

DATE: August 23, 2006

In Re:

SSN: -----

Applicant for Security Clearance

ISCR Case No. 05-07683

DECISION OF ADMINISTRATIVE JUDGE

CHARLES D. ABLARD

APPEARANCES

FOR GOVERNMENT

Candace Le'i, Esq. , Department Counsel

FOR APPLICANT

Pro Se

SYNOPSIS

Applicant, a 46-year-old employee of a defense contractor, failed to mitigate financial considerations security concerns relating to delinquent debts. He offered no evidence in mitigation except for payment of two of the smallest debts and reduction of delinquent child support payments by \$4,000.00 leaving a balance of delinquent debts exceeding \$8,000.00, for which no evidence of payment or settlement was submitted. Clearance is denied.

STATEMENT OF CASE

On January 31, 2006, the Defense Office of Hearings and Appeals (DOHA), pursuant to Executive Order 10865, *Safeguarding Classified Information Within Industry*, 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 which 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. DOHA recommended the case be referred to an administrative judge to determine whether a clearance should be granted, continued, denied, or revoked.

In a sworn written statement dated March 7, 2006, Applicant responded to the allegations in the SOR admitting two in full and one in part. He denied the remainder. He elected to have his case decided on the written record in lieu of a hearing. Department Counsel submitted the Government's written case on April 26, 2006. A complete copy of the file of relevant material (FORM) was provided to the Applicant, and he was afforded an opportunity to file objections and submit material in refutation, extenuation, or mitigation. Applicant filed no response and the case was assigned to me on July 14, 2006.

FINDINGS OF FACT

After a complete and thorough review of the information in the record, and upon due consideration of same, I make the following additional findings of fact:

Applicant is a 46-year-old employee of a defense contractor. He admitted two of the allegations concerning delinquent debts and denied all others stated on the SOR as exceeding \$16,000.00. He accumulated the debts to a variety of creditors over an extended period of time. He admitted he lacks financial management skills and that his current credit is "poor". However, he is "working to correct it". He intends to pay the debts but offered no plan or evidence of doing so in either his answer or his statement made during his security interview (Exhs. 3 and 6).

He has paid only the two smallest of the delinquent debts, one for \$412.00 (SOR 1.d.) (Exh. 4) and a second for \$57.00 (SOR 1.j.). He has not received credit counseling. His most recent credit report does not list the debt stated in SOR 1.a. of \$3,856.00, but no evidence was offered to show that it had, in fact, been paid.

Applicant has a delinquent debt for child support. The SOR 1.g. alleges a debt of \$6,400.00 but a credit report (Exh. 8) shows the amount to be reduced to \$2,500.00. Applicant admitted delinquent debts in SOR 1.h. for \$2,914.00 and SOR 1.b. for \$1225.00, and acknowledges them in his response to interrogatories (Exh. 7), but states that he is negotiating with the creditors for payment. No further information about these debts was offered.

POLICIES

"[N]o 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.

An evaluation of whether the applicant meets the security guidelines includes consideration of the following factors: (1) the nature, extent, and seriousness of the conduct; (2) the circumstances surrounding the conduct; (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 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. Directive, ¶ E2.2.1. Security clearances are granted only when "it is clearly consistent with the national interest to do so." Executive Order No. 10865 § 2. *See* Executive Order No. 12968 § 3.1(b).

Initially, the Government must establish, by something less than a preponderance of the evidence, that conditions exist in the personal or professional history of the applicant which disqualify, or may disqualify, the applicant from being eligible for access to classified information *See Egan*, 484 U.S. at 531. The applicant then bears the burden of demonstrating that it is clearly consistent with the national interest to grant or continue the applicant's clearance. "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. "[S]ecurity clearance determinations should err, if they must, on the side of denials." *Egan*, 484 U.S. at 531. *See* Executive Order No. 12968 § 3.1(b)

CONCLUSIONS

Upon consideration of all the facts in evidence, and after application of all appropriate legal precepts, factors, and conditions above, I conclude the following with respect to all allegations set forth in the SOR:

Applicant's delinquent debts prompted the allegations in the SOR under Guideline F in that an individual who is financially overextended is at risk of having to engage in illegal acts to generate funds. (E2.A6.1.1.) Conditions that could raise a security concern and may be disqualifying include a history of not meeting financial obligations (E2.A6.1.2.1.) and evidence of inability or unwillingness to satisfy debts. (E2.A6.1.2.3.)

Mitigating conditions (MC) might include the fact that the person has initiated a good-faith effort to repay overdue creditors or otherwise resolve debts (E2.A6.1.3.6.), and that the conditions resulting in the problems were largely

beyond the person's control (E2.A6.1.3.3.). No evidence was offered by Applicant to establish that any mitigating condition was applicable. He has paid only the two smallest debts, and apparently reduced the child support by almost \$4,000.00. He offered no explanation as to how this was achieved. He has failed to establish the debts resulted from conditions beyond his control.

Even assuming a best case scenario for Applicant as to those debts no longer on his credit report and his reduced child support delinquency, he still has delinquent debts exceeding \$8,000.00 for which no evidence of payment or settlement has been provided.

In all adjudications the protection of our national security is of paramount concern. Persons who have access to classified information have an overriding responsibility for the security concerns of the nation. The objective of the security clearance process is the fair-minded, commonsense assessment of a person's trustworthiness and fitness for access to classified information.

After considering all the evidence in its totality and as an integrated whole to focus on the whole person of Applicant, I conclude that it is not clearly consistent with the national interest to grant clearance to Applicant.

FORMAL FINDINGS

Formal findings as required by the Directive (Par. E3.1.25) are as follows:

Paragraph 1. Guideline F: AGAINST APPLICANT

Subparagraph 1.a.: For Applicant

Subparagraph 1.b.: Against Applicant

Subparagraph 1.c.: Against Applicant

Subparagraph 1.d.: For Applicant

Subparagraph 1.e.: Against Applicant

Subparagraph 1.f.: Against Applicant

Subparagraph 1.g.: Against Applicant

Subparagraph 1.h.: Against Applicant

Subparagraph 1.i.: Against Applicant

Subparagraph 1.j.: For Applicant

DECISION

After full consideration of all the facts and documents 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.

Charles D. Ablard

Administrative Judge