

DATE: uly 27, 2006

In re:

SSN: -----

Applicant for Security Clearance

CR Case No. 05-06332

DECISION OF ADMINISTRATIVE JUDGE

SHARI DAM

APPEARANCES

FOR GOVERNMENT

Francisco J. Mendez, Esq.

FOR APPLICANT

Pro Se

SYNOPSIS

Applicant is 45 years old, and applied for a position with a federal contractor that requires a security clearance. Since 1997, he accumulated a significant amount of delinquent debt, as a result of periods of unemployment and job related travel expenses, which he has not resolved. He failed to mitigate the security concerns raised by financial considerations. Clearance is denied.

STATEMENT OF THE CASE

On March 11, 2005, Applicant filed a security clearance application. On December 8, 2005, the Defense Office of Hearings and Appeals (DOHA) under Executive Order 10865, *Safeguarding Classified Information Within Industry*, as amended, and Department of Defense Directive 5220.6, *Defense Industrial Security Clearance Review Program* (Directive), dated January 2, 1992, as amended, issued a Statement of Reasons (SOR) to Applicant. The SOR detailed reasons under Guideline F (Financial Considerations) and Guideline E (Personal Conduct) why DOHA could not make a preliminary affirmative finding under the Directive that it is clearly consistent with the national interest to grant a security clearance to Applicant. DOHA recommended the case be referred to an administrative judge to determine whether a clearance should be granted.

In a sworn statement, dated February 13, 2006, Applicant responded to the SOR, and requested a hearing. On April 14, 2006, the case was assigned to me. An Amended Notice of Hearing was mailed on May 24, 2006, setting the case for hearing on June 13, 2006. At the hearing the Government introduced exhibits (GX) 1-9 into evidence. Applicant introduced exhibits (AX) A-I into evidence, and testified in his case-in-chief. At the conclusion of the hearing, I left the record open until June 26, 2006, to give Applicant an opportunity to submit additional documents. DOHA received the hearing transcript (Tr.) on June 21, 2006. On June 26, 2006, Applicant submitted an additional document that Department Counsel forwarded to me on June 28, 2006, which I marked as AX J, and admitted over the government's objection.

PROCEDURAL MATTERS

On April 12, 2006, the Government notified Applicant that it did not intend to present evidence on the allegation contained in Paragraph 2 of the SOR under Guideline E (Personal Conduct). Hence, Guideline E is found for Applicant.

FINDINGS OF FACT

Based on the entire record, including Applicant's admissions in his Answer to the SOR and at the hearing, and an assessment of his credibility, I make the following findings of fact:

Applicant is 45 years old. He has been married for 16 years and has three children. His wife is employed as an accountant. For the last 15 years he has worked as an independent crane operator. Since 2003, he has held a nuclear clearance, which is necessary for him to work on nuclear power sites. In March 2005, he applied for a construction job in China with a federal contractor that requires a security clearance. (Tr. 57) Subsequently, he has been working and living in the Virgin Islands on an assignment.

Applicant's financial problems began in 1989 after he married and moved to a new city where he could not find work in his field. Over the course of the next ten to fifteen years, he traveled extensively to obtain work, incurring travel and living expenses. (Tr. 22) During those years, he also experienced periods of unemployment for several month intervals, and subsequently relied on credit cards to pay his bills. (Tr. 96-97; 102) At one point he had 25 credit cards, many of which became delinquent at some point. (Tr. 95) A November 2005 credit report notes that his delinquent debts date back to 1997. (GX 8)

In February 2004, Applicant obtained the addresses and phone numbers of creditors referenced on an earlier credit report. (GX 7) He contacted many of them, and resolved some debts, not included in this proceeding. (Tr. 29) In his November 2005 response to interrogatories about the status of certain delinquent debts, he indicated that he had disputed some of the accounts, claimed others were paid or not his, and had requested verification for others. The SOR, filed in December 2005, alleged those debts as its basis for raising security concerns.

Paragraph 1 of the SOR alleged in ¶¶ 1.a through 1.m that Applicant's delinquent debts totaled \$22,424, and consisted of monies owed to credit card companies, department stores, utilities and medical providers. He admitted that he owed a jewelry debt alleged in ¶ 1.e (\$2,106), and the department store debts listed in ¶ 1.k (\$3,718) and ¶ 1.l (\$1,421), but disputed the amounts. He denied that he owed the monies alleged in the remaining allegations. None of the debts have been resolved or paid, except ¶ 1.b which will be removed from his credit report. (AX B) About three weeks before the hearing, Applicant mailed certified letters to all of the creditors referenced in the SOR, requesting validation of the debts. (AX A-H)

According to a recently submitted budget, Applicant and his wife's net monthly income is \$6,270. After paying their expenses, they have approximately \$1,200 remaining for other costs and items. (AX J at 3) Applicant insisted that he is willing and able to resolve the delinquent debts after he receives verification of the amounts. (Tr. 77; 82)

POLICIES

Enclosure 2 of the Directive, *Adjudicative Guidelines for Determining Eligibility for Access to Classified Information*, sets forth criteria which must be evaluated when determining security clearance eligibility. Within those adjudicative guidelines are factors to consider in denying or revoking an individual's request for access to classified information (Disqualifying Conditions), and factors to consider in granting an individual's request for access to classified information (Mitigating Conditions). By recognizing that individual circumstances of each case are different, the guidelines provide substantive standards to assist an administrative judge in weighing the evidence in order to reach a fair, impartial and common sense decision.

