

DATE: May 7, 2004

In re:

SSN: -----

Applicant for Security Clearance

ISCR Case No. 03-18421

DECISION OF ADMINISTRATIVE JUDGE

JAMES A. YOUNG

APPEARANCES

FOR GOVERNMENT

Francisco J. Mendez, Department Counsel

FOR APPLICANT

Pro Se

SYNOPSIS

Applicant failed to mitigate security concerns raised by his financial condition. Although his debts were in large measure accrued due to circumstances beyond his control, and he is making good-faith efforts to repay some of the debts, he is not in a financial position to resolve other debts and has made no attempt to do so. 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 4 December 2003, DOHA issued a Statement of Reasons (SOR) ⁽¹⁾ detailing the basis for its decision-security concerns raised under Guideline F (Financial Considerations) of the Directive. Applicant answered the SOR in writing on 12 January 2004 and elected to have a hearing before an administrative judge. The case was assigned to me on 3 February 2004. On 23 March 2004, 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 30 March 2004.

FINDINGS OF FACT

Applicant is a 35-year-old communications equipment installer for a defense contractor. His hard work and dedication to duty have been acknowledged by those for whom he has worked. Exs. C-H.

When he was about 26 years old, Applicant moved from State 1 to State 2 where he intended to live with his parents while working construction and going to college. He married another student and they had a child. They moved to State 3 to be close to her parents. His wife had another child by a different man. The couple eventually separated and divorced. When his daughter appeared for a visit with a palm print on her face, Applicant went to court to seek custody of her. The court made applicant the primary parent for custody of the child but ordered him to pay child support for the time his daughter lives with his ex-wife.

Applicant's current monthly income is just sufficient to pay his monthly expenses. Ex. 3 at 7. Some of his debts were caused by the legal expenses incurred during his divorce and custody battle over his daughter. Applicant has additional student loans of approximately \$8,000 which are in forbearance until some time this year. Tr. 55. The following chart summarizes Applicant's delinquent debts.

¶	Nature and Amount	Status	Record
1.a.	Charged off acct to bank \$1,201	Unpaid; can't afford settlement offer	Tr. 37
1.b.	Delinq student loans \$3,780	Consolidated and current on pay plan	Ex. B; Tr. 38
1.c.	Delinq child support \$3,346	Payment plan; he is current	Ex. A
1.d.	Collection acct for lawyer \$2,610	Unpaid	Tr. 49
1.e.	Collection acct \$1,742	Unpaid; claims unaware of this debt	Tr. 51
1.f.	Collection acct-cable tv \$78	Paid; but still owes co. \$200	Tr. 54
1.g.	Delinq student loan \$600	Unpaid; uncertain of basis of debt	Tr. 54-55
1.h.	Collection acct computer \$1,281	Unpaid	Tr. 57-58

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 has restricted eligibility for access to classified information 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." Exec. Or. 12968, *Access to Classified Information* § 3.1(b) (Aug. 4, 1995). Eligibility for a security clearance is predicated upon the applicant meeting the security guidelines contained in the Directive.

Enclosure 2 of the Directive sets forth personal 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 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 establish, by substantial evidence, conditions in the personal or professional history of the applicant that disqualify, or may disqualify, the applicant from being eligible for access to classified information. *See Egan*, 484 U.S. at 531. The Directive presumes a nexus or rational connection between proven conduct under any of the disqualifying conditions listed in the guidelines and an applicant's security suitability. *See* ISCR Case No. 95-0611 at 2 (App. Bd. May 2, 1996).

Once the Government establishes a disqualifying condition by substantial evidence, the burden shifts to the applicant to rebut, explain, extenuate, or mitigate the facts. ISCR Case No. 01-20700 at 3 (App. Bd. Dec. 19, 2002); *see* 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.

CONCLUSIONS

In the SOR, DOHA alleged Applicant had several delinquent debts (¶¶ 1.a.-1.h.), including one for child support (¶ 1.c.), and his monthly income just meets his monthly expenses (¶ 1.i.). 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 established by substantial evidence and Applicant's admissions each of the SOR's allegations. Applicant has a history of not meeting his financial obligations (DC E2.A6.1.2.1.) and in unable to satisfy his debts (DC E2.A6.1.2.3.). Applicant's debts in large part resulted from conditions beyond his control-the costs associated with his divorce and the battle for custody of his daughter. MC E2.A6.1.3.3. He has initiated good-faith efforts to repay some of his overdue creditors or otherwise resolve some of his debts. MC E2.A6.1.3.6.

Applicant's current problem is that his monthly income does not exceed his monthly expenses to a degree that would permit him to pay off his delinquent debts. He is paying only \$23.18 a month on his student loan (Ex. J) of over \$3,700- barely enough to pay the interest on the loan. Several of the debts remain unpaid, and he has no plan on how he is going to pay them. He appeared confused as to the status of some of his debts. Applicant claims his salary will increase by \$5-\$8 an hour if he gets a security clearance, and that will permit him to pay off these debts. He provided no evidence to support this claim. He has approximately \$8,000 of educational loans that are currently in forbearance. He believes the forbearance will end this year. That does no bode well for Applicant being able to resolve his other debts. After carefully reviewing all of the evidence, I conclude Applicant has not fully mitigated the security concerns raised by his financial condition.

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.: Against Applicant

Subparagraph 1.c.: Against Applicant

Subparagraph 1.d.: Against Applicant

Subparagraph 1.e.: Against Applicant

Subparagraph 1.f.: Against Applicant

Subparagraph 1.g.: Against Applicant

Subparagraph 1.h.: Against Applicant

Subparagraph 1.i.: Against 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.

James A. Young

Administrative Judge

1. Pursuant to 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.