

DATE: June 22, 2005

In re:

SSN: -----

Applicant for Security Clearance

ISCR Case No. 03-10301

DECISION OF ADMINISTRATIVE JUDGE

JACQUELINE T. WILLIAMS

APPEARANCES

FOR GOVERNMENT

Robert E. Coacher, Esq., Department Counsel

FOR APPLICANT

Pro Se

SYNOPSIS

Between 1997 and 1999, Applicant incurred debts totaling approximately \$22,681. These delinquent debts are still outstanding. Along with these outstanding debts, he has a negative monthly income net remainder of approximately \$900. On or about June 1, 2004, he filed for Chapter 13 bankruptcy. Applicant has failed to successfully mitigate the security concern stemming from his history of not meeting financial obligations. 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 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 September 21, 2004, DOHA issued a Statement of Reasons (SOR) detailing the basis for its decision: security concerns under Guideline F (Financial Considerations). Applicant answered the SOR on October 14, 2004 and requested a decision without a hearing.

Department Counsel submitted the government's written case on January 20, 2005. Department Counsel provided a complete copy of the file of relevant material (FORM) to Applicant, along with notice of his opportunity to file objections and submit material to refute, extenuate, or mitigate the allegations. Applicant received the FORM on February 22, 2005. He responded to the FORM on March 7, 2005. The case was assigned to me on March 16, 2005.

FINDINGS OF FACT

Applicant admitted all of the allegations contained in the SOR. Those admissions are incorporated herein as findings of fact, and I make the following additional findings of fact:

Applicant is a 55-year-old electrical lab mechanic for a federal contractor. He has been in that position since 1985 and has had security clearances in the past. Applicant served 10 years in the Army. He is divorced and has one child.

During the period between 1997 and 1999, Applicant incurred debts totaling approximately \$22,681. The following delinquent debts are still outstanding: \$459 to a bank; \$1,131 turned over for collection; \$14,021 turned over for collection; \$7,079 past due debt. He has a negative monthly income net remainder of approximately \$900. On or about June 1, 2004, he filed for Chapter 13 bankruptcy.

Applicant indicates he had no knowledge of the existence of the outstanding debts on his credit report. He states that his ex-wife incurred these debts without his knowledge while they were separated in 1994; they were divorced in November 2001.

Although Applicant filed a Chapter 13 bankruptcy, the record does not specify what the payment plan will be. Applicant submitted a Verification of Mailing List from the bankruptcy court but this seven-page document lists names and addresses of company's with no explanation as to who they are or what, if anything, he owes each of them.

POLICIES

Enclosure 2 of the Directive sets forth adjudicative guidelines to be considered in evaluating a person's eligibility to hold a security clearance. Included in the guidelines are disqualifying conditions (DC) and mitigating conditions (MC) applicable to each specific guideline. Considering the evidence as a whole, Guideline F, pertaining to financial consideration, with its respective DC and MC, applies in this case. Additionally, each security clearance decision must be a fair and impartial commonsense decision based on the relevant and material facts and circumstances, the whole-person concept, along with the factors listed in the Directive. Specifically, these are: (1) the nature and seriousness of the conduct and surrounding circumstances; (2) the frequency and recency of the conduct; (3) the age of the applicant; (4) the motivation of the applicant, and the extent to which the conduct was negligent, willful, voluntary, or undertaken with knowledge of the consequences; (5) the absence or presence of rehabilitation, and (6) the probability that the circumstances or conduct will continue or recur in the future. Although the presence or absence of a particular condition or factor for or against clearance is not outcome determinative, the adjudicative guidelines should be followed whenever a case can be measured against this policy guidance.

The sole purpose of a security clearance decision is to decide if it is clearly consistent with the national interest to grant or continue a security clearance for an applicant.⁽¹⁾ The government has the burden of proving controverted facts.⁽²⁾ The burden of proof in a security clearance case is less than a preponderance of the evidence.⁽³⁾ Once the government has met its burden, the burden shifts to an applicant to present evidence of refutation, extenuation, or mitigation sufficient to overcome the case against him.⁽⁴⁾ Additionally, an applicant has the ultimate burden of persuasion to obtain a favorable clearance decision.⁽⁵⁾

No one has a right to a security clearance⁽⁶⁾ and "the clearly consistent standard indicates that security clearance determinations should err, if they must, on the side of denials."⁽⁷⁾ Any reasonable doubt about whether an applicant should be allowed access to sensitive information must be resolved in favor of protecting such sensitive information.⁽⁸⁾ The decision to deny an individual a security clearance is not necessarily a determination as to the loyalty of an applicant.⁽⁹⁾ 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.

Based upon consideration of all 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 when a person has significant delinquent debts. An individual who is financially overextended is at risk of having to engage in illegal acts to generate funds. Unexplained affluence is often linked to proceeds from financially profitable criminal acts.

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 below.

CONCLUSIONS

I have carefully considered all the facts in evidence and the legal standards. The government has established a case for disqualification under Guideline F. Based on all the evidence as a whole, Financial Considerations Disqualifying Conditions (FC DC) E2.A6.1.2.1 (*a history of not meeting financial obligations*) and FC DC E2.A6.1.2.3 (*inability or unwillingness to satisfy debts*), apply in this case. Applicant accumulated significant delinquent debt totaling approximately \$22,681. He has a negative monthly net balance of about \$900. Applicant filed the Chapter 13 bankruptcy to give himself some breathing room, but I do not know what the bankruptcy payment plan is and if all of the debts in the SOR were paid. Regardless, applicants are not denied security clearances because they file for bankruptcy. It is the underlying financial situation that is the basis for denials. The bankruptcies are merely evidence of how Applicant's financial situation has changed, or not, as a result of his exercise of this option. ⁽¹⁰⁾

None of the Financial Considerations Mitigating Conditions, I am unable to conclude that these debts were incurred due to the marital separation of Applicant and his wife. I have considered all the evidence in this case. I have also considered the "whole person" concept in evaluating Applicant's risk and vulnerability in protecting our national interests.

I am also persuaded by the totality of the evidence in this case that Applicant should not have a security clearance. Applicant has not mitigated the security concerns caused by his financial considerations. Accordingly, subparagraphs 1.a through 1.f of the SOR are decided against Applicant.

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:

Paragraph 1., Financial Considerations (Guideline F) AGAINST THE APPLICANT

Subparagraph 1.a Against the Applicant

Subparagraph 1.b Against the Applicant

Subparagraph 1.c Against the Applicant

Subparagraph 1.d Against the Applicant

Subparagraph 1.e Against the Applicant

Subparagraph 1.f Against the 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.

Jacqueline T. Williams

Administrative Judge

1. ISCR Case No. 96-0277 (July 11, 1997) at 2.
2. ISCR Case No. 97-0016 (December 31, 1997) at 3; Directive, Enclosure 3, ¶ E3.1.14.
3. *Dep't of Navy v. Egan*, 484 U.S. 518, 531 (1988).
4. ISCR Case No. 94-1075 (August 10, 1995) at 3-4; Directive, Enclosure 3, ¶ E3.1.15.
5. ISCR Case No. 93-1390 (January 27, 1995) at 7-8; Directive, Enclosure 3, ¶ E3.1.15.

6. *Egan*, 484 U.S. at 531.

7. *Id.*

8. *Id.*; Directive, Enclosure 2, ¶ E2.2.2.

9. Executive Order 10865 § 7.

10. *See* ISCR Case No. 97-0016, 1997 DOHA LEXIS 885 at **10-11 (App. Bd. Dec. 31, 1997).