

DATE: November 30, 2006

In re:

SSN: -----

Applicant for Security Clearance

ISCR Case No. 05-05128

DECISION OF ADMINISTRATIVE JUDGE

ARTHUR E. MARSHALL, JR.

APPEARANCES

FOR GOVERNMENT

Stephanie Hess, Esq., Department Counsel

FOR APPLICANT

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SYNOPSIS

Applicant is a 33-year-old engineer working for a defense contractor. Shortly after being awarded subcontracts for defense-related work, the economic repercussions of September 11, 2001, affected his employment, his ability to find work, and his income. His personal and professional obligations became delinquent, and he was eventually forced to seek Chapter 13 bankruptcy protection in December 2005. His bankruptcy plan and his other efforts to address his obligations mitigate financial security concerns raised by his formerly delinquent debts. Clearance is granted.

STATEMENT OF THE CASE

On November 20, 2003, Applicant submitted a Security Clearance Application (SF-86). On November 4, 2005, the Defense Office of Hearings and Appeals (DOHA) issued a Statement of Reasons (SOR) to Applicant, pursuant to Executive Order 10865, *Safeguarding Classified Information Within Industry*, February 20, 1960, as amended and modified, and Department of Defense Directive 5220.6, *Defense Industrial Personnel Security Clearance Review Program* (Directive), dated January 2, 1992, as amended and modified. The SOR detailed reasons under Guideline F (Financial Considerations) why DOHA could not make the preliminary affirmative finding under the Directive that it is clearly consistent with the national interest to grant or continue a security clearance for Applicant. Additionally, DOHA recommended the matter be referred to an administrative judge to determine whether a security clearance should be denied or revoked.

In a sworn statement, dated December 2, 2005, Applicant responded to the SOR allegations and requested a hearing. In his response to the SOR, Applicant admitted 8 of the 12 allegations under Guideline F. [\(1\)](#) The case was assigned to me on September 29, 2006. A notice of hearing was issued on October 3, 2006, which scheduled the hearing for October

19, 2006. The hearing was conducted as scheduled. The government submitted five documents that were marked as Government Exhibits (Exs.) 1 through 5, and admitted into the record without objection. Applicant and three character witnesses testified on his behalf. Through counsel, Applicant submitted 25 documents that were marked as Exs. A through Y and admitted without objection. DOHA received the hearing transcript (Tr.) on October 31, 2006. The record was closed on November 1, 2006.

FINDINGS OF FACT

Applicant's admissions to the allegations in the SOR are incorporated herein. In addition, after a thorough review of the evidence and exhibits, I make the following findings of fact:

Applicant is a 33-year-old engineer working for a defense contractor. While in college, he began to accrue some debt. (2) Although about twenty-five percent of his tuition was covered by scholarship, the rest of his tuition was paid through student loans. Some of his other expenses were paid by using his credit cards. While in school, he participated in a program designed to help minority students transition directly into the business sector based on their skills. Through that program, he gained experience in modeling simulation, and found work after receiving his degree in electrical engineering in September 1995. He was granted a security clearance in 1996, which he continued to possess for the next three years while working for his first employer.

Between the time of Applicant's August 1996 marriage and the birth of his daughter in April 1999, Applicant and his wife rented out a portion of his parents-in-laws' attic at a reduced rent. In exchange for the rent reduction, he and his wife had financed renovations in the attic on their credit cards. Despite the remodeling, the space was too small for three, and the couple decided to relocate to a less expensive region. Late in 1999, he found work as a contractor in his current area of residence, where the cost of living was more affordable. By early 2000, he had purchased a home.

Applicant realized he could increase his income and reduce costs to potential employers by working directly as a corporation subcontractor, rather than a consulting contractor. Applicant soon was awarded a government subcontract by his current employer in January 2001. With extensions, that contract would run through about October 2002. The extensions, however, only provided for more time to complete the work; they did not generate additional income.

