

DATE: September 19, 2006

In Re:

SSN: -----

Applicant for Security Clearance

ISCR Case No. 05-00847

DECISION OF ADMINISTRATIVE JUDGE

CHARLES D. ABLARD

APPEARANCES

FOR GOVERNMENT

Rita C. O'Brien, Esq., Department Counsel

FOR APPLICANT

Pro Se

SYNOPSIS

Applicant mitigated security concerns related to financial considerations by establishing that most of the delinquent debts listed on the SOR were for other family members. The problem was attributable to the fact that Applicant and his father, who lived with him, and his grandfather had identical names. After working to resolve the issues only two of the delinquent debts remained on credit report and they were established as paid in his latest post-hearing submission. Clearance is granted.

STATEMENT OF CASE

On September 14, 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 October 7, 2005, Applicant responded to the SOR allegations, and requested a hearing. The matter was assigned to me on March 14, 2006. A notice of hearing was issued on April 19, 2006, for a hearing on May 4, 2006, and held that day. The government offered in evidence 10 exhibits and Applicant offered 11. All were admitted. The transcript was received on May 19, 2006.

The record was left open until July 5, 2006, for submission of additional evidence which was timely submitted. On July 10, 2006. A conference call was requested by me in an effort to clarify the submission and was held with the parties on July 10, 2006. This resulted in the filing of a second post-hearing submission on July 20, 2006. The government had no objection to the two submissions and both were admitted. On August 11, 2006, the government submitted a recent credit

report for Applicant showing the status of two debts. Applicant was given until September 4, 2006, to respond to the government submission and to authenticate one document submitted in his earlier submission. Applicant timely responded with a third post-hearing submission to which the government had no objection and it was admitted.

FINDINGS OF FACT

Applicant denied 19 of the 26 SOR allegations relating to delinquent debts and admitted the remaining nine. After a complete review of the record, I make the following additional findings of fact:

Applicant is a 37-year-old employee of a defense contractor where he has been employed since 2002. He works as a lead technician and systems engineer. His annual salary is \$42,000.00. As a result of the failure of a business he and his father owned, he filed for Chapter 7 bankruptcy before his current employment and was discharged from bankruptcy on December 11, 2000. Most of the delinquent debts arose during the business failure and between the bankruptcy and his current employment when he was self employed or working as a consultant living away from home where his ability to manage his finances was more difficult.

The SOR lists 25 specific debts in addition to the bankruptcy. They totaled approximately \$122,000.00. Applicant is the third generation of men in his family to have the identical name. He

lives with his father and mother in their home with his wife, and two children of his, one by a former wife and a second by another woman. He now has custody of both children and receives some child support from both mothers. His financial records have been very confused because of the similarity of names and the debts of his parents as well as a brother for whom his father co-signed notes. He has been working with credit agencies to straighten out the records for four years.

As an example of the problems created, Applicant's father and grandfather were both retired military and had access to military post exchanges. He has never been the service so has no access to them yet one debt to the Armed Forces Exchange is listed at SOR 1.v., and on his credit report. Also, an automobile repossession listed as his on both was his mother's vehicle. On one credit report the name of his grandmother, who has been deceased for two years, is listed as Applicant's wife.

His largest listed delinquent debt was for \$69,000.00 in tuition loans which he incurred between 1987 and 1993 while attending community college where he received three associate degrees in technical subjects related to the work he does now for his employer.

As a result of his claims regarding the errors in the credit reports which led to the allegations in the SOR, he has now supplied as Item 4 of his latest submission of September 5, 2006, an analysis of the debts attributing them to the correct debtor with notarized signatures from Applicant and both of his parents. I accept this as accurate so the remaining issues concern only the eight debts listed on the SOR for which Applicant has assumed responsibility. They are listed and analyzed below with their respective SOR identification. Only two of the debts are on his current credit report as noted by the government in its comment dated August 16, 2006.

