

DATE: June 30, 2006

In Re:

SSN: -----

Applicant for Security Clearance

CR Case No. 04-12761

DECISION OF ADMINISTRATIVE JUDGE

JOHN GRATTAN METZ, JR

APPEARANCES

FOR GOVERNMENT

Francisco J. Mendez, Esquire, Department Counsel

FOR APPLICANT

Pro Se

SYNOPSIS

Applicant's history of financial difficulties makes him unsuitable for a security clearance. Clearance denied.

STATEMENT OF THE CASE

Applicant challenges the 20 July 2005 Defense Office of Hearings and Appeals (DOHA) Statement of Reasons (SOR) recommending denial or revocation of his clearance because of financial considerations.⁽¹⁾ Applicant answered the SOR in 19 August 2005 and requested a hearing. DOHA assigned the case to me 18 October 2005, and I convened a hearing 30 November 2005. DOHA received the transcript 12 December 2005.

PROCEDURAL ISSUES

At the hearing, I left the record open to give Applicant an opportunity to produce any of the claimed documentation that he said he had, but did not bring to the hearing. Applicant provided documents, relating to SOR 1.e., 1.i., and 1.j., to which Department Counsel did not object. Accordingly, I admit those documents as A.E. F.

FINDINGS OF FACT

The SOR alleges ten debts totaling just over \$13,000, falling past due between 2000 and 2005. Applicant denied the allegations of SOR 1.a. (paid 4 August 2005), 1.c. (paid 28 March 2005), 1.d. (paid 3 August 2005), and 1.h. (duplicate of 1.j.).⁽²⁾ He admitted the remaining debts, claimed to have reached settlement agreements with 1.e., 1.i., and 1.j., and provided proof of the first installment payment on 1.i.

Applicant is a 51-year-old senior systems engineer employed by a defense contractor since October 2000.⁽³⁾ He has held an industrial clearance since approximately March 1992. He previously held a clearance while in the U.S. Army between 1972 and 1992, retiring in paygrade E-7.

Applicant has a history of financial difficulties going back to the early 1990s. He stated (Tr 32) that he and his wife were overextended, and not saving any money. His military income had declined with his retirement in 1992. Applicant and his wife experienced financial problems for about 3-4 years before their divorce. These problems were exacerbated by Applicant's divorce in June 1999. In his arch 2004 sworn statement (G.E. 2), he acknowledged his finances were "atrocious," but claimed that he was going to be working on a number of the debts later alleged in the SOR. However, by his arch 2005 response to DOHA interrogatories (G.E. 4), he had still not resolved these debts. In some instances, he had not yet been in contact with the creditors. In others, he claimed to have been in contact as long ago as August 2003, but did not follow-up on his original contacts when the creditors did not respond.

When Applicant answered the SOR, he demonstrated that he had paid the debt at 1.c. before the SOR was issued. He provided proof that he had paid the debts at 1.c. and 1.d. after the SOR was issued. He provided proof that he had reached a settlement agreement with 1.i., and had made the first installment payment on that account. He provided a personal letter purporting to document a settlement agreement to pay approximately two thirds of the debt at 1.e. by the end of August 2005. He confirmed an agreement with the creditor at 1.j., to pay approximately half the debt in two payments: \$200 by the end of August 2005; \$307 by mid-September 2005. He had not contacted the creditors at 1.b. or 1.f. The record reflects that the debt that the debt at 1.g. had been resolved except for approximately \$942.00, an amount the successor-in-interest reduced to judgment and that Applicant satisfied in approximately April 2004.

At hearing, Applicant provided a document (A.E. A) that suggested Applicant had made his November 2005 payment on the debt at 1.i., but provided no other corroboration of either claimed payments or contacts with creditors. He had still not contacted creditor 1.b., because he was not able to pay anything on that account. He claimed to have contacted creditor 1.f. after the SOR and had been offered a settlement amount of approximately half the debt (\$500), which Applicant was unable to pay at the time. He had not been back in contact with the creditor since. He claimed to have made the agreed payment to creditor 1.e., but had not brought any proof with him. He claimed to have been making the required payments creditor 1.i., but produced only A.E. A to corroborate that claim. He claimed to have made the two required payments to creditor 1.j., but produced no corroboration. Applicant testified that he had no budget, and had undertaken no financial counseling. He claimed to have about \$600 per month positive cash flow with which to address his debts. He expected to have his finances under control by the end of 2006.

In his post-hearing submission, Applicant finally corroborated that he had made the required settlement payment to creditor 1.e. in August 2005, and that he had satisfied creditor 1.j. by the mid-September 2005 payment date. He corroborated his August 2005-November 2005 payments to creditor 1.i., who he was paying by post-dated checks sent to the creditor quarterly. He recounted an early-December 2005 conversation with creditor 1.b. in which the creditor offered to settle the now \$784 account for \$627 if Applicant made the payment by the end of December 2005. Applicant did not know if he would be able to make the payment by then.

Applicant's character witnesses (A.E. C, D, E)--all of whom are aware of his financial difficulties--praise his honest, integrity, and work ethic, and would recommend him for a clearance.