The impact of the events of September 11, 2001, quickly hit the defense contract industry. Resources were reallocated by the U.S. Government to efforts more directly related to the war on terrorism, and then the efforts in Iraq. Along with the national economic downturn and redirection of many defense-related contracts, Applicant's employer faced hard times. In turn, he began experiencing a slow down in payments from his employer starting in early 2002. Then he learned his employer had suffered a further reduction in projects for which he had been previously assigned participation. At the time, he was current on his mortgage, student loans, and obligations. (3) He quickly scrambled, however, to find additional work to compensate for the reduction in timely income and in anticipation of further downturns. Despite his efforts, he found himself unable to timely pay all of his business and personal expenses, and began prioritizing his debts for payment. He received financial counseling in July 2002 to help him organize his obligations, but the solutions offered could not be adopted without a better picture of his future employability and income flow. (4)

By October 2002, Applicant's employer had no further contracts for him and he left that employment. Because the impact of 9/11 was industry-wide, he still had difficulty finding work in a region where defense sector work was highly devoted to research and development. As his situation worsened, he tried to work with his credit card companies regarding his situation. Some relief followed when he was hired by his former employer as a regular company employee in May 2003, but the job stability it brought did not come fast enough.

Foreclosure proceedings were commenced against Applicant in July 2003, after he was unable to keep current on his mortgage payments. He informed the mortgagors of his new employment, but his failing credit made him a bad risk. Unable to pay the arrearage owed, foreclosure took place in October 2005 and a judgment was entered against him. While discussing his finances with his certified public accountant, he again received financial counseling and decided that through Chapter 13 protection, he could honor at least some percentage of his debts. On December 20, 2005, he filed his plan for bankruptcy protection under Chapter 13. (5)

Commencing on January 14, 2006, Applicant began making payments on his bankruptcy plan. As currently contemplated, the plan will take 60 months to satisfy. On his own initiative, he moved the court to let his payments be automatically deducted from his paycheck and paid to the trustee directly. That motion was granted on February 27, 2006, and such is the method currently employed. Twice a month, payments of \$1,550 are thusly drawn down for this purpose. Through the date of the hearing, all payments had been timely made.

Included in that bankruptcy are the accounts noted in the SOR at ¶ 1.b, ⁽⁶⁾ 1.c, ⁽⁷⁾ 1.d, ⁽⁸⁾ 1.e - 1.l, ⁽⁹⁾ and 1.k. ⁽¹⁰⁾ The debt noted as ¶ 1.j for \$1,212 was included in Applicant's petition and a notice of bankruptcy was sent to this creditor, but it did not respond and the account is not listed in his bankruptcy plan; the creditor, however, currently notes the account as "pending bankruptcy." ⁽¹¹⁾ He is precluded from directly satisfying this obligation in the interim because he is not allowed to pay off any debts outside of his bankruptcy petition. ⁽¹²⁾ He intends to satisfy this obligation after the completion of his bankruptcy plan. ⁽¹³⁾

Regarding the obligations noted at ¶ 1.a and ¶ 1.l, they purposefully were not included in Applicant's bankruptcy. ⁽¹⁴⁾ When Applicant received the SOR, he noted that they were for identical sums owed to the same creditor, but he did not recognize either account or the collection agency that subsequently was assigned the obligation. He later discovered that these entries were erroneous and duplicative. He disputed them, and they have since been removed from his credit report. ⁽¹⁵⁾

At present, Applicant is living within his means. His wife, a registered nurse, currently handles their finances and works as a housewife while their daughter attends second grade in a public school. They ceased using credit cards in around 2002 and have since relinquished them. They live on a cash-only basis and have accrued no new debts since then. They are current on their mortgage as part of the bankruptcy payment plans. Of his current income, 60% is devoted to the bankruptcy, 30% to living expenses, and 10% to savings and recreation. He and his wife share a 1996 car with no payments owed. They have no immediate needs and do not anticipate any debts that cannot be managed through their savings. His salary has increased considerably in the past three years, going from approximately \$70,000 to a current salary of approximately \$90,000 per year.

