

DATE: April 27, 2005

In Re:

SSN: -----

Applicant for Security Clearance

ISCR Case No. 03-07410

DECISION OF ADMINISTRATIVE JUDGE

THOMAS M. CREAN

APPEARANCES

FOR GOVERNMENT

Marc E. Curry, Esq., Department Counsel

FOR APPLICANT

Pro Se

SYNOPSIS

Applicant is a senior computer systems analyst for a defense contractor. He accumulated delinquent debts when he was married and on active military duty. He is now divorced and has either satisfied or otherwise resolved the debts. He has mitigated security concerns for Financial Considerations. Clearance is granted.

STATEMENT OF THE CASE

On June 9, 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* (February 20, 1990), as amended and modified, and Department of Defense Directive 5220.6, *Defense Industrial Personnel Security Clearance Review Program* (January 2, 1992), as amended and modified (Directive). Applicant acknowledged receipt of the SOR on July 1, 2004. The SOR alleges security concerns under Guideline F (Financial Considerations) of the Directive.

Applicant answered the SOR in writing on July 19, 2004. He admitted seven and denied three of the allegations. His request for a hearing before an administrative judge was received by DOHA on July 23, 2004. Department Counsel was prepared to proceed with the case on January 11, 2005, and the case was assigned to me on January 13, 2005. A notice of hearing was issued on February 16, 2005, and the hearing was convened on March 9, 2005. Five government exhibits, two Applicant exhibits, and the testimony of the Applicant were received during the hearing. The record was held open for Applicant to submit further documentary information. Applicant timely submitted additional documentary information on April 4, 2005, and the information was received for the record without objection from Department Counsel. The transcript was received on March 18, 2005.

FINDINGS OF FACT

Applicant is a 37 year old computer systems analyst for a defense contractor. He has worked for the defense contractor for almost ten years after serving four years on active military duty. Applicant received a security clearance while on

active duty which was renewed when he started working for the defense contractor. He is divorced and supports a child from the marriage. The delinquent debts were incurred when Applicant was married, on active military duty, and were caused by demands of active military duty and improper money management by Applicant and his wife. [\(1\)](#)

The SOR lists ten allegations of delinquent debt. At the start of the hearing, Department Counsel and Applicant agreed five of the allegations, 1.b., 1.e., 1.f., 1.h., and 1.i. in the SOR, are mitigated by the Applicant paying the debts. Debt 1.k. in the SOR is a duplicate of debt 1.b. The SOR had a mistake and there is no allegation 1.g. Allegations 1.a., 1.c., 1.d., and 1.j., were examined at the hearing as the remaining allegations under Guideline F. [\(2\)](#)

Debt 1.a. in the SOR is a delinquent credit card debt. Applicant and the credit card company agreed to a settlement amount and Applicant paid the settlement prior to the hearing. The credit card company has not provided Applicant with a letter that the settlement was paid. Applicant at the hearing discussed the steps taken to get a receipt from the credit card company. Applicant, as requested and agreed, contacted the credit card company after the hearing and was informed a receipt would not be immediately provided. In the documentary information submitted after the hearing, Applicant listed the name and telephone number of the contact person at the credit card company to verify the debt was paid. Applicant also provided a copy of his bank statement showing a debit in his account for the amount of the debt. The bank statement does not note the payee of the debit. [\(3\)](#)

Debt 1.c. in the SOR is a delinquent department store credit card debt. Applicant contacted the company prior to the hearing and was informed the company had no record of a debt owed by Applicant. Applicant agreed to again contact the company after the hearing to again determine if there was an account in his name. This time, the department store located an account for Applicant. Applicant made a plan to pay the debt. [\(4\)](#)

Debt 1.d. in the SOR is a delinquent credit card debt. Applicant at the hearing stated he planned to pay this debt after the hearing. Applicant paid the debt as planned but he could not get a receipt immediately from the credit card company. In the subsequent submission of documentary information after the hearing, Applicant provided the name, telephone number, and identification number of a contact person at the credit card company to verify the debt was paid. He also provided a copy of his bank statement reflecting a debit for the exact amount of the debt on the day the debt was paid. [\(5\)](#)

Debt 1.j. in the SOR is a debt incurred by Applicant's former wife. Applicant contacted the creditor and was informed the debt was for his wife and he had no debt with the creditor. The debt was settled by his former wife's release in bankruptcy. Applicant provided a letter from the creditor that there is no debt for Applicant and that the debt has been satisfied. [\(6\)](#)

Applicant has sufficient monthly income to meet his monthly expenses. He has used the discretionary funds available each month to pay-off prior debts. [\(7\)](#)

POLICIES

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." [\(8\)](#) Eligibility for a security clearance is predicated upon the applicant meeting the security guidelines contained in the Directive. [\(9\)](#)

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 and mitigating conditions 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." An administrative judge must apply the "whole person concept," and consider and carefully weigh the available, reliable information about the person. [\(10\)](#) 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.⁽¹¹⁾

