

DATE: December 27, 2006

In re:

SSN: -----

Applicant for Security Clearance

CR Case No. 05-03307

DECISION OF ADMINISTRATIVE JUDGE

JUAN J. RIVERA

APPEARANCES

FOR GOVERNMENT

Nichole L. Noel, Esq., Department Counsel

FOR APPLICANT

Pro Se

SYNOPSIS

Applicant has a history of failing to meet his financial obligations dating back to the late 1990s. As of the date he answered the file of relevant material, he had seven accounts, totaling \$12,597, that have been delinquent for many years. Applicant's evidence is insufficient to show he is in control of his finances, is not overextended, and that he has a track record of financial responsibility. Clearance is denied.

STATEMENT OF THE CASE

On January 20, 2006, the Defense Office of Hearings and Appeals (DOHA) issued Applicant a Statement of Reasons (SOR) alleging facts which raise security concerns under Guideline F (Financial Considerations). The SOR informed Applicant that, based on information available to the Government, DOHA adjudicators could not make a preliminary affirmative finding that it is clearly consistent with the national interest to grant him access to classified information. ⁽¹⁾

On March 14, 2006, Applicant answered the SOR (Answer), admitted all allegations, and requested a decision without a hearing. On October 4, 2006, Department Counsel prepared a File of Relevant Material (FORM) which was mailed to Applicant on October 6, 2006. He responded to the FORM on October 20, 2006, submitted information for the administrative judge's consideration, and did not object to anything contained in the FORM. The case was assigned to me on November 15, 2006.

FINDINGS OF FACT

Applicant's admissions to the SOR allegations are incorporated herein as findings of facts. After a thorough review of the pleadings and the evidence, I make the following additional findings of facts:

Applicant is a 44-year-old Army retiree who is employed by a Department of Defense (DoD) contractor. He married his first wife in 1990 and they were divorce in 1998. The marriage produced two boys, ages 19 and 12. Applicant married his second wife in July 2001. There is no evidence indicating whether he has any children from this marriage. Applicant

received an associate's degree in 2001.

Applicant enlisted in the U.S. Army in October 1981, and served on active duty until January 2001. He was honorably retired at the rank of sergeant first-class (E-7). Applicant's Certificate of Release or Discharge From Active Duty (DD Form 214) indicates he received numerous awards and decorations, which include among others, the Army Commendation Medal (2nd award), Army Achievement Medal (2nd award), the Global War on Terrorism Expeditionary Medal, and War on Terrorism Service Medal. While in the Army, Applicant possessed a secret clearance from around 1983 until he retired. There is no evidence Applicant mishandled or compromised classified information while in the service or at his current job. There is no information in the file to establish when Applicant began working for his current employer.

A review of the CBRs of record showed that in September 2003 Applicant had 13 accounts that were either delinquent and/or charged off as bad debts. The June 2005 CBR reflects 12 accounts that were either delinquent and/or charged off as bad debts, and his November 2005 CBR showed 10 accounts that were either delinquent and/or charged off as bad debts. The information contained in the three CBRs, in addition to information provided by Applicant in his answer to the SOR, and his response to the two government interrogatories form the basis for the seven SOR allegations. The total amount owed, based on the SOR allegations is \$12,597.

In his responses to interrogatories (August 2005 and January 2006),⁽²⁾ Applicant claimed he was in the process of reaching a settlement to have some of the old debts that were not in his name removed from his credit report. He also claimed he had retained a lawyer and was waiting for "the close out balance" to resolve his debts. In his March 2006 response to the SOR, Applicant admitted liability for all the SOR allegations, stated they were his debts, but explained the debts originated from a prior relationship. He also stated his intent to have his financial problems resolved within 90 days with the assistance of his lawyer. Applicant presented no evidence, other than his uncorroborated statement, to support these claims or to establish any efforts he took to resolve his debts.

In his answer to the FORM, Applicant claimed he was in the process of disputing some of the delinquent debts because the accounts were either opened by his former spouse without his knowledge, or they were not his accounts. His response to the FORM included a letter from a consumer counseling service, dated October 2006, generally stating that Applicant was its client, and they were assisting him to evaluate and verify the delinquent debts in his credit report. Applicant presented no evidence, other than his statement and the letter, to corroborate his claims that he has in fact disputed some debts, or that the debts are not his valid financial obligation.

Applicant presented no evidence to explain why the alleged debts became delinquent, what efforts, if any, he has taken to pay, settle, or resolve the debts (other than the uncorroborated claims he made), whether he has been making payment on other debts, what is his current financial situation (i.e., income, monthly expenses, debts, etc.), whether he is not financially overextended, whether he has participated in financial counseling, or whether he has taken any measures to avoid future financial problems.

POLICIES

The Directive sets forth adjudicative guidelines which must be considered in evaluating an Applicant's eligibility for access to classified information. The administrative judge must take into account both disqualifying and mitigating conditions under each adjudicative guideline applicable to the facts and circumstances of the case. The guidelines are not viewed as inflexible ironclad rules of law. The presence or absence of a disqualifying or mitigating condition is not determinative of a conclusion for or against an Applicant. Each decision must reflect a fair and impartial common sense consideration of the factors listed in Section 6.3 of the Directive, and the whole person concept. Having considered the record evidence as a whole, I conclude Guideline F (Financial Considerations)⁽³⁾ is the applicable relevant adjudicative guideline.

