

DATE: October 13, 2004

In re:

SSN: -----

Applicant for Security Clearance

ISCR Case No. 03-06168

ECISION OF ADMINISTRATIVE JUDGE

THOMAS M. CREAN

APPEARANCES

FOR GOVERNMENT

Kathryn A. Trowbridge, Esq., Department Counsel

FOR APPLICANT

Pro Se

SYNOPSIS

Applicant is a logistics specialist for a defense contractor. He acknowledges two significant debts totaling approximately \$7,800. He refuses to pay the two major debts since he paid his fair share of the debts and the remainder should be paid by his wife whom he is divorcing. The latest credit report shows Applicant has a judgment against him and a debt in collection that have not been satisfied. Applicant was given an opportunity to provide information concerning the judgment and the debt in collection but chose not to provide information. Clearance is denied.

STATEMENT OF THE CASE

On April 30, 2004, the Defense Office of Hearings and Appeals (DOHA) issued a Statement of Reasons (SOR) detailing the basis for its decision to not grant a security clearance to Applicant. The action was taken under Executive Order 10865, *Safeguarding Classified Information within Industry* (Feb. 20, 1990), 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). Applicant acknowledged receipt of the SOR on May, 20, 2004. The SOR alleges security concerns under Guideline F (Financial Considerations) of the Directive. It alleges that Applicant is indebted to a bank for approximately \$2,358 which has been charged off as a bad debt (SOR, para 1.a), a debt past due over 120 days in the amount of \$5,402 (SOR, para 1.b) and a debt of \$70 that has been placed for collection (SOR, para 1,c).

Applicant answered the SOR in writing on June 3, 2004. He admits to the two debts (SOR paras 1.a and 1.b) but attributes the debts to a pending divorce from his wife. He states he has paid his share of the debts but that his wife has refused to pay her fair share. He also states he paid the debt of \$70 (SOR, para 1.c) on April 10, 2004 but provides no written documentation of such payment. He elected to have the matter decided on the written record in lieu of a hearing.

Department Counsel submitted the Government's written case on July 15, 2004 noting two more debts of the Applicant listed in a July 15, 2004 credit report. The debts are a judgment placed against the Applicant in February 1998 for

\$5,480 and a debt in collection for \$100.

Applicant received a complete file of the relevant material (FORM) on July 30, 2004, and was provided the opportunity to file objections and submit material to refute, extenuate, or mitigate the disqualifying conditions. His response was due August 29, 2004. As of September 24, 2004 he had not responded. The case was assigned to me on September 24, 2004.

FINDINGS OF FACT

Applicant is 60 years old and has worked for the same defense contractor as a logistics specialist for over 33 years. He has been continuously employed for over 35 years. (FORM, Item 4, p. 2, question 6 and Form, Item 3). He is separated from his wife and is in the process of filing for divorce. He has debts incurred during the marriage but refuses to pay more than his fair share of the debts contending his wife should pay her fair share of the debts He has purchased a truck and pays credit cards each month and considers he is not overextended. (FORM, Item 3).

Applicant admits he is indebted to a bank for approximately \$2,358 which has been charged off as a bad debt. He admits he is indebted for approximately \$5,402 which is over 120 days past due. Neither of these debts have been satisfied. He does not admit to being indebted to a cable company for \$70. He states he has paid this debt but provided no prove it has been satisfied.

The government notes from a July 15, 2004 credit report a judgment placed against Applicant in February 1998 for \$5,840 and a debt in collection for \$100. This credit report does not list a debt to the cable company of \$70.

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 judgement, 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.

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 (DC) and mitigating conditions (MC) 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." Directive ¶E2.2.1. An administrative judge must apply the "whole person concept," and consider and carefully weigh the available, reliable information about the person. *Id.* 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. Directive ¶¶ E2.2.1.1 through E2.2.1.9.

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, 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. "[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." ISCR Case No. 95-0611 at 2 (App. Bd. May 2, 1996) (quoting DISCR Case No. 92-1106 (App. Bd. Oct. 7, 1993)).

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 (App. Bd. Dec. 19, 2002). "[S]ecurity clearance determination should err, if they must, on the side of denials." *Egan*, 484 U.S. at 531; *see* Directive ¶ E2.2.2.

CONCLUSIONS

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

Under Guideline F (Financial Considerations (FC)) a security concern exists for an individual who is financially irresponsible. An individual who is financial irresponsibility 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. E2.A6.1.1.

Applicant's financial situation brings the matter within Financial Considerations Disqualifying Conditions (FC DC) E2.A6.1.2.1. (*A history of not meeting financial obligations*). The Government's documentary exhibits and Applicant's admission to the delinquent debts in the SOR constitutes substantial evidence of the disqualifying condition. The debts have been long outstanding and Applicant has taken no steps to satisfy the debts. The two additional debts raised in the FORM are additional factors in Applicant's history of not meeting financial obligations. I conclude that the disqualifying condition has been established.

Applicant's handling of his debts brings the matter within Financial Considerations Disqualifying Condition (FC DC) E2.A6.1.2.3. (*Inability or unwillingness to satisfy debts*). Applicant admits to the delinquent debts in the SOR and has taken no steps to satisfy his obligations. Instead, he tries to shift the responsibility to pay the obligation to the wife he is divorcing unless he is ordered to pay the debts by a judge. The judgment against Applicant and the debt in collection revealed in the July 15, 2004 credit report are further indications of debts Appellant has not taken steps to satisfy. I conclude that this disqualifying condition has been established.

Applicant states that he has paid the debt to the cable company. A debt to the cable company is not listed on the latest credit report of July 15, 2004. Based on Applicant's statement that he paid the debt and that it is not listed on the credit report, I conclude that the debt has been satisfied.

The Financial Considerations Mitigating Conditions (FC MC) that are relevant to this Applicant are E2.A6.1.3.1. (*the behavior was not recent*); E2.A6.1.3.2. (*it was an isolated incident*); E2.A6.1.3.3 (*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.A6.1.3.4 (*the person has received or is receiving counseling for the problem and there are clear indications that the problem is being resolved or is under control*); and E2.A6.1.3.6 (*the individual initiated a good-faith effort to repay overdue creditors or otherwise resolve debts*). The debts are long standing, not isolated incidents, not the result of behavior beyond the applicant's control, no debt counseling has been attempted, and Applicant has taken no steps to satisfy the debts. Applicant states he will pay the debts but he has not taken steps to do so. Shifting the burden to his former wife to "pay her fair share" is not a mitigating condition. I conclude that there are no mitigating conditions established by Applicant.

I carefully considered all the circumstances in light of the "whole person" concept. I conclude 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:

Paragraph1, Guideline F: AGAINST APPLICANT

Subparagraph 1.a. Against Applicant

Subparagraph 1.b Against Applicant

Subparagraph 1.c. 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