

DATE: August 9, 2006

In Re:

SSN: -----

Applicant for Security Clearance

CR Case No. 04-10862

DECISION OF ADMINISTRATIVE JUDGE

PAUL J. MASON

APPEARANCES

FOR GOVERNMENT

Francisco J. Mendez, Jr., Esq., Department Counsel

FOR APPLICANT

Pro Se

SYNOPSIS

In 2000, Applicant was driving a rental car that was involved in an accident. The rental-car-agency was holding him liable because they contended he had not filed a police report to corroborate his claim of not being responsible for the accident. In June 2005, (1) Applicant was informed he owed \$9,296.00 to this creditor, and more than \$20,000.00 to all creditors listed in the SOR, and (2) he was asked to submit information describing action taken on the debts. Applicant stated he either paid the debts or would pay the debts as soon as possible, and his July 2006 credit bureau report (CBR) verifies his statement. Applicant has successfully mitigated his financial indebtedness. Clearance is granted.

STATEMENT OF CASE

The Defense Office of Hearings and Appeals (DOHA) declined to grant or continue a security clearance for Applicant. On November 23, 2005, under Executive Order 10865 and Department of Defense Directive 5200.6, DOHA issued a Statement of Reasons (SOR) detailing the reasons for its security concerns raised under the financial considerations guideline (Guideline F) of the Directive. Applicant provided his answers to the SOR on December 27, 2005 and March 5, 2005; he requested a decision be made on the record in lieu of a hearing.

A copy of the Government's File of Relevant Material (FORM, the Government's evidence in support of the SOR) was sent to Applicant on June 8, 2006. Applicant received the FORM on July 3, 2006. Applicant's response to the FORM was received on July 14, 2006. The case was assigned to me for decision on July 18, 2006.

FINDINGS OF FACT

The SOR alleges five past due debts. The sixth allegation is that based on a personal financial statement Applicant provided in June 2005, he has sufficient funds (\$5,228.00) to make payments on the five delinquent debts. Applicant denied owing any of the debts. He admitted the sixth allegation, but indicated all debts were paid. Though Applicant denied the 1.c. debt in his answers to the SOR, he stated in his response to interrogatories (Item 7, June 2005) that he was not familiar with the 1.c. debt. Furthermore, allegation 1.c. was removed from his CBR. Applicant is a 32-year-old

technician who is employed as a technician by a defense contractor. He seeks a secret level security clearance.

In August 1995, Applicant opened an installment account (1.a.) to purchase an auto. The account was to be paid off in 60 months through the auto credit company. For unknown reasons, the account became past due in the amount of 9,509.00. Applicant explained in Item 6 (responses to interrogatories) that he had one installment remaining before the account would be paid off; he provided a copy of the settlement letter to the 1.a. creditor. As of June 2005 (Item 7), the account had not been paid. The 1.a. account does not appear in Item 11 (June 2006) or Applicant's CBR dated July 2006. Applicant indicated (without documentation) he paid the third installment.

Subparagraph 1.b. involves a rented auto Applicant was driving when he collided with another auto in 2000. He is certain he filed a police report but the rent-a-car company maintains he did not, and is therefor liable. Rather than officially challenge his liability and possibly jeopardize his security clearance, Applicant settled the debt. His CBR dated July 2006, reflects the account (\$9,296.00) was "paid in full for less than the full balance."

Applicant denies the 1.c. debt (\$2,658.00). Though the debt appeared in Item 7 (CBR, June 2005), the debt no longer appears in Item 11 (CBR, June 2006) or Applicant's CBR dated July 2006 that he provided to the government to verify he had paid the overdue debts.

Next, the SOR lists a \$230.00 debt (1.d.) for medical services. In Item 6, Applicant stated he paid the debt in March 2005 but provided no documentation. Applicant reiterated his position in his July 2006 response to the FORM; the July 2006 CBR reflects he disputed this medical debt.

Regarding the 1.d. debt, Applicant explained he was paying the credit union in two installments; he had paid one installment and planned to pay the other portion. Item 11 (June 2006) indicates the 1.d. was closed or paid with a zero balance. Accompanying his explanation that the 1.d. debt was settled is Applicant's July 2006 CBR showing the account was paid with a zero balance.

