

DATE: October 31, 2006

In Re:

SSN: -----

Applicant for Security Clearance

CR Case No. 05-02551

DECISION OF ADMINISTRATIVE JUDGE

JOAN CATON ANTHONY

APPEARANCES

FOR GOVERNMENT

Daniel F. Crowley, Esq., Department Counsel

FOR APPLICANT

Jack Gerald Roberts, Personal Representative

SYNOPSIS

Applicant is responsible for two delinquent debts, totaling approximately \$70,000, which accrued from a line of credit and a loan he obtained and used several years ago to finance his business. His creditors demand \$100,000 to settle the debts. Applicant's current annual income is less than \$8,000. He is unable to pay his creditors and has no viable plan to pay or settle the debts in the future. Applicant has failed to mitigate security concerns under Guideline F, Financial Considerations. Clearance is denied.

STATEMENT OF THE CASE

The Defense Office of Hearings and Appeals (DOHA) declined to grant or continue a security clearance for Applicant. On October 31, 2005, under the applicable Executive Order⁽¹⁾ and Department of Defense Directive,⁽²⁾ DOHA issued a Statement of Reasons (SOR), detailing the basis for its decision-security concerns raised under Guideline F (Financial Considerations) of the Directive. Applicant answered the SOR in writing on December 13, 2005, and elected to have a hearing before an administrative judge. The case was assigned to me July 11, 2006. On September 22, 2006, I convened a hearing to consider whether it is clearly consistent with the national interest to grant or continue a security clearance for Applicant. The Government offered nine exhibits for admission to the record. The Government's exhibits were identified as Exhibits (Ex.) 1 through 9. Government Ex. 1 through 8 were admitted without objection. Applicant objected to the admission of Ex. 9, a credit report dated July 7, 2006, because some recent payments he had made on existing debts were not listed. Applicant's objection went not to the admissibility of Ex. 9 but to the weight given to the evidence in the exhibit. Applicant's objection was overruled, and the document was admitted. Applicant was invited to submit evidence of recent payment of debts listed on Ex. 9. Applicant called one witness and offered three exhibits for admission to the record. Applicant's exhibits were identified as Ex. A, B, and C and were admitted to the record without objection. On October 3, 2006, DOHA received the transcript (Tr.) of the proceeding.

FINDINGS OF FACT

The SOR contains two allegations of disqualifying conduct under Guideline F, Financial Considerations. In his answer

to the SOR, Applicant admitted both allegations. His admissions are incorporated as findings of fact.

Applicant is 44 years old. He was married in 1988 and divorced in 1992. Applicant married for the second time in 2001. He and his wife are the parents of two young children. (Ex. 1; Tr. 57-58.)

Applicant has worked in information technology for approximately 25 years. During that time, he worked as an analyst, programmer, project developer, and project manager. In 1997, he started his own information technology company, which was initially profitable and employed Applicant and approximately five other employees. A downturn in the information technology business affected Applicant's company in about 1999 or 2000. In order to expand his business opportunities, Applicant obtained a \$40,000 line of credit and a \$36,000 small business loan. When the line of credit and loan were exhausted, Applicant used his personal funds to keep his business in operation. (Tr. 12-13, 43, 50-53, 72-73.)

In 2003 June and August 2003, the two accounts were placed in collection status. (Ex. 5.) Applicant retained an attorney to assist him in arranging payment of the debts, and in May 2005, he tendered a check for \$500 to the creditors. (Tr. 53; Ex. 6.) The creditors have obtained a judgment against Applicant, and they demand payment of \$100,000, including interest and penalties, to settle the debts. (Tr. 47.)

In 2004, Applicant sold his home in order to satisfy a number of personal debts. He presented evidence he had settled or paid his outstanding personal debts from the proceeds of the sale of his home. (Ex. A, B, C; Ex. 6; Tr. 43-45.) He and his wife now live in a house his wife owned before their marriage. Applicant's wife is employed as a database analyst and earns approximately \$3,600 per month. Applicant works at his business from his home. In 2005, he reported an annual income of \$8,600. He sometimes goes for several months without work. (Tr. 56-60.) He has not sought additional employment. When Applicant's fixed monthly expenses are deducted from his income, there are insufficient funds to pay his judgment creditors. (Tr. 60-65, 68.)

Applicant called a witness who testified to his good character. The witness said he knew Applicant as a friend and had lent him money. He further testified Applicant had timely repaid the loan. (Tr. 38-40.)

While Applicant retained an attorney to assist him in negotiations with the judgment creditors, he provided no evidence he had sought professional financial counseling or had a long-term plan in place for managing his income and personal and business financial obligations. (Tr. 55-57.)

Applicant seeks a security clearance to improve his company's ability to compete for government contracts. He speculates that he will be able to pay his judgment creditors if he has a security clearance. (Tr. 68-69.)

POLICIES

"[No 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. The President has restricted eligibility for access to classified information to United States citizens "whose personal and professional history affirmatively indicates loyalty to the United States, strength of character, trustworthiness, honesty, reliability, discretion, and sound judgment, as well as freedom from conflicting allegiances and potential for coercion, and willingness and ability to abide by regulations governing the use, handling, and protection of classified information." Exec. Or. 12968, *Access to Classified Information* § 3.1(b) (Aug. 4, 1995). Eligibility for a security clearance is predicated upon the applicant meeting the security guidelines contained in the Directive.

Enclosure 2 of the Directive sets forth personal security guidelines, as well as the disqualifying conditions (DC) and mitigating conditions (MC) under each guideline. In evaluating the security worthiness of an applicant, the administrative judge must also assess the adjudicative process factors listed in ¶ 6.3 of the Directive. The decision to deny an individual a security clearance is not necessarily a determination as to the loyalty of the applicant. *See* Exec. Or. 10865 § 7. It is merely an indication that the applicant has not met the strict guidelines the President and the Secretary of Defense have established for issuing a clearance.

