

DATE: July 6, 2006

In re:

SSN: -----

Applicant for Security Clearance

ISCR Case No. 05-02250

ECISION OF ADMINISTRATIVE JUDGE

MICHAEL J. BRESLIN

APPEARANCES

FOR GOVERNMENT

Richard Stevens, Esq., Department Counsel

FOR APPLICANT

David Price, Esq.

SYNOPSIS

Applicant's financial problems arose from circumstances largely beyond his control, including a marital separation and divorce, a serious physical injury, and unexpected unemployment. Attempts to resolve his debts, including a Chapter 13 bankruptcy action and sale of his former home, were unsuccessful. He still faces substantial delinquent debt and his plan to repay it from his recently-increased earnings is speculative. I conclude Applicant failed to mitigate the security concerns arising from his history of failing to meet his financial obligations and inability to satisfy his debts. Clearance is denied.

STATEMENT OF THE CASE

On May 8, 2003, 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 (the "Directive"). On July 26, 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 on August 26, 2005. He elected to have a hearing before an administrative judge.

The case was originally assigned to another administrative judge. I received the case assignment on April 3, 2006. With the concurrence of Applicant and Department Counsel, I convened the hearing on April 19, 2006. The government introduced Exhibits 1 through 15. Applicant's counsel presented Exhibits A through E and the testimony of two witnesses. Applicant also testified on his own behalf. At Applicant's request, I kept the record open until May 19, 2006, to allow Applicant time to submit additional matters. DOHA received the final transcript of the hearing (Tr.) on May 3, 2006. On May 19, 2006, Applicant's counsel provided documents admitted, without objection, as Exhibits F through L.

In order to obtain clarification of some of the new matters, I offered Applicant an opportunity to reopen the record to

submit additional documents. On June 22, 2006, Applicant's counsel submitted Exhibit M. Department Counsel objected (Hearing Exhibit I) on the grounds that Exhibit M provided no new matters to clarify the earlier submission. On June 26, 2006, I admitted Exhibit M for the limited purpose of documenting that Applicant was unable to provide additional documentation to clarify the earlier submissions.

FINDINGS OF FACT

Applicant denied the allegations in ¶¶ 1.k, 1.l, 1.m, 1.n, and 1.p of the SOR, but admitted the remaining allegations. (Applicant's Answer to SOR, dated August 26, 2005.) 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 was born in October 1957. (Ex. 1 at 1.) He studied electrical engineering in college and obtained a two-year a degree in 1982. (*Id.* at 2; Tr. at 39.)

Applicant began working as a senior systems engineer for a defense contractor in about 1986. (Ex. 1 at 2.; Tr. at 34.) He received a security clearance in 1986, and it was renewed in 1993. (Ex. 1 at 8.)

He was married in August 1986. (Ex. 1 at 3.) Three children were born of the marriage. (Tr. at 30.)

Applicant's wife filed the family's tax returns for tax years 1990 and 1991. (Tr. at 79.) According to Applicant, he was not aware of any problem until he received a notice of intent to levy on his wages for unpaid taxes. (*Id.*) He paid the debt immediately. (Tr. at 80.)

According to Applicant, his wife decided to live a different lifestyle and engaged in adultery and recreational drug use. (Tr. at 43, 52, 77.) They divorced in 1995. (Ex. 1 at 3.) Applicant was awarded custody of their three girls, who were then four, five, and seven years old. (Tr. at 30, 81.) His former wife did not pay child support because of her limited income. (Ex. 7 at 3.) Applicant was required to pay the lawyer fees and spousal support to his former wife. (Tr. at 81.)

In order to have the funds necessary to make his required monthly payments, Applicant adjusted the amount withheld from his salary for income taxes. (Tr. at 81.) As a result, he had an insufficient amount withheld each year to pay his taxes when due. Over three years, he accumulated a \$6,000.00 debt to the Internal Revenue Service (I.R.S.). (Tr. at 83.)

Applicant married for the second time in March 1997. (Ex. 1 at 3.) His wife had two children from a prior marriage, and they had a child born of the marriage. (*Id.* at 3; Tr. at 32, 50.)

In 1998, the I.R.S. filed a tax lien against Applicant for a debt that, with interest and penalties, had grown to over \$10,000.00. (Ex. 5; Tr. at 84.) Applicant made an Offer in Compromise, but the I.R.S. rejected it. (Tr. at 85.) Applicant paid the tax debt in full in August 2004. (Ex. 6 at 3; Tr. at 86.)

In 1999, Applicant and his wife purchased a home to accommodate their six children. (Tr. at 53-54, 85.) They spent about \$20,000.00 renovating the property themselves. (Tr. at 46, 72-73.) After a dispute about the condition of the home, they withheld \$2,500.00 in payment to the sellers. (Tr. at 104.) The sellers sued and obtained a default judgment against Applicant totaling \$4,838.00. (Tr. at 104; SOR, ¶ 1.o.)

