

DATE: July 13, 2005

In Re:

SSN: -----

Applicant for Security Clearance

ISCR Case No. 02-32663

DECISION OF ADMINISTRATIVE JUDGE

THOMAS M. CREAN

APPEARANCES

FOR GOVERNMENT

Eric H. Borgstrom, Esq., Department Counsel

FOR APPLICANT

Pro Se

SYNOPSIS

Applicant is a mechanist for a defense contractor. He previously worked for the railroad and was laid off, but found work shortly after the lay-off. He received less pay than he previously earned, until he was employed by the defense contractor. Applicant did not pay his debts. He now has a payment plan for some of his delinquent debts and is paying them off. He paid off two delinquent debts by borrowing money to pay them, thereby incurring more debt. Applicant presented information to mitigated only half of his delinquent debts. He did not deliberately omit reference to two judgments on his security clearance application. Applicant has mitigated the security concerns for personal conduct but not for the financial considerations. Clearance is denied.

STATEMENT OF THE CASE

On October 7, 2003, the Defense Office of Hearings and Appeals (DOHA) issued a Statement of Reasons (SOR) detailing the basis for its decision to deny a security clearance for Applicant. The action was taken under Executive Order 10865, *Safeguarding Classified Information within Industry* (February 20, 1990), as amended and modified, and Department of Defense Directive 5220.6, *Defense Industrial Personnel Security Clearance Review Program* (January 2, 1992), as amended and modified (Directive). Applicant acknowledged receipt of the SOR on October 21, 2003. The SOR alleges security concerns under Guideline F (Financial Considerations) and Guideline E (Personal Conduct) of the Directive.

Applicant answered the SOR in writing on January 6, 2004. He admitted all of the allegations under Guideline F, but did not respond to the allegation under Guideline E. At the hearing, Applicant denied the allegation under Guideline E. He requested a hearing before an administrative judge and the request was received by DOHA on January 9, 2004. Department Counsel was prepared to proceed with the case on January 5, 2005, and the case was assigned to me on January 10, 2005. A notice of hearing was issued on February 22, 2005, and the hearing convened on March 22, 2005. Ten government exhibits, five Applicant exhibits, and the testimony of the Applicant were received during the hearing. The record was held open for Applicant to submit additional documents. Applicant timely submitted additional documents and Department Counsel had no objection to consideration of these documents. The transcript was received

on April 4, 2005.

FINDINGS OF FACT

Applicant is a 45-year-old machinist employed by a defense contractor for over four years. Previously he had worked for a railroad for over 13 years before he was laid off by the railroad when it downsized. He found employment immediately after being laid off but at a reduced salary. A year after being laid-off by the railroad, Applicant was employed by his present defense contractor employer at a salary comparable to his railroad salary.⁽¹⁾

There are four allegations of delinquent debt in the SOR. Debt 1.a. in the SOR is a judgment from an unpaid personal loan for over \$7,000 with a finance company that Applicant used to consolidate and pay-off other smaller debts. The judgment was satisfied and the debt was paid in 2003.⁽²⁾ Debt 1.b. in the SOR is a judgment on an unpaid personal loan for approximately \$4,000 with the same finance company Applicant used to purchase a car. The judgment was satisfied and the debt was paid in 2003.⁽³⁾ Applicant received another personal loan to pay both judgments. There is no information on the status of payments on this loan.⁽⁴⁾

Debt 1.c. in the SOR is a delinquent debt for approximately \$2,400 for arrears on Applicant's mortgage. Applicant, in early 2005, made arrangements with the mortgage company to pay off his arrears first, before continuing to pay his normal monthly mortgage payment. Applicant has been paying this account as agreed. He did this to make the loan payments less each month.⁽⁵⁾

Debt 1.d. in the SOR is a personal loan originally for approximately \$4,000, and in arrears for approximately \$1,300. Applicant started making some payments on this loan in early 2005, and the balance on the loan has been reduced from over \$2,700, at the time of the SOR, to approximately \$1,800.⁽⁶⁾

Applicant has other loans and debts he is paying. These debts include loans for a car and a motorcycle. There is no information that the payments on these other debts are not current. Applicant uses a substantial amount of his monthly financial resources to keep these debts current. Applicant and his spouse's combined monthly income is approximately \$5,300. Their combined expenses and debt payments are over \$5,000, leaving only a few hundred dollars for other expenses.⁽⁷⁾ Applicant was only unemployed for a short time between jobs. While he received less pay for about a year, he has been employed for over three years at the same salary range before the lay-off from the railroad.

