

DATE: December 28, 2006

In re:

SSN: -----

Applicant for Security Clearance

CR Case No. 05-05016

DECISION OF ADMINISTRATIVE JUDGE

JAMES A. YOUNG

APPEARANCES

FOR GOVERNMENT

Robert E. Coacher, Esq., Department Counsel

FOR APPLICANT

Pro Se

SYNOPSIS

Applicant had debts discharged in bankruptcy in 1992 and 2002. In 2006, he filed a Chapter 13 wage earner's plan that his attorney has advised him to convert it to another Chapter 7 bankruptcy. Applicant failed to mitigate security concerns raised by his financial condition. 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. In accordance with Department of Defense Directive 5220.6 ¶ E3.1.2 (Jan 2, 1992), as amended, DOHA issued a Statement of Reasons (SOR) on 27 April 2006 detailing the basis for its decision-security concerns raised under Guideline F (Financial Considerations) of the Directive. Applicant answered the SOR in writing on 25 May 2006 and elected to have a hearing before an administrative judge. The case was assigned to me on 19 July 2006. On 15 November 2006, I convened a hearing to consider whether it is clearly consistent with the national interest to grant or continue a security clearance for Applicant. I kept the record open until 27 November 2006 so Applicant could make copies of original documents he wanted submitted as exhibits. DOHA received the hearing transcript (Tr.) on 29 November 2006. Applicant did not submit the documents.

FINDINGS OF FACT

Applicant is a 41-year-old assembly technician for a defense contractor. He has worked for that contractor for almost 22 years and has held a Secret clearance since August 2002. He has been commended and given awards for his job performance. This review of his security clearance was initiated when he reported his recent Chapter 13 bankruptcy filing.

Applicant is divorced (21 February 2006) and has three children--20, 19, and 16 years old. Two of his children will be entering the U.S. military.

Applicant had debts discharged in Chapter 7 bankruptcy in October 1992 and August 2002. Applicant asserts the first bankruptcy resulted from an unusual amount of medical expenses, his brother stopped making payments on a loan that Applicant cosigned, and he and his wife had trouble controlling their credit card debts. Ex. 2 at 1. The 2002 bankruptcy was caused by their debts "getting to the point where [they] could not handle the payments." *Id.*

In February 2003, when interviewed by an agent of the Defense Security Service (DSS), Applicant claimed that he and his wife were working to get their finances straightened out. They had destroyed all of their credit cards. He had not received counseling, but promised to do so if he found himself in financial trouble again. In a personal financial statement he submitted with his February 2003 statement, Applicant reported no debts that were then delinquent and a monthly remainder of \$897. *Id.* at 5.

Applicant completed financial interrogatories in March 2005. He reported that he had initiated a divorce, that his wife had assumed the mortgage, and that he was not delinquent on any debts. Neither he nor his wife was represented by an attorney during the divorce. Applicant was on disability at the time, but expected to return to work later that month. Ex. 3 at 4.

Applicant filed a Chapter 13 bankruptcy wage-earners' plan in March 2006. Applicant claimed his ex-wife had failed to make payments on the house that was still in his name. He couldn't afford to make the payments, so he had to seek the Chapter 13 bankruptcy. Nevertheless, the lender foreclosed on the house two weeks before the hearing. Tr. 22. Applicant is currently paying, with the help of his ex-wife, \$403 a month on the wage earner's plan. His bankruptcy attorney has advised him to convert the Chapter 13 into a Chapter 7 bankruptcy. Tr. 23.

Applicant had his 2005 tax returns prepared by a commercial tax preparer. But the tax preparer will not release the tax returns for Applicant to file with the IRS, until Applicant pays for the service. Applicant believes the debt alleged in ¶ 1.f for \$787 is listed in the Chapter 13. He has not paid the \$70 he owes to a video rental company (¶ 1.e).

Applicant currently lives with his parents. He doesn't pay rent, but he pays all the utilities and helps them purchase medications. He denies ever going to a credit counseling service. Tr. 35-36. Yet his bankruptcy attorney submitted a credit counseling certificate to the bankruptcy court on 8 March 2006. Ex. 4 at 2.

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 authorized the Secretary of Defense or his designee to grant applicants eligibility for access to classified information "only upon a finding that it is clearly consistent with the national interest to do so." Exec. Or. 10865, *Safeguarding Classified Information within Industry* § 2 (Feb. 20, 1960). Eligibility for a security clearance is predicated upon the applicant meeting the security guidelines contained in the Directive. 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.

Enclosure 2 of the Directive sets forth personnel 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 the applicant has not met the strict guidelines the President and the Secretary of Defense have established for issuing a clearance.

CONCLUSIONS

Guideline F-Financial Considerations

In the SOR, DOHA alleged Applicant had debts discharged in bankruptcy in 1992 (¶ 1.c) and 2002 (¶ 1.b), and filed a voluntary petition for Chapter 13 bankruptcy in March 2006 (¶ 1.a); had an account for \$8,952 that was past due more

than 120 days (§ 1.d); an account for \$70 that was placed for collection (§ 1.e); and a debt of \$787 that was past due more than 60 days (§ 1.f). In his Answer, Applicant admitted each of the allegations, except for § 1.d.

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's evidence established potentially disqualifying conditions under Guideline F. Applicant has a history of not meeting his financial obligations (DC E2.A6.1.2.1) and is unable or unwilling to satisfy his debts (DC E2.A6.1.2.3). On three occasions in the last 14 years Applicant has had to resort to bankruptcy to resolve his debts. Although he is currently making \$403 payments on his Chapter 13, his attorney advised him to convert it to a Chapter 7.

An Applicant may mitigate financial considerations security concerns by establishing that the behavior was not recent (MC E2.A6.1.3.1); it was an isolated incident (MC E2.A6.1.3.2); the financial situation was largely beyond the applicant's control (MC E2.A6.1.3.3); the person has received counseling and there are clear indications the problem is being resolved or is under control (MC E2.A6.1.3.4); or the applicant has made a good-faith effort to repay overdue creditors or otherwise resolve his debts (MC E2.A6.1.3.6).

Some of Applicant's financial difficulties originally arose due to unforeseen medical debts. Applicant established MC E2.A5.1.3.3, at least for the first bankruptcy. But these debts were discharged as a result of his 1992 Chapter 7 bankruptcy. Applicant was given an opportunity to start over financially. It is not clear whether Applicant ever actually received any credit counseling. Regardless, he has not established that his debts are being resolved or that he has made a good-faith effort to resolve his debts.

Whole Person Analysis

"The adjudicative process is an examination of a sufficient period of a person's life to make an affirmative determination that the person is an acceptable security risk." Directive ¶ E2.2.1. It involves "the careful weighing of a number of variables known as the "whole person concept." *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.*

Applicant has been experiencing financial problems over the past 14 years. He doesn't seem to be able to get them resolved. He is now talking about converting his Chapter 13 to a Chapter 7 bankruptcy. He admits he still owes \$70 on a debt that was placed for collection in 2003. Despite the longevity of his current employment, I am unable to conclude this 41-year-old Applicant has mitigated the financial security concerns alleged against him.

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

DECISION

In light of all of the circumstances 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