

DATE: August 22, 2005

In Re:

SSN: -----

Applicant for Security Clearance

ISCR Case No. 03-07859

DECISION OF ADMINISTRATIVE JUDGE

THOMAS M. CREAN

APPEARANCES

FOR GOVERNMENT

Richard A. Stevens, Esq., Department Counsel

FOR APPLICANT

Pro Se

SYNOPSIS

Applicant is a mechanic for a defense contractor. He served ten years on active military duty and had a security clearance at the time. After leaving active duty, he incurred delinquent debts for a mortgage on rental property he owned, for his apartment rent, for a telephone bill, and for a credit card bill. He paid his back due rent, his telephone debt, and credit card debts. He is now current on his mortgage payments for his rental property. On his security clearance application, Applicant answered "NO" to a question concerning judgments against him. He had a judgment against him, but he was paying that judgment monthly and thought "no" was the appropriate answer. Applicant has mitigated security concerns based on financial considerations and personal conduct. Clearance is granted.

STATEMENT OF THE CASE

On September 21, 2004, the Defense Office of Hearings and Appeals (DOHA) issued a Statement of Reasons (SOR) detailing the basis for its decision to deny a security clearance for 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 October 1, 2004. The SOR alleges security concerns under Guideline F (Financial Considerations) and Guideline E (Personal Conduct) of the Directive.

Applicant answered the SOR in writing on October 14, 2004. He admitted three and denied four of the allegations under Guideline F, and denied the allegation under Guideline E. Applicant's request for a hearing before an administrative judge was received by DOHA on October 18, 2004. Department Counsel was prepared to proceed with the case on May 19, 2005, and the case was assigned to me on May 20, 2005. A notice of hearing was issued on May 25, 2005, and the hearing convened on June 23, 2005. Eight government exhibits and the testimony of the Applicant were received during the hearing. DOHA received the transcript (Tr.) on June 30, 2005. The record was held open until July 15, 2005, for Applicant to submit additional documents. Appellant timely submitted additional documents marked as Applicant Exhibits A thru D. On July 19, 2005, Department Counsel had no objection to consideration of the documents.

FINDINGS OF FACT

Applicant is a 41-year-old mechanic for a defense contractor. He served ten years on active military duty and was released in 1996 with an honorable discharge because he could not make his rate. He was unemployed for approximately six months, from June to December 1996, after leaving active military duty. He was married in 1989 and divorced in 2004. His former wife was also on active military duty. He held a security clearance while on active military duty.⁽¹⁾ Applicant had owned six houses at one of his former duty stations that he rented for income. He now only owns two of the rental houses. The income each month from the rental houses, after all expenses are paid, is between \$500.00 and \$600.00.⁽²⁾

There are seven allegations of delinquent debts in the SOR. SOR allegations 1.a., 1.c., 1.d., and 1.e. are judgments for Appellant's past due apartment rent from September 2002, and June, July, and December 2003, totaling \$1,258.00.⁽³⁾ Prior to the hearing, Appellant paid all but approximately \$300.00 of this debt. After the hearing, he paid the additional amount on the debt and the debt is now satisfied.⁽⁴⁾

SOR allegation 1.b. is a mortgage debt for approximately \$40,000.00 for the two rental properties. After he left active military duty, Applicant was unable to keep current his payments on these houses, and the mortgage company foreclosed on the houses. The delinquent debt is for the debt remaining from the foreclosure. After the foreclosure, Applicant was able to redeem the mortgage and continue his interest in the properties. He has continued to pay on this mortgage, is current on his mortgage payments, and there is now no delinquent debt on this mortgage.⁽⁵⁾

SOR allegation 1.e. is a delinquent debt in collection for a home telephone bill. This debt has been paid and is now satisfied.⁽⁶⁾

SOR allegation 1.g. is a judgment for a delinquent credit card debt in collection with a law firm for approximately \$4,000.00. Applicant has been paying this debt under a garnishment by payroll deduction. All payments have been made, and the debt has been satisfied.⁽⁷⁾

Applicant completed a security clearance application on October 23, 2000. In response to question 37 asking in the last seven years had he any judgments against him that have not been paid, Applicant answered "NO". The judgment in SOR allegation 1.g. had been entered against Applicant in September 2000 and was outstanding. Applicant was paying on this judgment by mailing monthly payments to the law firm. He considered the debt as being paid, and that was the reason for his "NO" answer to question 37 on the security clearance application.⁽⁸⁾

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."⁽⁹⁾ Eligibility for a security clearance is predicated upon the applicant meeting the security guidelines contained in the Directive.⁽¹⁰⁾

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.⁽¹¹⁾ 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.⁽¹²⁾

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.⁽¹³⁾ 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.⁽¹⁴⁾ Thereafter, Applicant is responsible for presenting evidence to rebut, explain, extenuate, or mitigate facts.⁽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."⁽¹⁶⁾ "[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."⁽¹⁷⁾ "Any doubt as to whether access to classified information is clearly consistent with national security will be resolved in favor of the national security."⁽¹⁸⁾

Based upon a consideration of the evidence, I find the following adjudicative guidelines 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.