Applicant completed a security clearance application on June 3, 2002. He responded "NO" to question 37 asking if in the last seven years he had any judgments against him that had not been paid. In fact, there were the two judgments listed in allegations 1.a. and 1.b. in the SOR that had not been satisfied at the time. The judgments were entered in February 2001. Applicant started working for the defense contractor in April 2001. He completed the security clearance application in June 2002. Applicant completed the application over a period of time making a number of trips to the clerical staff at his place of employment who were assisting him with the application. He does not remember the question or completing the answer. He stated he did not intentionally provide a false answer to the question concerning judgments.⁽⁸⁾

POLICIES

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."⁽⁹⁾ Eligibility for a security clearance is predicated upon the applicant meeting the security guidelines contained in the Directive.⁽¹⁰⁾

The Directive sets out the adjudicative guidelines for making decisions on security clearances. Enclosure 2 of the Directive sets forth adjudicative guidelines for determining eligibility for access to classified information, and it lists the disqualifying conditions and mitigating conditions for each guideline. Each clearance decision must be fair, impartial, and a commonsense decision based on the relevant and material facts and circumstances, the whole person concept, and the factors listed in the Directive ¶ 6.3.1 through ¶ 6.3.6.

"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." An administrative judge must apply the "whole person concept," and consider and carefully weigh the available, reliable information about the person.⁽¹¹⁾ An administrative judge should consider: (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 applicant'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 of recurrence.⁽¹²⁾

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. The decision to deny an individual a security clearance is not necessarily a determination as to the loyalty of the applicant.⁽¹³⁾ 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 present evidence to establish controverted facts in the SOR that disqualify or may disqualify the Applicant from being eligible for access to classified information.⁽¹⁴⁾ Thereafter, Applicant is responsible for presenting evidence to rebut, explain, extenuate, or mitigate facts.⁽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."⁽¹⁶⁾ "[T]he Directive presumes there is a nexus or rational connection between proven conduct under any of the Criteria listed therein and an applicant's security suitability."⁽¹⁷⁾ "Any doubt as to whether access to classified information is clearly consistent with national security will be resolved in favor of the national security."⁽¹⁸⁾

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

Guideline F - Financial Considerations: A security concern exists for an individual who is financially irresponsible. An individual who is financially irresponsible may also be irresponsible, unconcerned, or careless in their obligations to protect classified information. Behaving responsibly or irresponsibly in one aspect of life provides an indication of how a person may behave in other aspects of life.

Guideline E - Personal Conduct: A security concern exists for conduct involving questionable judgment, untrustworthiness, unreliability, lack of candor, dishonesty, or unwillingness to comply with rules and regulations. Any of these characteristics in a person could indicate that the person may not properly safeguard classified information.

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

CONCLUSIONS

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

The government has established its case under Guideline F. Applicant's delinquent debts brings the matter within Financial Consideration Disqualifying Conditions E2.6.1.2.2 (*a history of not meeting financial obligations*) and E2.A6.1.2.3 (*inability or unwillingness to satisfy debts*). Applicant had debts when he worked for the railroad. The debts became delinquent when Applicant was laid off. However, he was not out of work long, but was working for less pay until he started with his present employer about four years ago. Applicant has not presented any evidence that he was unable to continue to make payments on his debts. I conclude the above disqualifying conditions have been established.

The Financial Considerations Mitigating Conditions to consider for Applicant are E2.A6.1.3.3 (*the conditions that resulted in the behavior were largely beyond the person's control (e.g.; loss of employment . . .)*) and E2.A6.1.3.6 (*the individual initiated a good-faith effort to repay overdue creditors or otherwise resolve debts*). It is recognized that being laid off and securing employment for a lesser salary may potentially affect an individual's ability to pay debts, particularly when an individual's debt load is high and requires almost all of an individual's salary to pay the debts. After Applicant was laid off from his position with the railroad, he was not unemployed for long. His new job paid less until he was employed by the defense contractor. Applicant did not present any information on his actions to live within his new salary. He did not present any evidence that he was unable to make payments on his debts. I conclude based on the information presented that Applicant's loss of employment was not a condition beyond his control that adversely and materially affected his ability to resolve his indebtedness.

