

DATE: December 28, 2006

In Re:

SSN: -----

Applicant for Security Clearance

CR Case No. 05-04867

DECISION OF ADMINISTRATIVE JUDGE

MATTHEW E. MALONE

APPEARANCES

FOR GOVERNMENT

Emilio Jaksetic, Esquire, Department Counsel

FOR APPLICANT

Pro Se

SYNOPSIS

Applicant's wife's medical problems four years ago contributed, in part, to his financial difficulties and adversely impacted his ability to pay some overdue debts. However, his unpaid debts resulted more directly from his own financial mismanagement over the past ten years. Applicant claimed he paid or resolved several of his debts, but was unable to document his claims. In the past year, he has been late on his mortgage payments and has caused electronic payments to be made from his bank account without sufficient funds. Applicant failed to mitigate the security concerns about his delinquent debts. Clearance is denied.

STATEMENT OF THE CASE

After reviewing the results of Applicant's background investigation, adjudicators for the Defense Office of Hearings and Appeals (DOHA) were unable to make a preliminary affirmative finding⁽¹⁾ it is clearly consistent with the national interest to give Applicant a security clearance. On November 16, 2005, DOHA issued to Applicant a Statement of Reasons (SOR) alleging facts that raise security concerns addressed in the Directive under Guideline F (financial considerations). Applicant timely answered the SOR and requested a hearing.

This case was originally assigned to another administrative judge on May 25, 2006, but transferred to me on June 9, 2006. I convened a hearing on August 2, 2006, at which the parties appeared as scheduled, and the government presented 16 exhibits (Gx1 - 16). Applicant testified in his own behalf, and submitted a post-hearing exhibit (Ax A).⁽²⁾ DOHA received the transcript (Tr) on August 10, 2006. The record closed on August 11, 2006.

FINDINGS OF FACT

Applicant admitted, with explanation, the allegation in SOR 1.a and 1.c. His admissions are incorporated herein and, after a thorough review of the pleadings, transcript, and exhibits, I make the following additional findings of fact:

Applicant is 48 years old. Since 2003, he has worked for defense contractor as an a trainer and as an assistant logistic

system analyst. For about seven years before that, he worked for a large financial institution as a documentation specialist. He served on active duty as an enlisted man in the U.S. Army from 1982 until 1986. He then affiliated with the Army National Guard in an inactive reserve status, received a commission, and retired as a captain in October 2002. He held a security clearance during the entire time he was in the military. Applicant and his wife have been married since 1989 and have two children, ages 10 and 4. His wife is a registered nurse, and they have lived in the same house for 11 years.

Applicant and his wife have always lived on a tight budget, sometimes "robbing Peter to pay Paul" when it came to paying bills. (3) His wife managed the finances for most of their marriage, but in 2002, she experienced depression associated with the birth of their second child. Applicant did not know it, but his wife stopped paying many of their regular bills. In August 2002, Applicant received a certified letter notifying him that his mortgage was to be foreclosed due to non-payment for the previous six months (SOR ¶ 1.b).

To keep from losing their house and to pay their overdue debts, they filed for Chapter 13 bankruptcy protection in November 2002. A monthly payment to the trustee was to be taken directly from Applicant's pay, but this did not occur. The petition was involuntarily dismissed in July 2003, when Applicant could not come up with enough money to make up the deficiency (SOR ¶ 1.1). He re-filed a Chapter 13 petition in September 2003, and made payments to the wage earner's plan until July 2004, when he asked that the petition be dismissed (SOR ¶ 1.k). Applicant had re-negotiated a new mortgage with the holders of both his first and second (4) mortgages, and felt he could keep his house and could reduce his overall monthly payments by paying his creditors directly. The new mortgage agreement did not begin until May 2005, and the arrearage for the six months when he missed his mortgage payments was \$11,286.01. Applicant claims he is current on his new mortgage, but admits he has been late in making his payments more than once in the six months preceding the hearing. (5)

