

DATE: December 29, 2004

In Re:

SSN: -----

Applicant for Security Clearance

ISCR Case No. 03-05139

DECISION OF ADMINISTRATIVE JUDGE

CLAUDE R. HEINY

APPEARANCES

FOR GOVERNMENT

Edward W. Loughran, Department Counsel

FOR APPLICANT

Pro Se

SYNOPSIS

Applicant owed 12 debts totaling just under \$40,000. All but one of the debts was discharged in bankruptcy. The remaining debt does not establish Applicant is financially overextended. The available information is sufficient to mitigate or extenuate the negative security implications stemming from his debts. Clearance is granted.

STATEMENT OF THE CASE

On October 17, 2003, the Defense Office of Hearings and Appeals (DOHA) issued a Statement of Reasons (SOR) to Applicant, stating that DOHA could not make the preliminary affirmative finding ⁽¹⁾ it is clearly consistent with the national interest to grant or continue a security clearance for Applicant. On November 3, 2003, Applicant answered the SOR and requested a hearing. I was assigned the case September 1, 2004. On September 1, 2004, a Notice of Hearing was issued scheduling the hearing which was held on September 20, 2004.

The Government's case consisted of ten exhibits (Gov Ex). The Applicant relied on his own testimony and five exhibits. (App Ex) Following the hearing, additional documents were received, provisions having been made at the time of the hearing for their submission following the hearing. Department Counsel having no objection to their admission, the submissions were admitted as App Ex F. The transcript (tr.) of the hearing was received on September 30, 2004.

FINDINGS OF FACT

The SOR alleges Financial Considerations. Applicant denies owing two of the debts and admits the rest. Those admissions are incorporated herein as findings of fact. After a complete and thorough review of the evidence in the record, and upon due consideration of same, I make the following additional findings of fact:

The Applicant is 41 years old, has worked for a defense contractor since January 2001, and is seeking to obtain a security clearance. Applicant and his wife are over-the-road, long-haul truckers who own and operate their own truck.

They have been hauling government freight since November 1992. Those that know him indicate he has maintained a high standard of quality and performance. "A person not only skilled in his profession, but deserving of respect for his knowledge and professionalism in the manner in which he carries out his duties." (App Ex B)

Applicant and his wife had no financial problems until 1998, when Applicant experienced difficulties getting paid for services provided:

. . . we would get paid and then we'd have to take time off and argue with them for about a week to get what was coming. So then we lost time. We were constantly getting farther behind . . . We'd have to take all of our paperwork and copies of our bills and everything else to get our money. (Tr. 53)

In 1998, they refinanced their home before their financial problems began. In February 2000, Applicant employed a debt consolation company to help him. He made \$795 per months payments through the company for 14 or 15 months--until April 2001. Nine of the debts (a, d, e, g, h, I, j, k, and l) were list in the SOR were included in this repayment plan. (App Exs C and D) He ended the arrangement when his creditors contacted him telling him they were not getting paid and were still assessing late fees. In January 2002, his truck's engine blew up that resulted in a \$22,000 repair bill and being out of work for seven weeks. The debt before they got back on the road was \$34,000, which has been repaid. In March 2003, the truck was paid off. In April 2003, Applicant injured his back and was off from work for 14 months during which time he received workman's compensation. The type of freight hauled by Applicant requires two drivers. With his back injury, both he and his wife were out of work as truckers. His wife got a job as a store clerk bring home \$1000 per month and disability insurance paid \$2,100 per month. (Tr. 81) Before his back injury their take home pay was averaging \$6,000 per month.

In January 2003, a judgment was filed against him by a credit card company. On April 6, 2004, Applicant filed for bankruptcy protection under Chapter 7 of the bankruptcy code. Applicant's bankruptcy attorney informed Applicant his wife did not have to be included in the bankruptcy unless she was a co-applicant on any of the debts. Since she was not a co-applicant, but merely a co-user, she was not obligated on the debts. (Tr. 34, 57) On July 19, 2004, Applicant's debts were discharged. (App Ex D) Applicant and his wife have approximately \$40,000 worth of equity in their home and \$30,000 equity in their truck.

