

DATE: December 22, 2005

---

In re:

-----

SSN: -----

Applicant for Security Clearance

---

ISCR Case No. 03-23776

**DECISION OF ADMINISTRATIVE JUDGE**

**JAMES A. YOUNG**

**APPEARANCES**

**FOR GOVERNMENT**

Robert E. Coacher, Esq., Department Counsel

**FOR APPLICANT**

*Pro Se*

**SYNOPSIS**

Applicant and his wife incurred delinquent debts after she was laid off from her job in 1996. She found work shortly thereafter, albeit at lower pay. Applicant paid off some of the debts and asserts he is not responsible for those incurred by his wife. Applicant failed to mitigate security concerns raised by his financial situation. 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 11 February 2005, DOHA issued a Statement of Reasons<sup>(1)</sup> (SOR) detailing the basis for its decision—security concerns raised under Guideline F (Financial Considerations) of the Directive. Applicant answered the SOR in writing on 11 March 2005 and elected to have a hearing before an administrative judge. The case was assigned to me on 21 July 2005. On 14 September 2005, I convened a hearing to consider whether it is clearly consistent with the national interest to grant or continue a security clearance for Applicant. I kept the record open for Applicant to submit an additional piece of evidence. Department Counsel had no objection and the documents were admitted as Ex. N. DOHA received the hearing transcript (Tr.) on 27 September 2005.

**FINDINGS OF FACT**

Applicant is a 56-year-old classification management specialist for a defense contractor. He is also a Defense Security Service (DSS) certified facility security officer. He has worked for the contractor for 23 years and has held a security clearance for 27. He has been married for 18 years.

In 1996, Applicant's wife was laid off from her employment as a security specialist supervisor for the same defense contractor resulting in a 50 percent reduction in the couple's income. Tr. 27. The couple began to experience financial difficulties and was delinquent in paying some accounts. See Ex. K. At the time, Applicant's wife had several credit accounts on which she became delinquent. Applicant made some, but not all, of the payments for his wife. Instead, he concentrated on paying his debts because he was concerned about maintaining his security clearance. Tr. 28. Applicant's

wife found another job, working as an office manager for a doctor, and is now paying her current debts. The couple has always had a joint banking account and most of the bills are paid out of it.

Debt 1.a for \$5,385 and Debt 1.e for \$869 were from corporate credit cards issued to Applicant. The debt in 1.a appears to have been charged off in 1997 and the debt in 1.e was charged off in 2001. In June 2004, after Applicant had completed interrogatories from DOHA regarding his debts, Applicant paid off 1.a. The company appears to have given Applicant credit for paying 1.e, although there is no evidence to suggest he did. Ex. N; Ex. 5.

Deb 1.b for \$1,787 and Debt 1.c for \$1,744 were for separate accounts from the same creditor. Applicant asserts these debts may have belonged to his wife, and she acknowledged holding accounts with that creditor. He testified that he sent inquiries to the creditor that were never answered and the debts have subsequently been removed from his credit reports. He claims that he never asked his wife if they were her accounts, although they are still living together and she testified for him during the hearing. Exs. 4, 5.

Debt 1.d for \$4,557 is for an account from a major department store that was opened by Applicant's wife. He was an authorized buyer. He admits it was possible that he used the account, but doesn't think he did. In July 1998, the account was charged off due to non-payment. In June 2002, the account was turned over to a collection firm that sued Applicant's wife. She failed to timely answer or appear and a default judgment was entered against her on 9 May 2003 for more than \$3,300. The judgment remains unpaid.

Debt 1.f is for \$826 owed to a collection agency. Applicant claims he has no knowledge of this debt. He disputed this debt and it was removed from his credit report. Exs. 4, 5.

## 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 authorized the Secretary of Defense or his designee to grant applicants eligibility for access to classified information "only upon a finding that it is clearly consistent with the national interest to do so." Exec. Or. 10865, *Safeguarding Classified Information within Industry* § 2 (Feb. 20, 1960). Eligibility for a security clearance is predicated upon the applicant meeting the security guidelines contained in the Directive. 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.

