

DATE: January 19, 2005

In re:

SSN: -----

Applicant for Security Clearance

ISCR Case No. 03-09862

DECISION OF ADMINISTRATIVE JUDGE

MICHAEL J. BRESLIN

APPEARANCES

FOR GOVERNMENT

Kathryn McKinnon, Esq., Department Counsel

FOR APPLICANT

Jon L. Roberts, Esq.

SYNOPSIS

Applicant is a 50-year-old employee of a defense contractor. Applicant held a security clearance and met his financial obligations during his 20 years of military service. After retiring, Applicant bought a service station to operate his own business. Shortly thereafter, the city closed the road in front of his station for major construction, limiting access to his business for about six months and keeping away potential customers. Applicant's business failed, and he incurred numerous delinquent debts. Applicant later sold two houses and paid off all the creditors he could locate. Applicant has mitigated the security concerns arising from his financial difficulties. Clearance is granted.

STATEMENT OF THE CASE

On March 9, 2001, Applicant submitted a security clearance application. The Defense Office of Hearings and Appeals (DOHA) declined to grant or continue a security clearance for Applicant under Executive Order 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 (the "Directive"). On March 9, 2004, DOHA issued a Statement of Reasons (SOR) detailing the basis for its decision. The SOR alleges security concerns raised under the Directive, Guideline F, Financial Considerations.

Applicant answered the SOR in writing on April 30, 2004. Applicant elected to have a hearing before an administrative judge.

The case was assigned to me on August 12, 2004. With the concurrence of the parties, I conducted the hearing on September 28, 2004. The government presented eleven exhibits. Applicant presented Exhibits A through I, and testified on his own behalf. At the Applicant's request, I left the record open so that he could submit additional documents. On October 25, 2004, Applicant submitted Exhibits J through R, inclusive, which were admitted without objection. DOHA received the transcript (Tr.) on October 6, 2004.

FINDINGS OF FACT

Applicant denied the allegations in ¶ 1.m of the SOR. Answer to SOR, dated April 30, 2004, at 5. Applicant admitted all the remaining factual allegations in the SOR, and noted mitigating circumstances. Answer to SOR, *supra*, at 1-5. Those admissions are incorporated herein as findings of fact. After a complete and thorough review of the evidence in the record, I make the following additional findings of fact:

Applicant is 50 years old. Ex. 2 at 1. He is unmarried, with two children. *Id.* at 3; Tr. at 85.

Applicant entered active duty in the U.S. Navy in 1973. Ex. 2 at 5. After initial training, he was assigned as a sonar operator aboard a nuclear submarine. Tr. at 19. His duties required a security clearance, which he held throughout his 20 years of active duty service in the Navy. Ex. A; Tr. at 20, 22. He was also granted Personnel Reliability Program (PRP) status. Tr. at 22; Ex. A. Applicant's security clearance was never suspended or revoked. Tr. at 24. Applicant retired from the Navy in 1993.

After retiring from the U.S. Navy, Applicant worked for about 18 months for a defense contractor. Tr. at 25. Throughout this period, Applicant had good credit; he never had any bad debts, unpaid bills, or liens against him. Tr. at 25-26.

In 1995, Applicant bought a service station to operate as a personal business. Tr. at 26. Shortly after buying the business, the city closed the main street in front of his service station to install a sewer line. Tr. at 26. The road was closed for one month, and then allowed only limited access for five months. Answer to SOR, *supra*, at 2. The construction blocked the main access to Applicant's service station and reduced his business by about 50%. Tr. at 26-27. According to Applicant, many former customers never came back, even after the road reopened. *Id.* While his business struggled, Applicant ran up substantial bills for business and personal living expenses. *Id.*; Ex. 4 at 2. He also became seriously delinquent on his state and federal taxes. Finally, Applicant closed the service station in 1998. Tr. at 27.

Between 1998 and 2001, Applicant worked as an automotive repairman, both independently and as a shop manager. Tr. at 30. Applicant estimated his total income for that time period to have been about \$3,000.00, plus his military retirement income. Tr. at 38. He sought credit counseling, but was advised not to begin a debt consolidation plan unless he was sure he could follow through with it. Tr. at 62. Applicant moved from the state where he had his service station. He sold his home and paid off the state tax liens. Tr. at 79.

In 2001, Applicant accepted his present position with a defense contractor. *Id.* His job requires a security clearance. Tr. at 31. Applicant's supervisor considers him a valuable member of the company and trustworthy enough to hold a security clearance. Ex. I.

The salary from the defense contractor allowed Applicant to stay current on his new debts. Tr. at 38; Exs. B, C, D, E. He originally tried to sell his second home in the Spring of 2003, but did not find a buyer. He eventually sold his second house in June, 2004. Tr. at 59. Applicant paid off his federal tax delinquencies. Ex. N. Applicant then resolved most of the debts remaining after the failure of the service station business. At the hearing, Applicant provided evidence of payment of the delinquent debts listed in the SOR, paragraphs 1.a (Ex. F, Tab 5), 1.b (Ex. O), 1.f (Ex. F, Tab 4; Ex. G), 1.g (Ex. F, Tab 6; Ex. P), 1.h (Ex. G), 1.j (Ex. F, Tab 8), and 1.l (Ex. F, Tab 7; Ex. O). Applicant attempted to pay the delinquent debts listed in the SOR, paragraphs 1.c, 1.d, 1.e, and 1.k, but has been unable to locate the creditors currently holding the accounts. Applicant asserts the debt listed in ¶ 1.i is the same as the debt listed in ¶ 1.d. Tr. at 76.

