

DATE: March 8, 2004

In re:

SSN: -----

Applicant for Security Clearance

ISCR Case No. 02-22925

AMENDED DECISION OF ADMINISTRATIVE JUDGE

JAMES A. YOUNG

APPEARANCES

FOR GOVERNMENT

Marc Curry, Esq., Department Counsel

FOR APPLICANT

Pro Se

SYNOPSIS

Applicant mitigated the security concerns raised by all of his debts except his debt to the IRS. Applicant owes over \$12,000 to the IRS and failed to file his 2002 tax return until August 2003, after he received the statement of reasons from DOHA detailing the reasons for declining to grant him a security clearance. 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 24 July 2003, DOHA issued a Statement of Reasons (SOR), under the applicable Executive Order⁽¹⁾ and Department of Defense Directive,⁽²⁾ detailing the basis for its decision-security concerns raised under Guideline F (Financial Considerations) of the Directive. Applicant answered the SOR in writing on 25 August 2003 and elected to have a hearing before an administrative judge. The case was assigned to me on 15 September 2003. On 29 October 2003, I convened a hearing to consider whether it is clearly consistent with the national interest to grant or continue a security clearance for Applicant. At the hearing, I granted, without objection from Applicant, the amendment of ¶ 1.c. by deleting all words after "\$1,500.00," and adding ¶ 1.f., as follows:

1.f. On April 16, 2002, a judgment was entered against you in favor of Asset Acceptance Corp. in the amount of \$784.91. Subsequently, on August 19, 2003, the creditor obtained a garnishment of your wages in the amount of \$220 in order to satisfy the remaining amount due.

DOHA received the transcript (Tr.) of the proceeding on 6 November 2003. The record was left open so Applicant could submit an additional exhibit (Ex. I) which was admitted without objection from the department counsel.

I issued an opinion in this case on 18 November 2003 in which I found against Applicant on ¶ 1.a. of the SOR, but for Applicant on all remaining subparagraphs. In the final paragraph of the opinion, I incorrectly stated that it was in the national interest to grant Applicant a clearance. My finding against Applicant on ¶ 1.a. precluded granting Applicant a

clearance.

FINDINGS OF FACT

Applicant, a 36-year-old security officer for a defense contractor, is married and has two children. Both children are out of the house and serving on active duty with the U.S. armed forces.

The following chart summarizes the current status of the debts alleged in the SOR.

¶	Nature and Amount	Status	Record
1.a.	IRS tax lien for 1992-94, 1997 \$12,866	Agreement to pay \$410 @ month	Ex. I
1.b.	Collection acct \$124	Paid	Tr. 22
1.c.	Judgment for \$5,131	Satisfied in Mar 2000	Ex. A, C
1.d.	Collection acct \$107	Unpaid	Ex. G
1.e.	Delinq auto insurance acct \$263	Unpaid, Applicant claims included in costs of current policy	Ex G at 1 Ex. D
1.f.	Judgment, Apr 2002, \$784	Paying by garnishment	Ex. E

The IRS served a notice of levy on Applicant's employer and demanded the surrender of all wages, salary and other income owed or becoming payable to Applicant. On 6 August 2003, the IRS released all income greater than \$410 per month from the levy. Ex. B. On that date, Applicant walked into the IRS, filed his income tax return for 2002 and set up a payment plan to begin paying the IRS \$410 each month with payments to start on 22 December 2003. The plan covers tax years 1993 through 2002. Ex. I.

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 (DC) and mitigating conditions (MC) 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

In the SOR, DOHA alleged Applicant failed to satisfy a federal tax lien for unpaid taxes from 1992-94 and 1997 (¶ 1.a.), several delinquent debts (¶¶ 1.b. - 1.e.), and has a garnishment order to satisfy a judgment for a delinquent account (¶ 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 meeting his financial obligations. DC E2.A6.1.2.1. He was unable or unwilling to satisfy his debts. DC E2.A6.1.2.3. Applicant has paid most of his debts. The Government concedes that, except for his unpaid taxes, Applicant's current financial situation does not cause a security concern. Tr. 44-45. Applicant's tax situation remains a security concern. It appears his debt to the IRS still exceeds \$12,000. Although his payment plan with the IRS demonstrates some effort to resolve his debts (*see* MC E2.A6.1.3.6), it came only after he received the SOR, and will not start until next month. It appears the SOR also caused Applicant to file his 2002 federal income tax return. Under the circumstances, Applicant failed to demonstrate that he has his financial difficulties under control. Finding is against Applicant.

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. 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 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.

James A. Young

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.