

DATE: July 27, 2005

In re:

SSN: -----

Applicant for Security Clearance

ISCR Case No. 04-07783

DECISION OF ADMINISTRATIVE JUDGE

PHILIP S. HOWE

APPEARANCES

FOR GOVERNMENT

Robert E. Coacher, Esq., Department Counsel

FOR APPLICANT

Pro Se

SYNOPSIS

Applicant is 43 years old, married with two children from his current marriage and two children from a prior marriage. He pays child support for them. Applicant has five delinquent debts that he is trying to pay, but his income for four people is only \$31,000 annually. He works a second job also. Applicant mitigated the financial considerations security concerns. Clearance is granted.

STATEMENT OF THE CASE

The Defense Office of Hearings and Appeals (DOHA) declined to grant or continue a security clearance for Applicant. On September 21, 2004, DOHA issued a Statement of Reasons⁽¹⁾ (SOR) detailing the basis for its decision-security concerns raised under Guideline F (Financial Considerations) of the Directive. Applicant answered the SOR in writing on October 18, 2004 and elected to have a hearing before an administrative judge. The case was assigned previously to another administrative judge who scheduled a hearing for December 28, 2004, but due to inclement weather in the area the hearing was cancelled. Then, the case was assigned to me on January 4, 2005. On May 3, 2005, I convened a hearing to consider whether it is clearly consistent with the national interest to grant or continue a security clearance for Applicant. The Government and the Applicant submitted exhibits that were admitted into evidence. DOHA received the hearing transcript (Tr.) on May 13, 2005.

FINDINGS OF FACT

Applicant's admissions to the SOR allegations are incorporated here as findings of fact. After a complete and thorough review of the evidence in the record, and full consideration of that evidence, I make the following additional findings of fact:

Applicant is 43 years old, married with four children, two of whom are from a previous marriage. He works as a helicopter mechanic for a defense contractor at a northern tier military base. Applicant makes about \$31,000 annually

(net income of \$27,000 annually), out of which he supports his family and pays child support of \$351 monthly for his two older children. He earns \$15 per hours as a helicopter mechanic. Applicant and his wife also have a paper route to earn extra money. Applicant has no significant savings, and must spend everything he earns to support his family. He takes no vacations and lives in a mobile home on which he pays \$85 monthly for lot rent and \$428 mortgage payments. Applicant's current financial problem started in 2002 when he was involved in an auto accident in which he hit a vehicle stopped without lights in the middle of a country road. Applicant's car was totaled, and the insurance proceeds paid the balance of the loan on that car. Exhibit 3 reflects that debt and payment. Replacing that used vehicle with another used vehicle took money that could have been and previously was being applied to his credit card debts. Applicant also saw a reduction in his income when the contract for helicopter maintenance changed from one company to another, and the new employer did not pay a fringe benefit for medical insurance. Applicant does not have any credit cards now. (Tr. 22, 24, 25, 31-36, 40, 47, 57; Exhibits 1-3)

Applicant's unresolved delinquent debts are for credit card purchases made in the late 1990s. He was current on his payments until his automobile accident. He is paying one credit card creditor that obtained a judgment against him \$200 monthly and has \$1,000 remaining on that debt of \$2,651. That debt was not alleged in the SOR. (Tr. 18, 22, 23; Exhibits 3, E, F)

Applicant denies the \$7,000 debt owed to a finance company for a pick-up truck he owned. Applicant paid \$7,000 over four years for the truck. At that point the finance company claimed Applicant needed different insurance on the vehicle than the type Applicant had on the truck, and the finance company put charged him another \$7,000 for that insurance. Applicant voluntarily surrendered the vehicle then, refusing to pay the same amount twice for the vehicle and denying the need for more insurance. The vehicle was sold at auction, but Applicant does not know the amount realized from that sale, or what the true balance of the debt is, if any. The surrender occurred in 1998. (Tr. 17, 18, 21, 28-30, 41; Exhibits 2 and 3)

Applicant owes a credit card issuer \$1,414, another credit card issuer \$929, a third credit card creditor \$1,868, and another credit card issuer \$708. Applicant does not have sufficient income to pay these debts at present, and does not think it proper for him to file bankruptcy because he would rather pay the debts. He will pay these delinquent debts when he can use the \$351 monthly payments from child support payments he makes now and no longer thinks he owes, and the \$200 monthly he now pays another creditor. Applicant owes about \$21,000 in child support arrearage as of February 2003, but the monthly payments are deducted from his monthly paychecks and sent to the appropriate receiving government agency. (Tr. 22; Exhibit 3)

Applicant enrolled in a consumer counseling agency in May 2005. He is paying \$795 for that organization to assist him in paying off his delinquent debts. The \$795 fee seems to be an enrollment fee, profit to the organization, and not applied to the payment of his delinquent debts. Applicant's personal financial statement from February 2004 shows he has either no net remainder or operates at a deficit if the math calculations are done of his income and expenses. The net remainder shown of \$2,545 is an error. 4(Exhibits 3 and E)

Applicant is a competent and experienced helicopter mechanic. He is respected by his peers and superiors, who recommend him for a renewal of his security clearance. (Tr. 53-73; Exhibits A-D)

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 has 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 the national interest to do so." Exec. Or. 10865, *Safeguarding Classified Information with 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.

