

DATE: May 16, 2005

In Re:

SSN: -----

Applicant for Security Clearance

CR Case No. 02-16705

DECISION OF ADMINISTRATIVE JUDGE

MATTHEW E. MALONE

APPEARANCES

FOR GOVERNMENT

Juan J. Rivera, Esquire, Department Counsel

FOR APPLICANT

Gregory S. Seador, Esquire

SYNOPSIS

Applicant accrued about \$33,000 in unpaid delinquent debt between 1992 and 2000. However, the security concerns over Applicant's financial difficulties are mitigated by Applicant's improved financial condition and his efforts to repay his delinquencies. To date he has satisfied more than 70% of his total debt and has demonstrated sound financial practices so as to avoid similar problems in the future. Clearance is granted.

STATEMENT OF THE CASE

After reviewing the results of Applicant's background investigation, adjudicators for the Defense Office of Hearings and Appeals (DOHA) were unable to make a preliminary affirmative finding⁽¹⁾ it is clearly consistent with the national interest to give Applicant a security clearance. On November 13, 2003, DOHA issued to Applicant a Statement of Reasons (SOR) alleging facts that raise security concerns addressed in the Directive under Guideline F (financial considerations). Applicant timely answered the SOR (Answer), admitted three⁽²⁾ of the nine allegations, and requested a hearing.

The case was assigned to me on August 11, 2004, and I convened a hearing December 14, 2004.⁽³⁾ The parties appeared as scheduled and the government presented six exhibits (GE 1 through 6), which were admitted without objection. Applicant testified in his own behalf and presented 25 exhibits (AE 1 through 25). DOHA received the transcript (Tr) on December 22, 2004.

FINDINGS OF FACT

After a thorough review of the pleadings, transcript, and exhibits, I make the following essential findings of fact:

Applicant is 47 years old and employed by a civilian merchant marine company contracted to support military sealift operations. He has been married for more than 20 years, but his wife has maintained their marital residence in one state

while Applicant has lived in other states for his various Navy assignments and, more recently, for his civilian work. Applicant and his wife have no children and, while his wife has worked throughout their marriage, she has contributed very little to the marital income. Further, his wife has access to whatever money he makes, but she does not reciprocate with whatever money she makes.

After graduating from college in 1980 with a BS in biology, Applicant, having been enrolled in his school's ROTC program, was commissioned as an ensign in the U.S. Navy. He served as a surface warfare officer in seagoing assignments and as commanding officer of a shore activity until 1991, when he accepted an early separation bonus to leave active duty in 1991. He then affiliated as a drilling member of the Naval Reserve Force until he retired in 2001. He held a security clearance without incident throughout his Navy career.

After leaving active duty, Applicant found work from 1992 until 1995 as a biologist with a state wildlife commission; however, his annual pay decreased from about \$40,000 to about \$15,000. Because his wife remained at their home of record while Applicant worked and lived elsewhere, he bore the costs of maintaining his own residence as well as the marital abode. For a time, he managed to make ends meet by relying on his early separation bonus from the Navy, reducing unnecessary expenses, and performing extra Reserve drills and active duty orders.

Applicant managed to stay financially afloat for about two years. However, he eventually had to resort to credit cards and high interest lines of credit to make ends meet. Those accounts soon became delinquent and were either referred to collection agencies, charged off as business losses, or enforced through judgment and garnishment. He left his state job in 1995 after his pay was garnished to such an extent he could not support either himself or his wife on what was left. Reasoning (correctly) the creditors could not garnish what was not being paid, he resigned his position. Unfortunately, aside from the extra work through Reserve drills and active duty, Applicant was unemployed from 1995 until hiring on with his current employer in 1997.

Sometime while he was still employed by the state wildlife commission, Applicant sought help from a consumer credit counseling service (CCCS). They assessed his situation and made recommendations, but were unable to intervene with his creditors to establish a debt repayment plan because he had too little income and too many debts. Among their recommendations, the CCCS advised Applicant to pay his secured creditors first and send whatever minimal amounts he could afford to the other creditors. Applicant has always made sure the mortgage on the marital home as well as all the associated utilities were paid first each month.

Applicant's income with his current employer is significantly more than what he made with the state wildlife commission. He initially hired on as an Able Bodied Seaman at about \$30,000 annually. In November 2000, Applicant earned his Third Mate's license and his annual pay doubled. He began to contact his creditors to negotiate settlement of some of his larger debts where possible, and paid several smaller debts outright. As of the hearing, Applicant had managed to put about \$30,000 into savings and pay the creditors listed in SOR ¶¶1.a, 1.d, 1.e, 1.h, and 1.i. He still pays the mortgage and expenses on the marital abode where his wife lives, but no longer has to support two residences as he lives aboard ship and has no other major living expenses to speak of.

Applicant has no knowledge of the accounts alleged in SOR ¶¶1.f and 1.g. He has sent written inquiries to the major credit reporting services seeking verification of these debts as his. In October 2004, Applicant again approached CCCS and asked them for an updated assessment of his credit and financial standing. CCCS told him his credit was excellent, but part of that assessment was due to the fact some of his old debts were no longer reported.

Since working for his current employer, Applicant has established himself as a competent seaman and valuable Third Mate. Ships' masters, engineers, and chief mates with whom Applicant has sailed speak positively of his integrity and reliability.

