

DATE: December 9, 2004

In re:

SSN: -----

Applicant for Security Clearance

ISCR Case No. 02-23805

DECISION OF ADMINISTRATIVE JUDGE

PHILIP S. HOWE

APPEARANCES

FOR GOVERNMENT

Francisco J. Mendez, Jr., Esq., Department Counsel

FOR APPLICANT

Pro Se

SYNOPSIS

Applicant is 46 years old and works for a defense contractor. Applicant bought two new cars in 1996 for a total of \$30,000. In 1998 he bought a \$118,000 house on a mortgage loan. In 1998 his wife became ill, ceased work, and Applicant could not pay his debts. Applicant filed Chapter 13 bankruptcy in 1999, but it was dismissed in May 2000 when Applicant failed to pay his monthly \$297 payment to the bankruptcy trustee. In the ensuing four years Applicant has paid nothing on any of his delinquent debts, and has borrowed from his 401k savings account to pay current debts. Applicant failed to disclose his delinquent debts on his 2001 security clearance application. Applicant has not mitigated the financial considerations and personal conduct security concerns. 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 February 24, 2004, DOHA issued a Statement of Reasons⁽¹⁾ (SOR) detailing the basis for its decision-security concerns raised under Guideline F (Financial Considerations) and Guideline E (Personal Conduct) of the Directive. Applicant answered the SOR in writing on March 19, 2004 and elected to have a hearing before an administrative judge. The case was assigned to me on June 2, 2004. On June 29, 2004, I convened a hearing to consider whether it is clearly consistent with the national interest to grant or continue a security clearance for Applicant. The Government and the Applicant submitted exhibits that were admitted into evidence. DOHA received the hearing transcript (Tr.) on July 9, 2004.

FINDINGS OF FACT

Applicant's admissions to the SOR allegations are incorporated here as findings of fact. After a complete and thorough review of the evidence in the record, and full consideration of that evidence, I make the following additional findings of fact:

Applicant is 46 years old, married, and employed by a defense contractor as an electronic technician. Applicant has

three children. His wife worked until she became ill in 1999 and they lost her \$15,000 annual salary that helped them pay the house mortgage and debts they had. Applicant also purchased two new cars in 1996, costing about \$30,000, for himself and his wife when their total annual salary was about \$51,000. Applicant bought a \$118,000 house in 1998. His mortgage went into foreclosure when he could not continue to make the nearly \$2000 monthly mortgage payments by the beginning of 2004. Applicant negotiated with the lender and on July 9, 2004, signed a note and security deed modification agreement with his lender that allows him to keep his house and reduce his payments to about \$1300 monthly henceforth. Applicant did not file Chapter 7 bankruptcy in 1999 when his debts became delinquent because he was told by someone that he would lose his house if he did so file. (Tr. 19 to 26, 54; Exhibits 1, 2, and A)

Applicant filed Chapter 13 bankruptcy on November 5, 1999, when his liabilities, including his house, totaled \$136,000. After Applicant made payments of \$297 monthly to the bankruptcy trustee for about four months, he stopped the payments, and the bankruptcy petition was dismissed on May 11, 2000. Applicant has not refiled the bankruptcy or paid the creditors listed in it. (Tr. 27, 28, 58; Exhibit 7)

Applicant has seven delinquent debts that were incurred from 1996 to 1999. These debts were included in Applicant's dismissed Chapter 13 bankruptcy. Since that dismissal in 2000 Applicant has been unable to pay these debts, that are listed as follows:

Applicant owes \$555 on a telephone bill that remains unpaid.

Applicant owes \$3,578 on a loan he took out in 1998 to make a mortgage payment. He made some payments, but then stopped paying when he filed the Chapter 13 bankruptcy in 1999.

Applicant owes \$9,095 for one of the cars he purchased in 1996. The auto was sold and Applicant claims the balance owed is closer to \$5,000.

Applicant owes \$945 on a credit card debt from December 1997. Applicant has not made payments on this debt after his financial condition worsened with his wife's illness in 1998.

Applicant owes \$9,003 for a car loan he took out in 1996 when he bought the second new car that year for himself and his wife. The car was repossessed and sold. This amount is the outstanding unpaid delinquent balance. Each car purchased that year was valued at about \$15,000, for a total debt of \$30,000 in new cars purchased in one year.

Applicant owes his mortgage company \$7,164 for unpaid mortgage payments on his house. This unpaid balance was included in the note and security deed modification signed on July 9, 2004, by Applicant and the mortgage holder.

Applicant owes \$3,757 to a creditor for furniture purchases made in 1998 for his new home. This debt became delinquent when Applicant was unable to repay it because his wife became ill with cancer when she was pregnant with their child in 1998.

Applicant's wife is now receiving \$500 monthly in disability payments, and Applicant has received two pay increases since he submitted his personal financial statement in May 2003. Applicant's net income per month is no longer zero, but approximately \$900. Applicant puts \$100 weekly into his Section 401k account. In May 2004 Applicant took out a \$1,300 loan from his 401k account to pay current bills, including an electric bill and car repair bill. He is repaying that loan. Applicant pays nothing on any of these delinquent debts, and is waiting for the mortgage company loan to be renegotiated, until he hires a debt consolidation company, to reduce his debt and interest rate. Applicant has not hired any company yet because the ones he contacted wanted \$500 up front to start the work. Applicant is also saving money to pay the mortgage company a lump sum to bring his arrearage payments up to date. (Tr. 27 to 40, 57, 73, 75, 78; Exhibits 2, 4 to 6, and 8)

