

DATE: July 24, 2006

In Re:

SSN: -----

Applicant for Security Clearance

ISCR Case No. 03-27062

ECISION OF ADMINISTRATIVE JUDGE

CHARLES D. ABLARD

APPEARANCES

FOR GOVERNMENT

Eric H. Borgstrom, Esq. , Department Counsel

FOR APPLICANT

Pro Se

SYNOPSIS

Applicant mitigated financial security concerns relating to delinquent debts and his Chapter 13 bankruptcy finalized in April 2006. He has been in the bankruptcy process since 1999 and, because of various factors beyond his control, the process took more time than necessary. The rise in value of his home permitted re-financing and the ability to resolve all delinquent debts. Clearance is granted.

STATEMENT OF CASE

On August 10, 2005, the Defense Office of Hearings and Appeals (DOHA), pursuant to Executive Order 10865, *Safeguarding Classified Information Within Industry*, 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, issued a Statement of Reasons (SOR) to Applicant which detailed reasons 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. DOHA recommended the case be referred to an administrative judge to determine whether a clearance should be granted, continued, denied, or revoked.

On August 25, 2005, Applicant responded to the SOR allegations, and requested a hearing. The matter was assigned to me on October 26, 2005. A notice of hearing was issued on November 18, 2005, for a hearing on December 7, 2005, and held that day. The government offered in evidence 16 exhibits and Applicant offered 25. All were admitted. The transcript was received on December 16, 2005.

The record was left open until January 9, 2006, for submission of additional evidence which was timely submitted to department counsel on January 6, 2006, and sent to me on February 23, 2006. On April 11, 2006, Applicant requested leave to keep the record open for conclusion of bankruptcy proceeding and to file additional materials resulting from that proceeding particularly refinancing documents. One document showing his payments was filed with the request. A conference call with the parties resulted in a 60-day extension of time to submit closing information about the Chapter

13 proceeding. The additional material was filed on May 24, 2006. The government had no objection to the submissions and all were admitted.

A second conference call subsequently was held resulting in submission through department counsel of four additional documents by Applicant on June 12 and 13, 2006. These were transmitted to me on June 21, 2006, without objection to their admission but with ten additional documents submitted by the government in rebuttal. All exhibits were admitted but Applicant was advised by letter the same day that he would be given until July 7, 2006, to respond to the new government materials. He responded in a final submission of one 14 page set of documents on July 10, 2006, to which the government objected as being untimely. Notwithstanding the objection, they were admitted.

FINDINGS OF FACT

Applicant denied all of the SOR allegations. After a complete review of the record, I make the following additional findings of fact:

Applicant is a 56-year-old employee of a major defense contractor where he has been employed since 1985. He has held a security clearance since 1997. He works as a training instructor

for a weapons system used by the Navy in electronic warfare which requires him to travel frequently both domestically and internationally to Navy facilities and to countries where his employer has sold the system. His annual salary is \$62,000.00.

For a variety of reasons, Applicant has had difficulty over several years with personal financial management and incurred extensive debts some of which became delinquent. One was to the IRS over his 2002 taxes which was caused by a combination of fault between Applicant and his accountant. He filed bankruptcy under Chapter 13 in 1999 with debts of almost \$200,000.00. After paying the monthly amount designated by the court until September 2004, he and his attorney discovered that an insufficient amount was being withheld from his salary to resolve the debts. The result was that he was almost \$5,000.00 behind and could not make a required an immediate catch-up payment in that amount. At that time he had reduced the debt to approximately \$6,000.00 since he was paying only a proportional amount of each debt to his creditors. His counsel then advised him to agree to a dismissal and to re-file the bankruptcy (Exh. W) which he did on October 28, 2005.

In December 2005, before the hearing on this matter, Applicant was able to make an agreement to re-finance his home because of its appreciation in value (Exh. A). The re-financing was finalized on March 31, 2006. As a result of the increased value he was now required by the court to pay the remaining debts in full which amounted to approximately \$24,000.00. He was discharged from bankruptcy on April 20, 2006, with a payment by the finance company to the bankruptcy trustee of \$24,500.00. (Exh. Z 14 line 1305) for the debts in bankruptcy.

The four other creditors who were not in bankruptcy will also be paid from the balance from the re-financing of \$33,000.00 paid to Applicant after paying the bankruptcy court for those debts over which it had jurisdiction (Exh. Z 15, line 1504). His first and second mortgages totaling \$136,000.00 were paid through the re-financing. He now has a mortgage on his home of \$212,000.00. An IRS garnishment of \$170.00 per month was dropped since the balance of \$900.00 which was all that remained after the garnishment and has been paid.

Five debts alleged in the SOR were not included in the bankruptcy. They have been or will be resolved as follows:

1. Par. 1.d.: \$1,615.00 Paid with several monthly installments (Exh. Z 2) and through payment of balance in the settlement on refinance of home (Exh. Z 14, line 1306).
2. Par. 1.e.: \$4,600.00 Reduced after monthly payments and will be paid in full from re-financing his home.
3. Par. 1.f.: \$2,500.00 IRS tax debt. Debt was reduced to approximately \$900.00 by paying \$100.00 per month in garnishment prior to bankruptcy proceedings. Advised that this could not continue during bankruptcy. Debt has been resolved after re-financing (Exh. ZZ 6 and 8).

4. Par. 1.g.: \$1,015.00 Paid through re-financing (Exh. ZZ 3).

5. Par. 1.h.: \$97.00 wife's credit card for a gasoline charge. Will be paid by wife and is not on current credit report.

