

DATE: February 28, 2006

In re:

SSN: -----

Applicant for Security Clearance

ISCR Case No. 03-16576

DECISION OF ADMINISTRATIVE JUDGE

MICHAEL J. BRESLIN

APPEARANCES

FOR GOVERNMENT

Sabrina Redd, Esq., Department Counsel

FOR APPLICANT

Pro Se

SYNOPSIS

Applicant experienced severe financial difficulties resulting from circumstances beyond his control, including his call to active duty in the U.S. Army in support of the Gulf War, loss of business income, and unexpected medical expenses. After that time, he worked diligently to pay off or resolve his obligations, and succeeded in reducing his debts substantially. Applicant mitigated the security concerns arising from his financial difficulties. Clearance is granted.

STATEMENT OF THE CASE

On October 21, 2002, 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 Department of Defense Directive 5220.6, *Defense Industrial Personnel Security Clearance Review Program* (Jan. 2, 1992), as amended (the "Directive"). On May 11, 2005, DOHA issued a Statement of Reasons (SOR) detailing the basis for its decision. The SOR alleges security concerns raised under Guideline F, Financial Considerations, of the Directive.

Applicant answered the SOR in writing by letter dated June 2, 2005, with attachments. He elected to have a hearing before an administrative judge.

I received the case assignment on August 1, 2005. I originally scheduled the hearing for September 13, 2005, but then granted a continuance at Applicant's request. With the concurrence of Applicant and Department Counsel, I convened the hearing on November 17, 2005. The government introduced Exhibits 1 through 7. Applicant's counsel provided Exhibits A through BB, and the testimony of one witness. Applicant also testified on his own behalf. At Applicant's request, I left the record open for additional matters. On December 20, 2005, Applicant submitted Exhibits BB through GG, which were admitted without objection. DOHA received the final transcript of the hearing (Tr.) on December 1, 2005.

FINDINGS OF FACT

Applicant admitted the factual allegations in ¶¶ 1.c through 1.j, 1.n(1), 1.o, 1.q, 1.s through 1.u, and 1.w of the SOR. (Applicant's Answer to SOR, June 2, 2005.) Those admissions are incorporated herein as findings of fact. He denied the factual allegations in ¶¶ 1.a, 1.b, 1.k through 1.m, 1.n(2), 1.p, 1.r, 1.v, and 1.x of the SOR. (*Id.*) After a complete and thorough review of the evidence in the record, I make the following additional findings of fact.

Applicant was born in August 1947. (Ex. 1 at 1.) He began college in 1965 and was awarded a bachelor of science degree in June 1970. (*Id.* at 2.)

In November 1970, Applicant accepted a commission as an officer on active duty in the U.S. Army. In November 1980, he left active duty and joined the U.S. Army Reserve in January 1981. (Ex. 1 at 4.) Applicant's Army experience included duty as an instructor for the Signal Officer Advanced Course, executive officer for a signal battalion, staff officer for a signal brigade, and commander for a signal battalion. (Ex. B.) He held a security clearance (including, at times, a high-level clearance) throughout his service in the Army. (Tr. at 16.)

After leaving active duty in 1980, Applicant became a real estate agent working for an established firm. In July 1985, he opened his own real estate company, financing it with personal savings, a second mortgage, short-term financing, and personal credit cards. (Ex. A at 2.) According to Applicant, the business did not grow as quickly as he had envisioned, but it started to become profitable in 1989 and he started paying down accumulated debt. (*Id.*)

In early 1991, the Army called Applicant to active duty for almost one year in support of the first Gulf War. (Ex. A at 2.) He was deployed overseas in support of Operations DESERT SHIELD and DESERT STORM for five months. Applicant arranged for his bookkeeper to pay his bills in his absence. (Ex. B at 6.) When Applicant left, his partner fired the bookkeeper and did not pay Applicant's bills. (Ex. B at 6.) He remained on active duty until December 1991. (*Id.*) When Applicant returned, he was faced with substantial unpaid accounts. He became involved in a legal dispute with his partner over the business; in 1993, Applicant had to sell his interest in the business at a loss. (Ex. A at 2.)