The adjudicative process requires thorough consideration and review of all available, reliable information about the applicant, past and present, favorable and unfavorable, to arrive at a balanced decision. Section E2.2. of Enclosure 2 of the Directive describes the essence of scrutinizing all appropriate variables in a case as the "whole person concept." In evaluating the disqualifying and mitigating conduct an administrative judge should consider: (1) the nature, extent, and seriousness of the conduct; (2) the circumstances surrounding the conduct; (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 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.

Granting an applicant's clearance for access to classified information is based on a high degree of trust and confidence in the individual. Accordingly, decisions under the Directive must include consideration of not only the *actual* risk of disclosure of classified information, but also consideration of any *possible* risk an applicant may deliberately or inadvertently compromise classified information. Any doubt about whether an applicant should be allowed access to classified information must be resolved in favor of protecting classified information. Directive, Enclosure 2, ¶ E2.2.2. The decision to deny an individual a security clearance is not necessarily a judgment about an applicant's loyalty. Executive Order 10865, § 7. Instead, it is a determination that an applicant has not met the strict guidelines established by the Department of Defense 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. *Department of the Navy v. Egan*, 484 U.S. 518, 531 (1988). The Directive presumes a rational connection between past proven conduct under any of the disqualifying conditions listed in the guidelines and an applicant's security suitability. ISCR Case No. 95-0611 at 2 (App. Bd. May 2, 1996).

Once the Government establishes a disqualifying condition by substantial evidence, the corresponding burden of rebuttal shifts to the applicant to present evidence in refutation, extenuation, or mitigation sufficient to overcome the position of the government. ISCR Case No. 01-20700 at 3 (App. Bd. Dec. 19, 2002); Directive, Enclosure 3, ¶ 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 clearance." *Id.*

Based upon the allegations contained in the SOR and a consideration of the evidence as a whole, the following adjudicative guideline is pertinent to an evaluation of the facts of this case:

Guideline F - Financial Considerations: A security concern may exist when 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.

The disqualifying and mitigating conditions, either raising security concerns or mitigating security concerns applicable to this case, are discussed in the Conclusions section below.

CONCLUSIONS

I considered all of the facts in evidence, legal standards, including the "whole person" concept and Applicant's credibility.

The Government established a potential disqualification under Financial Consideration 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*). From 1997 to the present, Applicant accumulated a significant amount of delinquent debt that remains unresolved and unpaid, as reflected in credit reports and by his testimony. Although he recently initiated action to resolve the delinquent debts listed in the SOR, his previous dilatory conduct exhibited an unwillingness to manage his debts.

The Government having established its case, the burden shifted to Applicant to mitigate or rebut the allegations. After reviewing all of the mitigating conditions, I concluded Financial Consideration Mitigating Condition (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. Applicant's financial difficulties are the result of numerous periods of unemployment, and the incurrence of job related expenses while working, which were factors beyond his control.

As that mitigating condition standing alone is insufficient to overcome the Government's present concern, I also

considered FC MC E2.A6.1.3.4 (*The person has received or is receiving counseling for the problem and there are clear indications that the problem is being resolved or under control*), and concluded it does not apply. Although Applicant contacted some of the creditors in early 2004, and sent letters requesting validation of the debts in May 2006, only one of the 13 debts alleged in the SOR has been resolved or paid to date, despite his previous acknowledgment that he owed money on three of the old debts. Thus, he did not provide sufficient evidence to clearly indicate that the problems are being resolved or under control, as required under this mitigating condition.

I further considered the totality of the evidence in this case, including Applicant's long employment history and nuclear clearance, the resolution of debts not listed in the SOR, the recent letters to his creditors, his current budget, and his candid testimony about his financial situation. While Applicant expressed a willingness to resolve his financial obligations in February 2004, November 2005, and during the hearing, he did not present a solid plan, which would resolve or pay the delinquent debts alleged in the SOR, and establish a track record of financial management sufficient to mitigate the security concerns raised by a history of unresolved debts and credit problems. Hence, all allegations are concluded against him, except ¶ 1.b. Accordingly, Guideline F is 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 as follows:

Paragraph 1: Guideline F (Financial Considerations) AGAINST APPLICANT

Subparagraph 1.a: Against Applicant

Subparagraph 1.b: For 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

Subparagraph 1.j: Against Applicant

Subparagraph 1.k: Against Applicant

Subparagraph 1.l: Against Applicant

Subparagraph 1.m: Against Applicant

Paragraph 2: Guideline E (Personal Conduct) FOR APPLICANT

Subparagraph 2.a: For 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 Applicant a security clearance. Clearance is denied.

Shari Dam
Administrative Judge