

DATE: November 18, 2003

In re:

SSN: -----

Applicant for Security Clearance

ISCR Case No. 02-33092

DECISION OF ADMINISTRATIVE JUDGE

JAMES A. YOUNG

APPEARANCES

FOR GOVERNMENT

Marc Curry, Esq., Department Counsel

FOR APPLICANT

Pro Se

SYNOPSIS

Since he separated from military service in 2001, Applicant has been unable or unwilling to pay all of his debts. Although he has enrolled in a debt management program, he has not started making payments. Thus, he has not established a track record from which one could conclude he has resolved his financial problems. 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 9 July 2003, under the applicable Executive Order ⁽¹⁾ and Department of Defense Directive, ⁽²⁾ DOHA issued a Statement of Reasons (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 4 August 2003 and elected to have a hearing before an administrative judge. The case was assigned to me on 2 September 2003. A hearing was scheduled for 26 September 2003, but was delayed at Applicant's request. On 30 October 2003, 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 transcript (Tr.) of the proceeding on 10 November 2003.

FINDINGS OF FACT

Applicant served eight and one-half years in the U.S. Army and now works for a defense contractor as a computer network administrator. He was married in November 1994 and divorced in February 2003. Applicant attends a local university and is doing well in his course work.

Applicant's debts and the current status of those debts is listed in the following chart:

	Nature and Amount	Status	Record
1.a.	Charged off debt \$3,578	Referred to debt management company	Tr. 28

1.b.	Charged off debt \$1,873	Referred to debt management company	Tr. 28
1.c.	Charged off debt \$718	Amt \$853 settled for \$450	Ex. F
1.d.	Delinq education debt \$1,892	Referred to debt management company	Tr. 28
1.e.	Charged off bank debt \$117	No evidence paid	Tr. 27
1.f.	Charged off debt \$1,088	Referred to debt management company	Tr. 28
1.g.	Delinq debt \$969	Referred to debt management company	Tr. 28
1.h.	Delinq foreign telephone debt \$2961	Disputes as wife's debt, but service was established in his name	Tr. 19, 25

On 4 October 2002, Applicant acknowledged that his monthly expenses exceeded his income by over \$400. Ex. 4 at 1. Since the SOR was issued, Applicant has fallen two months behind on his car payment of \$434 per month. Tr. 20-21.

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 several debts that were charged off his credit report (¶¶ 1.a. - 1.c., 1.e. - 1.f.) and delinquent debts he had not paid (¶¶ 1.d., 1.g. - 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 Applicant's debts. Since separating from military service, he 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.). Applicant claims he has made a good-faith effort to resolve some of his debts. *See* MC E2.A6.1.3.6. He has enrolled in a debt consolidation program and will start making payments on his delinquent debts in December. He testified that, as part of his cost-cutting efforts, he moved in with his brother to save on rent payments and utilities.

However, he does not know his brother's address. Tr. 34.

After carefully considering all of the evidence in this case, I am not convinced Applicant has demonstrated that it is clearly consistent with the national interest to grant him a clearance. With the exception of the debt alleged in ¶ 1.c., which was paid after the SOR was issued, Applicant has not established that he paid his debts. The debt management program he enrolled in does not begin until he starts making payments in December. Thus, he has no track record to show that he is making progress. He failed to produce any evidence that he is attempting to resolve his debt with the foreign telephone company. Claiming his wife should pay because she made the calls is not sufficient. As he subscribed to the telephone service, the debt is his. In addition, at the hearing, Applicant admitted being two months behind in his car payments of \$434 per month. Applicant failed to establish that he has his financial problems under control. Finding is 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. Exec. Or. 10865, *Safeguarding Classified Information within Industry* (Feb. 20, 1960), as amended and modified.
2. Department of Defense Directive 5220.6, *Defense Industrial Personnel Security Clearance Review Program* (Jan. 2, 1992), as amended and modified.