The SOR lists 12 debts totaling approximately \$39,450. A summary of those debts is provided in the following table:

	Creditor	Amount	Current Status
a	Financial Company for jewelry	\$1,316	Discharged in 2004 bankruptcy.
b	furniture store debt	\$2,328	Discharged in 2004 bankruptcy.
c	credit card	\$332	Discharged in 2004 bankruptcy.
d	bank debt	\$2776	Discharged in 2004 bankruptcy.
e	credit card debt	\$4,763	Discharged in 2004 bankruptcy.
f	bank debt	\$2,664	unpaid.
g	bank credit card	\$3,632	Discharged in 2004 bankruptcy.
h	credit card	\$4,000	Discharged in 2004 bankruptcy.
i	bank credit card	\$5,584	Discharged in 2004 bankruptcy.
j	hardware store debt	\$3,565	Discharged in 2004 bankruptcy.
k	department store debt	\$2,308	Discharged in 2004 bankruptcy.
l	department store debt	\$6,182	Discharged in 2004 bankruptcy.
	Debt alleged in SOR	\$39,450	

POLICIES

The Adjudicative Guidelines in the Directive are not a set of inflexible rules of procedure. Instead they are to be applied

by Administrative Judges on a case-by-case basis with an eye toward making determinations that are clearly consistent with the interests of national security. In making overall common sense determinations, Administrative Judges must consider, assess, and analyze the evidence of record, both favorable and unfavorable, not only with respect to the relevant Adjudicative Guidelines, but in the context of factors set forth in section E 2.2.1. of the Directive. The government has the burden of proving any controverted fact(s) alleged in the SOR, and the facts must have a nexus to an Applicant's lack of security worthiness.

The adjudication process is based on the whole person concept. All available, reliable information about the person, past and present, is to be taken into account in reaching a decision as to whether a person is an acceptable security risk. Although the presence or absence of a particular condition for or against clearance is not determinative, the specific adjudicative guidelines should be followed whenever a case can be measured against this policy guidance.

Considering the evidence as a whole, this Administrative Judge finds the following adjudicative guidelines to be most pertinent to this case:

Financial Considerations, Guideline F, the Concern: An individual who is financially overextended is at risk of having to engage in illegal acts to generate funds. Unexplained affluence is often linked to proceeds from financially profitable criminal acts. E2.A6.1.1.

Conditions that could raise a security concern and may be disqualifying include:

1. A history of not meeting financial obligations. (E2.A6.1.2.1.)
3. Inability or unwillingness to satisfy debts. (E2.A6.1.2.3.)

Conditions that could mitigate security concerns include:

3. The conditions that resulted in the behavior were largely beyond the person's control (e.g., loss of employment, a business downturn, unexpected medical emergency, or a death, divorce or separation). (E2.A6.1.3.3.)
6. The individual initiated a good-faith effort to repay overdue creditors or otherwise resolve debts. (E2.A6.1.3.6.)

BURDEN OF PROOF

As noted by the United States Supreme Court in *Department of Navy v. Egan*, 484 U.S. 518, 528 (1988), "no one has a 'right' to a security clearance." 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." Executive Order 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.

Initially, the Government must establish, by substantial 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. All that is required is proof of facts and circumstances which indicate an applicant is at risk for mishandling classified information, or that an applicant does not demonstrate the high degree of judgment, reliability, or trustworthiness required of persons handling classified information. Where the facts proven by the Government raise doubts about an applicant's judgment, reliability or trustworthiness, then the applicant has the ultimate burden of establishing his security suitability with substantial evidence in explanation, mitigation, extenuation, or refutation, sufficient to demonstrate that despite the existence of guideline conduct, it is clearly consistent with the national interest to grant or continue his security clearance.

Security clearances are granted only when "it is clearly consistent with the national interest to do so." *See* Executive Orders 10865 § 2 and 12968 § 3.1(b). "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 "The clearly consistent standard indicates that security clearance determinations should err, if they must, on the side of denials." *See Egan*, 484 U.S. at 531. Doubts are to be resolved against the applicant.