In June 2001, before Applicant's wife's bout of depression, a gutter company obtained a judgment against Applicant for an unpaid bill for services totaling \$772 plus interest (SOR ¶ 1.a). Applicant did not pay anything on this debt until December 2004. The balance had risen to about \$2,000, but Applicant negotiated a settlement amount of \$1,240. The balance due is now about \$490. (6)

Applicant's previous employment with a financial institution required some travel and other work-related expenses. To that end, he was issued a corporate credit card in July 1996, but it became delinquent when Applicant did not receive the full amount of his claim for expenses. It was his responsibility to pay the account and keep it current, even if he had not yet been reimbursed by the company. Applicant still owes \$2,340 for this debt (SOR ¶ 1.d), which was charged off as a business loss in 2001. (7)

When Applicant was trying to resolve his mortgage delinquencies, other bills went unpaid. He cancelled a cell phone account early because he could not afford the payments, but the early cancellation fee resulted in a debt of \$465 (SOR ¶ 1.h). Applicant claims he has paid this, but provided no documentation of his claim. Applicant also fell behind in paying a health club membership and owed \$113 to a collection agency for this debt (SOR ¶ 1.i). Applicant claims to have paid this debt as well, but has not provided any documentation. Applicant also became delinquent on a military exchange credit card. He owed about nearly \$500 (SOR ¶ 1.g), but has been making modest payments each week and now owes \$166. His account is current. (8)

Around 1998 or 1999, Applicant enrolled in classes at a local university. He claims his company was supposed to pay the tuition, but failed to do so. He has not pursued this dispute, and the original tuition bill of \$624 (SOR ¶ 1.f) has doubled due to interest accrual. He has not made any payments on this debt.

Applicant owns a car, which his mother uses. Applicant lives in the city adjoining the county where his mother lives. The city has assessed Applicant for personal property tax on the car, and he now owes \$2,983 (SOR ¶ 1.e). State law where Applicant lives requires such taxes to be imposed based on where the car is garaged; however, if that location cannot be determined, the tax will be assessed based on where the owner lives. (9) Applicant claims, again without supporting documentation, that he paid taxes on the car to the county where his mother lives and garages the car.

In January 2005, Applicant's wages were garnished to satisfy a state income tax debt of \$5,111.36 (SOR ¶ 1.j). The debt was satisfied and the garnishment lifted in April 2005, after the state took \$1,276.85 a month from his paychecks over four months. Applicant claims the tax lien against him was filed because the state had lost his tax return, and that the garnishment ended and he received a refund when he produced a copy of his tax return. ⁽¹⁰⁾

Applicant submitted a personal financial statement to DOHA in September 2005. It reflected a net cash flow of \$2,454 after expenses each month. ⁽¹¹⁾ At his hearing, Applicant testified he now has a car payment, child care expenses, and increased first and second mortgage payments that have reduced his net remainder by more than half. In 2005, he had sought advice from his bankruptcy attorney on how best to resolve his delinquent debts. He is now actively involved with his wife in the household finances. They have no credit cards and have incurred no new delinquencies other than those listed in the SOR. However, Applicant testified they have "bounced" as many as 12 electronic payments in the past year from their bank account to utilities and other creditors, and he is at a loss to explain how that has happened. ⁽¹²⁾

POLICIES AND BURDEN OF PROOF

The Directive sets forth adjudicative guidelines ⁽¹³⁾ to be considered in evaluating an applicant's suitability for access to classified information. Security clearance decisions must reflect consideration of both disqualifying and mitigating conditions under each adjudicative issue applicable to the facts and circumstances of each case. Each decision must also reflect a fair and impartial common sense consideration of the factors listed in Section 6.3 of the Directive. ⁽¹⁴⁾ The presence or absence of a disqualifying or mitigating condition is not determinative of a conclusion for or against an applicant. However, specific applicable guidelines should be followed whenever a case can be measured against them as they represent policy guidance governing the grant or denial of access to classified information.