Applicant was unable to provide documentation of payment of his debts because he was on vacation in the United States when he received the SOR in November 2005 at his overseas duty location. He did not believe he had time to obtain the necessary documentation in the time provided.

Applicant believes he is worthy of a security clearance based on his seven years of military service from June 1991 to December 1998. He has held a security clearance since June 1991, and understands that to keep his security clearance, he must pay his debts. He stated, "I understand that if I expect to continue working in a cleared job, I know I must never allow myself to become financially unstable." (response to FORM)

POLICIES

Enclosure 2 of the Directive sets forth guidelines containing disqualifying conditions (DC) and mitigating conditions (MC) that should be given binding consideration in making security clearance determinations. These conditions must be considered in every case along with the general factors of the whole person concept. However, the conditions are not automatically determinative of the decision in any case nor can they supersede the Administrative Judge's reliance on his own common sense.

Burden of Proof

Initially, the government must establish, by substantial evidence, that conditions exist in the personal or professional history of the applicant which disqualifies, or may disqualify, the applicant from being eligible for access to classified information. *See Department of the Navy v. Egan*, 484 U.S. 518, 531 (1988) "[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." ISCR Case No. 95-0611 at 2 (App. Bd. May 2, 1996) (quoting DISCR Case No. 92-1106 (App. Bd. Oct. 7, 1993)).

Once the government establishes a disqualifying condition by substantial evidence, the burden shifts to the applicant to rebut, explain, extenuate, or mitigate the facts. "[S]ecurity clearance determinations should err, if they must, on the side

of denials." *See Egan*, 481 U.S. at 531; *see* Directive E2.2.2.

Financial Considerations (Guideline F)

An individual who is financially overextended is at risk of having to engage in illegal acts to generate funds.

CONCLUSIONS

Applicant's indebtedness of more than \$20,000,00.00 to four creditors falls within the scope of financial considerations (FC) disqualifying condition (DC) E2.A6.1.2.1. (*a history of not meeting financial obligations*) and FC DC E2.A6.1.2.3. (*inability or unwillingness to satisfy debts*). Failing to pay debts voluntarily incurred, particularly the rental car debt (1.b.) that is more than five years old, demonstrates financial irresponsibility that can disqualify a person from security clearance consideration.

In examining the five CBRs, it is readily apparent that the three of the four debts appear to be less than three years old, and therefore receive no consideration under FC mitigating condition (MC) E2.A6.1.3.1. (*the behavior was not recent*) or FC MC E2.A6.1.3.2. (*it was an isolated incident*). Without any evidence of why the debts became delinquent, there is no way to reasonably determine whether the debts were caused by events in or out of his control. Hence, FC MC E2.A6.1.3.3. (*the conditions that resulted in the behavior were largely beyond the person's control*) does not apply either.

Though there is no evidence of financial counseling, Applicant receives extensive benefit from FC MC E2.A6.1.3.4. (*the person has received counseling for the problem and there are clear indications that the problem is being resolved or is under control*) and FC MC E2.A6.1.3.6. (*the individual initiated a good-faith effort to repay overdue creditors or otherwise resolve debts*). While the record shows little or no documented effort before he was informed in June 2005 that the four accounts were delinquent, Item 11 and Applicant's CBR prove he has taken responsible action since then to resolve all the accounts. By providing convincing documentation that three of the four debts have been paid or settled since June 2005, I conclude that he also followed through with his stated intention of having paid the medical debt in March 2005, even though the debt continues to appear in his July 2006 CBR. The FC guideline is found Applicant's favor.

My favorable findings under the FC guideline have also included a review of this case under the general factors of the whole person concept. Considering Applicant's understanding that he must pay his bills to keep his security clearance, I do not believe he will encounter financial difficulty in the future.

FORMAL FINDINGS

Paragraph 1 (Financial Considerations, Guideline F): FOR THE APPLICANT.

Subparagraph 1.a. For the Applicant.

Subparagraph 1.b. For the Applicant.

Subparagraph 1.c. For the Applicant.

Subparagraph 1.d. For the Applicant.

Subparagraph 1.e. For the Applicant.

DECISION

In light of all 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.

Paul J. Mason

Administrative Judge