

DATE: August 14, 2006

In re:

SSN: -----

Applicant for Security Clearance

ISCR Case No. 04-12721

DECISION OF ADMINISTRATIVE JUDGE

JUAN J. RIVERA

APPEARANCES

FOR GOVERNMENT

Pamela C. Benson, Esq., Department Counsel

FOR APPLICANT

Pro Se

SYNOPSIS

Applicant has a history of failing to meet his financial obligations dating back to the early 1990s. As of the date he answered the SOR, he had seven delinquencies he has been carrying for many years. He failed to show that he is in control of his finances or that he made any effort to repay creditors or otherwise resolve his debts. To the contrary, he refuses to pay his financial obligations. Applicant lacks a track record of financial responsibility. Clearance is denied.

STATEMENT OF THE CASE

On August 29, 2005, the Defense Office of Hearings and Appeals (DOHA) issued Applicant a Statement of Reasons (SOR) alleging facts which raise security concerns under Guideline F (Financial Considerations). The SOR informed Applicant that, based on information available to the Government, DOHA adjudicators could not make a preliminary affirmative finding that it is clearly consistent with the national interest to grant his access to classified information.⁽¹⁾

On September 15 and November 21, 2005, Applicant answered the SOR (Answer), admitted seven of the eight allegations,⁽²⁾ and requested a clearance decision based on the written record without a hearing. On March 29, 2006, Department Counsel prepared a File of Relevant Material (FORM) which was mailed to Applicant on April 7, 2006. He acknowledged receipt of the FORM on April 18, 2006, and did not object to anything contained in the FORM or submit additional information for consideration within the 30-day time period provided to him. The case was assigned to me on June 14, 2006.

FINDINGS OF FACT

Applicant admitted SOR allegations 1.a - 1.g. His admissions are incorporated herein as findings of facts. After a thorough review of the pleadings and the evidence, I make the following additional findings of facts:

Applicant is 42 years old; he married his wife in 1983, and has one adult son.⁽³⁾ He attended college between August

1982 and December 1983. It does not appear, however, that he obtained a degree.⁽⁴⁾ Since 1985, Applicant has been employed as an aircraft painter for a Department of Defense (DOD) contractor. Apparently, he has held a security clearance for over 10 years. There is no evidence Applicant ever mishandled or compromised classified information.

In October 2002, Applicant submitted an SF 86 seeking a continuation of his security clearance. In his answers to the SF 86 questions, Applicant disclosed a car repossession and one unpaid \$10,000 credit card debt. The subsequent background investigation addressed Applicant's 2002, 2003, 2004, and 2005 credit bureau reports (CBR). The November 2002 CBR showed Applicant had 12 delinquent accounts, totaling approximately \$20,000, that had been referred for collection or charged off as bad debt. The oldest delinquent account dated back to 1987. Applicant's December 2003 and 2004 CBRs reflected many of the same delinquencies indicated in the 2002 CBR. Applicant's 2005 CBR reflects two additional charged off accounts.⁽⁵⁾

In June 2004, Applicant provided a statement to a government investigator in which he acknowledged his delinquent accounts with Capital One Bank, First Premier Bank, Network Long Distance, NuVell Credit, and Sprint. Applicant stated his financial problems were the result of his over use of credit cards, employment fluctuations, and expenses related to his son's illnesses.⁽⁶⁾ Applicant provided a personal financial statement indicating that he and his wife's combined monthly take home pay was approximately \$3,100, and that they had a remainder of \$888. However, no payments were earmarked for any of the above delinquencies. Furthermore, Applicant specifically stated he had no intention to pay off his delinquent debts.

In his September 2005 answer to the SOR, Applicant clarified he does not have a \$888 remainder. He listed numerous additional expenses including contributions to his son's college education and grandson's preschool. He stated after paying living expenses and some of his debts he only has approximately \$250 a week remaining for gas and groceries. He also stated that he plans on paying some of his smaller delinquencies when his son finishes college. Notwithstanding, in his November 2005 answer to the SOR Applicant stated he had no intention to pay any of the delinquencies alleged in the SOR in the near future.⁽⁷⁾

The SOR alleges seven delinquent accounts, totaling \$13,269, which Applicant admitted without explanation. Applicant provided no additional information concerning when or how he acquired the debts; whether he has paid off any of the debts, or whether he has made any effort to resolve the debts. There is no information as to how he intends to resolve his financial predicament or what he has done or intends to do to prevent it from happening again. In light of the available evidence, I find that all the delinquencies alleged in the SOR are still outstanding.

POLICIES

The Directive sets forth adjudicative guidelines which must be considered in evaluating an Applicant's eligibility for access to classified information. The administrative judge must take into account both disqualifying and mitigating conditions under each adjudicative guideline applicable to the facts and circumstances of the case. The guidelines are not viewed as inflexible ironclad rules of law. The presence or absence of a disqualifying or mitigating condition is not determinative of a conclusion for or against an Applicant. Each decision must reflect a fair and impartial common sense consideration of the factors listed in Section 6.3 of the Directive, and the whole person concept. Having considered the record evidence as a whole, I conclude Guideline F (Financial Considerations)⁽⁸⁾ is the applicable relevant adjudicative guideline.

