

DATE: February 27, 2004

In Re:

SSN: -----

Applicant for Security Clearance

ISCR Case No. 02-21498

DECISION OF ADMINISTRATIVE JUDGE

CHARLES D. ABLARD

APPEARANCES

FOR GOVERNMENT

Erin C. Hogan, Esq., Department Counsel

FOR APPLICANT

Pro Se

SYNOPSIS

Applicant is a 53-year-old employee of a defense contractor. He admitted to debts of approximately \$10,000.00. While he has paid a number of them in full or in part, he did not do so until the issuance of the Statement of Reasons and did not offer any evidence of payment on the largest judgment debt for \$5,500.00. Clearance is denied.

STATEMENT OF CASE

On July 31, 2003, the Defense Office of Hearings and Appeals (DOHA), pursuant to Executive Order 10865, *Safeguarding Information Within Industry*, 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 which detailed reasons 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 the case be referred to an administrative judge to determine whether a clearance should be granted, continued, denied, or revoked.

In a sworn but undated written statement, Applicant responded to the allegations set forth in the SOR, and elected to have his case decided on the written record in lieu of a hearing. Department Counsel submitted the Government's written case on October 16, 2003. A complete copy of the file of relevant material (FORM) was provided to Applicant, and he was afforded an opportunity to file objections and submit material in refutation, extenuation, or mitigation. Applicant responded on October 29, 2003 and the case was assigned to me on January 8, 2004.

FINDINGS OF FACT

Applicant admitted to 12 of the specific allegations in the SOR and denied four. The admitted facts are hereby incorporated as findings of fact.

After a complete and thorough review of the information in the record, and upon due consideration of same, I make the

following additional findings of fact.

Applicant is a 53-year-old employee of a defense contractor. He admitted to debts of approximately \$10,000.00 in his answer but showed evidence of having paid three of them and partially paid a fourth.

After the filing of the FORM Applicant submitted additional evidence of having paid three more in full and made a partial payment on another. He asserted that he would start paying the largest, a judgment debt for \$5,500.00, but no evidence was offered to establish that this would occur.

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.

An evaluation of whether the applicant meets the security guidelines includes consideration of the following factors: (1) the nature, extent, and seriousness of the conduct; (2) the circumstances surrounding the conduct; (3) the frequency and recency of the conduct; (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 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. Security clearances are granted only when "it is clearly consistent with the national interest to do so." Executive Order No. 10865 § 2. *See* Executive Order No. 12968 § 3.1(b).

Initially, the Government must establish, by something less than a preponderance of the 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. The applicant then bears the burden of demonstrating that it is clearly consistent with the national interest to grant or continue the applicant's clearance. "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, ¶ E2.2.2. "[S]ecurity clearance determinations should err, if they must, on the side of denials." *Egan*, 484 U.S. at 531. *See* Executive Order No. 12968 § 3.1(b)

Applicant's extensive debts have raised the allegation of violation of Guideline F in that an individual who is financially overextended is at risk of having to engage in illegal acts to generate funds. (E2.A6.1.1.) Conditions that could raise a security concern and maybe disqualifying include a history of not meeting financial obligations (E2.A6.1.2.1.) and evidence of inability or unwillingness to satisfy debts. (E2.A6.1.2.3.)

CONCLUSIONS

Upon consideration of all the facts in evidence, and after application of all appropriate legal precepts, factors and conditions above, I conclude the following with respect to all allegations set forth in the SOR.

While Applicant has made significant progress in paying a number of his debts, he has paid only a portion of two (SOR ¶ 1.d and h.) and nothing on the largest debt. (SOR ¶ 1.i.) He did not start his payment program until the SOR was filed. Thus, I conclude that the program he has now undertaken is too little and too late to satisfy the requirements for granting a security clearance.

After considering all the evidence in its totality and as an integrated whole to focus on the whole person of Applicant, I conclude that it is not clearly consistent with the national interest to grant clearance to Applicant.

FORMAL FINDINGS

Formal findings as required by the Directive (Par. E3.1.25) are as follows:

Paragraph 1. Guideline F: AGAINST APPLICANT

Subparagraph 1.a.: For Applicant

Subparagraph 1.b.: For Applicant

Subparagraph 1.c.: For 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.: Against Applicant

DECISION

After full consideration of all the facts and documents 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.

Charles D. Ablard

Administrative Judge