The adjudication process is based on the whole person concept. All available, reliable information about the person, past and present, is to be taken into account in reaching a decision as to whether a person is an acceptable security risk. Enclosure 2 of the Directive sets forth personnel security guidelines, as well as the disqualifying conditions (DC) and mitigating conditions (MC) under each guideline that must be carefully considered in making the overall common sense determination required.

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. Those assessments include: (1) the nature, extent, and seriousness of the conduct; (2) the circumstances surrounding the conduct, and the extent of knowledgeable participation; (3) how recent and frequent the behavior was; (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 (See Directive, Section E2.2.1. of Enclosure 2). Because each security case presents its own unique facts and circumstances, it should not be assumed that the factors exhaust the realm of human experience or that the factors apply equally in every case. Moreover, although adverse information concerning a single condition may not be sufficient for an unfavorable determination, the individual may be disqualified if available information reflects a recent or recurring pattern of questionable judgment, irresponsibility, or other behavior specified in the Guidelines.

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 that the applicant has not met the strict guidelines the President and the Secretary of Defense have established 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. 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. *See* ISCR Case No. 95-0611 at 2 (App. Bd. ay 2, 1996). All that is required is proof of facts and circumstances that indicate an applicant is at risk for mishandling classified information, or that an applicant does not demonstrate the high degree of judgment, reliability, or trustworthiness required of persons handling classified information. ISCR Case No. 00-0277, 2001 DOHA LEXIS 335 at **6-8 (App. Bd. 2001). Once the Government has established a *prima facie* case by substantial evidence, the burden shifts to the applicant to rebut, explain, extenuate, or mitigate the facts. *See* Directive ¶ E3.1.15. An applicant "has the ultimate burden of demonstrating that is clearly consistent with the national interest to grant or continue his security clearance. ISCR Case No. 01-20700 at 3 (App. Bd. 2002). "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* Exec. Or. 12968 § 3.1(b).

Based upon a consideration of the evidence as a whole, I find the following adjudicative guidelines most pertinent to an evaluation of the facts of this case:

Guideline F:Financial Considerations: *The Concern*: An individual who is financially overextended is at risk of having to engage in illegal acts to generate funds. E2.A6.1.1

CONCLUSIONS

The Government established by substantial evidence and Applicant's admissions all of the allegations in the SOR. Regarding the financial considerations security concerns, the Disqualifying Conditions (DC) applicable are DC 1 (*A history of not meeting financial obligations*. E2.A6.1.2.1) and DC 3 (*Inability or unwillingness to satisfy debts*. E2A6.1.2.3) Applicant has several debts that are delinquent because he does not earn enough money to pay them, support his family, and maintain his vehicles in running condition so he can get to work and get his children to school.

The Mitigating Conditions (MC) applicable are MC 3 (*The conditions that resulted in the behavior were largely beyond the person's control*, being here the auto accident causing the diversion of money to buy another used car, and his loss of income when the contractor companies switched and his new employer did not pay him a fringe benefit for his medical benefits. E2.A6.1.3.3), and MC 4 (*Applicant is receiving counseling for the problem and there are clear indications the*

problems is being resolved or is under control. E2A6.1.3.4) Applicant is paying one debt now on the installment basis, and commits to paying the other debts when he has money to do so. A \$31,000 income to support a family of four and child support payments for two other children does not leave Applicant much leeway for anything. He enrolled in a credit counseling program to help him pay his bills. It is financially impossible for Applicant to pay these delinquent debts from his current income, and while he and his wife have a second job delivering newspapers, in their geographic location, and with their education and experience, there is little opportunity for him to earn larger amounts of money to rapidly pay off these debts. He is addressing the financial considerations to the best of his ability. The \$7,000 debt from 1998 I conclude is suspect because of the actions of the seller in unilaterally applying excessive insurance costs to the transaction without Applicant's consent. Applicant has not disputed that debt with the credit reporting agencies or through legal processes, but does have that option based upon the evidence submitted at the hearing. Therefore, after considering all of the evidence, and looking at the whole person from a common sense perspective, I conclude this guideline for Applicant.

FORMAL FINDINGS

The following are my conclusions as to each allegation in the SOR:

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

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 continue a security clearance for Applicant. Clearance is granted.

Philip S. Howe

Administrative Judge

1. Pursuant to Exec. Or. 10865, *Safeguarding Classified Information within Industry* (Feb. 20, 1960), as amended and modified, and Department of Defense Directive 5220.6, *Defense Industrial Personnel Security Clearance Review Program* (Jan. 2, 1992), as amended and modified (Directive).