A person granted access to classified information enters into a special relationship with the government. The government must be able to repose a high degree of trust and confidence in those individuals to whom it grants access to classified information. The decision to deny an individual a security clearance is not necessarily a determination as to the loyalty of the applicant.⁽¹²⁾ 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 present evidence to establish controverted facts in the SOR that disqualify or may disqualify the Applicant from being eligible for access to classified information.⁽¹³⁾ Thereafter, Applicant is responsible for presenting evidence to rebut, explain, extenuate, or mitigate facts.⁽¹⁴⁾ An applicant "has the ultimate burden of demonstrating that it is clearly consistent with the national interest to grant or continue his security clearance."⁽¹⁵⁾ "[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."⁽¹⁶⁾ "Any doubt as to whether access to classified information is clearly consistent with national security will be resolved in favor of the national security."⁽¹⁷⁾

Based upon a consideration of the evidence, I find the following adjudicative guideline most pertinent to the evaluation of the facts in this case:

Guideline F - Financial Considerations: A security concern exists for an individual who is financially irresponsible. An individual who is financially irresponsible 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.

Conditions that could raise a security concern and may be disqualifying, as well as those which might mitigate security concerns, pertaining to the adjudicative guideline are set forth and discussed in the conclusions section below.

CONCLUSIONS

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

The government has established its case under Guideline F. Applicant's delinquent debts brings the matter within Financial Considerations Disqualifying Conditions Directive ¶ E2.A6.1.2.2 (*a history of not meeting financial obligations*); and Directive ¶ E2.A6.1.2.3 (*inability or unwillingness to satisfy debt*). Applicant accumulated delinquent debts over a period of time that were satisfied only recently. I conclude the above Financial Consideration Disqualifying Conditions have been established.

Applicant has taken steps to satisfy his delinquent debts. I have considered Financial Considerations Mitigating Condition Directive ¶ E2.A6.1.3.6 (*the individual initiated a good-faith effort to repay overdue creditors or otherwise resolve debt*). Applicant and department counsel agreed six of the delinquent debts were either duplicate debts or had already been satisfied. Applicant provided documentary information from the creditor that Applicant was not a debtor on another of the delinquent debts. Applicant did not believe he owed another debt. When informed the delinquent department store debt was valid, Applicant immediately made plans to pay the debt. Applicant satisfied the two remaining debts by paying them off, one before and one after the hearing. The debtors did not immediately provide Applicant with a receipt for the payments. However, Applicant provided information, to include name and telephone number of the contact person at each company to verify the payments. He also provided copies of his bank statements noting debits to his account in the exact amount of the debts. Applicant's testimony is credible and he has taken every action he said he would accomplish. He provided whatever credible documents he could to verify payments. Applicant

has either satisfied or made arrangements for payment of the debts. I conclude from the credible testimony of Applicant and the documentary information, Applicant initiated a good-faith effort to repay overdue creditors or otherwise resolve his debts. Applicant has established the mitigating condition under Guideline F and has mitigated the security concerns.

I carefully considered all of the circumstances in light of the "whole person" concept. I conclude Applicant is eligible for access to classified information.

FORMAL FINDINGS

Formal findings for or against Applicant on the allegations in the SOR, as required by Section E3.1.25 of Enclosure 3 of the Directive, are:

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.h.: For Applicant

Subparagraph 1.i.: For Applicant

Subparagraph 1.j.: For Applicant

Subparagraph 1.k.: For Applicant

DECISION

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

Thomas M. Crean

Administrative Judge

1. Tr. 30.
2. Tr. 8-10.
3. Tr. 24-25; Applicant's post-hearing information (Letter, dated Apr. 4, 2005) at 2.
4. Tr. 20-23; Applicant's post-hearing information (Letter, dated Apr. 4, 2005) at 3..
5. Tr. 24-25.; Applicant's post-hearing information (Letter, dated Apr. 4, 2005) at 4.
6. Tr. 25; Applicant's post hearing information (Letter from creditor, dated Apr. 1, 2005).
7. Tr. 40-56; Applicant exhibit A (Applicant's pay record, dated Mar 3, 2005); Applicant exhibit B (Monthly budget,

dated Mar. 2, 2005).

8. *Department of the Navy v. Egan*, 484 U.S. 518 (1988).

9. Directive ¶ E2.2.1.

10. *Id.*

11. Directive ¶¶ E2.2.1.1 through E2.2.1.9.

12. *See* Exec. Or. 10865 § 7.

13. Directive ¶ E3.1.14.

14. ISCR Case No. 01-20700 at 3 (App. Bd. Dec. 19, 2002); *see* Directive ¶ E3.1.15.

15. ISCR Case No. 01-20700 at 3 (App. Bd. Dec. 19, 2002).

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

17. *Egan*, 484 U.S. at 531; *see* Directive ¶ E2.2.2.