

DATE: November 25, 2005

In Re:

SSN: -----

Applicant for Security Clearance

CR Case No. 03-21180

DECISION OF ADMINISTRATIVE JUDGE

CLAUDE R. HEINY

APPEARANCES

FOR GOVERNMENT

Robert E. Coacher, Department Counsel

FOR APPLICANT

Pro Se

SYNOPSIS

Applicant mitigated security concerns arising from his failure to resolve his delinquent debts by paying them. The record evidence is sufficient to mitigate or extenuate the negative security implications stemming from his past financial considerations. Clearance is granted.

STATEMENT OF THE CASE

On November 4, 2004, the Defense Office of Hearings and Appeals (DOHA) issued a Statement of Reasons (SOR) to Applicant stating that DOHA could not make the preliminary affirmative finding [\(1\)](#) it is clearly consistent with the national interest to grant or continue a security clearance for Applicant. Security concerns were alleged under Guideline F (Financial Considerations). DOHA recommended the case be referred to an administrative judge to determine whether a clearance should be granted, continued, denied, or revoked.

On December 6, 2004, Applicant answered the SOR and requested a hearing. On February 16, 2005, I was assigned the case. On May 2, 2005, a Notice of Hearing was issued scheduling the hearing which was held on May 23, 2005. The record was kept open to allow Applicant to submit additional documents. Several documents were received and admitted into the record. On June 1, 2005, DOHA received a copy of the transcript (Tr.).

FINDINGS OF FACT

In his response to the SOR, Applicant admits owing two of the debts listed in the SOR. Those admissions are incorporated herein as findings of fact. After a thorough review of the entire record, I make the following additional findings of fact:

Applicant is a 26-year-old test engineer who has worked for a defense contractor for two years and is seeking to obtain a security clearance. He served in the Army from July 1992 through July 2003, leaving the Army as an E-5 with an honorable discharge (Gov Ex 3).

In January 2000, Applicant's wife purchased a 1997 Neon with \$242 monthly payments. She made a down payment of \$1,900 and made her first five monthly payments. (App Ex A) This was his wife's debt. He was never obligated on the debt and it should not have been reflected on his credit report. The car developed an electrical problem. The wiring burned. Applicant was overseas on a military exercise at the time of the trouble. The auto dealer was unsympathetic with Applicant's problem and would not fix the vehicle. Applicant paid \$500 to have the problem fixed, but the problem continued. Applicant's wife returned the car to the dealer. Following the voluntary repossession, the credit agency was unwilling to enter into a repayment plan. The creditor wanted the entire debt paid immediately.

In February 2005, Applicant's anticipated income tax refund check was intercepted to pay an outstanding store debt. The tax refund paid the entire debt (SOR paragraph 1.e).

Following the hearing, Applicant refinanced his home and used the equity to pay his debts. Following the refinancing, his \$728 monthly mortgage payment increased by \$150 (Tr. 27). Applicant's monthly truck payments are \$400 on a 2002 vehicle.

The six debts listed in the SOR total more than \$12,000. The current status of those debts follows:

SOR	Creditor	Amount Owed	Current Status
1.a	telephone debt	\$182	Paid. (See App Ex D)
1.b	credit card debt	\$390	Paid. (See App Ex D)
1.c	bank debt	\$405	Paid. (See App Ex C)
1.d	auto repossession	\$7,750	Paid. (See App Ex D)
1.e	federal store credit card debt	\$3,714	Paid. (See App Ex B)
1.f	debt	\$133	Applicant denied this debt and there is no evidence the debt is owed.
	Total debt alleged in SOR	\$12,574	

POLICIES

The Directive sets forth adjudicative guidelines to be considered when evaluating a person's eligibility to hold a security clearance. Disqualifying Conditions (DC) and Mitigating Conditions (MC) are set forth for each applicable guideline. Additionally, each decision must be a fair and impartial commonsense decision based upon the relevant and material facts and circumstances, the whole person concept, and the factors listed in Section 6.3 of the Directive. The adjudicative guidelines are to be applied by administrative judges on a case-by-case basis with an eye toward making determinations that are clearly consistent with the interests of national security. The presence or absence of a particular condition or factor for or against clearance is not determinative of a conclusion for or against an applicant. However, the adjudicative guidelines should be followed whenever a case can be measured against this policy guidance. Considering the evidence as a whole, I conclude the relevant guideline to be applied here is Guideline F (Financial Considerations).

