

DATE: October 7, 2005

In re:

SSN: -----

Applicant for Security Clearance

ISCR Case No. 03-07802

DECISION OF ADMINISTRATIVE JUDGE

JAMES A. YOUNG

APPEARANCES

FOR GOVERNMENT

Edward W. Loughran, Esq., Department Counsel

FOR APPLICANT

Pro Se

SYNOPSIS

Applicant failed to mitigate security concerns raised by his more than \$19,000 in delinquent debts. 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 27 December 2004, DOHA issued a Statement of Reasons⁽¹⁾ (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 6 January 2005 and elected to have a hearing before an administrative judge. The case was assigned to me on 23 ay 2005. On 28 June 2005, 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 hearing transcript (Tr.) on 14 July 2005.

FINDINGS OF FACT

Applicant is a 34-year-old naturalized U.S. citizen. He was born in Vietnam and emigrated to the U.S. in 1986. Tr. 17, 22. He has been employed by his present employer since 1989. He now works as a technician for storage technology. Applicant started dating AS, a native born U.S. woman, in 1990. In 1991, after their first child was born, they moved in together. Applicant became a U.S. citizen in 1993. Tr. 17. The couple never formally married, but had another child in 1994. Ex. 2 at 6-7.

Due to his Chinese ancestry, Applicant's mother wanted him to marry a Chinese woman. Applicant's parents arranged a marriage. Applicant and his brother traveled to China in January 1997 to meet the woman, LX. Applicant and LX married in January 1997 in a Chinese ceremony. After the marriage, Applicant and his brother returned to the U.S., and Applicant returned to live with AS and their children. Applicant's Chinese wife remained in China until July 1999 when she entered the U.S. and moved close to Applicant.

Applicant and AS separated in 2001, and AS filed for divorce. Prior to the breakup, the couple had a physical

confrontation over Applicant losing \$3,000 gambling and AS not paying a bill from a department store for six months. Ex. 9 at 7, 14. AS called the police and Applicant was arrested on a charge of domestic violence. He pled guilty to an amended charge of harassment. The court sentenced him to pay hundreds of dollars in fines, and he was ordered to attend anger management classes that cost \$4-5,000. Ex. 2 at 7-8; Exs. 9, 10. The court recognized the relationship as a common-law marriage and granted a divorce later that year. Applicant was ordered to pay \$770 per month in child support. The child support payments are taken directly from his pay. Ex. 2 at 6-7.

After his divorce from AS, Applicant started a relationship with JCT, a "Vietnamese national living in this country on a work permit." Ex. 2 at 3. LX acquired U.S. citizenship in January 2003. Applicant filed for divorce from LX the same month. In a signed, sworn statement to an agent of the Defense Security Service on 6 February 2003, Applicant claimed he provides some support for LX and remains "committed to [their] relationship and marriage out of respect for [his] parents and family customs. [He] does not believe in divorce." Ex. 2 at 11-12. The divorce was granted in July 2003. Tr. 40-41.

Applicant has had financial problems for some time. He filed for Chapter 7 bankruptcy in April 2002. His debts, totaling approximately \$40,400, were discharged in July 2002. Applicant enjoys gambling. "In the past, he has traveled to Las Vegas, NV, "three, four, six times a year" to gamble." Tr. 33; Ex. 2 at 10. He views his gambling losses as a "hobby or recreation, not a problem." Ex. 2 at 10. The most he ever lost on one of these trips was \$5-6,000. *Id.* Applicant asserts he only gambles with money in his possession. *Id.* at 11. In 1999 or 2000, Applicant bought a 1998 Corvette for more than \$34,000. He admits he couldn't afford the vehicle, but "liked the car so much, and [he] just pulled a second mortgage out." Tr. 34.

The following chart summarizes the status of Applicant's bad debts:

¶	Debt	Status	Reference
1.b	CP for broadband-\$244	No longer appears on CBR	Ex. 7
1.c	CF-\$5,040	Unpaid	Ex. 7 at 2
1.d	Credit cards-\$6,503	Discharged in bankruptcy	Ex. 8 at 14
1.e	WCP- \$381	Now \$13,394	Ex. 7 at 1
1.f	COB-\$1,208	Now \$1,272	Ex. 7 at 1

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 authorized the Secretary of Defense or his designee to grant applicants eligibility for access to classified information "only upon a finding that it is clearly consistent with the national interest to do so." Exec. Or. 10865, *Safeguarding Classified Information within Industry* § 2 (Feb. 20, 1960). Eligibility for a security clearance is predicated upon the applicant meeting the security guidelines contained in the Directive. 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.

Enclosure 2 of the Directive sets forth personnel 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 the applicant has not met the strict guidelines the President and the Secretary of Defense have established for issuing a clearance.

CONCLUSIONS

In the SOR, DOHA alleged Applicant had debts of more than \$40,000 discharged in bankruptcy in 2002 (¶ 1.a); has two

accounts in collection status totaling more than \$620 (¶¶ 1.b, 1.e); has three accounts that were charged off as bad debts totaling more than \$12,500 (¶¶ 1.c, 1.d, 1.f). Applicant admitted the bankruptcy alleged in ¶ 1.a, but denied the other allegations, claiming the debts should have been resolved in his bankruptcy. 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's evidence and Applicant's admissions constitute evidence of potentially disqualifying conditions under Guideline F. Through credit bureau reports, the Government established each of the allegations, except ¶¶ 1.b and 1.d. Applicant has a history of not meeting his financial obligations (DC E2.A6.1.2.1.) and is unwilling to satisfy his debts (DC E2.A6.1.2.3.). He has debts totaling more than \$19,000. The Government claims the debts are linked, in part, to gambling. *See* DC E2.A6.1.2.5. Applicant's gambling losses surely affected his disposable income, but there is no evidence he incurred gambling debts or it rendered him unable to pay his delinquent debts. Instead, Applicant was just unwilling to impose any discipline on his spending. He preferred to engage in a profligate lifestyle by gambling, purchasing expensive cars, and supporting at least two families. I conclude DC E2.A6.1.2.5 does not apply.

Applicant claims all of these debts should have been discharged in his bankruptcy. But a careful review of the bankruptcy petition shows Applicant did not even claim most of the alleged debts. Applicant presented no documents to corroborate his position or to show that any of the debts, except those alleged in ¶¶ 1.b and 1.d, had been resolved. Under the circumstances none of the mitigating conditions apply. I find 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: For Applicant

Subparagraph 1.c: Against Applicant

Subparagraph 1.d: For Applicant

Subparagraph 1.e: Against Applicant

Subparagraph 1.f: Against Applicant

DECISION

In light of all of the circumstances 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. As required by Exec. Or. 10865, *Safeguarding Classified Information within Industry* (Feb. 20, 1960), 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).