Applicant satisfied the judgments in allegations 1.a. and 1.b. in the SOR by incurring new debt to pay off these delinquent debts. Applicant's incurring of new debts to pay an old debt is not a good-faith effort to resolve the delinquent indebtedness, even if part of Applicant's intent on taking out the new loan was to lower his monthly

payments on the loans. All Applicant did was shift one line of indebtedness to a new line of indebtedness. He has not resolved the amount of the indebtedness by paying on the loans. Applicant did not present any information on the status of this new debt. Applicant has now initiated efforts to repay his other overdue creditors or otherwise resolve debts. He only recently worked with his mortgage company to resolve the arrears on his mortgage. He is paying the arrears and will soon be back to paying interest and principle. Under the circumstances, Applicant initiated a good-faith effort to resolve debt 1.c. in the SOR. Applicant recently started making payments on debt 1.d. in the SOR and has in part paid down this loan. Under the circumstances, he initiated a good-faith effort to resolve this indebtedness. I conclude Applicant has not mitigated allegations 1.a. and 1.b. but did mitigate allegations 1.c. and 1.d. in the SOR.

The government has established its case under Guideline E by showing the answer to question 37 on the security clearance application pertaining to judgments was incorrect and brings the matter under Personal Conduct Disqualifying Condition E2.A5.1.2.2 (*the deliberate omission, concealment, or falsification of relevant and material facts from any personnel security questionnaire, personal history statement, or similar form used to conduct investigations. . . determine security clearance eligibility or trustworthiness . . .*). A finding of falsification requires evidence that the Applicant acted with an intent to mislead or deceive the government. The record evidence as a whole must be considered to determine whether there is direct or circumstantial evidence concerning Applicant's state of mind at the time the statement was made. Applicant made a number of trips to his employer's security office to complete his security clearance application. He did not pay close attention to the questions and answers. The security personnel transferred information from one version of the answers to another form during the process. Applicant stated he made a mistake by not reading the answers carefully. Applicant's testimony on the process for completing the application, how question 37 was answered, and his lack of intent to deceive is credible and understandable. I conclude Applicant did not deliberately, with an intent to deceive, answer question 37 incorrectly. He has mitigated the security concern under Personal Conduct.

I carefully considered all of the circumstances in light of the "whole person" concept. Applicant has mitigated the security concerns for personal conduct but not all of the concerns for financial considerations. In considering the "whole person" concept, I have taken into consideration that Applicant has taken steps to resolve his indebtedness and is starting to show success in resolving it. However, Applicant's actions to resolve the indebtedness has only been recent and he presented no information to explain why he could not take such action earlier. I conclude because of his financial status, Applicant is not eligible for access to classified information.

FORMAL FINDINGS

Formal findings for or against Applicant on the allegations set forth in the SOR, as required by Section E3.1.25 of Enclosure 3 of the Directive, are:

Paragraph 1, Guideline F: AGAINST APPLICANT

Subparagraph 1.a.: Against Applicant

Subparagraph 1.b.: Against Applicant

Subparagraph 1.c.: For Applicant

Subparagraph 1.d.: For Applicant

Paragraph 2, Guideline E: FOR APPLICANT

Subparagraph 2.a.: 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.

Thomas M. Crean
Administrative Judge

1. Tr. 33-34; Government Exhibit 2 (Security clearance application, dated Jun. 3, 2002).
2. Tr. 33-34; Applicant Exhibit D (Notice of satisfaction, dated Oct. 31, 2003).
3. Tr. 33-34; Applicant Exhibit E (Notice of satisfaction, dated Oct 31, 2003).
4. Tr. 66-67.
5. Tr. 40-45; Applicant Exhibit A (Letter from mortgage company, dated Feb. 3, 2005).
6. Tr. 68-70; Applicant Exhibit C (Credit union account statement, dated Mar. 18, 2005); Applicant's additional documents (Credit union account statement, dated May 24, 2005).
7. Tr. 70.
8. Tr. 55-60; 72-73.
9. *Department of the Navy v. Egan*, 484 U.S. 518 (1988).
10. Directive ¶ E2.2.1.
11. *Id.*
12. Directive ¶¶ E2.2.1.1 through E2.2.1.9.
13. *See* Exec. Or. 10865 § 7.
14. Directive ¶ E3.1.14.
15. ISCR Case No. 01-20700 at 3 (App. Bd. Dec. 19, 2002); *see* Directive ¶ E3.1.15.
16. ISCR Case No. 01-20700 at 3 (App. Bd. Dec. 19, 2002).
17. ISCR Case No. 95-0611 at 2 (App. Bd. May 2, 1996) (quoting DISCR Case No. 92-1106 (App. Bd. Oct. 7, 1993))
18. *Egan*, 484 U.S. at 531; *see* Directive ¶ E2.2.2.