Enclosure 2 of the Directive sets forth personnel 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 the applicant has not met the strict guidelines the President and the Secretary of Defense have established for issuing a clearance.

## CONCLUSIONS

### **Guideline F-Financial Considerations**

In the SOR, DOHA alleged Applicant was indebted for five accounts totaling more than \$11,000 (¶¶ 1.a-1.c, 1.e-1.f) and an unpaid judgment for \$4,557 (¶ 1.d). Applicant admitted the allegation in ¶ 1.a and denied the others. An applicant who is financially overextended is at risk of having to engage in illegal acts to generate funds. Directive ¶ E2.A6.1.1.

The Government's evidence established Applicant had several delinquent debts. Some were paid off before the SOR was issued, so they were not alleged. The Government clearly established the debts alleged in ¶¶ 1.a, 1.d, and 1.e. Applicant paid off the debt in ¶ 1.a, and was credited with paying the debt in ¶ 1.e, in 2004 after having to answer interrogatories about his financial condition. He insists the debt in ¶ 1.d is his wife's because she is the person who opened the account

and the judgment was entered against her. Applicant and his wife share a joint checking account from which their bills were paid. He admits being an authorized buyer on the account and testified he may have used it, although he does not remember doing so. Under these circumstances, I find the debt alleged in ¶ 1.d to be his debt for the purpose of determining his security worthiness. A judgment against a spouse that affects the family's total income is a factor in determining whether an applicant is financially overextended.

Applicant's wife admitted she had two accounts with the creditor whose debts are alleged in ¶¶ 1.b and 1.c. Applicant believes the debts belong to his wife and therefore should not affect his security clearance. Answer. He wrote to the creditor, but claims never to have received a response. The debts from both of these accounts no longer appears on his credit report. He never asked his wife if they were her accounts or compared the numbers on his wife's account with those in the adverse credit report. I conclude that, for the purposes of determining Applicant's security worthiness, these are his debts.

Applicant contested the debt alleged in ¶ 1.f. Ex. 4. Shortly thereafter, it was removed from his credit report. Ex. 5. Under all the circumstances, I find for Applicant on ¶ 1.f.

The Government established potentially disqualifying conditions under Guideline F. Applicant has a history of not meeting his financial obligations (DC E2.A6.1.2.1) and is unable or unwilling to satisfy his debts (DC E2.A6.1.2.3). The purpose of a security clearance adjudication is not to collect an applicant's personal debts, but to evaluate an applicant's judgment, reliability, and trustworthiness to make a decision about the applicant's security eligibility. ISCR Case No. 01-09691 at 3 (App. Bd. Mar. 27, 2003). Applicant has not shown the reliability and good judgment necessary to retain a security clearance.

Applicant argues the debts were not recent (MC E2.A6.1.3.1), amounted to an isolated incident (MC E2.A6.1.3.2), and the debts resulted from his wife's layoff-a condition largely beyond his control (MC E2.A6.1.3.3). Although perhaps not incurred recently, most of the debts alleged as delinquent still have not been paid. It is understandable that Applicant and his wife had financial difficulties immediately after she was laid off in 1996, but the debts persist to this day. I considered that Applicant has made a good-faith effort to repay the overdue debts alleged in ¶¶ 1.a and 1.e. MC E2.A6.1.3.6. But, this mitigating condition has only limited applicability. Applicant waited until faced with interrogatories to pay these debts, has not paid other debts, and insists they are his wife's debts for which he is not responsible. Applicant's reliance on the running of the state statute of limitations is misplaced. While it is legal method of avoiding paying debts, such reliance does not constitute a good faith effort to resolve debts within the meaning of MC 6. ISCR Case No. 99-9020 at 6 (App. Bd. Jun. 4, 2001).

After considering all of the circumstances of this case, I conclude Applicant failed to mitigate the financial security concerns raised in SOR ¶ 1. He still has delinquent debts outstanding and does not have a track record of fiscal responsibility.

### **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: For Applicant

**DECISION**

In light of all of the circumstances 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. As required by 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).