CONCLUSIONS

The Government has satisfied its initial burden of proof under Guideline F, Financial Considerations. Under Financial Considerations, a person's relationship with his creditors is a private matter until evidence is uncovered demonstrating an inability or unwillingness to repay debts under agreed upon terms. Absent evidence of strong extenuating or mitigating circumstances, an Applicant with a history of serious or recurring financial difficulties is in a situation of risk inconsistent with the holding of a security clearance. Under Guideline F, an Applicant is not required to be debt free, but is required to manage his finances in such a way as to meet his financial obligations. The Applicant's financial history provides concern. Disqualifying conditions (DC) 1(A history of not meeting financial obligations) and 3 (Inability or unwillingness to satisfy debts.) apply.

In mitigation, there is no indication of extravagant expenditure. Applicant owed 12 debts totaling just under \$40,000. Until 1998, Applicant had experienced no financial difficulties. His financial problems started then by slow payment from his employer. In 2000, Applicant attempted to resolve his debts through \$800 monthly payments to a debt consolation company. This arrangement included 9 of the 12 creditors. In April 2001, after 14 or 15 months of payments, he ended the arrangement when his creditors informed him they were not being paid in a timely manner.

In January 2002, his truck's engine blew up, which resulted in a \$22,000 repair bill and his debts further increased by the seven weeks loss of work that resulted. In April 2003, Applicant injured his back and was off from work for 14 months. During this time the household income was reduced by half, dropping from \$6,000 to \$3,100. All of these problems-- pay problems with his employer, blown engine, medical problems resulting in lost time from work--were factors beyond his control. Mitigating Condition (MC) 3 (The conditions that resulted in the behavior were largely beyond the person's control (e.g., loss of employment, a business downturn, unexpected medical emergency, or a death, divorce or separation (E2.A6.1.3.3.) applies.

In April 2004, Applicant filed for Chapter 7 bankruptcy protection. In July 2004, 11 of the SOR debts were discharged and Applicant is no longer liable on these debts. Except for his engine trouble and back injury, the amount of his debts included in his bankruptcy would have been lower. Or, without the occurrence of these events, the bankruptcy might have been avoided all together. In any event, the bankruptcy has resolved these debts. MC 6 (The individual initiated a good-faith effort to repay overdue creditors or otherwise resolve debts E2.A6.1.3.6.) applies.

One bank card debt (i.f, \$2,664), was not listed in his bankruptcy. There is insufficient written documentation to prove the bank credit card has been paid. However, this debt, does not establish Applicant is financially overextended. He and his wife have equity of \$70,000 in their home and truck. I find for Applicant as to the financial considerations.

In reaching my conclusions I have also considered: the nature, extent, and seriousness of the conduct; the Applicant's age and maturity at the time of the conduct; the circumstances surrounding the conduct; the Applicant's voluntary and knowledgeable participation; the motivation for the conduct; the frequency and recency of the conduct; presence or absence of rehabilitation; potential for pressure, coercion, exploitation, or duress; and the probability that the circumstance or conduct will continue or recur in the future.

FORMAL FINDINGS

Formal Findings as required by Section 3., Paragraph 7., of Enclosure 1 of the Directive are hereby rendered as follows:

Paragraph 1 Financial .: FOR THE APPLICANT

Subparagraph 1.a.: For the Applicant

Subparagraph 1.b.: For the Applicant

Subparagraph 1.c.: For the Applicant

Subparagraph 1.d.: For the Applicant

Subparagraph 1.e.: For the Applicant

Subparagraph 1.f.: For the Applicant

Subparagraph 1.g.: For the Applicant

Subparagraph 1.h.: For the Applicant

Subparagraph 1.i.: For the Applicant

Subparagraph 1.j.: For the Applicant

Subparagraph 1.k.: For the Applicant

Subparagraph 1.l.: For the Applicant

DECISION

In light of all the circumstances presented by the record in this case, it is clearly consistent with the national interest to grant or continue a security clearance for the Applicant. Clearance is granted.

Claude R. Heiny

Administrative Judge

1. Required by Executive Order 10865, as amended, and Department of Defense Directive 5220.6 (Directive), dated January 2, 1992, as amended.