BURDEN OF PROOF

The sole purpose of a security clearance decision is to decide if it is clearly consistent with the national interest to grant or continue a security clearance for an applicant. 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, an applicant from being eligible for access to classified information. The burden of proof in a security clearance case is something less than a preponderance of evidence, although the government is required to present substantial evidence to meet its burden of proof. Substantial evidence is more than a scintilla, but less than a preponderance of the evidence. All that is required is proof of facts and circumstances which 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. Additionally, the government must prove controverted facts alleged in the SOR. Once the government has met its burden, the burden shifts to an applicant to present evidence to refute, extenuate or mitigate the government's case. Additionally, an applicant has the ultimate burden of persuasion to obtain a favorable clearance

decision. [\(2\)](#)

As noted by the United States Supreme Court in *Department of Navy v. Egan*, 484 U.S. 518, 528 (1988), "no one has a 'right' to a security clearance." 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. The "clearly consistent with the national interest" standard compels resolution of any reasonable doubt about an applicant's suitability for access to classified information to be resolved in favor of protecting national security. Security clearance determinations should err, if they must, on the side of denials.

CONCLUSIONS

A person's relationship with his creditors is a private matter until evidence is uncovered demonstrating an inability or unwillingness to repay debts under agreed upon terms. Absent evidence of strong extenuating or mitigating circumstances, an applicant with a history of serious or recurring financial difficulties is in a position of risk that is inconsistent with the holding of a security clearance. Under Guideline F, an Applicant is not required to be debt free, but is required to manage his finances so as to meet his financial obligations. An applicant who is financially overextended is at risk of having to engage in illegal acts to generate funds. Directive E.2.A.6.1.1.

The Government has satisfied its initial burden of proof under Guideline F (Financial Considerations). Disqualifying Conditions (DC) 1 (E2.A6.1.2.1. *A history of not meeting financial obligations*) and 3 (E2.A6.1.2.3. *Inability or unwillingness to satisfy debts*) apply.

Applicant has paid five of the debts. Mitigating Condition 6 (E2.A6.1.3.6. *The individual initiated a good-faith effort to repay overdue creditors or otherwise resolve debts*) applies to these five debts. Applicant denies owing the debt of \$133 (SOR paragraph 1.f). There is no evidence this is his debt. Even if the debt did exist, a \$133 debt would not establish Applicant was financially overextended or is at risk of having to engage in illegal acts to generate funds. I find for Applicant as to financial considerations.

In reaching my conclusions I have also considered: the nature, extent, and seriousness of the conduct; Applicant's age and maturity at the time of the conduct; the circumstances surrounding the conduct; Applicant's voluntary and knowledgeable participation; the motivation for the conduct; the frequency and recency of the conduct; presence or absence of rehabilitation; potential for pressure, coercion, exploitation, or duress; and the probability that the circumstance or conduct will continue or recur in the future.

FORMAL FINDINGS

Formal Findings as required by Section 3, Paragraph 7, of Enclosure 1 of the Directive are hereby rendered as follows:

Paragraph 1 Guideline F (Financial Considerations): FOR APPLICANT

Subparagraph 1.a: For Applicant

Subparagraph 1.b: For Applicant

Subparagraph 1.c: For Applicant

Subparagraph 1.d: For Applicant

Subparagraph 1.e: For Applicant

Subparagraph 1.f: For 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 Applicant. Clearance is granted.

Claude R. Heiny

Administrative Judge

1. Required by Executive Order 10865, *Safeguarding Classified Information Within Industry*, as amended, and Department of Defense Directive 5220.6, *Defense Industrial Personnel Security Clearance Review Program* (Directive), dated January 2, 1992, as amended.
2. ISCR Case No. 93-1390 (January 27, 1995) at pp. 7-8; Directive, Enclosure 3, Item E3.1.15.