Applicant is highly regarded by his company for his work. He has received numerous awards and is relied upon as a leader in his field as his evaluations show (Exhs. C-T).

Applicant has been in consumer credit counseling since 1987, and he and his wife remain in a counseling service provided by their church. They share responsibility for payment of bills but when Applicant is traveling, his wife has total responsibility and this has led to some of the problems. He has had serious medical problems including prostate cancer resulting in loss of work for periods with resultant loss of income which aggravated his debt problems. He has given financial help to his brother and father-in-law during periods of their serious illnesses which contributed to his own financial problems.

Applicant holds an associate's degree from a junior college. He and his wife have owned their own home for many years. She is employed by a school system with an annual salary of \$42,000.00. and they have a joint income of a little over \$100,000.00 per annum. They have one child who is 18 and beginning college this year.

Applicant served on active duty with the Navy for eight years and was discharged as a petty officer first class. He served in the Navy Reserve for six more years and intended to stay in the Reserve but was required to leave because he was overweight. It was while on active duty that he obtained the skills that he now uses in his corporate work. He has received numerous achievement awards and commendations for his contract work for the Navy (Exhs. C-T).

Applicant and his wife own two cars. His wife's car requires a monthly payment (Tr. 69) but the second is an older car with no payments which he drives. There was a recent lapse of several months in payments on his wife's car brought out in the government's post-hearing submission of June 21, 2006, (Exh. ZZZ 9 and 10). The problem has been resolved with payment of the arrearage in Applicant's final submission (Exh. ZZZZ B).

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.

An evaluation of whether the applicant meets the security guidelines includes consideration of the following factors: (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. Directive, ¶ E2.2.1. Security clearances are granted only when "it is clearly consistent with the national interest to do so." Executive Order No. 10865 § 2. *See* Executive Order No. 12968 § 3.1(b).

Initially, the Government must establish, by something less than a preponderance of the evidence, that conditions exist in the personal or professional history of the applicant which disqualify, or may disqualify, the applicant from being eligible for access to classified information *See Egan*, 484 U.S. at 531. The applicant then bears the burden of demonstrating it is clearly consistent with the national interest to grant or continue a security clearance. "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. "[S]ecurity clearance determinations should err, if they must, on the side of denials." *Egan*, 484 U.S. at 531.

CONCLUSIONS

Upon consideration of all the facts in evidence, and after application of all appropriate adjudicative factors, I conclude the following with respect to all allegations set forth in the SOR:

Applicant's delinquent debts prompted the allegation of security concerns under Guideline F since an individual who is financially overextended is at risk of having to engage in illegal acts to generate funds. (E2.A6.1.1.) Conditions that could raise a security concern and may be disqualifying include a history of not meeting financial obligations (E2.A6.1.2.1.), and evidence of inability or unwillingness to satisfy debts. (E2.A6.1.2.3.) Mitigating Conditions (MC) might include the fact that the person has initiated a good faith effort to repay overdue creditors or otherwise resolve debts. (E2.A6.1.3.6.), and the person has received or is receiving counseling for the problem and there are clear indications that the problem is being resolved (Es.A6 1.3.4.).

Applicant candidly admits his problems in financial management for several years. However, he has been trying to resolve these issues for at least seven years through the bankruptcy process. In view of this history, the argument of the government that he only began to take action when the SOR was issued is incorrect. He has encountered a series of "catch-22" problems such as the fact that the original bankruptcy proceeding did not require sufficient withholding from his salary to resolve the debts. Some of his tax debts were the product of a misunderstanding with his accountant. He is represented by an attorney knowledgeable in bankruptcy and financial issues have been, or are being, resolved.

Fortunately, the valuations of his home has helped him resolve the debts to the IRS and private creditors. He remains burdened with a large mortgage on his home but can accommodate the payments required with the present family income and the fact that the IRS garnishment will cease. He has received, and continues to receive, consumer credit counseling and is confident of his ability to stay out of debt in the future. While the matters should have been resolved sooner, Applicant was not dilatory in his pursuit of resolution of his financial problems.

Mitigating conditions apply since he has been and continues to receive counseling and the problems have now been resolved to the satisfaction of nearly all the creditors with the ability to resolve those that remain. An applicant is not required to prove that all delinquent debts be resolved to be granted a security clearance but only that efforts be made to resolve the debts and to show that the matters are being diligently pursued with an ability to resolve them. From the documentation submitted by Applicant, I have no difficulty in making that determination.

Applicant's net proceeds from re-financing his home is sufficient to pay any debts remaining and there is every indication that he intends to do so. The fact that he was able to accomplish this through what the government calls a "windfall" as a result of rising real estate values, is not relevant to our considerations. The combined income of Applicant and his wife should be sufficient to carry the new mortgage and stay out of debt.

In all adjudications the protection of our national security is of paramount concern. Persons who have access to classified information have an overriding responsibility for the security concerns of the nation. The objective of the security clearance process is the fair-minded, commonsense assessment of a person's trustworthiness and fitness for access to classified information.

Applicant's entire record of professional employment and exercise of his responsibilities to his employer and to the Navy supports his credibility as well as the specific evidence offered at the hearing and the post-hearing submissions. His record in the Navy was a good one and he continues to serve the interests of the Navy in his present position. He knows the requirements imposed on those persons who hold security clearances and has demonstrated compliance with those requirements over many years.

After considering all the evidence in its totality, I conclude that a security clearance should be granted.

FORMAL FINDINGS

Formal findings as required by the Directive (Par. E3.1.25) are as follows:

Paragraph 1. Guideline F: 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

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 renew a security clearance for Applicant. Clearance is granted.

Charles D. Ablard

Administrative Judge