

DATE: October 6, 2005

In re:

SSN: -----

Applicant for Security Clearance

CR Case No. 05-01890

DECISION OF ADMINISTRATIVE JUDGE

MICHAEL J. BRESLIN

APPEARANCES

FOR GOVERNMENT

Stephanie C. Hess, Esq., Department Counsel

FOR APPLICANT

Pro Se

SYNOPSIS

Applicant is a 46-year-old employee of a defense contractor. He has a long history of failing to meet his financial obligations, demonstrated by an inability and unwillingness to pay his debts extending from about 1986 to the present. His delinquent debts were discharged in bankruptcy in November 1998, but he continued to act irresponsibly in his financial affairs and subsequently accrued more delinquent debt. Applicant took some preliminary steps to begin to sort out his financial problems, but has not made significant progress in resolving his delinquent debts. Applicant failed to mitigate security concerns arising from his financial difficulties. Clearance is denied.

STATEMENT OF THE CASE

On March 15, 2004, Applicant submitted an application for a security clearance. The Defense Office of Hearings and Appeals (DOHA) declined to grant or continue a security clearance for Applicant under Department of Defense Directive 5220.6, *Defense Industrial Personnel Security Clearance Review Program* (Jan. 2, 1992), as amended and modified (the "Directive"). On May 9, 2005, DOHA issued a Statement of Reasons (SOR) detailing the basis for its decision. The SOR alleges security concerns raised under Guideline F, Financial Considerations, of the Directive.

Applicant answered the SOR in writing by letter dated May 20, 2005. Applicant elected to have a hearing before an administrative judge.

The case was originally assigned to another administrative judge, but was reassigned to me on September 6, 2005. With the concurrence of the parties, I conducted the previously scheduled hearing on September 8, 2005. The department counsel introduced four exhibits. Applicant presented documents admitted as Exhibits (Exs.) A through I, and testified on his own behalf. At Applicant's request, I left the record open for an additional two weeks for Applicant to submit additional matters. On September 19, 2005, Applicant submitted documents admitted, without objection, as Exhibits L through O. DOHA received the transcript (Tr.) on September 19, 2005.

FINDINGS OF FACT

Applicant admitted all the factual allegations in the SOR. Answer to SOR, dated May 20, 2005, at 1-3. *Id.* Those admissions are incorporated herein as findings of fact. After a complete and thorough review of the evidence in the record, I make the following additional findings of fact.

Applicant is 46 years old. Ex.1 at 1. He works as a computer-assisted design (CAD) specialist for a defense contractor, and seeks a security clearance. *Id.* at 3.

Applicant obtained a certificate from a technical institute in 1979. *Id.* at 2. Thereafter, he worked for several different organizations in a variety of positions. At times he worked on a contract basis; businesses would not withhold funds for income taxes and Applicant failed to budget for that expense. Ex. G at 2. In 1986, Applicant did not file his federal tax return or pay his federal income taxes. Answer to SOR, *supra*, at 1; Tr. at 30-31. Thereafter, he did not file federal income tax returns for many years for fear that it would result in scrutiny of his tax deficiencies. Tr. at 31.

As a contract worker, Applicant worked full-time when there was a need, but worked less when the workload dropped. Tr. at 51. Also, when projects ended, Applicant was unemployed briefly while he sought another position. Tr. at 48. This resulted in a very uneven income. While Applicant was working steadily, he incurred debts for automobiles and consumer goods. Tr. at 30. When he was unemployed or underemployed, he was unable to meet his obligations. As a result, Applicant had two automobiles repossessed. Tr. at 28.

In June 1998, Applicant filed for bankruptcy protection under Chapter 7 of the Bankruptcy Code. Answer to SOR, *supra*, at 1; Tr. at 26. His delinquent consumer debts were discharged in November 1998. The bankruptcy did not discharge his debts for unpaid federal taxes. Tr. at 54.

Between 1997 and March 2003, Applicant worked as a CAD technician for a variety of companies. *Id.* at 4-5. Many of these positions were as a contract worker, and Applicant continued to experience periods of sporadic unemployment or underemployment. Tr. at 30. While fully employed, Applicant incurred financial obligations he was unable to meet when his work declined. Tr. at 30; 46.

