

DATE: November 8, 2005

In Re:

SSN: -----

Applicant for Security Clearance

ISCR Case No. 04-09024

DECISION OF ADMINISTRATIVE JUDGE

THOMAS M. CREAN

APPEARANCES

FOR GOVERNMENT

Robert E. Coacher, Esq., Department Counsel

FOR APPLICANT

Pro Se

SYNOPSIS

Applicant is a computer systems analyst for a defense contractor. He admits to delinquent debts as shown on a credit bureau report. Applicant stated in response to security investigators that he would either pay the debts or make arrangements to pay the debts. He stated in response to the Statement of Reasons that he paid two of the debts and had arrangements to pay the other four debts. He provided no documents to support payment on the debts, or the agreements to pay the debts. He has not met his burden to mitigate security concerns for his delinquent debts. Clearance is denied.

STATEMENT OF THE CASE

On June 10, 2005, the Defense Office of Hearing and Appeals (DOHA) issued a Statement of Reasons (SOR) detailing the basis for its decision to deny a security clearance for Applicant. The action was taken under Executive Order 10865, *Safeguarding Classified Information within Industry* (February 20, 1990), as amended and modified, and Department of Defense Directive 5220.6, *Defense Industrial Personnel Security Clearance Review Program* (January 2, 1992), as amended and modified (Directive). Applicant acknowledged receipt of the SOR on June 21, 2005. The SOR alleges security concerns under Guideline F (Financial Considerations) of the Directive.

Applicant answered the SOR in writing on August 8, 2005. He admitted all of the allegations under Guideline F, except one which he did not address, and provided an explanation for his actions. He elected to have the matter decided on the written record in lieu of a hearing.

Department Counsel submitted the Government's written case on September 21, 2005. Applicant received a complete file of relevant material (FORM) on October 1, 2005, and was provided the opportunity to file objections and submit material to refute, extenuate, or mitigate the disqualifying conditions. Applicant responded to the FORM with additional information on October 20, 2005. On October 27, 2005, Department counsel stated he had no objection to the additional material. The case was assigned to me on October 28, 2005.

FINDINGS OF FACT

Applicant is a 39-year-old computer systems analyst for a defense contractor. He is a college graduate, and not married. He submitted a security clearance application on December 1, 2003.⁽¹⁾ A credit bureau report established six delinquent debts.⁽²⁾

SOR allegation 1.a is a delinquent debt placed in collection in February 1999 for \$166.00. Applicant admits this is a valid debt. He stated in response to the SOR he would pay this bill by August 12, 2005.⁽³⁾ He stated in response to the FORM that it was paid in full.⁽⁴⁾ He provided no documents to support his assertion.

SOR allegation 1.b. is a \$181.00 debt to a collection agency. Applicant admits to this debt, and stated in response to the SOR that he would pay it by August 2005.⁽⁵⁾ Applicant states in response to the FORM that he has paid this bill in full.⁽⁶⁾ He provides no documents to verify his payment

SOR allegation 1.c is a delinquent debt of \$3,167.00 on a loan. Applicant admitted the debt and in response to the SOR stated that he would pay it by August 2005.⁽⁷⁾ Applicant states in response to the FORM that he made payment arrangements with the creditor, and the loan will be repaid in six months.⁽⁸⁾ Applicant presented no documents to verify the arrangements or any payments made on the debt.

SOR allegation 1.d is a bank loan for \$12,258.00 charged off as a bad debt. SOR allegation 1.e. is a bank loan for \$8,500.00 that is past due. Applicant admitted these debts and stated in response to the SOR that he would contact the creditors to arrange payments.⁽⁹⁾ Applicant states in response to the FORM that he has contacted the creditors, is working on payment arrangements, but has not paid on the debts.⁽¹⁰⁾ Applicant presented no documents to verify his assertions.

SOR allegation 1.f. is for \$466.00 for an account placed in collection. Applicant admits to the debt and stated in response to the SOR that he would pay it by August 26, 2005.⁽¹¹⁾ He stated in his response to the FORM that he spoke with the creditor, arranged a payment plan, and should have the debt paid in a few months.⁽¹²⁾ He presented no documentation to verify his claim.

SOR allegation 1.g is based on Applicant's Personal Financial Statement which shows a net remainder of discretionary income each month of \$1,326.00.⁽¹³⁾ The allegation asserts Applicant has sufficient funds to pay on his delinquent debts but he has not done so. Applicant states in response to the FORM that he is working on paying his delinquent debts, and given time he will pay his obligations.⁽¹⁴⁾

POLICIES

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⁾ Eligibility for a security clearance is predicated upon the applicant meeting the security guidelines contained in the Directive.⁽¹⁶⁾

The Directive sets out the adjudicative guidelines for making decisions on security clearances. Enclosure 2 of the Directive sets forth adjudicative guidelines for determining eligibility for access to classified information, and it lists the disqualifying conditions and mitigating conditions for each guideline. Each clearance decision must be fair, impartial, and a commonsense decision based on the relevant and material facts and circumstances, the whole person concept, and the factors listed in the Directive ¶ 6.3.1 through ¶ 6.3.6.