POLICIES AND BURDEN OF PROOF

The Directive, Enclosure 2 lists adjudicative guidelines to be considered in evaluating an Applicant's suitability for access to classified information. Administrative Judges must assess both disqualifying and mitigating conditions under each adjudicative issue fairly raised by the facts and circumstances presented. Each decision must also reflect a fair and impartial common sense consideration of the factors listed in Section 6.3. of the Directive. The presence or absence of a disqualifying or mitigating condition is not determinative for or against Applicant. However, specific adjudicative guidelines should be followed whenever a case can be measured against them, as they represent policy guidance governing the grant or denial of access to classified information. Considering the SOR allegations and the evidence as a whole, the relevant, applicable, adjudicative guideline is Guideline F (Financial Considerations).

Security clearance decisions resolve whether it is clearly consistent with the national interest to grant or continue an Applicant's security clearance. The government must prove, by something less than a preponderance of the evidence, controverted facts alleged in the SOR. If it does so, it establishes a *prima facie* case against access to classified information. Applicant must then refute, extenuate, or mitigate the government's case. Because no one has a right to a

security clearance, the Applicant bears a heavy burden of persuasion.

Persons with access to classified information enter into a fiduciary relationship with the government based on trust and confidence. Therefore, the government has a compelling interest in ensuring each Applicant possesses the requisite judgement, reliability, and trustworthiness of those who must protect national interests as their own. The "clearly consistent with the national interest" standard compels resolution of any reasonable doubt about an Applicant's suitability for access in favor of the government.⁽⁴⁾

CONCLUSIONS

The government established a case for disqualification under Guideline F, and Applicant did not mitigate the security concerns. Applicant has a history of financial difficulties going back to the early 1990s, exacerbated by, but not caused by, his 1999 divorce.⁽⁵⁾ The debts alleged in the SOR fell past due between 2000 and 2005, and Applicant has been unable to address them sooner because he has been addressing debts older than those alleged in the SOR. Of the nine debts alleged in the SOR, only two (1.c. and 1.g.) were paid before the SOR was issued. The debts that were satisfied were paid (some for reduced amounts) only in the wake of the SOR (1.a. and 1.d) or Applicant's answer (1.e. and 1.j). One debt (1.i.) Applicant reached a repayment schedule with only after the SOR, but has been making payments. One debt (1.f.) Applicant had a settlement offer that he could not pay at the time, and he has not been back in contact with the creditor. One creditor (1.b), he did not contact until after the hearing, and he is not sure he could pay the reduced settlement offered by the date offered.

Applicant does not meet any of the mitigating conditions. His financial difficulties appear to be ongoing. The government has been engaged in discussions with Applicant about his finances since at least March 2004, yet it appears that Applicant adds new delinquent accounts even as he struggles to pay debts that are older. Further, his finances remain so tight that he could not make the settlement payment offered on debt 1.f. in the past, and did not know if he could make the settlement payment offered on debt 1.b. in the future. Thus his financial problems are recent,⁽⁶⁾ and not isolated.⁽⁷⁾ His financial difficulties have not been due to circumstances beyond his control,⁽⁸⁾ and there is no evidence that Applicant has established a budget, sought credit counseling, or otherwise brought the problem under control.⁽⁹⁾ Further, although Applicant has belatedly paid several of the debts alleged in the SOR and reached a payment schedule on one account that he is paying, these actions were spurred by the SOR, and he has still not resolved two of the debts or made viable arrangements to resolve them.⁽¹⁰⁾ Finally, even if Applicant could get his debts under control by the end of 2006, he has not demonstrated any ability to avoid financial problems in the future. I conclude Guideline F against Applicant.

FORMAL FINDINGS

Paragraph 1. Guideline F: AGAINST APPLICANT

Subparagraph a: Against Applicant

Subparagraph b: Against Applicant

Subparagraph c: For Applicant

Subparagraph d: Against Applicant

Subparagraph e: Against Applicant

Subparagraph f: Against Applicant

Subparagraph g: For Applicant

Subparagraph h: For Applicant

Subparagraph i: Against Applicant

Subparagraph j: 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 denied.

John G. Metz, Jr.

Administrative Judge

1. Required by Executive Order 10865 and Department of Defense Directive 5220.6, as amended (Directive).
2. The record corroborated that the debts at 1.h. and 1.j. were the same debt. Accordingly, I find 1.h. for Applicant to avoid duplicate findings on the merits.
3. He has been continuously employed with a series of defense contractors since retiring from the U.S. Army in December 1992.
4. *See, Department of the Navy v. Egan*, 484 U.S. 518 (1988).
5. E2.A6.1.2.1 A history of not meeting financial obligations; E2.A6.1.2.3 Inability or unwillingness to satisfy debts;
 6. E2.A6.1.3.1 The behavior was not recent;
 7. E2.A6.1.3.2 It was an isolated incident;
 8. E2.A6.1.3.3 The conditions that resulted in the behavior were largely beyond the person's control. . . ;
 9. E2.A6.1.3.4 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;
 10. E2.A6.1.3.6 The individual initiated a good-faith effort to repay overdue creditors or otherwise resolve debts.