While performing contract work for a company in 2002, Applicant hired an employee to assist him. Ex. 2 at 1. The employee did not perform the work to Applicant's satisfaction and Applicant withheld payment of the employee's last check. *Id.* The employee filed a criminal complaint for failing to pay wages. *Id.*; Tr. at 36. Applicant paid the disputed amount and thereafter did not report on the scheduled trial date. Tr. at 37. The court issued a bench warrant and Applicant was arrested for failing to appear. *Id.* Applicant provided proof of the previous payment; he was released and the matter dismissed. Tr. at 38. Applicant has no record of conviction. Ex. A at 1.

Applicant was unemployed between March 2002 and September 2002, but received unemployment compensation. Thereafter, Applicant continued to work for a variety of firms. He accrued numerous delinquent debts for consumer goods and services. Applicant contacted the Internal Revenue Service (IRS) and began resolving his unpaid taxes. Tr. at 31-33. He filed his old tax returns and began making payments on delinquent taxes through a compromise agreement with the IRS. Tr. at 32-33; Ex. G.

In March 2004, Applicant began working for his current employer, earning a salary of about \$66,000.00 per year. His personal financial statements indicate his normal living expenses exhausted or exceeded his available funds, without any payments toward delinquent debts. Ex. 2 at 5; Ex. H at 3. Applicant had funds available to pay several of his smaller outstanding debts, but did not do so. Tr. at 25.

He contacted a credit counseling company in about May 2005. Ex. H, Ex. I. He met with counselors and established that his normal living expenses exceeded his net income. He is in the process of collecting account numbers to start a repayment plan. Tr. at 23. Applicant paid off the debts listed in ¶¶ 1.h and 1.k of the SOR. Ex. L; Ex. M. He negotiated a settlement for the debt listed in ¶ 1.m but did not provide proof of payment. Ex. N.

Applicant plans to sell his current vehicle and the proceeds to pay off his delinquent debts. Tr. at 29; Ex. O. He also hopes to move to a new apartment with lower rent that is walking distance to his place of employment. *Id.*; He plans to reduce his normal monthly expenses by getting fewer haircuts each month, cutting back on dry-cleaning costs, and

trimming his expenditures at restaurants. Tr. at 43-44. Applicant expects this will generate the additional funds necessary to make regular payments on a formal debt repayment plan. He has not begun a repayment plan because he wanted to make sure his present position was secure before starting the plan.

POLICIES

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." *Department of the Navy v. Egan*, 484 U.S. 518, 527 (1988). In Executive Order 10865, *Safeguarding Classified Information Within Industry* (Feb. 20, 1960), the President set out guidelines and procedures for safeguarding classified information within the executive branch.

To be eligible for a security clearance, an applicant must meet the security guidelines contained in the Directive. Enclosure 2 of the Directive sets forth personnel security guidelines, as well as the disqualifying conditions and mitigating conditions under each guideline. The adjudicative guideline at issue in this case is:

Guideline F, Financial Considerations. An individual who is financially overextended is at risk of having to engage in illegal acts to generate funds. Directive, ¶ E2.A6.1.1.

Conditions that could raise a security concern and may be disqualifying, as well as those which could mitigate security concerns pertaining to this adjudicative guideline, are set forth and discussed in the conclusions below.

"The adjudicative process is an examination of a sufficient period of a person's life to make an affirmative determination that the person is eligible for a security clearance." Directive, ¶ E2.2.1. An administrative judge must apply the "whole person concept," and consider and carefully weigh the available, reliable information about the person. *Id.* An administrative judge should consider the following factors: (1) the nature, extent, and seriousness of the conduct; (2) the circumstances surrounding the conduct, to include knowledgeable participation; (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 pertinent 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. *Id.*

Initially, the Government must present evidence to establish controverted facts in the SOR that disqualify or may disqualify the applicant from being eligible for access to classified information. Directive, ¶ E3.1.14. Thereafter, the applicant is responsible for presenting evidence to rebut, explain, extenuate, or mitigate the facts. Directive, ¶ E3.1.15. An applicant "has the ultimate burden of demonstrating that it is clearly consistent with the national interest to grant or continue his security clearance." ISCR Case No. 01-20700 at 3 (App. Bd. Dec. 19, 2002). "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.