Applicant received a tax refund of \$3,000 for tax year 2003 that he has saved. He also has saved \$2000 over four months to use as a payment to the mortgage company. Applicant has not been paying his \$2,000 mortgage payment during 2004, so he has extra income to save. Applicant has not paid about \$10,000 in 2004 and has saved from that amount \$2,000. Applicant does not know where the \$8,000 he did not pay on his mortgage in 2004 to date went except to various expenditures for which he has no record. (Tr. 40 to 45, 68, 69, 70)

Applicant completed his security clearance application (SCA) on March 7, 2001. Applicant did not disclose his delinquent debts that are listed in the SOR. Applicant claims to have not read the Question 38 (180 days delinquent on debts in the past seven years) and Question 39 (over 90 days delinquent on any debt) or not understood them, so he answered "no" to both questions. In fact, Applicant has seven delinquent debts at that time that were included in the bankruptcy that should have been disclosed. Applicant did disclose his bankruptcy. Applicant claimed he did not disclose certain debts because they were listed in the bankruptcy, but the telephone debt and the credit card debt were not listed in the bankruptcy. (Tr. 47 to 52, 59, 60 to 63; Exhibit 7)

Applicant submitted two quality awards from his employer. Applicant has been employed for about 20 years with this employer. (Tr. 70; Exhibits 1, B and C)

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.

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 of the Directive sets forth personnel security guidelines, as well as the disqualifying conditions (DC) and mitigating conditions (MC) under each guideline that must be carefully considered in making the overall common sense determination required.

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. Those assessments include: (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.

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). 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 ¶ 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 ¶ 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 § 3.1(b).

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

Guideline F: Financial Considerations

The Concern: An individual who is financially overextended is at risk of having to engage in illegal acts to generate funds.

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

- (1) A history of not meeting financial obligations.
- (3) Inability or unwillingness to satisfy debts.

Conditions that could mitigate security concerns include:

- (3) The conditions that resulted in the behavior were largely beyond the person's control due to a loss of employment and an unexpected medical emergency.

Guideline E - Personal Conduct:

The Concern: Conduct involving questionable judgment, untrustworthiness, unreliability, lack of candor, dishonesty, or unwillingness to comply with rules and regulations could indicate that the person may not properly safeguard classified information.

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

- (2) The deliberate omission, concealment, falsification or misrepresentation of relevant and material facts from any personnel security questionnaire, personal history statement or similar form used to conduct investigations, determine employment qualifications, award benefits or status, determine security clearance eligibility or trustworthiness, or award fiduciary responsibilities;

Conditions that could mitigate security concerns include:

None

CONCLUSIONS

Regarding Guideline F, the Government proved its allegations by substantial evidence. Applicant has seven unpaid debts totaling nearly \$34,000. He has not made any payments on them since at least May 2000 when his Chapter 13 bankruptcy was dismissed. During 2004 he has not paid his mortgage payment and not had to pay \$10,000 as of the hearing date. Of that amount, he has saved only \$2,000 with no explanation where the other \$8000 went. Applicant has about \$5000 saved up to pay his mortgagee a lump sum when they renegotiate the mortgage loan, but also borrowed \$1,300 from his 401k saving account to pay a current electric and car repair bill. Applicant has made no effort in six years to arrange debt repayments except his Chapter 13 bankruptcy filing in 1999 that he could not complete because the \$297 monthly payments to the bankruptcy trustee were too much for him to continue, according to him. Furthermore, within the 1996 to 1998 time period, Applicant loaded himself with \$30,000 in debt for two new cars, and a mortgage payment on a house. Clearly, Applicant cannot manage his money well and has not made any reasonable

good-faith efforts to repay his debts. Disqualifying Conditions (DC) 1 and DC 3 apply.

Applicant's wife became ill with cancer in 1998 and ceased working. The loss of her income caused the initial problem with Applicant's ability to repay some debts. In the intervening six years Applicant's wife applied for and received \$500 monthly disability payments, and they have a \$3000 tax refund received in 2004 they are holding. Applicant's wife's illness is not contemporaneous with his financial problems and delinquent debts. Applicant has not been proactive in paying his debts, but his testimony shows he waits passively for creditors to contact him or renegotiate his debts for him. The Mitigating Condition (MC) of his wife's illness is too distant in time to be applied to Applicant's case. He has had ample time, and with \$5,000 in savings some money with which to negotiate himself various installment repayment or settlement payment plans on his debts. He has not done so. I conclude this guideline against Applicant.

Regarding Guideline E and Applicant's failure to disclose his delinquent debts in answer to Questions 38 and 39 on his 2001 SCA, the Government showed by substantial evidence that Applicant knew he had debts, and did not list them on the SCA. DC 2 applies.

Applicant did not testify convincingly as to why he did not list his debts. Some were not listed on the bankruptcy petition. His bankruptcy was contemporaneous enough in time that he should have remembered his debts and listed them. I am not persuaded Applicant did not read or understand these simple questions about delinquent debts. Therefore, I conclude Applicant's failure to disclose them was deliberate. DC 2 applies.

I cannot apply any MC because none are applicable. Applicant had no credible explanation for his lack of disclosure. Therefore, I conclude this guideline 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: Against Applicant

Subparagraph 1.c: Against Applicant

Subparagraph 1.d: Against Applicant

Subparagraph 1.e: Against Applicant

Subparagraph 1.f.: Against Applicant

Subparagraph 1.g.: Against Applicant

Subparagraph 1.h.: Against Applicant

Subparagraph 1.i.: Against Applicant

Paragraph 2. Guideline E: AGAINST APPLICANT

Subparagraph 2.a: Against 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.

Philip S. Howe

Administrative Judge

1. Pursuant to Exec. Or. 10865, *Safeguarding Classified Information within Industry* (Feb. 20, 1960), as amended and modified, and Department of Defense Directive 5220.6, *Defense Industrial Personnel Security Clearance Review Program* (Jan. 2, 1992), as amended and modified (Directive).