A security clearance decision is intended to resolve whether it is clearly consistent with the national interest ⁽¹⁵⁾ for an applicant to receive or continue to have access to classified information. The government bears the initial burden of producing admissible information on which it based the preliminary decision to deny or revoke a security clearance for an applicant. Additionally, the government must be able to prove controverted facts alleged in the SOR. If the government meets its burden, the burden then shifts to the applicant to refute, extenuate or mitigate the government's case. Because no one has a "right" to a security clearance, an applicant bears a heavy burden of persuasion. ⁽¹⁶⁾ 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 in ensuring each applicant possesses the requisite judgement, reliability and trustworthiness of one who will protect the national interests as his or her own. The "clearly consistent with the national interest" standard compels resolution of any reasonable doubt about an applicant's suitability for access in favor of the government. ⁽¹⁷⁾

CONCLUSIONS

Financial Considerations. The government alleged Applicant had not paid a civil judgment for \$772 entered against him in 2001 (SOR ¶ 1.a); he was \$23,000 in arrears for 120 days non-payment of his primary mortgage, for which foreclosure had been initiated (SOR ¶ 1.b); he was also \$10,000 in arrears on a second mortgage for 120 days non-payment (SOR ¶ 1.c); he owed \$2,340 for a delinquent credit card account (SOR ¶ 1.d); he owed \$2,983 for non-payment of personal property tax on his car (SOR ¶ 1.e); he owed \$624 for unpaid tuition at a local university (SOR ¶ 1.f); he was about \$100 past due for a military exchange credit card account (SOR ¶ 1.g); he owed \$365 on a delinquent cell phone account (SOR ¶ 1.h); he owed \$113 for a delinquent health club membership (SOR ¶ 1.i); his wages were garnished in January 2005 to satisfy a state income tax lien (SOR ¶ 1.j); and that he filed Chapter 13 bankruptcy petitions in 2002 (SOR ¶ 1.l) and 2003 (SOR ¶ 1.k).

The government presented sufficient admissible information to support each of the SOR allegations. Applicant has incurred numerous unpaid debts as far back as 1998. He also told investigators that he and his wife have always had tight finances, sometimes borrowing from one source to pay another. Several of the debts listed in the SOR remain unpaid, and Applicant has been late on mortgage payments in the past year. He also has made electronic payments from his bank account without sufficient funds, but he has no explanation for why that has happened. Based on the foregoing,

the facts established through the SOR allegations raise a security concern addressed in the Directive under Guideline F; that is, an individual who is financially overextended is at risk of having to engage in illegal acts to generate funds. [\(18\)](#) These facts further require consideration of Guideline F disqualifying condition (DC) 1 and DC 3. [\(19\)](#)

By contrast, available information supports consideration of mitigating condition (MC) 3, [\(20\)](#) because his wife's depression around 2002 resulted in non-payment of his mortgage, which, in turn, adversely impacted payment on other accounts. Applicant is also entitled to some consideration under MC 6, [\(21\)](#) in that he sought protection of his assets and repayment of his debts through Chapter 13. In this regard, I conclude SOR ¶¶ 1.k and 1.l for the Applicant. Further, I conclude SOR ¶¶ 1.a and 1.f for the Applicant based on his documented repayment on those debts. Nonetheless, available information does not support Applicant's claims he has paid, resolved, or addressed in a meaningful way the remaining debts. In the case of the SOR ¶ 1.f tuition debt, his inaction has resulted in a doubling of the money he owes. Even though the allegation in SOR ¶ 1.h allows that he has paid down that debt by \$100, Applicant has not presented anything to support his claim he has paid the entire debt. The same can be said for his claim he has paid the SOR ¶ 1.i health club debt. As to his claim that the tax lien alleged in SOR ¶ 1.j was filed in error and he was refunded the wages garnished by the state, as with the other claims, Applicant failed to do provide anything to support his claim despite being allowed extra time after hearing to do so. Finally, Applicant's admission about his late mortgage payments and that he has overdrawn his bank account paying creditors in the past year work against his claims that he is managing his finances more conscientiously than before. These facts serve only to reinforce the government's concerns about his finances. I conclude this guideline against the Applicant.