Applicant began a new real estate company in 1993, and by 1996 his financial circumstances had begun to improve. (*Id.*) However, a series of business setbacks between 1996 and 1998 generated financial hardship for Applicant. (Ex. A at 2-3.) In February 1998 he was diagnosed with skin cancer, resulting in significant medical expenses. (Ex. A at 3.)

In 1997, Applicant sought advice on managing his debts. He arranged a debt consolidation plan and made payments of \$1,000.00 a month for about five months, but was unable to continue making the payments. He considered filing for bankruptcy, but chose not to pursue that option. (Tr. at 76-77.) Applicant elected to resolve his delinquent debts on his own, by paying or settling each debt in turn, as funds became available. (Ex. A at 3.)

In October 1999, Applicant accepted his current position as a senior research analyst for a defense contractor. The company provides technical support to the U.S. Army by exploring future tactical communications capabilities. (Ex. A at 3; Ex. B at 4, 5; Tr. at 16.) His supervisors commend his skill, dedication, and integrity. (Ex. B; Tr. at 28-29.)

Applicant made substantial progress in resolving his delinquent debts. His new position provided a steady, reliable source of income essential to financial planning. He refinanced his home to lower his monthly payment, making additional funds available to apply to his outstanding debts. (Ex. Z.) Currently, after payment of his regular expenses, he has available about \$1,300.00 each month in discretionary funds. (Ex. X.)

The SOR lists 24 delinquent debts in the total amount of more than \$61,000.00. Applicant has paid, settled, or brought current 12 of these accounts, totaling over \$30,000.00. He disputes the debt listed in ¶ 1.k of the SOR. Of the remaining 11 unresolved debts, he is making payments on four accounts totaling \$9,885.00, and is investigating and attempting to resolve the remaining seven accounts totaling \$17,193.00.

He retired from the U.S. Army Reserve in September 2000 in the rank of Colonel (O-6). He will be eligible to receive his Reserve Retired Pay in August 2007, which he estimates will exceed \$3,000.00 a month. (Ex. A at 3; Ex. AA.) Applicant intends to apply those funds to eliminating any remaining delinquent debt.

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." (*Department of the Navy v. Egan*, 484 U.S. 518, 527 (1988).) In Executive Order 10865, *Safeguarding Classified Information Within Industry* (Feb. 20, 1960), the President set out guidelines and procedures for safeguarding classified information within the executive branch.

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 guideline at issue in this case is:

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 this adjudicative guideline, 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.)

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.

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.

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 has a history of not meeting his financial obligations. He still has unpaid debts totaling over \$25,000.00 that have remained unpaid for many years. I find Applicant has shown both a history of failing to meet his financial obligations and an inability to satisfy his debts. I conclude the available evidence raises both these potentially disqualifying conditions.

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." Although Applicant's delinquent debts arose between 1991 and 1999, they remain unresolved; therefore, I find the unpaid obligations are recent. This

potentially 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's numerous delinquent debts arose over many years because of a variety of reasons. I conclude this mitigating condition does not apply.

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)." Several conditions beyond Applicant's control contributed to his financial problems, including his call to active duty in the Army Reserve, his partner's refusal to pay Applicant's business debts, the loss of his business, several subsequent financial setbacks, and unexpected medical bills. I conclude this potentially 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. Applicant sought and received financial counseling in 1997. He paid, settled, or brought current at least 12 listed debts, and is pursuing resolution of the remaining obligations. I find his debt problem is being resolved. I conclude this mitigating condition applies.

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.) As noted above, Applicant has paid or begun to repay the bulk of the delinquent debts listed in the SOR, and continues his efforts to resolve the remaining debts. I conclude this mitigating condition applies.

I considered the potentially disqualifying and mitigating circumstances in light of the "whole person" concept. Applicant is a mature individual. He served the United States in positions of trust for many years and successfully held a high-level security clearance. He is a retired officer of the U.S. Army. His financial difficulties arose from circumstances beyond his control, especially his call to active duty during the Gulf War. Applicant acted reasonably towards his obligations, and has continued his diligent efforts to pay-off or resolve the obligations. Applicant's current financial circumstances make him able to continue resolving the delinquent debts. I conclude Applicant's financial circumstances do not create a security risk.

FORMAL FINDINGS

My conclusions as to each allegation in the SOR are:

Paragraph 1, Guideline F: FOR APPLICANT

Subparagraph 1.a-1.x: 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