Within his community, Applicant volunteers his time at many levels. He is highly regarded for his character, maturity, and diligence, as well as his other positive qualities. ⁽¹⁶⁾ His supervisor and co-workers similarly praise him for his various qualities and work achievements in high terms, as well as his trustworthiness. ⁽¹⁷⁾

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. 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 determination is to decide if it is clearly consistent with the national interest to grant or continue a security clearance for an applicant. ⁽¹⁸⁾ The government has the burden of proving controverted facts. ⁽¹⁹⁾ The burden of proof is something less than a preponderance of evidence. ⁽²⁰⁾ Once it has met its burden, the burden shifts to an applicant to present evidence of refutation, extenuation, or mitigation to overcome the case against him. ⁽²¹⁾ Finally, the applicant has the ultimate burden of persuasion to obtain a favorable clearance decision. ⁽²²⁾

No one has a right to a security clearance⁽²³⁾ and "the clearly consistent standard indicates that security clearance determinations should err, if they must, on the side of denials."⁽²⁴⁾ Any reasonable doubt about whether an applicant should be allowed access to sensitive information must be resolved in favor of protecting such sensitive information.⁽²⁵⁾ The decision to deny an individual a security clearance is not necessarily a determination as to the loyalty of an applicant.⁽²⁶⁾ 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 security clearance.

Based upon consideration of the evidence, I find the following adjudicative guideline most pertinent to the evaluation of the facts in this case:

Guideline F - Financial Considerations. *The Concern:* 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.⁽²⁷⁾

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

CONCLUSIONS

I have carefully considered all the facts in evidence and the applicable legal standards. The government set forth arguments for disqualification under Guideline F (Financial Considerations) and provided evidence that Applicant acquired a dozen accounts which became delinquent at some indeterminate time prior to August 2005. Consequently, the government has provided sufficient evidence under Guideline F that Financial Considerations Disqualifying Condition (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.

With the government's case established, the burden shifts to Applicant to present evidence of refutation, extenuation, or mitigation to overcome the case against him. Here, Applicant has admitted to the majority of delinquent accounts cited in the SOR. Because the accounts at issue are multiple in number and most were only addressed within this past year with his 2005 bankruptcy, neither Financial Considerations Mitigating Condition (FC MC) E2.A6.1.3.1 (*the behavior was not recent*) nor FC MC E2.A6.1.3.2 (*it was an isolated incident*) applies.

As noted by the government, however, Applicant has provided much evidence of mitigation in other areas.⁽²⁸⁾ In the beginning of 2002, he was current on his obligations. As the impact of 9/11 affected both the U.S. economy and the defense industry, the trickle down effect inevitably reached him in terms of work availability, timely receipt of payments, and his ability to timely meet his own obligations. This impact proved to be near devastating, especially for one who had so recently started a business of his own as a subcontractor. Given this significant business downturn, FC MC E2.A6.1.3.3 (*the 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)*) applies.

The record shows that Applicant twice received financial counseling, in July 2002 and in the autumn of 2005. Although the first counseling offered little help because of Applicant's then-precarious financial position, his second counseling prepared him for his current bankruptcy. Through that counseling and the resultant bankruptcy, all but one of his delinquent obligations have been addressed. His current finances are now under control, and he confidently plans on honoring his one remaining obligation as soon as he is permitted to do so following the completion of his bankruptcy payment plan. Therefore, (*the person received or is receiving counseling for the problem and there are clear indications that the problem is being resolved or is under control*) applies.