A person granted access to classified information enters into a special relationship with the government. The government must be able to repose a high degree of trust and confidence in those individuals to whom it grants access to classified information. The decision to deny an individual a security clearance is not a determination as to the loyalty of the applicant. Exec. Ord. 10865, § 7. It is merely an indication that the applicant has not met the strict guidelines the President has established for issuing a clearance.

CONCLUSIONS

I considered carefully all the facts in evidence and the legal standards discussed above. I reach the following conclusions regarding the allegations in the SOR.

Paragraph E2.A6.1.2.1 of the Directive provides that it may be a disqualifying condition if the evidence reveals "[a] history of not meeting financial obligations." Similarly, ¶ E2.A6.1.2.3 indicates that an "[i]nability or unwillingness to satisfy debts" may be disqualifying. Applicant has a long history of not meeting his financial obligations. He admits having delinquent debts totaling over \$20,000.00 that have remained unpaid for many years. Several of these smaller debts could have been repaid easily, but Applicant failed to do so. I find Applicant has shown both a history of failing to

meet his financial obligations and an unwillingness to satisfy his debts. I conclude both these potentially disqualifying conditions apply.

The security concerns arising from Applicant's financial difficulties can be mitigated under certain circumstances. Under the Directive, ¶ E2.A6.1.3.1, it may be mitigating where "the behavior was not recent." Some of Applicant's delinquent debts are many years old—at least one dates from 1986. Thus, the original indebtedness is not recent. However, all the debts (except those in SOR ¶¶ 1.h and 1.k) remain unpaid at this time. I find Applicant's failure to pay delinquent debts is recent, therefore this mitigating condition does not apply.

Paragraph E2.A6.1.3.2 of the Directive provides that it may be mitigating where the financial difficulty "was an isolated incident." Applicant's numerous delinquent debts arose over many years, even after his discharge in bankruptcy. I conclude this mitigating condition does not apply.

Under ¶ E2.A6.1.3.3, it may be mitigating where, "[t]he conditions that resulted in the behavior were largely beyond the person's control (e.g., loss of employment, a business downturn, unexpected medical emergency, or a death, divorce or separation)." Applicant was unemployed or underemployed for certain periods. Of course, an unanticipated loss of income is a condition beyond an individual's control. However, in Applicant's case the jobs were temporary contract positions, therefore he knew beforehand they would not last. Moreover, Applicant had been engaged in that kind of work for many years, thus the sporadic nature of his income was to be expected. For these reasons, I find this mitigating condition does not apply.

Proof that "[t]he 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," may be mitigating, under ¶ E2.A6.1.3.4 of the Directive. Applicant has received some financial counseling since the initiation of this action, but has not begun a formal debt payment program. I find this mitigating condition does not apply.

Finally, it may be mitigating where "[t]he individual initiated a good-faith effort to repay overdue creditors or otherwise resolve debts." Directive, ¶ E2.A6.1.3.6. Applicant paid two relatively minor debts, but otherwise has made no significant progress toward payment of his delinquent debts. I conclude this mitigating condition does not apply.

I considered the potentially disqualifying and mitigating circumstances in light of the "whole person" concept. Applicant is a mature individual with many years of experience in the workplace. He experienced severe financial problems in the past, resulting in bankruptcy. Nonetheless, it appears he learned little from the experience; after the bankruptcy he continued to live beyond his means and failed to keep his finances in order. Presently, Applicant is considering a plan to repay his delinquent debts, but has not actually begun it. I conclude Applicant has not mitigated the security concerns arising from his history of failing to meet his financial obligations and his unwillingness to pay his debts.

FORMAL FINDINGS

My conclusions as to each allegation in the SOR are:

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: Against Applicant

Subparagraph 1.g: Against Applicant

Subparagraph 1.h: For Applicant

Subparagraph 1.i: Against Applicant

Subparagraph 1.j: Against Applicant

Subparagraph 1.k: For Applicant

Subparagraph 1.l: Against Applicant

Subparagraph 1.m: Against Applicant

Subparagraph 1.n: Against Applicant

Subparagraph 1.o: 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 continue a security clearance for Applicant. Clearance is denied.

Michael J. Breslin

Administrative Judge