

DATE: December 28, 2004

In re:

SSN: -----

Applicant for Security Clearance

ISCR Case No. 03-19875

ECISION OF ADMINISTRATIVE JUDGE

MICHAEL J. BRESLIN

APPEARANCES

FOR GOVERNMENT

Jennifer I. Campbell, Esq., Department Counsel

FOR APPLICANT

David Hill, Esq.

SYNOPSIS

Applicant is 47 years old. He successfully held a security clearance during his ten years in the U.S. Navy and during his 18 years of employment with a defense contractor. Applicant has a history of failing to meet his financial obligations, resulting in delinquencies, judgments, and garnishments. In 2001, Applicant initiated Chapter 13 bankruptcy proceedings for most of his outstanding debts, and has made regular payments on the repayment plan since that time. Applicant failed to resolve some delinquent debts not included in the bankruptcy action. Considering all the circumstances, including Applicant's efforts at repayment, the extent of the delinquent debts, the potential for pressure, exploitation, or duress, and his record of duty performance, Applicant has mitigated the security concerns arising from his financial problems. Clearance is granted.

STATEMENT OF THE CASE

On July 18, 2002, Applicant submitted an application for a security clearance. The Defense Office of Hearings and Appeals (DOHA) declined to grant or continue a security clearance for Applicant under Executive Order 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 (the "Directive"). On May 17, 2004, DOHA issued a Statement of Reasons (SOR) detailing the basis for its decision. The SOR alleges security concerns raised under the Directive, Guideline F, Financial Considerations.

Applicant answered the SOR in writing on June 14, 2004. He elected to have a hearing before an administrative judge.

The case was assigned to me on August 11, 2004. With the concurrence of the parties, I conducted the hearing on September 21, 2004. The government introduced seven exhibits. Applicant presented five exhibits and testified on his own behalf. The DOHA received the transcript (Tr.) on October 12, 2004.

FINDINGS OF FACT

Applicant admitted the allegations in ¶¶ 1.i and 1.j of the SOR. Applicant's Answer to SOR, dated June 14, 2004, at 1. Those admissions are incorporated herein as findings of fact. Applicant denied the remaining allegations in the SOR. After a complete and thorough review of the evidence in the record, I make the following additional findings of fact:

Applicant is 47 years old. Ex. 1, at 1. He served in the U.S. Navy from about 1976 to about 1986, and rose to the grade of E-7. *Id.* at 3. While he was in the Navy, Applicant successfully held a security clearance. Tr. at 34. In 1986, Applicant began working for a defense contractor. Ex. 1, at 2. Applicant's supervisors praise his duty performance and his personal qualities. Ex. B. Indeed, Applicant was recently promoted. *Id.*

Applicant began experiencing financial difficulties after his first divorce in 1986 when he was left with the bills from the marriage. Tr. at 36. Applicant admits he fell behind in his payments but was able to catch up. *Id.*

Applicant remarried in 1989 and was divorced for the second time in 1991. Ex. 1 at 2; Tr at 36. Applicant asserts that he was again left with the bills from the marriage and also had two children living with him. Tr. at 36. For these reasons, Applicant again fell behind on his bill payments and it took about one year to get caught up. *Id.*

Applicant contends he remained current with his debts for several years, but that he "got into trouble" in about 1996 or 1997. Tr at 36. Applicant acknowledged several reasons for his financial difficulties. Tr. at 29, 37. He rented a house in order to get his children into a certain school district, which cost more than the rent on their previous apartment. Tr. at 28, 46-47. He also purchased an automobile with a high monthly payment in an effort to re-establish his credit. Tr. at 29, 37. On top of that, his son was having psychological difficulties and his daughter needed dental surgery. *Id.* Applicant stated his insurance carrier did not pay the bills as expected. Tr. at 24.

As Applicant fell behind in his debts, he tried to make his payments by going to check-cashing businesses and taking out short-term loans for \$500.00 each. Answer, *supra*, at 1; Tr. at 29. Eventually, Applicant had five or six of these short-term loans at once and could not make the payments. Answer, *supra* at 1; Tr. at 29. Creditors repossessed Applicant's automobile (Ex. 2 at 1), resulting in a deficiency judgment. Ex. 5 at 14. Creditors began garnishing his wages. Tr. at 39, 48.

In about October 2001, Applicant filed for bankruptcy protection under Chapter 13 of the bankruptcy code, commonly called a "wage earner's" plan. Answer, *supra*, at 1; Tr. at 29. Under the plan, \$138.50 is taken from his paycheck every two weeks and paid out to his creditors. Tr. at 27. Applicant contends he chose the Chapter 13 plan because he wanted to pay his creditors. Tr. at 27. Under the plan, Applicant will pay about 70% of the debt he owes to the listed creditors. Tr. at 28. Applicant has made all the required payments under the bankruptcy plan. Answer, *supra* at 2; Ex. E.