POLICIES

The Directive sets forth adjudicative guidelines⁽⁴⁾ for consideration when evaluating an Applicant's suitability for access to classified information. Security clearance decisions must reflect consideration of both disqualifying and mitigating conditions under each adjudicative issue applicable to the facts and circumstances of each case. Each

decision must also reflect a fair and impartial common sense consideration of the factors listed in Section 6.3 of the Directive. The presence or absence of a disqualifying or mitigating condition is not determinative of a conclusion for or against an Applicant. However, specific applicable guidelines should be followed whenever a case can be measured against them as they represent policy guidance governing the grant or denial of access to classified information. Having considered the record evidence as a whole, I conclude the relevant adjudicative guideline to be applied here is Guideline F (financial considerations).

BURDEN OF PROOF

A security clearance decision is intended to resolve whether it is clearly consistent with the national interest⁽⁵⁾ for an Applicant to either receive or continue to have access to classified information. The government bears the initial burden of proving, by something less than a preponderance of the evidence, controverted facts alleged in the SOR. If the government meets its burden it establishes a *prima facie* case that it is not clearly consistent with the national interest for the Applicant to have access to classified information. The burden then shifts to the Applicant to refute, extenuate or mitigate the government's case. Because no one has a "right" to a security clearance, the Applicant bears a heavy burden of persuasion.⁽⁶⁾ A person who has access to classified information enters into a fiduciary relationship with the government based on trust and confidence. The government, therefore, has a compelling interest in ensuring each Applicant possesses the requisite judgement, reliability and trustworthiness of one who will protect the national interests as his or her own. The "clearly consistent with the national interest" standard compels resolution of any reasonable doubt about an Applicant's suitability for access in favor of the government.⁽⁷⁾

CONCLUSIONS

The security concern under Guideline F is that someone who is financially overextended through delinquent debt and poor personal financial management may be at risk of engaging in illegal acts to generate funds to resolve their fiscal difficulties. Here, the government's concerns about Applicant's suitability to hold a clearance are based on his record of delinquent debts totaling approximately \$30,000. The government has presented sufficient information to support these allegations, thereby establishing a *prima facie* case for disqualification under Guideline F. Applicant generated significant unpaid credit card debts between 1991 and 1997. Having to maintain two residences while he was on active duty was apparently feasible; however, taking a civilian job at less than half his previous military pay without changing the expenses to which he was obligated made him financially overextended and dependent on credit cards to make ends meet. These facts support application of Guideline F disqualifying condition (DC) 1⁽⁸⁾ and DC 3.⁽⁹⁾

By contrast, by the time the SOR issued, Applicant had already acted to pay in full, settle, or otherwise resolve all but two of the debts listed therein. He has reduced his delinquent debt by more than 70%, has restored his credit rating, and has managed to save a significant amount of money in the process. Applicant appears to have established himself in a secure, better paying career more suited to his skills and experience, and is not likely to find himself financially overextended again. His financial solvency and demonstrated good judgment in addressing his debt problems support application of Guideline F mitigating condition (MC) 1,⁽¹⁰⁾ MC 4,⁽¹¹⁾ and MC 6.⁽¹²⁾ On balance, I conclude Guideline F for the Applicant.

I have carefully weighed all of the available evidence, and I have applied the appropriate disqualifying and mitigating conditions. Further, I have tried to make a fair and commonsense assessment of the record before me as required by Directive Section E2.2.3. Based on available information about Applicant's financial difficulties, this record initially raises reasonable doubts about Applicant's ability to protect classified information and to exercise the requisite good judgment and discretion expected of one in whom the government entrusts its interests. However, the record also supports a conclusion he has mitigated those doubts and has overcome the government's case.

FORMAL FINDINGS

Formal findings regarding each SOR allegation are as follows:

Paragraph 1, Guideline F (Financial): FOR THE APPLICANT

Subparagraph 1.a: For the Applicant

Subparagraph 1.b: For the Applicant

Subparagraph 1.c: For the Applicant

Subparagraph 1.d: For the Applicant

Subparagraph 1.e: For the Applicant

Subparagraph 1.f: For the Applicant

Subparagraph 1.g: For the Applicant

Subparagraph 1.h: For the Applicant

Subparagraph 1.i: For the Applicant

DECISION

In light of all the circumstances presented by the record in this case, it is clearly consistent with the national interest to grant or continue a security clearance for the Applicant. Clearance is granted.

Matthew E. Malone

Administrative Judge

1. Required by Executive Order 10865, as amended, and by DoD Directive 5220.6 (Directive), as amended.
2. Applicant admitted SOR ¶¶1.b, 1.c, and 1.i.
3. The hearing could not be more timely scheduled because Applicant was at sea until mid-October. Thereafter, for administrative efficiency, this case was grouped for scheduling purposes with three others in the same geographic location.
4. Directive, Enclosure 2.
5. *See Department of the Navy v. Egan*, 484 U.S. 518 (1988).
6. *See Egan*, 484 U.S. at 528, 531.
7. *See Egan*; Directive E2.2.2.
8. Directive, E2.A6.1.2.1. A history of not meeting financial obligations;
9. Directive, E2.A6.1.2.3. Inability or unwillingness to satisfy debts;
10. Directive, E2.A6.1.3.1. The behavior was not recent;
11. Directive, E2.A6.1.3.4. The person has received or is receiving counseling for the problem and there are clear indications that the problem is being resolved or is under control;
12. Directive, E2.A6.1.3.6. The individual initiated a good-faith effort to repay overdue creditors or otherwise resolve debts.