

DATE: November 12, 2003

In re:

SSN: -----

Applicant for Security Clearance

ISCR Case No. 02-15848

DECISION OF ADMINISTRATIVE JUDGE

PHILIP S. HOWE

APPEARANCES

FOR GOVERNMENT

Eric H. Borstrom, Esq., Department Counsel

FOR APPLICANT

Pro Se

SYNOPSIS

Applicant is 32 years old and works as a security guard for a defense contractor. He admitted he has six unpaid and delinquent debts totaling over \$17,000. Applicant has made few if any attempts to pay these delinquent debts. Applicant failed to mitigate the financial considerations concerns. Clearance is denied.

STATEMENT OF THE CASE

On May 15, 2003, the Defense Office of Hearings and Appeals (DOHA), under Executive Order 10865, *Safeguarding Classified Information Within Industry*, dated February 20, 1960, as amended and modified, and Department of Defense Directive 5220.6, *Defense Industrial Personnel Security Clearance Review Program* (Directive), dated January 2, 1992, as amended and modified, issued a Statement of Reasons (SOR) to Applicant. The SOR detailed reasons under Guideline F (Financial Considerations) why DOHA could not make the preliminary affirmative finding under the Directive that it is clearly consistent with the national interest to grant or continue a security clearance for Applicant. DOHA recommended referral to an Administrative Judge to conduct proceedings and determine whether clearance should be granted, continued, denied, or revoked.

Applicant submitted a signed and sworn statement, dated June 10, 2003. He admitted all the allegations contained in the SOR, except one, and made no answer on that allegation concerning unpaid child support. Applicant requested his case be decided on the written record in lieu of a hearing.

On July 28, 2003, Department Counsel submitted the Department's written case. A complete copy of the file of relevant material (FORM) was provided to the Applicant. He was given the opportunity to file objections and submit material in refutation, extenuation, or mitigation. Applicant did not file a response to the FORM by the September 28, 2003, due date. The case was assigned to me on October 24, 2003.

FINDINGS OF FACT

Applicant admitted all of the SOR allegations. Those admissions are incorporated herein as findings of fact. After a complete and thorough review of the evidence in the record, and upon due consideration of that evidence, I make the following additional findings of fact:

Applicant is 32 years old, unmarried, and works for a defense contractor as a security guard. Applicant has one child and is paying child support pursuant to a court order. (Item 3 at 1, Item 4 at 1 and 2)

Applicant has six unpaid delinquent debts, some of which he has had for several years. He has had low-paying jobs, but his current job for which he needs a security clearance pays him at least \$13.00 per hour. He has \$1,200 net remaining each month from his income that could be used to increase his debt repayments from the current \$300 monthly to enable him to pay off these debts.

Applicant attributes his past financial difficulties to the inability to remain employed long due to layoffs. Applicant answered Questions 38 (delinquent bills over 180 days) and Question 39 (delinquent bills over 90 days) in the negative, when he should have answered affirmatively because his six delinquent debts are all delinquent more than 180 days. Applicant submitted no evidence showing that he has attempted to pay off any of these debts. (Item 3 at 10; Item 4 at 1)

Applicant owes approximately \$3,950 on a credit card debt, which has been charged off and sold to a collection agency (SOR subparagraph 1.a.). Applicant owes at least \$840 in child support arrearages (SOR subparagraph 1.b.). He owes an automobile manufacturer's financial services division approximately \$1,486 for the balance on an auto lease (SOR subparagraph 1.c.). Applicant owes \$2,965 on a student loan, and has not paid that debt since 1996 when it became due because he did not have that money (SOR subparagraph 1.d.) Applicant owes a collection agency \$5,394.16 for an unpaid debt (SOR subparagraph 1.e). Finally, he owes \$3,051 to another collection agency (SOR subparagraph 1.f). (Item 2 at 1 and 2; Item 4 at 1 to 4; Item 5 at 1 to 8; Item 6 at 1 to 5)

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 judgement, 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* Section 3.1(b) (Aug. 4, 1995). Eligibility for a security clearance is predicted upon the applicant meeting the security guidelines contained in the Directive.

The adjudication process is based on the whole person concept. All available, reliable information about the person, past and present, is to be taken into account in reaching a decision as to whether a person is an acceptable security risk. Enclosure 2 to the Directive sets forth adjudicative guidelines that must be carefully considered according to the pertinent Guideline in making the overall common sense determination required.

Each adjudicative decision must also include an assessment of:

- (1) the nature, extent, and seriousness of the conduct;
- (2) the circumstances surrounding the conduct, and the extent of knowledgeable participation;
- (3) how recent and frequent the behavior was;
- (4) the individual'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 (See Directive, Section E2.2.1. of Enclosure 2).

Because each security case presents its own unique facts and circumstances, it should not be assumed that the factors exhaust the realm of human experience or that the factors apply equally in every case. Moreover, although adverse information concerning a single condition may not be sufficient for an unfavorable determination, the individual may be disqualified if available information reflects a recent or recurring pattern of questionable judgment, irresponsibility, or other behavior specified in the Guidelines.

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. All that is required is proof of facts and circumstances that indicate an applicant is at risk for mishandling classified information, or that an applicant does not demonstrate the high degree of judgment, reliability, or trustworthiness required of persons handling classified information. ISCR Case No. 00-0277, 2001 DOHA LEXIS 335 at **6-8 (App. Bd. 2001). Once the Government has established a *prima facie* case by substantial evidence, the burden shifts to the applicant to rebut, explain, extenuate, or mitigate the facts. See Directive Para E3.1.15. An applicant "has the ultimate burden of demonstrating that is clearly consistent with the national interest to grant or continue his security clearance." ISCR Case No. 01-20700 at 3 (App. Bd. 2002). "Any doubt as to whether access to classified information is clearly consistent with national security will be resolved in favor of the national security." Directive Para. E2.2.2. "[S]ecurity clearance determinations should err, if they must, on the side of denials." *Egan*, 484 U.S. at 531. See Exec . Or. 12968 Section 3.1(b).

Based upon a consideration of the evidence as a whole, I find the following adjudicative guideline most pertinent to an evaluation of the facts of this case:

Guideline F - Financial Considerations:

An individual who is financially overextended is at risk of having to engage in illegal acts to generate funds. Directive, ¶ E2.A6.1.1.

Conditions that could raise a security concern and may be disqualifying include:

- (1) A history of not meeting financial obligations. Directive, ¶ E2.A6.1. 2.1.
- (3) Inability or unwillingness to satisfy debts. Directive, ¶ E2.A6.1.2.3.

Conditions that could mitigate security concerns include:

None

CONCLUSIONS

In the SOR, DOHA alleged Applicant failed to pay delinquent debts that were past due, charged off, or placed for collection (subparagraphs 1.a. to 1.f.). 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 has a history of not paying his bills and meeting his financial obligations. He is unable or unwilling to pay his delinquent debts. Applicant admits he has not paid his debts, and attributes his inability to hold a job as the reason why he cannot pay. Under the facts and circumstances in this case, there is no cause to believe Applicant will pay off his debts in the near future. The finding is against Applicant.

FORMAL FINDINGS

Formal Findings as required by Section E3.1.25 of Enclosure 3 of the Directive are hereby rendered as follows:

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

DECISION

In light of all the circumstances and facts presented by the record in this case, it is not clearly consistent with the interest of national security to grant a clearance to Applicant. Clearance is denied.

Philip S. Howe

Administrative Judge