Initially, the Government must establish, by substantial evidence, conditions in the personal or professional history of the applicant that disqualify, or may disqualify, the applicant from being eligible for access to classified information. *See Egan*, 484 U.S. at 531. The Directive presumes a nexus or rational connection between proven conduct under any of the disqualifying conditions listed in the guidelines and an applicant's security suitability. *See* ISCR Case No. 95-0611 at 2 (App. Bd. May 2, 1996).

Once the Government establishes a disqualifying condition by substantial evidence, the burden shifts to the applicant to rebut, explain, extenuate, or mitigate the facts. ISCR Case No. 01-20700 at 3 (App. Bd. Dec. 19, 2002); *see* 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.

CONCLUSIONS

Guideline F-Financial Considerations

The Government's concern under Guideline F, Financial Considerations, is that individuals who are financially overextended and unable or unwilling to pay their just debts may try to generate funds by engaging in illegal acts. Directive ¶ E2.A6.1.1. Applicant has a history of not meeting his financial obligations, and his financial history suggests an inability or unwillingness to satisfy his debts, conditions which raise security concerns under subparagraphs E2.A6.1.2.1. and E2.A6.1.2.3. of Guideline F. DOHA's Appeal Board has concluded that "[a] person who is unwilling to fulfill his legal obligations does not demonstrate the high degree of good judgment and reliability required of persons granted access to classified information." ISCR Case No. 98-0810 at 4 (App. Bd. June 8, 2000).

In the SOR, DOHA alleged that Applicant owed a creditor approximately \$34,675 on an account that had been placed for collection in about June 2003, and, as of October 20, 2005, the debt had not been paid. (¶1.a.) DOHA also alleged Applicant owed a creditor approximately \$35,500 on an account placed for collection about August 2003, and, as of October 20, 2005, the debt had not been paid. (¶1.b.)

The Government has established, through Applicant's admissions and the record evidence, a *prima facie* case that Applicant is financially overextended. He provided no persuasive evidence to rebut the financial concerns specified in the SOR and identified as disqualifying conditions under ¶¶ E2.A6.1.2.1. and E2.A6.1.2.3. of Guideline F. While Applicant asserted he intended at some future date to repay his delinquent business debts, he was unable to demonstrate he had the resources to carry out his plan. Applicant's current monthly financial obligations and his recent periods of underemployment appeared to nullify any earlier plans he may have had to pay approximately \$70,000 in financial delinquencies alleged in the SOR.

We turn to a review of the several conditions that could mitigate the security concerns raised by Applicant's financial delinquencies. Applicant's acknowledged financial delinquencies involve long-standing debts, and his inability or unwillingness to pay them is recent. Thus, neither mitigating condition E2.A.6.1.3.1. nor mitigating condition E2.A6.1.3.2. applies.

Applicant attributed his financial delinquencies to a period of under-employment occurring during an economic downturn in the information technology business in 1999 or 2000, over six years ago.

If a person's financial delinquencies were largely caused by conditions beyond his or her control, then mitigating condition E2.A6.1.3.3 might apply. The record shows that Applicant's financial problems were not caused solely by the economic downturn in 1999 and 2000. His loss of business during that time, while unfortunate, does not explain or mitigate his long-standing personal financial difficulties and his unwillingness to set aside and save the necessary resources to pay his business creditors. His current financial problems do not appear to be solely the result of conditions beyond his control. Thus, mitigating condition E2.A6.1.3.3. applies only in part.

Applicant asserted he had plans to pay his business creditors at some unspecified time in the future. DOHA's Appeal Board has stated that promises to pay one's debts in the future are not a substitute for a clear record of debts actually paid. ISCR Case No. 98-0188 at 3 (App. Bd. Apr. 29, 1999) In determining an individual's security worthiness, the Government cannot rely on the possibility that an applicant might resolve his or her outstanding debts at some future

date. ISCR Case No. 98-0614 at 5 (App. Bd. Jul. 12, 1999).

Applicant has neither sought financial counseling nor presented clear indications that his financial problems are being resolved or are under control. Therefore, mitigating condition E2.A6.1.3.4. is inapplicable. Applicant provided evidence he had resolved personal debts by selling his family home, but he had no concrete or verifiable plan in place to pay the business debts alleged in the SOR. Accordingly, mitigating condition E2.A6.1.3.6. does not apply, and the Guideline F allegations in the SOR are concluded against the Applicant.

In all adjudications, the protection of our national security is the paramount concern. Security clearance decisions are not intended to assign guilt or to impose further punishment for past transgressions. Rather, the objective of the security clearance process is the fair-minded, common sense assessment of a person's trustworthiness and fitness for access to classified information. Indeed, the "whole person" concept recognizes we should view a person by the totality of his or her acts and omissions, including all disqualifying and mitigating conduct. Having done so, I conclude Applicant should not be entrusted with a security clearance. In reaching my decision, I have considered the evidence as a whole, including the appropriate factors and guidelines in Department of Defense Directive, 5220.6., as amended.

FORMAL FINDINGS

The following are my conclusions as to each allegation in the SOR:

Paragraph 1.: Guideline F: AGAINST APPLICANT

Subparagraph 1.a.: Against Applicant

Subparagraph 1.b.: 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.

Joan Caton Anthony

Administrative Judge

1. Exec. Or. 10865, *Safeguarding Classified Information Within Industry* (Feb. 20, 1960), as amended and modified.
2. Department of Defense Directive 5220.6, *Defense Industrial Personnel Security Clearance Review Program* (Jan. 2, 1992), as amended and modified.