

DATE: October 16, 2006

In Re:

SSN: -----

Applicant for Security Clearance

ISCR Case No. 05-04662

DECISION OF ADMINISTRATIVE JUDGE

MARTIN H, MOGUL

APPEARANCES

FOR GOVERNMENT

Daniel F. Crowley, Esq., Department Counsel

FOR APPLICANT

Pro Se

SYNOPSIS

Applicant has two past overdue debts, in an amount of more than \$55,000, that have been not been resolved. Although Applicant contends that theses debts were initially incurred by his wife at the time, without his knowledge, he is still responsible for the payment of these debts. Mitigation has not been established. Clearance is denied.

STATEMENT OF THE CASE

On May 5, 2006, the Defense Office of Hearings and Appeals (DOHA), under Executive Order 10865, *Safeguarding Classified Information Within Industry*, dated February 20, 1960, 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. The SOR 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, and recommended referral to an Administrative Judge to conduct proceedings and determine whether clearance should be granted or denied.

In a signed and sworn statement, dated September 13, 2004, Applicant responded to the SOR allegations (RSOR). He requested that his case be decided on the written record in lieu of a hearing. On June 30, 2006, Department Counsel prepared the Department's written case. A complete copy of the File of Relevant Material (FORM) was provided to Applicant, and he was given the opportunity to file objections and submit material in refutation, extenuation, or mitigation. Applicant did not file a response to the FORM. The case was initially assigned to another Administrative Judge on June 25, 2006, but it was then reassigned to this Administrative Judge on October 12, 2006.

Department Counsel offered 10 documentary exhibits (Exhibits 1-10), which were admitted without objection. Applicant offered no documentary evidence.

FINDINGS OF FACT

In the SOR, the Government alleges that a security risk may exist under Adjudicative Guideline F (Financial Considerations) of the Directive. The SOR contains two allegations, 1.a. and 1.b., under Guideline F.

After a complete and thorough review of the evidence in the record, including Applicant's RSOR, the FORM, and the admitted documents, and upon due consideration of that evidence, I make the following Findings of Fact:

According to the information furnished in Applicant's Security Clearance Application (SCA), executed on July 12, 2004, Applicant is a 47 year old employee of a defense contractor who seeks access to classified information. He is now divorced, but he was married from 1991 to 1999. He received a Bachelor of Arts Degree in 1999 (Exhibit 4).

(Guideline F - Financial Considerations)

The SOR lists two overdue debts that the Government alleges are owed by Applicant, 1.a. and 1.b, under Adjudicative Guideline F . Both debts will be discussed as they were listed in the SOR:

1.a. This overdue debt to Creditor 1 is listed in the SOR in the amount of \$27,463. In his June 10, 2006 RSOR, Applicant denied owing this debt (Exhibit 2).

1.b. This overdue debt to Creditor 2 is listed in the SOR in the amount of \$27,963. In his June 10, 2006 RSOR, Applicant denied owing this debt (Exhibit 2).

Two Credit Reports, dated September 14, 2004, and November 8, 2005, establish that both of these debts were charged off and are still owed by Applicant (Exhibits 5, 9).

In his RSOR. Affidavit and Interrogatory Response, Applicant contended that these debts were incurred fraudulently, in 1997 or 1998, without his knowledge, by his wife with whom he was still married but separated, at the time that the debts arose (Exhibits 2, 7, 8). He averred that he did not believe he was responsible for these debts and therefore, he engaged the services of an attorney to try to resolve these debts, so that he would not be responsible for them. He was unsuccessful at this attempt.

Since, Applicant has contended that these debts arose in 1997 or 1998, and the SCA shows that he was married until November 30, 1999, these debts were incurred while he was still married. Because of this, he has been unable to avoid liability for the debts.

While the evidence establishes that Applicant is current on all of his other debts (Exhibits 5, 9), he still owes more than \$55,000 for the two overdue debts.

POLICIES

Enclosure 2 of the Directive sets forth adjudicative guidelines that must be carefully considered in evaluating an individual's security eligibility and making the overall common sense determination required. The Administrative Judge must take into account the conditions raising or mitigating security concerns in each area applicable to the facts and circumstances presented. Although the presence or absence of a particular condition for or against clearance is not determinative, the specific adjudicative guidelines should be followed whenever a case can be measured against this policy guidance, as the guidelines reflect consideration of those factors of seriousness, recency, motivation, *etc.*

The adjudication process is based on the whole person concept. All available, reliable information about the person, past and present, is to be taken into account in reaching a decision as to whether a person is an acceptable security risk.

Each adjudicative decision must also include an assessment of: (1) the nature, extent, and seriousness of the conduct; (2) the circumstances surrounding the conduct, and the extent of knowledgeable participation; (3) how recent and frequent the behavior was; (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 (See

Directive, Section E2.2.1. of Enclosure 2).

BURDEN OF PROOF

Initially, the Government must prove controverted facts alleged in the Statement of Reasons. If the Government meets that burden, the burden of persuasion then shifts to Applicant to establish his security suitability through evidence of refutation, extenuation or mitigation sufficient to demonstrate that, despite the existence of disqualifying conduct, it is nevertheless clearly consistent with the national interest to grant or continue the security clearance. Assessment of Applicant's fitness for access to classified information requires evaluation of the whole person, and consideration of such factors as the recency and frequency of the disqualifying conduct, the likelihood of recurrence, and evidence of rehabilitation.

A person who seeks access to classified information enters into a fiduciary relationship with the U.S. Government that is predicated upon trust and confidence. Where facts proven by the Government raise doubts about Applicant's judgment, reliability, or trustworthiness, Applicant has a heavy burden of persuasion to demonstrate that he is nonetheless security worthy. As noted by the United States Supreme Court in *Department of the Navy v. Egan*, 484 U.S. 518, 531 (1988), "the clearly consistent standard indicates that security-clearance determinations should err, if they must, on the side of denials."

CONCLUSIONS

Having considered the evidence of record in light of the appropriate legal precepts and factors, I conclude the following:

The Government has established its case under Guideline F. The record evidence clearly establishes Applicant's indebtedness and his current non-payment of the debts listed on the SOR.

Applicant's overall conduct pertaining to his financial obligations falls within Financial Considerations Disqualifying Condition (DC) E2.A6.1.2.1., and DC E2.A6.1.2.3., because of Applicant's history of not meeting financial obligations and his inability to satisfy his debts. Regarding Mitigating Condition (MC) E2.A6.1.3.3, which involves debts that result from circumstances beyond the person's control, I find it applicable to this case, but not controlling. While Applicant's indebtedness was in large part due to circumstances beyond his control, specifically the problems of Applicant's ex-wife's actions, Applicant's debts are substantial, and there has been no independent evidence introduced to establish that Applicant has made a good-faith attempt to resolve these debts, which are still due and owing.

Until Applicant can make greater progress toward reducing or resolving these overdue debts, security concerns will continue to exist under Guideline F. I resolve Guideline F against Applicant, and I conclude Applicant has not established, at this time, that it is "clearly consistent with the national interest" that he should be granted the privilege of a security clearance.

FORMAL FINDINGS

Formal Findings as required by Section E3.1.25 of Enclosure 3 of the Directive are hereby rendered as follows:

Paragraph 1, Financial Considerations: Against Applicant

Subparagraph 1.a.: Against Applicant

Subparagraph 1.b.: Against Applicant

DECISION

In light of all the circumstances and facts 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.

Martin H. Mogul

Administrative Judge