

DATE: November 20, 2006

In Re:

SSN: -----

Applicant for Security Clearance

ISCR Case No. 04-12391

DECISION OF ADMINISTRATIVE JUDGE

CHARLES D. ABLARD

APPEARANCES

FOR GOVERNMENT

Nicole Noel, Esq., Department Counsel

FOR APPLICANT

Pro Se

SYNOPSIS

Applicant, who has worked overseas for a defense contractor for half the time in the past six years leaving the payment of bills to his wife in the U.S., mitigated security concerns relating to financial considerations arising from \$11,000.00 in delinquent debts by payment of one debt and efforts to reach the other three creditors without success. He later entered into a credit counseling program that located them and is depositing funds each month to pay the debts, which he is financially able to do. Clearance is granted.

STATEMENT OF CASE

On November 9, 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 December 1, 2005, Applicant responded to the SOR allegations and requested a hearing. The matter was assigned to two other judges who were unable to schedule a hearing because of Applicant's overseas work. Requests for extensions of time were granted and it was assigned to me on July 20, 2006. A notice of hearing was issued on August 8, 2006, for a hearing on August 24, 2006, and held that day. The government offered 11 exhibits and Applicant offered 7 into evidence and all were accepted. The transcript was received on September 5, 2006. In a post-hearing submission sent to me on October 18, 2006, Applicant submitted six additional exhibits to which the government had no objection. In a second and final submission sent on November 2, 2006, Applicant submitted four additional exhibits to which the government had no objection. All post-hearing exhibits were admitted in evidence.

FINDINGS OF FACT

Applicant admitted all SOR allegations relating to delinquent debts with explanation for some and admitted the withholding information regarding them on his applicant for security clearance with explanation. After a complete review of the record, I make the following additional findings of fact:

Applicant is a 57-year-old employee of a defense contractor who has worked as a senior field engineer on support contract for a defense system for the past 15 years. He retired from the Army in 1989 after 22 years of active duty. He has held a security clearance continuously since 1967, sometimes at a level as high as secret crypto. He has never had a security violation. Approximately

half of his work since 2000 has been spent abroad working on overseas installations. Most recently he has been working in Saudi Arabia and returned to the U.S. from his latest assignment in May 2006. During his time overseas his pay is deposited in the U.S. and his wife has total discretion over the account to pay all the bills.

He incurred four delinquent debts totaling over \$11,000.00, which are the subject of the SOR.

These debts became delinquent while he was overseas and he failed to appreciate their existence and the extent that they were overdue. The first time he realized the existence of the debts was during his security interview on October 25, 2004, when he was confronted with a credit report. He has since attempted to resolve them and paid one in 2003. He exhibited great concern over the problems created by his lack of oversight at the hearing.

Since the hearing, Applicant has entered into a consumer credit counseling program and has \$350.00 each month deposited in an account used to pay the three remaining debts (Exh. 6 Post-hearing). The payments are current and will be resolved between 2006 and 2009 (Exh. 9 and 10 Post-hearing).

When Applicant filed his SF 86 on March 22, 2002, he was overseas and was unaware of the debts and did not report them at Questions 38 and 39 relating to delinquent debts of 90 and 180 days duration.

The following is an analysis of the four delinquent debts alleged in the SOR:

1. SOR 1.a.: \$5,908.00. He wrote and emailed the creditor but received no response (Exh. A and B). Credit report showed addresses in Florida where he had never lived. The creditor has been located by the counselor and is now on the payment plan (Exhs. 9 and 10 Post hearing).
2. SOR 1.b.: \$2,929.00. He sent two registered letters to the creditor which he showed at the hearing and both were returned unaccepted. The Federal Trade Commission had an ongoing investigation about credit collection practices at the time he sent the letters (Exh. D). The creditor has been located by the counselor and is now on the payment plan (Exhs. 9 and 10 Post hearing).
3. SOR 1.c.: \$1,782.00. The creditor furniture company closed its operation in his city and he could find no information about them although he acknowledged that his family had purchased furniture from them. Applicant has recently been contacted by the holder of the account and they are being paid through the credit counseling program (Exhs. 7 and 10 Post hearing).
4. SOR 1.d.: \$490.00. Credit card debt was paid in May 2003. He currently has a credit card with the same company that has a zero balance (Exh. 5 Post Hearing).

Applicant's salary is \$65,000.00 per annum but he receives a 45% bonus when overseas for periods exceeding six months duration and a larger one if it exceeds one year. He also receives military retirement of \$1,200.00 each month. His wife is also employed. They have two grown children one of whom is still in college. He has a 401K savings account consisting of stock in his employer's company worth approximately \$71,000.00. They own their home but have a mortgage.

He is will regarded in his company (Exhs. 3 and 4 Post hearing).

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 four delinquent debts prompted the allegation of security concern under Guideline F since 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 conditions that resulted in the behavior were largely beyond the person's control (E2.A6.1.3.3.) and 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 (E2.A6.1.3.4.) and the person has initiated a good-faith effort to repay overdue creditors or otherwise resolve debts. (E2.A6.1.3.6.).

There is little evidence the debts resulted from conditions beyond his control although the circumstances of his overseas work for extended periods and lack of attention to family finances managed by his wife led to much of the problem. While he did not exercise the most diligent oversight of his finances, the steps he has most recently taken are well designed to remedy the problem. Applicant clearly has the means to resolve debts of this size considering the amounts of his salary, retirement income, and savings. The steps he has taken are sufficient to do so.

Applicant's failure to report his financial delinquencies at Questions 38 and 39 on his SF 86 raises issues under Guideline E that might indicate questionable judgment, unreliability, and unwillingness to comply with rules and regulations and could indicate that the person may not properly safeguard classified information (E2.A5.1.1.). Specifically, the deliberate omission, concealment, or falsification of relevant and material facts from a personnel security application could raise a security concern and be disqualifying. (E2.A5.1.2.2.) Applicant's explanation of the circumstances of the filing and his lack of knowledge of the debts in 2002 is credible and thus, I cannot conclude that it was deliberate.

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.

The "whole person" concept recognizes we should view a person by the totality of their acts and omissions. Each case must be judged on its own merits taking into consideration all relevant circumstances, and applying sound judgment, mature thinking, and careful analysis. Applicant impressed me at the hearing as a hard-working person whose relatively small debts compared to his assets had accumulated and he had lost account of them. He was sufficiently chagrined by the problem that it is unlikely to recur. He intended to resolve them if he did owe the money and could locate an office to pay. He has since established to my satisfaction that he is doing so in a responsible manner.

After considering all the evidence in its totality, and as an integrated whole to focus on the whole person of Applicant, 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

Subparagraph 1.d.: For Applicant

Paragraph 2. Guideline E: FOR APPLICANT

Subparagraph 2.a.: For Applicant

Subparagraph 2.b.: 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