The record also shows that Applicant was pro-active and attentive to his financial condition once the full economic impact of 9/11 was understood. He sought out financial counseling, contacted his credit cards, and tried to work with his mortgage holder, albeit with little success. He eventually chose to seek Chapter 13 bankruptcy protection in the hopes of honoring at least a portion of his debts. Since then, he has timely made payments on his bankruptcy plan for nearly a year, and has done so through a direct payment scheme between his employer and the trustee. Moreover, although the

one debt not covered by the bankruptcy was exempted through no fault of his own, he has expressed his commitment to repay it when he is permitted to do so. Consequently, FC MC E2.A6.1.3.6 (*[t]he individual initiated a good-faith effort to repay overdue creditors or otherwise resolve debts*) applies.

I have considered the mitigating conditions raised and analyzed Applicant as a "whole person." He first encountered true fiscal problems when the economic reverberations caused by 9/11 affected first his industry, then his own business. This unprecedented event and its unique effects left Applicant, then a young family man in his late 20s, delinquent on his obligations for personal debts and those owed for his newly founded business venture. As his debts and costs became past due and he faced losing his home, he chose to file for Chapter 13 protection as a method of honoring his obligations. Since then, through financial counseling and personal effort, he has learned to live within his means on a cash-only basis. His family live simply, and his wife now handles the bills. They do not indulge in extravagances; instead, they choose to drive an older car and use the public schools. No longer part of an entity relying on subcontracts, he is now a full-time employee with a major company. To date, he has made 11 of the projected 60 monthly payments owed on his bankruptcy plan. His success in continuing to complete those payments and honor his one remaining debt seems highly likely given his financial counseling, his demonstrated parsimony, his rising salary, his stable employment, his direct payments to his trustee, and his credible testimony regarding his commitment to meet his obligations. Given all these considerations, the facts of record, and the numerous favorable references noting his character, integrity, and trustworthiness, Applicant has mitigated security concerns based on his finances. Clearance is granted.

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. Guideline F (Financial Considerations): 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

DECISION

In light of all of the circumstances in this case, it is clearly consistent with the national interest to grant a security clearance for Applicant. Clearance is granted.

Arthur E. Marshall, Jr.

Administrative Judge

1. Specifically, Applicant admitted SOR allegations l.d through k.
2. Tr. 55.
3. Tr. 62.
4. Ex. H (Counseling Correspondence, dated July 8, 2002).
5. Tr. 79; Ex. N (Order Establishing Deadline for Making Payments, dated December 21, 2005).
6. Tr. 87-89.
7. Tr. 89-90.
8. Tr. 90-91.
9. Tr. 91-95 (Note: The student loans, in the interim, are considered to be in forbearance, dismissing Applicant from monthly payments, but interest continues to accrue. Tr. 72.)
10. Tr. 99-101.
11. Tr. 97, 120 (Applicant states that the creditor possibly did not pursue because, as a student loan, it will eventually survive the bankruptcy; in the interim, he is precluded from satisfying this debt because). *See generally* Tr. 96-99.
12. Tr. 102-103.
13. Tr. 103.
14. Tr. 81-87; *see also* Tr. 114.
15. Tr. 87.
16. Ex. G (Thirteen Highly Positive Recommendations).
17. Tr. 25-48.
18. ISCR Case No. 96-0277 at 2 (App. Bd. Jul 11, 1997).
19. ISCR Case No. 97-0016 at 3 (App. Bd. Dec 31, 1997); Directive, Enclosure 3, ¶ E3.1.14.
20. *Department of the Navy v. Egan*, 484 U.S. 518, 531 (1988).
21. ISCR Case No. 94-1075 at 3-4 (App. Bd. Aug 10, 1995); Directive, Enclosure 3, ¶ E3.1.15.
22. ISCR Case No. 93-1390 at 7-8 (App. Bd. Jan 27, 1995); Directive, Enclosure 3, ¶ E3.1.15.
23. *Egan*, 484 U.S. 518, at 531.
24. *Id.*
25. *Id.*; Directive, Enclosure 2, ¶ E2.2.2.
26. Executive Order 10865 § 7.

27. Directive, Enclosure 2, ¶ E2.A6.1.1

28. Tr. 114.