

DATE: June 29, 2004

---

In re:

-----

SSN: -----

Applicant for Security Clearance

---

ISCR Case No. 02-33038

**DECISION OF ADMINISTRATIVE JUDGE**

**JAMES A. YOUNG**

**APPEARANCES**

**FOR GOVERNMENT**

Jennifer I. Campbell, Esq., Department Counsel

**FOR APPLICANT**

*Pro Se*

**SYNOPSIS**

Applicant failed to mitigate security concerns raised by his delinquent debts. Although he signed a petition for bankruptcy under Chapter 7 the day before the hearing and paid his attorney, the petition had not been filed and there is no evidence the debts would be discharged. 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 6 August 2003, 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 28 August 2003 and elected to have a hearing before an administrative judge. The case was assigned to me on 22 arch 2004. On 15 April 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. DOHA received the hearing transcript (Tr.) on 23 April 2004.

**FINDINGS OF FACT**

Applicant is a 42-year-old employee of a defense contractor. He had been promoted from helicopter mechanic to production supervisor because of his superior performance of duties, the positive feedback from customers, and his potential to handle increased responsibility. When the contract changed hands to a different defense contractor, the new contractor hired Applicant as a helicopter mechanic. This caused his pay to be reduced from \$21.60 an hour to \$17.01 an hour. Applicant served more than 20 years with the U.S. Marine Corps, retiring as a gunnery sergeant (E-7).

Applicant married in 1983. Applicant and his wife have three children. In approximately 1989, Applicant filed for Chapter 13 bankruptcy. Applicant's wife could not work because of an accident she was in, so the family ran up debts on credit cards. Applicant was able to pay off the debts by 1992 and the bankruptcy was discharged.

In 1994, Applicant left the marital home when his wife found out he had been carrying on an affair with another woman for a year. Applicant's wife refuses to agree to a divorce until all three children have completed college-probably in 2008. After he and his wife separated in 1994, Applicant's wife continued to receive his entire military pay and he lived off wages he earned from off-duty employment. Since his retirement, she gets all of his retired pay, but Applicant sends her additional funds each month. He supports his adopted son, who is 24 and HIV positive, so he can continue to receive military benefits.

Applicant has had considerable difficulties paying his federal income taxes from 1993 to the present. He pays the IRS \$125 a month to settle those debts. He currently owes about \$9,000. He also owes about \$4,000 in state income taxes for which he has no current payment plan.

On 14 April 2004, the day before the hearing, Applicant signed a petition for Chapter 7 bankruptcy and paid his attorney the necessary filing fees. Applicant testified the bankruptcy would be filed the following day. Applicant admits each of the debts listed on the SOR (¶ 1.a.-1.i.) totaling more than \$28,000 and has included each of them in his proposed bankruptcy filing. Applicant has never received any consumer credit counseling.

### 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 had delinquent debts (¶ 1.a.-1.g.) totaling more than \$28,000 and his monthly income approximates his monthly expenses such that he is unable to pay these debts (¶ 1.h.). 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 established by substantial evidence and Applicant's admissions each of the allegations in the SOR. Applicant has a history of not meeting his financial obligations (DC E2.A6.1.2.1.) and is unable or to satisfy his debts

(DC E2.A6.1.2.3.). In some respect, Applicant's financial circumstances were as a result of his separation from his wife. But Applicant admits he caused the marital breakup by carrying on an affair with another woman. He failed to take control of his finances thereafter. There is still no evidence the bankruptcy petition was filed and his debts are being resolved. And there are still unpaid state taxes for which Applicant produced no evidence to demonstrate he had been able to negotiate a settlement or payment plan with the state. Although the SOR did not allege the delinquent taxes as a reason for denying Applicant a security clearance, it is relevant in considering whether Applicant made good-faith efforts to resolve his financial problems and whether a bankruptcy, if eventually filed, would leave him in a financial position that would mitigate the security concerns. After carefully evaluating all of the evidence of record, I am unable to conclude the security concerns raised by his financial condition have been resolved. None of the mitigating conditions listed under the guideline apply. I find 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

### **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. 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).