The adjudicative process is an examination of a sufficient period of a person's life to make an affirmative determination that the person is eligible for a security clearance. An administrative judge must apply the "whole person concept," and consider and carefully weigh the available, reliable information about the person.⁽¹⁷⁾ An administrative judge should consider: (1) the nature, extent, and seriousness of the conduct; (2) the circumstances surrounding the conduct, to

include knowledgeable participation; (3) the frequency and recency of the conduct; (4) the applicant'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 of recurrence. ⁽¹⁸⁾

A person granted access to classified information enters into a special relationship with the government. The government must be able to repose a high degree of trust and confidence in those individuals to whom it grants access to classified information. The decision to deny an individual a security clearance is not necessarily a determination as to the loyalty of the applicant. ⁽¹⁹⁾ 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 present evidence to establish controverted facts in the SOR that disqualify or may disqualify the Applicant from being eligible for access to classified information. ⁽²⁰⁾ Thereafter, Applicant is responsible for presenting evidence to rebut, explain, extenuate, or mitigate facts. ⁽²¹⁾ An applicant "has the ultimate burden of demonstrating that it is clearly consistent with the national interest to grant or continue his security clearance." ⁽²²⁾ "[T]he Directive presumes there is a nexus or rational connection between proven conduct under any of the criteria listed therein and an applicant's security suitability." ⁽²³⁾ "Any doubt as to whether access to classified information is clearly consistent with national security will be resolved in favor of the national security." ⁽²⁴⁾

Based upon a consideration of the evidence, I find the following adjudicative guideline most pertinent to the evaluation of the facts in this case:

Guideline F - Financial Considerations: A security concern exists for an individual who is financially irresponsible. An individual who is financially irresponsible may also be irresponsible, unconcerned, or careless in their obligations to protect classified information. Behaving responsibly or irresponsibly in one aspect of life provides an indication of how a person may behave in other aspects of life.

Conditions that could raise a security concern and may be disqualifying, as well as those which would mitigate security concerns, pertaining to the adjudicative guideline are set forth and discussed in the conclusions section below.

CONCLUSIONS

I carefully considered all of the facts in evidence and the legal standards discussed above. I reach the following conclusions regarding the allegations in the SOR.

The government has established its case under Guideline F. Applicant's delinquent debts brings the matter within Financial Considerations Disqualifying Conditions E2.A6.1.2.1 (*a history of not meeting financial obligations*), and E2.A6.1.2.3 (*an inability or unwillingness to satisfy debts*). The credit bureau report and Applicant's admissions establish the delinquent debts. Applicant's Personal Financial Statement shows he has sufficient income to make payments on delinquent debts. His ability to pay on the debts and his failure to present documentation that he has made payments establishes an unwillingness to satisfy his debts. I conclude the above disqualifying conditions have been established.

I have considered Financial Consideration Mitigating Condition E2.A6.1.3.6 (*the individual initiated a good faith effort to repay overdue creditors or otherwise resolve debts*). Applicant stated he would pay his overdue debts, indicated he paid two of them, and was making or had made arrangements to pay the other four debts. He presented no documents to establish his payment of the two debts, or his agreements and plans to pay the other four debts. Applicant's statements alone are not sufficient to meet his burden to establish he initiated good-faith efforts to pay his debts. His income is sufficient to enable him to pay on his debts, but he has not provided proof of payment. He has failed to mitigate the security concerns for financial considerations.

I carefully considered all of the circumstances in light of the "whole person" concept. I conclude Applicant is not eligible for access to classified information.

FORMAL FINDINGS

Formal findings for or against Applicant on the allegations in the SOR, as required by Section 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

Subparagraph 1.f.: Against Applicant

Subparagraph 1.g.: Against Applicant

DECISION

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

Thomas M. Crean

Administrative Judge

1. Item 4 (Security Clearance Application, dated Dec. 01, 2003).
2. Item 7 (Credit Bureau Report, dated Apr. 29, 2005).
3. Item 3 (Applicant's answer to the SOR, dated Aug. 8, 2005).
4. Applicant's answer to the FORM, dated Oct 20, 2005.
5. Item 3, *supra*, n. 3.
6. *Supra*, n. 4.
7. Item 3, *supra*, n. 3.
8. *Supra*, n. 4.
9. Item 3, *supra*, n. 3.
10. *Supra*, n. 4.
11. Item 3, *supra*, n. 3.
12. *Supra*, n. 4.
13. Item 5, Applicant's statement, dated Jun. 2, 2004, at 4.

14. *Supra*, n. 4.

15. *Department of the Navy v. Egan*, 484 U.S. 518 (1988).

16. Directive ¶ E2.2.1.

17. *Id.*

18. Directive ¶¶ E2.2.1.1 through E2.2.1.9.

19. *See* Exec. Or. 10865 § 7.

20. Directive ¶ E3.1.14.

21. ISCR Case No. 01-20700 at 3 (App. Bd. Dec. 19, 2002); *see* Directive ¶ E3.1.15.

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

23. ISCR Case No. 95-0611 at 2 (App. Bd. May 2, 1996) (quoting DISCR Case No. 92-1106 (App. Bd. Oct. 7, 1993))

24. *Egan*, 484 U.S. at 531; *see* Directive ¶ E2.2.2.