Accordingly, the allegations are concluded against the Applicant.

In ISCR Case No. 98-0761 at 3 (Dec. 27, 1999), DOHA's Appeal Board stated that an administrative judge, in deciding an applicant's security worthiness, "must consider the record as a whole (Directive Section F.3.) and decide whether the favorable evidence outweighs the unfavorable evidence, or *vice versa*." I have considered the record as a whole and have evaluated Applicant's conduct under the whole person concept of the Directive, and I conclude that Applicant has not successfully overcome the Government's case opposing his request for a security clearance.

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

Subparagraph 1.i.: Against Applicant

Subparagraph 1.j.: Against Applicant

Subparagraph 1.k.: Against Applicant

Subparagraph 1.l.: 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.

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. Those debts included \$1035 in child support arrearage, \$1128 in credit card debt, \$4817 resulting from a voluntary repossession of an automobile, \$150 to a television service, and \$355 in medical expenses.