Whole Person. In general, I conclude Applicant has not mitigated the government's security concerns about the results of his background investigation. I have carefully weighed all of the available evidence, and I have applied the appropriate disqualifying and mitigating conditions. Further, I have tried to make a fair and commonsense assessment of the record before me as required by Directive Section E2.2.3. Having also reviewed the record before me in the context of the whole person factors listed in Directive, Section 6.3, it is apparent that Applicant is a mature adult, who has served his country well in the military, and has been gainfully and consistently employed for at least the past 15 years. He and his wife have overcome personal difficulties engendered by the financial effects of her depression, and Applicant appears to be sincere in his intent to resolve his past delinquencies. However, the record shows he has not yet been able to do so. Thus, the conduct at issue here is current and likely to continue. Absent information he claims to possess that would support his claims in this regard, the record presents an unacceptable risk in continuing Applicant's access to classified information at this time. Accordingly, I cannot conclude he has overcome the government's case.

FORMAL FINDINGS

Formal findings regarding each SOR allegation are as follows:

Paragraph 1, Guideline F (Financial): AGAINST THE APPLICANT

Subparagraph 1.a: For the Applicant

Subparagraph 1.b: Against the Applicant

Subparagraph 1.c: Against the Applicant

Subparagraph 1.d: Against the Applicant

Subparagraph 1.e: Against the Applicant

Subparagraph 1.f: Against the Applicant

Subparagraph 1.g: For the Applicant

Subparagraph 1.h: Against the Applicant

Subparagraph 1.i: Against the Applicant

Subparagraph 1.j: Against the Applicant

Subparagraph 1.k: For the Applicant

Subparagraph 1.l: For the 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 the Applicant. Clearance is denied.

Matthew E. Malone

Administrative Judge

1. Required by Executive Order 10865, as amended, and by DoD Directive 5220.6 (Directive), as amended.
2. Without objection, I left the record open to afford Applicant additional time to submit relevant information in support of his case. Ax A is a three-page exhibit consisting of two copies of a May 31, 2006, account statement from the creditor listed in SOR ¶ 1.a, and an August 4, 2006, statement from the creditor listed in SOR ¶ 1.g. Department Counsel did not object to the admissibility of Applicant's submissions.
3. Gx. 4.
4. Applicant took out a \$23,000 second mortgage on his house in September 2000 to pay off some of his debts, and to do some home improvements. (Gx. 13; Tr., 74 - 75.) He failed to pay this mortgage during the same six month period (SOR ¶ 1.c).
5. Tr., 73 - 74.
6. Gx. 5; Ax A; Tr., 48.
7. Gx. 13; Tr., 42 - 45.
8. Ax. A.
9. Virginia Code, Section 46.2-752.A.
10. Tr., 63.
11. Gx. 12.
12. Tr., 54 - 55, 85.
13. Directive, Enclosure 2.
14. Commonly referred to as the "whole person" concept, these factor are as follows:
 1. Nature and seriousness of the conduct and surrounding circumstances.
 2. Frequency and recency of the conduct.
 3. Age of the applicant.
 4. Motivation of the applicant, and the extent to which the conduct was negligent, willful, voluntary, or undertaken with knowledge of the consequences involved.

5. Absence or presence of rehabilitation.

6. Probability that the circumstances or conduct will continue or recur in the future;

15. *See Department of the Navy v. Egan*, 484 U.S. 518 (1988).

16. *See Egan*, 484 U.S. at 528, 531.

17. *See Egan*; Directive, E2.2.2.

18. Directive, E2.A6.1.1.

19. Directive, E2.A6.1.2.1 (A history of not meeting financial obligations); E2.A6.1.2.3 (Inability or unwillingness to satisfy debts).

20. Directive, E2.A6.1.3.3 (The 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)).

21. Directive, E2.A6.1.3.6 (The individual initiated a good-faith effort to repay overdue creditors or otherwise resolve debts).