Applicant is currently unmarried, but resides with his girlfriend whom he intends to marry one day. Tr. at 33. Applicant's two children do not live with him any longer and he does not provide support to them. *Id.*

At the hearing, Applicant testified about the debts listed in the SOR. With regard to the debt listed at ¶ 1.a, he explained that he was evicted from the apartment in July 2002 because of conduct by his son's friends. Tr. at 17, 38. Applicant claimed he never received notice of the debt or an explanation for the retention of his security deposit. Tr. at 17. He asserted that he first heard of the claim from the security investigator in 2003. *Id.*; Tr. at 39. Applicant stated that he called the creditor and requested a statement of the debt in order to pay it, but never received anything. Tr. at 18. He admitted that he did not intend to pay the debt unless pressured to do so. Tr. at 43. Even after receiving the SOR in May 2004, Applicant made no further effort to resolve the debt until about two weeks before the hearing. Tr. at 40-42. The claim remains unresolved.

With regard to the debt listed in ¶ 1.b of the SOR, Applicant denied that he owed it. Answer, *supra*, at 1. At the hearing, Applicant produced a statement showing the debt was paid. Ex. D.

Paragraph 1.c of the SOR listed an unpaid debt to a cable service provider. Applicant initially denied the debt. Answer, *supra*, at 1. At the hearing, he admitted he was mistaken and said he planned on paying it as soon as he got in touch with the creditor. Tr. at 19, 43.

Paragraph 1.d listed a debt to a hospital and 1.e listed a debt to a doctor. Applicant initially denied the debts. Answer, *supra*, at 1. At the hearing, he claimed he thought they were included in the bankruptcy proceeding and admitted that it was his fault they were not. Tr. at 44-45. Applicant said he intended to pay them, but had not done so. *Id.*

Paragraph 1.f of the SOR listed a debt to a jeweler. At the hearing, Applicant explained the debt was for an engagement ring for his girlfriend. He produced documentation indicating the debt was paid in June 2003. Ex. A.

Paragraphs 1.g and 1.h of the SOR listed debts for oral surgery. Applicant recalled the bills were for medical treatments for his daughter between 1995 and 1997. Tr. at 23-24. He related problems getting his insurance carriers to pay the debts because he was then changing insurers. Tr. at 24. Applicant claimed he no longer intended to pursue the insurers, but intended to pay the bills himself. Tr. at 46. There was no evidence of payment, however.

Paragraph 1.i of the SOR noted Applicant filed for bankruptcy in October, 2001. Applicant admitted this allegation. He produced evidence showing he is making his regular payments as required under the Chapter 13 wage-earner's plan. Ex. E. Debts totaling about \$4,500.00 remain to be paid under the plan. *Id.*

Paragraphs 1.j, 1.k, and 1.l of the SOR allege debts reduced to judgments or resulting in garnishment actions. These debts were included in the bankruptcy proceeding. Ex. 5; Ex. E.

POLICIES

In Executive Order 12968, *Access to Classified Information*, § 3.1(b) (August 4, 1995), the President provided that eligibility for access to classified information shall be granted only 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." A person granted access to classified information enters into a special relationship with the government. The government must be able to repose a high degree of trust and confidence in those individuals to whom it grants access to classified information.

To be eligible for a security clearance, an applicant must meet the security guidelines contained in the Directive. Enclosure 2 of the Directive sets forth personnel security guidelines, as well as the disqualifying conditions and mitigating conditions under each guideline. The adjudicative guidelines at issue in this case are:

Guideline F - An individual who is financially overextended is at risk of having to engage in illegal acts to generate funds. Directive, ¶ E2.A6.1.1.

Other conditions that could raise a security concern and may be disqualifying, as well as those which could mitigate security concerns pertaining to these adjudicative guidelines, are set forth and discussed in the conclusions below.

"The adjudicative process is an examination of a sufficient period of a person's life to make an affirmative determination that the person is eligible for a security clearance." Directive, ¶ E2.2.1. An administrative judge must apply the "whole person concept," and consider and carefully weigh the available, reliable information about the person. *Id.* An administrative judge should consider the following factors: (1) the nature, extent, and seriousness of the conduct; (2) the circumstances surrounding the conduct, to include knowledgeable participation; (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 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. *Id.*

Initially, the Government must present evidence to establish controverted facts in the SOR that disqualify or may disqualify the applicant from being eligible for access to classified information. Directive, ¶ E3.1.14. Thereafter, the applicant is responsible for presenting evidence to rebut, explain, extenuate, or mitigate the facts. 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 (App. Bd. Dec. 19, 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.

The decision to deny an individual a security clearance is not a determination as to the loyalty of the applicant. Exec. Ord. 10865, § 7. It is merely an indication that the applicant has not met the strict guidelines the President has established for issuing a clearance.

CONCLUSIONS

I considered carefully all the facts in evidence and the legal standards discussed above. I reach the following conclusions regarding the allegations in the SOR:

Paragraph E2.A6.1.2.1 of the Directive provides that it may be a disqualifying condition if the evidence reveals "a history of not meeting financial obligations." The evidence shows Applicant has a long history of failing to meet his financial obligations, resulting in numerous delinquencies, judgments, garnishments, and bankruptcy. Some of his current debts have been delinquent for many years. I find this potentially disqualifying condition applies.

