

DATE: December 28, 2006

In Re:

SSN: -----

Applicant for Security Clearance

CR Case No. 04-12481

DECISION OF ADMINISTRATIVE JUDGE

CHARLES D. ABLARD

APPEARANCES

FOR GOVERNMENT

Nicole Noel, Esq., Department Counsel

FOR APPLICANT

Pro Se

SYNOPSIS

Applicant failed to mitigate security concerns relating to delinquent debts and criminal conduct. He had seven debts of over \$9,000 and only one of the four smallest totaling a little over \$400 had been paid. He mitigated an Article 15 from 1976 because of the passage of time, but a DUI resulting in fines and loss of license in 2002 with subsequent arrest for driving without the license in 2003 were not mitigated. Failure to report the delinquent debts on his SF86 and allegation of criminal conduct under 18 U.S.C. 1001 for failure to do so were mitigated because of his confusion about the requirements. Clearance is denied.

STATEMENT OF CASE

On March 1 2006, 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 April 27, 2006, Applicant responded to the SOR allegations, and requested a hearing. The matter was assigned to another judge on June 8, 2006, and re-assigned to me on August 28, 2006. A notice of hearing was issued on September 5, 2006, for a hearing on September 18, 2006, and held that day. The government offered 12 exhibits into evidence and all were admitted. Applicant offered none. The transcript was received on September 27, 2006.

FINDINGS OF FACT

Applicant admitted all SOR allegations relating to delinquent debts and criminal conduct with explanation for some. He denied falsifying his answers regarding them on his application for security clearance (SF86). After a complete review

of the record, I make the following additional findings of fact:

Applicant is a 54-year-old employee of a major defense contractor who has worked as a communications electronics technician since 1993. He incurred debts totaling over \$9,000 most of the amount from three debts dating from 1996 and 1998. One for \$2,273 is a credit card debt for purchase of a vacuum cleaner which has escalated with interest and late charges. A second for \$2,770 is for miscellaneous charges on a credit card. A third for \$4,227 is for excess mileage charges on a lease to buy automobile. The only payment on any of these three was a \$300 payment to the third creditor several years ago. Four smaller debts totaling a little over \$400 were incurred between 1996 and 2004, and only one for \$33 has been paid. Most of the debts were incurred when he was married, and his wife and he spent in excess of their joint income.

Applicant served in the Air Force between 1971 and 1992 and is retired. In 1976 he received an Article 15 for possession of marijuana for which he was reduced in grade and fined.

Applicant was arrested for driving under the influence (DUI) in 2002 for which he received a deferred sentence and was sent to DUI school and a victims impact panel. He has yet to satisfy all of the financial conditions the court imposed. His license was suspended and six months later he was arrested for driving without a license. This occurred while he was driving to work since that was his only means of transportation to his job.

Applicant has held a security clearance since being on active duty, and it has been renewed several times since his current employment. The skills he now uses in his work were learned while he was on active duty. He was divorced in August 2003 when his wife abandoned him and their four sons who are now 15, 13, 10, and 9 years of age. He is solely responsible for the children since his wife is unable to pay her share of the child care and health costs exceeding insurance as required in the divorce decree (Exh. 10). Since the difficulties with his wife began he has suffered from depression and started drinking to excess. His health is now improved and he has lessened his drinking.

Applicant omitted his delinquent debts of 180 and 90 days on his SF86 at Questions 38 and 39 submitted on January 6, 2003. He believed his application for security clearance was only an update and was unsure as to what was required to be reported. No evidence of an SF86 since 1998 other than the current one was offered in evidence by either party.

Applicant owns his home and pays \$1,300 in monthly mortgage payments. He has two cars for which he pays \$724 per month for car payments. One, a truck, is inoperable but he cannot sell it and still owes for it. His monthly pay is \$2,900 after deductions. He recently received a bonus of \$3,300 in the form of company stock. He has sold it and intends to apply the proceeds to his debts but has not yet done so. He has not received credit counseling but has had discussions relating to his debt problems with members of his church.

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 seven delinquent debts prompted the allegation of security concern under Guideline F because 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 initiated a good faith effort to repay overdue creditors or otherwise resolve debts. (E2.A6.1.3.6.). There is no evidence the debts resulted from conditions beyond his control. Most began in the 1990s when he and his wife were not budgeting consistent with their income. While his wife's leaving the home and failure to contribute to the welfare of their children was an unforeseen event, those facts do not establish a mitigating condition since most of the debts were incurred and delinquent before their separation. He has only a limited ability to pay significant amounts to the creditors with his current obligations. He is not in a financial consulting program and only gets some advice at his church. He states that he intends to repay the debts and avers that he is working out plans for several (Exh. 4) but no evidence was offered of such a plan and only one of the four smallest debts have been paid. Thus, the mitigating conditions do not apply.

Guideline J (Criminal Conduct) is alleged for his convictions and failure to answer correctly questions 38 and 39 on his SF 86. It is also alleged as to criminal conduct under 18 U.S.C. 1001 for failure to report delinquent debts. The allegation could be mitigated by the fact the crime was not recent (E2.A10.1.2.1.) or was an isolated incident (E2.A10.1.3.2.) I conclude Applicant Article 15 is mitigated by the passage of time. I cannot so conclude as to the DUI and driving without a license in 2002 and 2003. I find that he did not have the requisite deliberate intent required for criminal intent in failing to report the delinquent debts on his SF86. .

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 failure to report any of the delinquent debts was at best negligent but in view of his difficulty with verbal and written communications as illustrated by his testimony and presentation at the hearing, I conclude that it was not deliberate as required by the guideline.

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 with considerable family responsibilities who is a responsible single parent. His delinquent debts accumulated to the point that he lost control of them and was unable to resolve them. I believe he intends to resolve the debts when he has the financial means to do so. However, he does not have the funds to do so now and is unlikely to be in such a position in the near future.

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

conclude it is premature to grant a security clearance.

FORMAL FINDINGS

Formal findings as required by the Directive (Par. E3.1.25) are as follows:

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.: For Applicant

Subparagraph 1.g.: Against Applicant

Paragraph 2. Guideline J: AGAINST APPLICANT

Subparagraph 2.a.: For Applicant

Subparagraph 2.b.: Against Applicant

Subparagraph 2.c.: Against Applicant

Subparagraph 2.d.: For Applicant

Paragraph 3. Guideline E: FOR APPLICANT

Subparagraph 3.a.: For Applicant

Subparagraph 3.b.: For Applicant

DECISION

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

Charles D. Ablard

Administrative Judge