BURDEN OF PROOF

The purpose of a security clearance decision is to determine whether it is clearly consistent with the national interest to grant or continue an applicant's eligibility for access to classified information.⁽⁹⁾ A person who has access to classified information enters into a fiduciary relationship with the government based on trust and confidence. The government, therefore, has a compelling interest to ensure each applicant possesses the requisite judgement, reliability and trustworthiness of one who will protect the national interests as his or her own.

The government has the initial burden of proving controverted facts alleged in the SOR. To meet its burden, the

government must establish by substantial evidence ⁽¹⁰⁾ a prima facie case that it is not clearly consistent with the national interest for the applicant to have access to classified information. The responsibility then shifts to the applicant to refute, extenuate or mitigate the government's case. Because no one has a right to a security clearance, the applicant carries a heavy burden of persuasion. ⁽¹¹⁾ The "clearly consistent with the national interest" standard compels resolution of any reasonable doubt about an applicant's suitability for access to classified information in favor of protecting national security. ⁽¹²⁾

CONCLUSIONS

Under Guideline F (Financial Considerations), a security concern exists when a person has significant unpaid debts. An individual who is financially overextended is at risk to engage in illegal or unethical acts to generate funds to meet financial obligations. ⁽¹³⁾ Similarly, an individual who is financially irresponsible may also be irresponsible, unconcerned, or careless in his obligation to protect classified information. Behaving responsibly or irresponsibly in one aspect of life can often indicate how a person may behave in other aspects of life.

Applicant has a history of failing to meet his financial obligations dating back to the early 1990s. In 2004, he was confronted by a government investigator about his then financial problems, and was made aware of the government's concerns about his financial situation. He acknowledged the problems and stated he did not intend to pay off his delinquencies.

As of November 2005, when he submitted his second response to the SOR, Applicant still had seven outstanding delinquencies totaling \$13,269. Four of the debts alleged are for relatively small delinquencies he has been carrying for years. Applicant's financial problems are recent, not isolated, and ongoing. Applicant's unwillingness or inability to honor his financial obligations is evidenced by the delinquent debts he has been carrying for years, and his failure to make meaningful efforts to repay creditors or otherwise resolve his financial situation. Financial Considerations Disqualifying Condition (FC DC) 1: *A history of not meeting financial obligations*; and FC DC 3: *Inability or unwillingness to satisfy debts*, apply in this case.

Applicant mentioned two mitigating factors that may be considered as circumstances beyond his control contributing to his inability to pay his debts -- i.e., employment fluctuations and providing financial assistance to his son and grandson. However, Applicant failed to provide sufficient information to support the applicability of Financial Considerations Mitigating Condition (FC MC) 3: *The conditions that resulted in the behavior were largely beyond the person's control*.

Notwithstanding the possible circumstances beyond his control, Applicant presented little or no evidence to show he has dealt responsibly with his financial obligations. Applicant presented no evidence of paid debts, settlements, negotiations, payment plans, budgets, financial assistance/counseling, or that he has otherwise made any effort to resolve his financial situation. Further, he failed to present sufficient evidence to show why his financial problems will not be a concern in the future. Applicant's financial history precludes a finding that he has established a track record of financial responsibility. I find that Applicant has not taken or is unable to take control his financial situation and failed to demonstrate he is or could be capable of overcoming his financial difficulties.

Considering all relevant and material facts and circumstances present in this case, including Applicant's statement, his failure to take any action to rectify his financial situation, the whole person concept, the adjudicative factors listed in the Directive, and the applicable disqualifying and mitigating conditions, I find Applicant has not mitigated the Guideline F security concern.

FORMAL FINDINGS

Formal findings regarding each SOR allegation as required by Directive Section E3.1.25 are as follows:

Paragraph 1, Financial Considerations (Guideline F) AGAINST APPLICANT

Subparagraphs 1.a - 1.h Against Applicant

DECISION

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

Juan J. Rivera

Administrative Judge

1. Required by Executive Order 10865, *Safeguarding Classified Information Within Industry* (Feb. 20, 1960, as amended, and Department of Defense Directive 5220.6, *Defense Industrial Personnel Security Clearance Review Program* (Jan. 2, 1992) (Directive), as amended.
2. Applicant denied SOR allegation 1.h.
3. Applicant failed to disclose any children in his SF 86, however, other information in the file indicates he has at least one adult son and one grandchild.
4. Item 6, Security clearance application, dated October 2002 (SF 86).
5. The CBR shows Applicant disputed the AFNI-Bloom account, however, he admitted it in his answer to the SOR.
6. Item 10, Applicant's June 2004 statement.
7. Item 5.
8. Directive, ¶ E2.A6.1.1.
9. *See Department of the Navy v. Egan*, 484 U.S. 518, 531 (1988).
10. ISCR Case No. 98-0761, at p. 2 (December 27, 1999)(Substantial evidence is more than a scintilla, but less than a preponderance of the evidence.); ISCR Case No. 02-12199, at p. 3 (April 3, 2006)(Substantial evidence is such relevant evidence as a reasonable mind might accept as adequate to support a conclusion in light of all the contrary evidence in the record.); Directive, ¶ E3.1.32.1.
11. *Egan*, 484 U.S. 518, at 528, 531.
12. *See Egan*; Directive, ¶ E2.2.2.
13. Directive, ¶ E2.A6.1.1.