

DATE: June 30, 2006

In re:

SSN: -----

Applicant for Security Clearance

ISCR Case No. 04-05235

ECISION OF ADMINISTRATIVE JUDGE

CHRISTOPHER GRAHAM

APPEARANCES

FOR GOVERNMENT

Ray T. Blank, Jr., Esq., Department Counsel

FOR APPLICANT

Pro Se

SYNOPSIS

Applicant is a 32-year-old employee of a federal contractor. He incurred \$11,716 in debts that have been delinquent for nearly four years. He moved with his job out of the country in 2001. He was recently divorced. He blames his lack of progress in resolving debts on his divorce and a loss of records during his move. He has made virtually no progress in resolving his indebtedness. He failed to mitigate security concerns regarding financial considerations. Clearance is denied.

STATEMENT OF THE CASE

On November 3, 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*, dated 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. The SOR alleged facts under Guideline F (financial considerations) which precluded DOHA from making a preliminary affirmative finding under the Directive that it is clearly consistent with the national interest to grant or continue Applicant's security clearance, and recommended referral to an administrative judge to determine whether a clearance should be granted or denied.

On December 5, 2005, Applicant responded to the allegations in the SOR, and requested a decision without a hearing. Department Counsel submitted a file of relevant material (FORM) in support of the government's case, a copy of which was received by Applicant on March 20, 2006. Applicant was afforded the opportunity to file objections and submit material in refutation, extenuation, or mitigation by April 19, 2006. Applicant filed no response to the FORM. The case was assigned to me on May 17, 2006.

FINDINGS OF FACT

Applicant admitted the allegations in the SOR. I make the following findings of fact.

Applicant is a 32-year-old employee of a federal contractor, employed as a network engineer.⁽¹⁾ He is divorced and has one child.⁽²⁾ He served in the U.S. Marine Corps for eight years, receiving an honorable discharge in November 2000.⁽³⁾ While serving in the Marine Corps, Applicant held a secret security clearance.⁽⁴⁾

SOR paragraphs 1.a. through 1.e. list unpaid debts totaling \$11,716 as of December 19, 2005.⁽⁵⁾ There has been no activity on these accounts in about four years.⁽⁶⁾ Applicant failed to provide any evidence that he has paid or is attempting to set up a plan to pay his delinquent debts. He intended to use a debt consolidation service but never did.⁽⁷⁾

He stated his debts accrued during his marriage.⁽⁸⁾ He was married on July 4, 1994. He was separated before May 7, 2003, the date of his security clearance application,⁽⁹⁾ and divorced at some point prior to December 19, 2005, the date he answered the SOR.⁽¹⁰⁾ There is no evidence he is paying child support. His reasons for the delinquencies are that debt resolution took a long time due to his separation and divorce.⁽¹¹⁾ He did not recall one debt of \$526, but he thought it might be his wife's accrued during the marriage, so he assumed responsibility for it.⁽¹²⁾ Another reason listed was his March 2001 move out of the continental U.S. with his job, where by he lost many of his records and lost touch with the stateside organizations with whom he had associated.⁽¹³⁾

POLICIES

"[No] one has a 'right' to a security clearance."⁽¹⁴⁾ 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."⁽¹⁵⁾ 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 coercion, and willingness and ability to abide by regulations governing use, handling, and protection of classified information."⁽¹⁶⁾ Eligibility for a security clearance may be adjudicated using the security guidelines contained in the Directive.

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 factors listed in ¶ 6.3 of the Directive: nature and seriousness of the conduct and surrounding circumstances; frequency and recency of the conduct; age of the applicant; motivation of the applicant, and the extent to which the conduct was negligent, wilful, voluntary, or undertaken with knowledge of the consequences involved; absence or presence of rehabilitation; and probability that the circumstances or conduct will continue or recur in the future.

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.⁽¹⁷⁾ 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.⁽¹⁸⁾

Once the government establishes a disqualifying condition, the burden shifts to the applicant to rebut, explain, extenuate, or mitigate the facts.⁽¹⁹⁾ An applicant "has the ultimate burden of demonstrating that it is clearly consistent with the national interest to grant or continue his security clearance."⁽²⁰⁾ A person who has access to classified information enters into a fiduciary relationship with the government based on trust and confidence. The government, therefore, has a compelling interest in ensuring each applicant possesses the requisite judgment, reliability and trustworthiness of one who will protect the national interests as his or his own. The "clearly consistent with the national interest" standard compels resolution of any reasonable doubt about an applicant's suitability for access in favor of the government.⁽²¹⁾ Decisions under this Directive include, by necessity, consideration of the possible risk an applicant may deliberately or inadvertently fail to protect or safeguard classified information. Such decisions entail a certain

degree of legally permissible extrapolation as to potential, not actual, risk of compromise of classified information.