Guideline E - Personal Conduct: A security concern exists for conduct involving questionable judgment, untrustworthiness, unreliability, lack of candor, dishonesty, or unwillingness to comply with rules and regulations. Any of these characteristics in a person could indicate that the person may not properly safeguard classified information.

Conditions that could raise a security concern and may be disqualifying, as well as those which would mitigate security concerns, pertaining to the adjudicative guidelines 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 E2.A6.1.2.1 (*a history of not meeting financial obligations*), and E2.A6.1.2.3 (*an inability or unwillingness to satisfy debts*). Applicant accumulated delinquent debts because he could not meet his mortgage payments on rental property, pay his apartment rent, pay his telephone bill, or make credit card payments. Applicant's credit and financial history shows he has not met his financial obligations or is unwilling or unable to satisfy his debts. I conclude the above disqualifying conditions have been established.

I have considered Financial Consideration Mitigating Condition E2.A6.1.3.6 (*the individual initiated a good-faith effort to repay overdue creditors or otherwise resolve debts*). Applicant has presented documentary information that the four judgments against him for back rent have been paid, and the debt satisfied. Applicant has paid the past due amounts on the mortgage on his rental properties, and the mortgage is now current. Applicant has presented documentary evidence his telephone bill has been paid, and is now satisfied. Applicant also presented documentary evidence the judgment against him for credit card debt has been paid and satisfied, and the garnishment of his wages completed. Applicant has made a good-faith effort to resolve his debts and all debts are current. I conclude Applicant has mitigated the security concerns for financial considerations.

Applicant's answer of "NO" to the question concerning unpaid judgments brings the matter under Personal Conduct Disqualifying Condition E2.A5.1.2.2 (*the deliberate omission, concealment, or falsification of relevant and material facts from the personal security questionnaire, personal history statement, or similar form used to conduct investigations . . . determine security clearance eligibility or trustworthiness*). At the time he completed the security clearance application, Applicant had a judgment against him that he was paying. Applicant knew he had the judgment since he was paying the judgment each month. However, he believed that since he was paying the judgment, the answer to the question should be "NO". It is reasonable for an Applicant paying a judgment to believe that "NO" is a correct and appropriate answer to the question. I conclude Applicant did not deliberately answer the question falsely with an intent to deceive. Accordingly, I find for Applicant as to the allegation under Guideline E.

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.g.: For Applicant

Paragraph 2, Guideline E: FOR APPLICANT

Subparagraph 2.a.: 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. 19-21; Government Exhibit 1 (Security clearance application, dated Oct. 23, 2000).
2. Tr. 17; Tr. 24-25.
3. Tr. 27.
4. Appellant Exhibit B (Three money order receipts, dated Jul. 13 and Jul. 18, 2005).
5. Tr. 28-29.

6. Tr. 30; Appellant Exhibit C (Cancelled checks, dated Jul. 22 and Aug. 1, 2005).
7. Tr. 30-31; Appellant Exhibit D (Statement from Applicant's payroll office, dated Jul. 18, 2005).
8. TR. 36-38.
9. *Department of the Navy v. Egan*, 484 U.S. 518 (1988).
10. Directive ¶ E2.2.1.
11. *Id.*
12. Directive ¶¶ E2.2.1.1 through E2.2.1.9.
13. *See* Exec. Or. 10865 § 7.
14. Directive ¶ E3.1.14.
15. ISCR Case No. 01-20700 at 3 (App. Bd. Dec. 19, 2002); *see* Directive ¶ E3.1.15.
16. ISCR Case No. 01-20700 at 3 (App. Bd. Dec. 19, 2002).
17. ISCR Case No. 95-0611 at 2 (App. Bd. May 2, 1996) (quoting DISCR Case No. 92-1106 (App. Bd. Oct. 7, 1993))
18. *Egan*, 484 U.S. at 531; *see* Directive ¶ E2.2.2.