

KEYWORD: Financial

DIGEST: Applicant mitigated allegations of delinquent debts for two foreclosures by offering evidence that the properties had been transferred to the mortgagees in 1998 and 1999 with no further financial obligations of Applicant. Clearance is granted.

CASENO: 04-05772.h1

DATE: 02/13/2006

DATE: February 13, 2006

In Re:

SSN: -----

Applicant for Security Clearance

ISCR Case No. 04-05772

DECISION OF ADMINISTRATIVE JUDGE

CHARLES D. ABLARD

APPEARANCES

FOR GOVERNMENT

Eric Borgstrom, Esq., Department Counsel

FOR APPLICANT

Pro Se

SYNOPSIS

Applicant mitigated allegations of delinquent debts for two foreclosures by offering evidence that the properties had been transferred to the mortgagees in 1998 and 1999 with no further financial obligations of Applicant. Clearance is granted.

STATEMENT OF CASE

On May 20, 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 June 18, 2005, Applicant responded to the SOR allegations, and requested a hearing. The matter was assigned to me on September 28, 2005. A notice of hearing was issued on November 9, 2005, for a hearing on November 17, 2005, and held that day. The government offered in evidence nine exhibits and Applicant offered eleven. All were admitted. The record was left open until December 17, 2005, for submission of additional evidence which was submitted on December 2, 2005. The transcript also was received on December 2, 2005.

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 43-year-old employee of a defense contractor whose work involves law enforcement with the Department of Justice. He had a part-time business buying residential property for rental income. At one time he owned four such properties. The gravamen of this matter involves two of the properties that Applicant owned and discovered that, because of vandalism and lack of rental income, he could no longer maintain. The SOR alleged two delinquent debts for these two properties after foreclosure for non-payment in the amounts of \$29, 790.00 (SOR ¶ 1.a.) and \$17, 614.00 (SOR ¶ 1.b.). An additional debt to a telephone provider was alleged for \$76.00 (SOR 1.c.).

Applicant executed two deeds in lieu of foreclosure on both properties with the mortgagees in 1998 and 1999 that relieved him of any further financial responsibilities for both properties and transferred ownership to the mortgagees. Applicant offered evidence at the hearing on both properties to establish that his debts had been relieved. Exhs. C and D relate to the allegations in SOR ¶ 1.a. and Exh. B relates to allegations in SOR ¶ 1.b. There were no issues regarding the second allegation, but as to the first, evidence offered by Applicant gave a different name of the mortgagee than the name listed in the SOR. However, in his post-hearing submission Applicant established that the two companies were the same (Exh. L 3-7). As to the third debt, Applicant continues to use the same telephone provider and has no outstanding debt to them as reflected on his current credit report which does not show the mortgage debts as of July 2005 (Exh. A).

Applicant holds a bachelors degree, is a financially stable homeowner, and is the divorced father of two daughters who attend college. He is a Navy veteran both active duty and reserve.

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. *See* Executive Order No. 12968 § 3.1(b).

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 alleged delinquent debts prompted the allegation of security concerns under Guideline F in that 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.). Applicant has established that he has not been responsible for the properties that gave rise to those allegations since 1998 and 1999 respectively, and that the third delinquent debt was erroneously alleged.

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 employment and exercise of responsibilities supports his credibility as well as the specific evidence offered at the hearing and the post-hearing submissions.

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

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