In 2002, Applicant was severely injured in an automobile accident. (Tr. at 58, 69.) His injuries continue to cause pain. (Tr. at 62.)

In August 2002, the defense contractor had a major lay-off, and Applicant lost his position after about 17 years' service. (Ex. 1 at 2; Tr. at 87.) He received a severance payment and unemployment compensation, but was unable to remain current on his debts. (Tr. at 35.) Due to the loss of employment, Applicant and his family also lost their health insurance coverage. (Tr. at 59.) A creditor repossessed Applicant's automobile, resulting in a \$2,186.00 deficiency claim. (SOR, ¶ 1.i; Tr. at 102.)

Under state law, as the children from his first marriage reached the age of 13, they were allowed to indicate a preference for a custodial parent. (Tr. at 88.) As they came of age, Applicant's three children elected to reside with his ex-wife. (Tr.

at 55-56, 66.) Applicant contends they did so in order to take advantage of a more lax disciplinary environment. As a result, Applicant was required to pay child support of about \$1,100.00 per month. (Tr. at 38, 89, 93; Ex. 10.) Applicant's former wife sued for an increase in child support payments, and Applicant was required to pay \$1,645.00 per month through the garnishment of his wages. (Tr. at 93; Ex. B.)

In about April 2003, Applicant was hired by a defense contractor in a new state. (Ex. 1 at 2; Ex. A.) The new position paid less than his previous job. (Tr. at 37, 93; Ex. A.) He moved in with his older brother for awhile, and then moved his family to the new location. (Tr. at 26.) The children living with his ex-wife were involved in disciplinary problems; Applicant incurred the additional time, trouble, and expense of several trips to help resolve these troubles. (Tr. at 38.) Eventually, two of the children returned to live with Applicant and his wife. (Tr. at 66.)

Applicant paid off all his back taxes (Tr. at 85, 87) and properly paid his federal income taxes for the years 2003 and 2004. (Exs. F and G.) He attempted to sell the family's previous home, without success. (Tr. at 94.) He rented it briefly to help make the payments. (Tr. at 36, 94.) Applicant was unable to make the mortgage payments on his former residence, and accumulated a delinquent debt of more than \$25,000.00 on his first mortgage. (SOR, ¶ 1.j.) He was also delinquent on a second mortgage totaling more than \$10,000.00. (SOR, ¶ 1.h.) The mortgage holder initiated foreclosure proceedings in January 2005 but did not complete the action at that time. (Ex. K.) Applicant also fell behind on several credit card payments, retail debts, and medical bill payments.

Applicant consulted with an attorney and filed for personal bankruptcy under Chapter 13. (Tr. at 96-97.) As part of the process, Applicant was required to take a course on budgeting. (Tr. at 143.) The first filing had an administrative error and was dismissed. (Tr. at 97; SOR, ¶ 1.s.) After the second filing, the court established a repayment plan; however, Applicant was unable to make the required payments. (Tr. at 97-98.) The bankruptcy was dismissed in August 2003. (Ex. 13; SOR, ¶ 1.t.)

At the hearing, Applicant generally acknowledged the debts listed in the SOR. He indicated he was uncertain about-and needed to further investigate-the debts listed in ¶¶ 1.a, 1.d, 1.g, 1.l, 1.m, and 1.n. Applicant asserted he paid the debts listed in ¶¶ 1.b, 1.c, 1.f, but had no receipts or documentation to establish the payments.

Applicant's plan to resolve the debts centered on selling the old house and paying off all the debts associated with the house. In March 2006, Applicant found a potential buyer for his former home, but at a price less than the existing amount due on the loan. (Ex. D at 5; Tr. at 103.) Applicant asked the mortgage holder to approve a "short sale," which would satisfy the outstanding debt for a reduced amount. (Tr. at 132-33; Ex. D at 1.) At the time of the hearing, the "short sale" was pending. After the hearing, the holder of the first mortgage declined to accept the "short sale" and foreclosed upon the property. (Ex. L at 2.) The foreclosure paid off the balance due on the first mortgage, except for \$2,300.00. (Ex. K; SOR ¶ 1.j.) The attorney for the lender opined that the creditor was not likely to pursue the balance. (Ex. K.) Because the proceeds of the foreclosure sale were insufficient to pay the first mortgage, the second mortgage and subsequent liens on the house were not satisfied.

Currently, Applicant has more than \$45,000.00 in delinquent debts. Shortly before the hearing, Applicant obtained a new position at a much higher annual salary. (Tr. at 107; Ex. A at 2.) He intends to use the extra income to pay off his debts. (Tr. at 107.)

