

DATE: November 13, 2006

In Re:

SSN: -----

Applicant for Security Clearance

ISCR Case No. 05-07366

DECISION OF ADMINISTRATIVE JUDGE

CHARLES D. ABLARD

APPEARANCES

FOR GOVERNMENT

Nicole Noel, Esq. , Department Counsel

FOR APPLICANT

Pro Se

SYNOPSIS

Applicant failed to mitigate security concerns arising from delinquent debts totaling over \$32,000.00 even though he had paid or settled five of the accounts for \$8,000.00 since he still had not settled three of the four largest debts totaling \$20,000.00. Two of those debts had been included in a 2001 bankruptcy that had been dismissed in 2003 with no settlement of the accounts. Clearance is denied.

STATEMENT OF CASE

On December 15, 2005, 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.

On December 20, 2005, Applicant responded to the SOR allegations, and requested a hearing. The matter was assigned to me on August 1, 2006. A notice of hearing was issued on August 16, 2006, for a hearing on August 22, 2006, and held that day after Applicant waived on the record the requirement for a 15-day notice of hearing. The government offered seven exhibits and Applicant offered eleven into evidence and all were accepted. The transcript was received on August 30, 2006. The record was left open until September 22, 2006, for submission of additional material. On September 7, 2006, Applicant requested an extension until October 14, 2006, which was granted on September 8, 2006. A post-hearing submission consisting of nine pages was received on September 13, 2006, to which the government had no objection and it was admitted in evidence.

FINDINGS OF FACT

Applicant admitted all but four of the nine SOR allegations relating to delinquent debts with explanation. Eight of the allegations were for specific debts totaling over \$32,000.00. The ninth concerned a bankruptcy in 2001. After a complete review of the record, I make the following additional findings of fact:

Applicant is a 46-year-old employee of a major defense contractor who has worked as a senior engineer for the company the past four years. He has worked for other defense contractors for 15 years holding a security clearance during some of that time. He holds an MBA in engineering management. He does not currently hold a security clearance but has been asked by his company to obtain one.

Applicant and his former wife filed for bankruptcy under Chapter 13 in 2001 which was dismissed in 2003. The filing was to protect their home from foreclosure and not because of the size of their debts although two of the three largest delinquent debts listed in the SOR were included in the bankruptcy. The bankruptcy was dismissed when they decided to sell their home.

Applicant submitted evidence at the hearing of payment or settlement of five of the eight debts specifically those alleged in SOR 1.b., c., d., e., and h. totaling approximately \$8,000.00. The government conceded that he had satisfied those debts but that three remained. Those three were the among the four largest listed in the SOR and total over \$20,000.00. The following is an analysis of the status of the three remaining delinquent debts:

1. SOR 1.a. This debt is alleged to be \$12,734.20 owed to a collection agency acting on behalf of the creditor, a property owner who rented an apartment to Applicant. He lived in the apartment for one year in 2000 - 2001 paying \$1,300.00 per month. He gave notice and moved out. The owners made a claim for the funds characterizing it as a "re-letting fee" and he has had a dispute with the owners over this claim since then. On August 23, 2006, he asked for a detailed accounting of how the figure was reached (Exhs. Y and Z). He does not have a copy of the lease and they have declined to give it to him. No legal action has been taken by the creditor.

2. SOR 1.f. This concerns an alleged debt to a credit card company for \$3,400.00 turned over for collection. Applicant acknowledged that this debt was owed at one time since it was included in his bankruptcy filing. He has communicated with the company and has been advised orally that he has a zero balance. However, no evidence of payments was offered at the hearing. He sent a letter by certified mail to the company in September 10, 2006, asking for confirmation and what, if anything is owed (Exhs. W and X).

3. SOR 1.g.: This concerns an alleged debt to a chain store for \$4,100.00 turned over for collection. This debt also was owed at one time and included in his bankruptcy filing. Applicant has been advised orally by the creditor that he has a zero balance but he offered no evidence of payments that would account for such a balance. He sent a certified letter to the company on August 23, 2006 and asked for documentation to learn what, if anything was owed. The information has not been forthcoming (Exhs. S and T).

Applicant's salary is \$2,600.00 per month and his wife's is \$2,000.00. She works as a loan officer, is knowledgeable about debt issues, and has assumed responsibility for straightening out his debts. He has a 401K account valued at \$20,000. He also works as a school sports official and earns \$500.00 per month. He and his wife own their home but are paying a mortgage. They own real property at several locations valued at over \$250,000.00. One has recently been sold and the proceeds used to pay debts. Applicant has never entered into a consumer credit counseling program. They have only one credit card which usually has a \$10,000.00 balance on it. They pay the minimum required each month.

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 it is clearly consistent with the national interest to grant or continue a security 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 adjudicative factors, I conclude the following with respect to all allegations set forth in the SOR:

Applicant's delinquent debts prompted the allegation of security concern under Guideline F since 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 conditions that resulted in the behavior were largely beyond the person's control (E2.A6.1.3.3.) and the person has initiated a good faith effort to repay overdue creditors or otherwise resolve debts. (E2.A6.1.3.6.).

Applicant has made progress in extinguishing a number of his delinquent debts over the past several years either by payments in full or compromise settlements. However, the remaining three delinquent debts continue to be problematic. The rental claim seems on its face to be excessive since the claim is for as much as he would have paid in rent the one year he lived there. He appears to have made some efforts to resolve it but it has been extant for over four years and is yet unresolved. The two debts included in his bankruptcy were sufficiently valid in 2001 to have been included in the bankruptcy, yet when the bankruptcy was dismissed in 2003 they were not paid and no evidence was offered to show that any effort was made to extinguish the debts. The companies may have advised him that both had a zero balance, but that could have been because they wrote them off rather than pursuing them in bankruptcy when he filed. In any event, it seems likely that he still owes the creditors and nothing was offered in evidence of efforts to resolve them until the recent letters were sent after the hearing.

While an applicant is not required under Guideline F to totally resolve all delinquent debts to justify the grant of a security clearance, in view of the fact that these three large debts constituting the bulk of his delinquent debts have not been resolved and are each at least five years old, I am reluctant to conclude that the mitigating conditions are applicable.

From the evidence offered at the hearing it appears Applicant has sufficient assets to resolve the remaining debts. He and his wife seem to have the professional skills and assets to resolve them yet such has not been done at this time.

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.

The "whole person" concept recognizes we should view a person by the totality of their acts and omissions. Each case must be judged on its own merits taking into consideration all relevant circumstances, and applying sound judgment, mature thinking, and careful analysis. Applicant impressed me at the hearing as a competent person with a wife who

was equally so but whose debts had accumulated over time without being adequately addressed.

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 premature to grant a security clearance at this time.

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.: Against Applicant

Subparagraph 1.b.: For Applicant

Subparagraph 1.c.: For Applicant

Subparagraph 1.d.: For Applicant

Subparagraph 1.e.: For Applicant

Subparagraph 1.f.: Against Applicant

Subparagraph 1.g.: Against Applicant

Subparagraph 1.h.: For Applicant

Subparagraph 1.i.: For 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 renew a security clearance for Applicant. Clearance is denied.

Charles D. Ablard

Administrative Judge