- (1) 1.b.: \$6,116.00 Auto dealer debt from 1996. Applicant believes this was discharged in the 2000 bankruptcy proceeding which seems likely since it preceded the bankruptcy by four years. It is not on the current financial report.
- (2) 1.f.: \$69,000.00 Education loans from 1998. This debt is being paid in installments of \$150.00 per pay period. There was a period of delinquency at the time of his bankruptcy when Applicant erroneously thought this debt could be covered in bankruptcy. It is now current.
- (3) 1.k.: \$138.00 Nebraska Public System 1999. Covered in the bankruptcy.
- (4) 1.p.: \$3,700.00 State of Nebraska child support. Paid in full. No longer on credit report.
- (5) 1.t.: \$206.00 A public utility. He is disputing it as he believes it has been paid but, if it has not, he will pay it.

(6) 1.u.: \$766.00 State of Nebraska tax. This is one of the two debts still listed on his most current credit report. It is reported as terminated and satisfied in Item 2 in Applicant's final submission.

(7) 1.w.: \$862.00 State of Nebraska tax. Paid and no longer on credit report.

(8) 1.y.: \$1,460.00 Dental bill. Second of two debts still listed on his most recent credit report. Applicant was paying on the bill incurred around the time of his bankruptcy. In 2002, the creditor, dissatisfied with the amount being paid, obtained a garnishment. Applicant has now paid the bill in full and the garnishment is terminated as shown by Item 3 in his September 5 submission.

Applicant is highly regarded by his company and the military officials for whom he works for his knowledge, character, and truthfulness (Exhs. A-D). He is relied upon as a leader in his field as his evaluations show (Exhs. E, F and K).

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.

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 delinquent debts prompted the allegation of security concerns 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 person has initiated a good faith effort to repay overdue creditors or otherwise resolve debts. (E2.A6.1.3.6.).

Applicant presented a compelling case that all but eight of the 25 specific delinquent debt allegations in the SOR were not his but caused by the confusion created by identical names in the family and sharing the same address with his father as well as the same name. He has been attempting to work with the credit agencies to resolve the confusion and has recently done so successfully. While it might have been done earlier during the pendency of the security investigation, I

am sympathetic with the difficulty he encountered in doing so.

One of the two largest of his debts were for child support which has now been resolved and his now receiving child support payments from the mothers of the two children which he is saving for college education for the children. The second of the large debts is for his student loans and that is being resolved by voluntary withholding from his pay and the payments are current. The other six debts have all been resolved except for one small amount to a utility which he is disputing but is willing and able to pay if it can be established that he owes it..

Mitigating conditions apply since he has taken steps to resolve the problems to the satisfaction of the creditors and has the ability to resolve those that remain. An applicant is not required to prove that all delinquent debts are resolved to be granted a security clearance, but only that efforts are being made to resolve the debts and to show that the matters are being diligently pursued with an ability to resolve them. From the documentation submitted by Applicant, I have no difficulty in making that determination.

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. I conclude that based on that analysis, Applicant's actions in attempting to resolve his financial difficulties, his present work record and the exercise of his family responsibilities justifies the application of the whole person analysis.

After considering all the evidence in its totality, 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

Subparagraph 1.e.: For Applicant

Subparagraph 1.f.: For Applicant

Subparagraph 1.g.: For Applicant

Subparagraph 1.h.: For Applicant

Subparagraph 1.i.: For Applicant

Subparagraph 1.j.: For Applicant

Subparagraph 1.k.: For Applicant

Subparagraph 1.l.: For Applicant

Subparagraph 1.m.: For Applicant

Subparagraph 1.n.: For Applicant

Subparagraph 1.o.: For Applicant

Subparagraph 1.p.: For Applicant

Subparagraph 1.q.: For Applicant

Subparagraph 1.r.: For Applicant

Subparagraph 1.s.: For Applicant

Subparagraph 1.t.: For Applicant

Subparagraph 1.u.: For Applicant

Subparagraph 1.v.: For Applicant

Subparagraph 1.w.: For Applicant

Subparagraph 1.x.: For Applicant

Subparagraph 1.y.: For Applicant

Subparagraph 1.z.: 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