Applicant's brother described him as an honest, hard-working individual with integrity. (Tr. at 39.) His former supervisor indicated he was an exemplary employee. (Ex. E.)

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 potentially disqualifying and mitigating conditions under each guideline.

"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

The security concern under Guideline F, Financial Considerations, is that "An individual who is financially overextended is at risk of having to engage in illegal acts to generate funds." (Directive ¶ E2.A6.1.1.)

Paragraph E2.A6.1.2.1 of the Directive provides that it may be disqualifying if the evidence reveals "[a] history of not meeting financial obligations." Similarly, ¶ E2.A6.1.2.3 provides that an "[i]nability or unwillingness to satisfy debts" may be disqualifying. Applicant failed to meet a large number of significant financial obligations between about 2002 and 2005 and is currently unable to resolve many outstanding debts. I conclude the available evidence raises these potentially disqualifying conditions.

Security concerns arising from an applicant's financial difficulties can be mitigated. Under the Directive, ¶ E2.A6.1.3.1, it may be mitigating where "the behavior was not recent." The behavior in question includes Applicant's failure to pay or otherwise resolve the delinquent debts. Applicant has been unable to pay or resolve a large portion of the outstanding debts for several years. Applicant has not presented evidence raising this mitigating condition.

Paragraph E2.A6.1.3.2 of the Directive provides that it may be mitigating where the financial difficulty "was an isolated incident." Applicant had many delinquent debts that arose at different times for a variety of reasons; therefore, this was not an isolated incident. 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's financial problems arose as a result of conditions largely beyond his control. First, the marital separation that eventually led to divorce resulted in financial strain. Secondly, he was injured in a serious car accident, resulting in additional medical expenses. Most significantly, Applicant was laid-off after about 17 years' service; when he was able to find new employment, it required him to relocate to a new state. I conclude this mitigating condition applies.

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 testified that he took some budgeting courses on-line as part of his bankruptcy application. However, he did not present evidence showing that his financial problems are being resolved or are under control. This potentially mitigating condition is not raised.

Paragraph E2.A6.1.3.6 of the Directive states it may be mitigating where, "[t]he individual initiated a good-faith effort to repay overdue creditors or otherwise resolve debts." As noted above, an applicant bears the burden of presenting evidence to mitigate security concerns. Applicant testified that he paid the debts in ¶¶ 1.b, 1.c, 1.f. He attempted to resolve many of the debts by selling his former home and even secured a potential buyer, however, the lender would not approve the proposed "short sale" and foreclosed on the property. Applicant did not provide any evidence of his attempts to resolve some of the debts, including those listed in ¶¶ 1.a, 1.d, 1.p, 1.q, and 1.r of the SOR. This mitigating condition applies in part.

The "Whole Person" Concept

I considered the potentially disqualifying and mitigating circumstances in light of the "whole person" concept. I note Applicant is a mature individual with many years of service as an employee of a defense contractor. (Directive, ¶ E2.2.1.4.) He successfully held a security clearance for many years. His financial problems arose from circumstances largely beyond his control, including a marital separation and divorce, a serious physical injury, and unexpected unemployment. (Directive, ¶ E2.2.1.1 and E2.2.1.2.) He was able to pay off a large debt owed to the government for unpaid taxes, interest, and penalties. However, several attempts to resolve his other debts, including a Chapter 13 bankruptcy action and a "short sale" of his former home, were unsuccessful. He still faces substantial delinquent debt and his hope to repay it from his recently-increased earnings is speculative, therefore there is a likelihood that his financial problems will continue for some time. (Directive, ¶ E2.2.1.9.) Considering the amount of the delinquent debt, Applicant's difficulty in resolving it, and its adverse effect on his personal interests, I conclude it creates potential for pressure, coercion, exploitation, or duress. (Directive, ¶ E2.2.1.8.) As noted above, "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.) I conclude Applicant failed to mitigate the security concerns arising from his history of failing to meet his financial obligations and inability to satisfy 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: For Applicant

Subparagraph 1.c: For Applicant

Subparagraph 1.d: Against Applicant

Subparagraph 1.e: Against Applicant

Subparagraph 1.f: For Applicant

Subparagraph 1.g: Against Applicant

Subparagraph 1.h: Against Applicant

Subparagraph 1.i: Against Applicant

Subparagraph 1.j: Against Applicant

Subparagraph 1.k: Against Applicant

Subparagraph 1.l: Against Applicant

Subparagraph 1.m: For Applicant

Subparagraph 1.n: Against Applicant

Subparagraph 1.o: Against Applicant

Subparagraph 1.p: Against Applicant

Subparagraph 1.q: Against Applicant

Subparagraph 1.r: Against Applicant

Subparagraph 1.s: For Applicant

Subparagraph 1.t: Against 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