POLICIES

In Executive Order 12968, *Access to Classified Information*, § 3.1(b) (August 4, 1995), the President provided that eligibility for access to classified information shall be granted only 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." 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 a determination as to the loyalty of the applicant. Exec. Ord. 10865, § 7. It is merely an indication that the applicant has not met the strict

guidelines the President has established for issuing a clearance.

To be eligible for a security clearance, an applicant must meet the security guidelines contained in the Directive. Enclosure 2 of the Directive sets forth personnel security guidelines, as well as the disqualifying conditions and mitigating conditions under each guideline. The adjudicative guidelines at issue in this case are:

Guideline F, Financial Considerations. An individual who is financially overextended is at risk of having to engage in illegal acts to generate funds. Directive, ¶ E2.A6.1.1.

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

"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 the following factors: (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 individual'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 or recurrence. *Id.*

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. Directive, ¶ E3.1.14. Thereafter, the applicant is responsible for presenting evidence to rebut, explain, extenuate, or mitigate the facts. 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). "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.

CONCLUSIONS

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

Guideline F, Financial Considerations

Paragraph E2.A6.1.2.1 of the Directive provides that it may be a disqualifying condition if the evidence reveals "[a] history of not meeting financial obligations." Similarly, ¶ E2.A6.1.2.3 indicates that an "[i]nability or unwillingness to satisfy debts" may be disqualifying. Applicant admitted being unable to pay his debts due to his failing business. Answer to SOR, *supra*. This included numerous debts arising between 1995 and 1998. The substantial evidence indicates that both these potentially disqualifying conditions apply.

The security concerns arising from Applicant's financial difficulties can be mitigated under certain circumstances. Under the Directive, ¶ E2.A6.1.3.1, it may be mitigating where "the behavior was not recent." The greatest part of Applicant's delinquent debts arose between 1995 and 1998. However, Applicant's inability to pay or otherwise resolve many of his delinquent debts continued after the date of the SOR until shortly before the date of the hearing. I conclude this mitigating condition does not apply.

Paragraph E2.A6.1.3.2 of the Directive provides that it may be mitigating where the financial difficulty "was an isolated incident." Applicant testified that he had no financial difficulties during his 20 years in the U.S. Navy. As discussed below, all of Applicant's delinquent debts arose from the failure of his service station business due to the road closure. Other than his debts from 1995-1998, he has been current on his financial obligations since his re-employment in 2001. I conclude this mitigating condition applies.

Under ¶ E2.A6.1.3.3, it may be mitigating where, "[t]he 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)." The delinquent debts at issue arose from the failure of his business, due to the city closing the road in front of his service station. The road was closed (or allowed only limited traffic) for about six months. Once his customers were forced to go elsewhere for service, they did not return, eventually leading to the business failure. Under the circumstances, that was a business downturn largely beyond his control. Therefore, I find this mitigating condition applies.

Proof that "[t]he 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," may be mitigating, under ¶ E2.A6.1.3.4 of the Directive. There is no evidence Applicant ever sought or received any financial counseling. He indicated he looked into a debt consolidation arrangement, but did not have the means to fulfill the obligations at the time. I find this mitigating condition does not apply.

Finally, it may be mitigating where "[t]he individual initiated a good-faith effort to repay overdue creditors or otherwise resolve debts." Directive, ¶ E2.A6.1.3.6. Applicant paid off many of his delinquent debts, largely through the sale of two homes. He has made an effort to find the creditors holding the four delinquent accounts that remain unpaid, but has not been successful. The four debts still unresolved total about \$2,600.00. I conclude this mitigating condition applies.

It is also important to consider all the evidence in light of the "whole person" concept. Applicant is a mature adult with experience handling his financial affairs. There is no evidence that he had financial difficulties before the ill-fated business enterprise, or after his employment with the defense contractor. He held a security clearance for about 20 years in the U.S. Navy, without adverse incident. He paid off almost all his delinquent debts, even though many were barred by the statute of limitations, indicating his commitment to repairing and maintaining his financial picture and his credit rating.

I considered the potentially disqualifying and mitigating circumstances in light of the "whole person" concept. I conclude Applicant has mitigated the security concerns arising from his history of failing to meet his financial obligations and his inability to pay his debts.

FORMAL FINDINGS

My conclusions as to each allegation in the SOR 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

Subparagraph 1.h: For Applicant

Subparagraph 1.i: For Applicant

Subparagraph 1.j: For Applicant

Subparagraph 1.k: For Applicant

Subparagraph 1.l: For Applicant

Subparagraph 1.m: For Applicant

DECISION

In light of all of 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 Applicant. Clearance is granted.

Michael J. Breslin

Administrative Judge