BURDEN OF PROOF

The purpose of a security clearance decision is to determine whether it is clearly consistent with the national interest to grant or continue an applicant's eligibility for access to classified information.⁽⁴⁾ A person who has access to classified

information enters into a fiduciary relationship with the government based on trust and confidence. The government, therefore, has a compelling interest to ensure each applicant possesses the requisite judgement, reliability and trustworthiness of one who will protect the national interests as his or her own.

The government has the initial burden of proving controverted facts alleged in the SOR. To meet its burden, the government must establish by substantial evidence⁽⁵⁾ a prima facie case that it is not clearly consistent with the national interest for the applicant to have access to classified information. The responsibility then shifts to the applicant to refute, extenuate or mitigate the government's case. Because no one has a right to a security clearance, the applicant carries a heavy burden of persuasion.⁽⁶⁾ The "clearly consistent with the national interest" standard compels resolution of any reasonable doubt about an applicant's suitability for access to classified information in favor of protecting national security.⁽⁷⁾

CONCLUSIONS

Under Guideline F (Financial Considerations), a security concern exists when a person has significant unpaid debts. An individual who is financially overextended is at risk to engage in illegal or unethical acts to generate funds to meet financial obligations.⁽⁸⁾ Similarly, an individual who is financially irresponsible may also be irresponsible, unconcerned, or careless in his obligation to protect classified information. Behaving responsibly or irresponsibly in one aspect of life can often indicate how a person may behave in other aspects of life.

Applicant has a history of failing to meet his financial obligations dating back to the late 1990s. He received the SOR in January 2006, and presented no evidence of efforts to pay, settle, or otherwise resolve the seven delinquent/charged off debts alleged in the SOR until after receipt of the FORM on October 10, 2006. As of the day he answered the FORM, he still had seven outstanding delinquent debts, owing approximately \$12,597. Applicant's unwillingness or inability to honor his financial obligations is evidenced by the delinquent debts he has been carrying for years, and his failure to show meaningful efforts to repay creditors or otherwise resolve his financial situation. Financial Considerations Disqualifying Condition (FC DC) E2.A6.1.2.1: *A history of not meeting financial obligations*; and FC DC E2.A6.1.2.3: *Inability or unwillingness to satisfy debts*, apply in this case.

Applicant failed to provide sufficient information to support the applicability of any of the Financial Considerations Mitigating Conditions (FC MC). His financial behavior is recent and not isolated. Even though he sought financial counseling in October 2006, the available evidence is not sufficient to establish he is in control of his finances, that his financial problems are being resolved, or that he has made meaningful efforts to resolve his financial problems. I specifically considered FC MC E2.A6.1.3.: *The conditions that resulted in the behavior were largely beyond the person's control (divorce)*, and conclude it does not apply. Applicant divorced his first wife in 1998 and the information in the file is not sufficient to establish circumstances beyond his control for the many years he has been carrying his delinquencies.

Furthermore, Applicant's evidence is not sufficient to show he has dealt responsibly with his financial obligations. Applicant presented little or no evidence of meaningful efforts taken to resolve his debts even after receipt of the SOR (i.e., paid debts, settlements, negotiations, payment plans, budgets, financial assistance/counseling). Additionally, he failed to present sufficient evidence to show he is not overextended or that his financial problems will not be a concern in the future. Applicant's financial history and lack of favorable evidence preclude a finding that he has established a track record of financial responsibility. Applicant's available evidence is not sufficient to demonstrate he has taken control of his financial situation and is capable of overcoming his financial difficulties.

I have carefully weighed all evidence, and I applied the disqualifying and mitigating conditions as listed under the applicable adjudicative guideline. I specifically considered Applicant's 22 years of honorable service to the U.S., the fact there is no evidence he ever mishandled or caused the compromise of classified information, and his efforts to rectify his financial situation. Considering all available information, and the whole person concept, I find Applicant has not mitigated the Financial Considerations security concerns.

FORMAL FINDINGS

Formal findings regarding each SOR allegation as required by Directive Section E3.1.25 are as follows:

Paragraph 1, Financial Considerations (Guideline F) AGAINST APPLICANT

Subparagraphs 1.a-1.g 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 is denied.

Juan J. Rivera

Administrative Judge

1. Required by Executive Order 10865, *Safeguarding Classified Information Within Industry* (Feb. 20, 1960, as amended, and Department of Defense Directive 5220.6, *Defense Industrial Personnel Security Clearance Review Program* (Jan. 2, 1992) (Directive), as amended.
2. Gov. Items 5 and 6.
3. Directive, ¶ E2.A6.1.1.
4. *See Department of the Navy v. Egan*, 484 U.S. 518, 531 (1988).
5. ISCR Case No. 98-0761, at p. 2 (December 27, 1999)(Substantial evidence is more than a scintilla, but less than a preponderance of the evidence.); ISCR Case No. 02-12199, at p. 3 (April 3, 2006)(Substantial evidence is such relevant evidence as a reasonable mind might accept as adequate to support a conclusion in light of all the contrary evidence in the record.); Directive, ¶ E3.1.32.1.
6. *Egan*, 484 U.S. 518, at 528, 531.
7. *See Egan*; Directive, ¶ E2.2.2.
8. Directive, ¶ E2.A6.1.1.