Applicant's allegiance, loyalty, and patriotism are not at issue in these proceedings. Section 7 of Executive Order 10865 specifically provides industrial security decisions shall be "in terms of the national interest and shall in no sense be a determination as to the loyalty of the applicant concerned." Security clearance decisions cover many characteristics of an applicant other than allegiance, loyalty, and patriotism.

Having considered the evidence as a whole, I find the following guideline most pertinent to an evaluation of the facts of this case:

Guideline F: E2.A6.1.1. Financial considerations are a security concern because *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.*

CONCLUSIONS

The government has established its case under Guideline F. Financial Considerations Disqualifying Condition (FC DC) E2.A6.1.2.1. arises where there is *(A history of not meeting financial obligations)*. Similarly, FC DC E2.A6.1.2.3. applies where the information shows an *(Inability or unwillingness to satisfy debts)*. The available information demonstrates Applicant has a history of not meeting his financial obligations. He has been delinquent in payments on several accounts for a long time. I conclude that FC DC E2.A6.1.2.1. and FC DC E2.A6.1.2.3. apply.

Various conditions can mitigate the security concerns arising from financial difficulties. The Directive sets out financial considerations 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 or a death or divorce))*. While he experienced problems with resolving debts during his separation and divorce, the record is devoid of evidence as to what problems occurred and their resolution. Separation and divorce are factors beyond his control but he did not meet his burden of providing any proof of the financial impact caused by the divorce. FC MC E2.A6.1.3.3. does not apply.

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 is under control)* does not apply. Applicant mentioned his intention to seek credit counseling but offered no evidence that he had sought or was receiving financial counseling. FC MC E2.A6.1.3.4. is inapplicable.

FC MC E2.A6.1.3.6. may apply where *(The individual initiated a good-faith effort to repay overdue creditors or otherwise resolve bad debts)*. All of the debts listed in the SOR have been unpaid for nearly 4 years. He moved out of the continental U.S. in 2001. He failed to provide any information to show why after 4 years he still was unable to recover his records, contact the creditor, or make payment. Although his separation and divorce may have had an impact on his ability to pay his debts, he has not provided any specific evidence to substantiate his claim. FC MC E2.A6.1.3.6. does not apply.

I carefully evaluated the "whole person" concept, keeping in mind that any doubt as to whether access to classified information is clearly consistent with national security must be resolved in favor of the national security. I have applied the appropriate disqualifying and mitigating conditions to the evidence. Further, I have tried to make a fair and commonsense assessment of the record before me as required by Directive Section E2.2.3. I have serious and persistent doubts about Applicant's ability to protect classified information and to exercise the requisite good judgment and discretion expected of one in whom the government entrusts its interests. Applicant failed to mitigate Guideline F security concerns. Clearance is denied.

FORMAL FINDINGS

Formal findings For or Against Applicant on the allegations set forth in the SOR, as required by E3.1.25 of Enclosure 3 of the Directive, are:

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

DECISION

In light of all the circumstances presented by the record in this case, it is not clearly consistent with the national interest to grant or continue Applicant's security clearance. Clearance is denied.

Christopher Graham

Administrative Judge

1. Item 4 (Applicant's *Security Clearance Application*, dated May 7, 2003) at 1-2.

2. Item 4, *supra*, note 1, at 5; Item 2 (Applicant's Answer, dated December 19, 2005) at 1.

3. Item 4, *supra*, note 1, at 5-6.

4. Item 4, *supra*, note 1, at 8.

5. Item 2, *supra*, note 2, at 1.

6. Item 6 (Credit Report, dated June 28, 2005) at 1-3.

7. Item 2, *supra*, note 2, at 1.

8. *Id.*

9. Item 4, *supra*, note 1, at 4.

10. Item 2, *supra*, note 2, at 1.

11. *Id.*

12. *Id.*; SOR subparagraph 1.e.

13. *Id.*

14. *See Department of the Navy v. Egan*, 484 U.S. 518, 528 (1998).

15. *Id.* at 527.

16. Exec. Or. 12968, *Access to Classified Information*, § 3.1(b) (Aug. 4, 1995).

17. *Egan, supra*, at 531.

18. *See ISCR Case No. 95-0611* at 2 (App. Bd. May 2, 1996).

19. *See* ISCR Case No. 01-20700 at 3 (App. Bd. Dec. 19, 2002).

20. *Id.*, at 3.

21. *See Egan*; Directive ¶ E2.2.2.