Similarly, ¶ E2.A6.1.2.3 indicates that an "[i]nability or unwillingness to satisfy debts" may be disqualifying. Applicant admitted being unable to pay his debts on two occasions. At the present time, Applicant has the ability to pay off many of his seriously delinquent debts (including some he has known about for well over a year), but has chosen not to do so even with this action pending. I find Applicant has shown, at various times, both an inability and an unwillingness to satisfy his debts, therefore this potentially disqualifying condition applies.

The security concerns arising from Applicant's financial difficulties can be mitigated under certain circumstances. Under the Directive, ¶ E2.A6.1.3.1, it may be mitigating where "the behavior was not recent." Many of Applicant's financial problems occurred several years ago, after his divorces and the ensuing delinquencies. However, the financial irresponsibility that led to his bankruptcy (including over-extending himself with house rental, car loan, and short-term loan payments (Tr. at 29)), was more recent. Finally, Applicant's unwillingness to pay or otherwise resolve the delinquent debts set out in ¶¶ 1.a, 1.c, 1.d, 1.e, 1.g, and 1.h, continued up to the date of the hearing. I conclude this mitigating condition does not apply.

Paragraph E2.A6.1.3.2 of the Directive provides that it may be mitigating where the financial difficulty "was an isolated incident." Considering Applicant's numerous debts spanning many years, I conclude this mitigating condition does not apply.

Under ¶ E2.A6.1.3.3, it may be mitigating where, "[t]he conditions that resulted in the behavior were largely beyond the person's control (e.g., loss of employment, a business downturn, unexpected medical emergency, or a death, divorce or separation)." Applicant testified that the delinquencies occurring in about 1986 and 1991 were the result of divorce. It is understandable that the termination of a marriage may result in financial strain for a period of time. However, as noted above, the financial problems that led to his bankruptcy resulted from Applicant over-extending himself with house rental, car loan, and short-term loan payments. Although he testified that medical expenses for his children contributed to the need for bankruptcy, Applicant's evidence is insufficient to demonstrate these bills were substantial enough to constitute "conditions largely beyond [his] control." With regard to those delinquent debts which remain unpaid, Applicant offered nothing to show why he could not have paid or resolved these debts. I conclude this mitigating condition does not apply.

Proof that "[t]he 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," may be mitigating, under ¶ E2.A6.1.3.4 of the Directive. Applicant consulted an attorney regarding his delinquent debts, elected to resolve them through the bankruptcy process, and is making satisfactory progress on the plan. I conclude that this mitigating condition applies to the largest portion of Applicant's debts, which were included in the bankruptcy proceeding. With regard to other debts not addressed in the bankruptcy, Applicant testified that after his bankruptcy he called a credit counseling referral service, but never actually received credit counseling. Tr. at 64-65. Also with regard to those other debts, Applicant has expressed his intention to take some action to resolve them, but there is no clear indication the problems are being resolved. I find this mitigating condition does not apply to those debts not included in the bankruptcy proceeding.

Finally, it may be mitigating where "[t]he individual initiated a good-faith effort to repay overdue creditors or otherwise resolve debts." For the reasons discussed above, I conclude this mitigating condition applies to those debts included in the bankruptcy proceeding, but not to those other delinquent debts.

It is also important to consider all the evidence in light of the "whole person" concept. Applicant was a mature adult over 40 years old during much of this time. Applicant did not seem to be especially concerned about his delinquent debts; he pursued bankruptcy only after creditors began garnishing his wages, failed to include many creditors in the bankruptcy action, and has allowed several claims to languish, even after the initiation of this action. He testified that he currently had the means to pay off the delinquent debts very quickly (Tr. at 30), but failed to do so. This raises some doubts about Applicant's judgment and reliability, and the likelihood of recurrence.

On the other hand, Applicant has taken action to discharge most of his delinquent debts through bankruptcy or direct payment. Other than the debts included in the bankruptcy action, Applicant's delinquent debts (including disputed amounts) total only about \$2,500.00. Thus, the delinquent debts are not that extensive. More importantly, the potential for pressure, coercion, exploitation, or duress is extremely limited. Applicant has successfully held a security clearance for many years, including several years in the U.S. Navy and 18 years working for his current employer. There was no indication of any problem with his access to classified materials, even during periods when he was in far worse financial circumstances.

I considered the potentially disqualifying and mitigating circumstances in light of the "whole person" concept. I conclude Applicant has mitigated the security concerns arising from his financial difficulties.

FORMAL FINDINGS

My conclusions as to each allegation in the SOR are:

Paragraph 1. Guideline F: 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

Subparagraph 1.g: For Applicant

Subparagraph 1.h: For Applicant

Subparagraph 1.i: For Applicant

Subparagraph 1.j: For Applicant

Subparagraph 1.k: For Applicant

Subparagraph 1.l: For Applicant

DECISION

In light of all of 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.

Michael J. Breslin
Administrative Judge