

DATE: May 24, 2004

In Re:

SSN: -----

Applicant for Security Clearance

ISCR Case No. 02-33003

DECISION OF ADMINISTRATIVE JUDGE

CHARLES D. ABLARD

APPEARANCES

FOR GOVERNMENT

Nygina T. Mills, Esq., Department Counsel

FOR APPLICANT

Pro Se

SYNOPSIS

Applicant is a 41-year-old engineer with a defense contractor who incurred approximately \$14,000.00 in debts most of them arising from a divorce that was finalized in July 2003, one month before the issuance of the SOR. The debts were either paid or an agreed payment plan has been entered to mitigate the allegations concerning financial considerations under Guideline F. Clearance is granted.

STATEMENT OF CASE

On August 13, 2003, the Defense Office of Hearings and Appeals (DOHA), pursuant to Executive Order 10865, *Safeguarding Information Within Industry*, as amended and modified, and Department of Defense Directive 5220.6, *Defense Industrial Personnel Security Clearance Review Program* (Directive), dated January 2, 1992, as amended and modified, issued a Statement of Reasons (SOR) to Applicant which detailed reasons why DOHA could not make the preliminary affirmative finding under the Directive that it is clearly consistent with the national interest to grant or continue a security clearance for Applicant. DOHA recommended the case be referred to an administrative judge to determine whether a clearance should be granted, continued, denied, or revoked.

In a sworn written statement dated September 5, 2003, Applicant responded to the allegations set forth in the SOR, and elected to have his case decided on the written record in lieu of a hearing. Department Counsel submitted the Government's written case on November 25, 2003. A complete copy of the file of relevant material (FORM) was provided to Applicant, and he was afforded an opportunity to file objections and submit material in refutation, extenuation, or mitigation. Applicant responded on January 27, 2004 and the case was assigned to me on February 13, 2004. A supplemental submission was received and accepted without objection on May 10, 2004.

FINDINGS OF FACT

Applicant admitted to all but one of the specific allegations regarding debts in the SOR in his answer. In the two subsequent filings he offered evidence of payment of most of them. After a complete and thorough review of the

information in the record, and upon due consideration of same, I make the following additional findings of fact.

Applicant is a 41-year-old engineer with a defense contractor who incurred approximately \$14,000.00 in debts most of them arising from a divorce that was finalized in July 2003, two weeks before the issuance of the SOR.

An analysis of the debts and the divorce decree indicates that there were three credit card debts. Two of them were allocated to the Applicant's wife and they have been paid. The third was the responsibility of Applicant and it was paid in September 2003. There is a mortgage on the family home that was also allocated to the wife who took possession of the home and payments are current as of January 2004. A telephone bill for \$187.00 was in dispute and a settlement was being negotiated at the time of the response to the FORM. A student loan debt was shown to be in error.

The remaining significant debt was to a bank in the amount of \$5,453.00 at the time of the SOR. It had been reduced to \$4,332.00 at the time of the answer to the SOR. The supplemental submission of May 6, 2004 from a collection agency for the bank indicates that an agreement had been reached for payment of \$150.00 per month until the balance was paid.

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.

An evaluation of whether the applicant meets the security guidelines includes consideration of the following factors: (1) the nature, extent, and seriousness of the conduct; (2) the circumstances surrounding the conduct; (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 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. Directive, ¶ E2.2.1. Security clearances are granted only when "it is clearly consistent with the national interest to do so." Executive Order No. 10865 § 2. *See* Executive Order No. 12968 § 3.1(b).

Initially, the Government must establish, by something less than a preponderance of the evidence, that conditions exist in the personal or professional history of the applicant which disqualify, or may disqualify, the applicant from being eligible for access to classified information *See Egan*, 484 U.S. at 531. The applicant then bears the burden of demonstrating that it is clearly consistent with the national interest to grant or continue the applicant's clearance. "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* Executive Order No. 12968 § 3.1(b)

CONCLUSIONS

Upon consideration of all the facts in evidence, and after application of all appropriate legal precepts, factors, and conditions above, I conclude the following with respect to all allegations set forth in the SOR.

Applicant's extensive debts prompted the allegation of violation of Guideline F in that an individual who is financially overextended is at risk of having to engage in illegal acts to generate funds. (E2.A6.1.1.) Conditions that could raise a security concern and may be disqualifying include a history of not meeting financial obligations (E2.A6.1.2.1.) and evidence of inability or unwillingness to satisfy debts. (E2.A6.1.2.3.) Mitigating Conditions (MC) include the fact that the person has initiated a good faith effort to repay overdue creditors or otherwise resolve debts. (E2.A6.1.3.6.) and that the conditions resulting in the problems were largely beyond the person's control such as divorce. (E2.A6.1.3.3.)

There were a number of disputes between Applicant and his wife concerning responsibility for specific debts. The divorce decree resolved these issues and Applicant has made a conscientious effort to resolve the debts allocated to him by the decree.

While it would have been desirable and preferable if more had been done to resolve the delinquent debts earlier, the

coincidence in timing of the divorce and the filing of the SOR two weeks later made it difficult for the Applicant to do so. His actions since then have shown both a willingness and an ability to resolve the problems.

I conclude that, because the debts were either paid or an agreed payment plan has been entered, Applicant has mitigated the allegations concerning financial considerations under Guideline F.

In all adjudications the protection of our national security is of paramount concern. Persons who have access to classified information have an overriding responsibility for the security concerns of the nation. The objective of the security clearance process is the fair-minded, commonsense assessment of a person's trustworthiness and fitness for access to classified information.

The "whole person" concept recognizes that we should view a person by the totality of their acts and omissions. Each case must be judged on its own merits taking into consideration all relevant circumstances, and applying sound judgment, mature thinking, and careful analysis.

After considering all the evidence in its totality and as an integrated whole to focus on the whole person of Applicant, I conclude that it is clearly consistent with the national interest to grant clearance to Applicant.

FORMAL FINDINGS

Formal findings as required by the Directive (Par. E3.1.25) are as follows:

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

DECISION

After full consideration of all the facts and documents 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.

Charles D. Ablard

Administrative Judge