

DATE: October 23, 2006

In re:

SSN: -----

Applicant for Security Clearance

CR Case No. 05-11147

DECISION OF ADMINISTRATIVE JUDGE

JAMES A. YOUNG

APPEARANCES

FOR GOVERNMENT

Sabrina E. Redd, Esq., Department Counsel

FOR APPLICANT

Pro Se

SYNOPSIS

Despite receiving some group credit counseling, and recently hiring a law firm to file a Chapter 13 bankruptcy, Applicant failed to mitigate security concerns raised by his more than \$32,000 in delinquent debt. Clearance is denied.

STATEMENT OF THE CASE

The Defense Office of Hearings and Appeals (DOHA) declined to grant or continue a security clearance for Applicant. As required by Department of Defense Directive 5220.6 ¶ E3.1.2 (Jan. 2, 1992), as amended, DOHA issued a Statement of Reasons (SOR) on 29 November 2005 detailing the basis for its decision-security concerns raised under Guideline F (Financial Considerations) of the Directive. Applicant answered the SOR in writing on 18 January 2006 and elected to have a hearing before an administrative judge. The case was assigned to me on 24 July 2006. With the consent of the parties, I convened a hearing on 16 August 2006, to consider whether it is clearly consistent with the national interest to grant or continue a security clearance for Applicant. DOHA received the hearing transcript (R.) on 6 September 2006.

I kept the record open until 26 August 2006 so Applicant could provide a copy of his Department of Defense Form 214 as proof of his 24 years of honorable military service. Applicant submitted the copy and it was admitted without objection as Ex. D.

FINDINGS OF FACT

Applicant is a 53-year-old fuels technician for a defense contractor, although he has spent much of his time working security/resource protection issues. He is the single parent of a 17-year-old daughter. He served 24 years in the U.S. Air Force, retiring in 1997 as a master sergeant (E-7). After his retirement, he was hired by the defense contractor for duties similar to those he had performed while on active duty. The contractor highly values his performance.

In the SOR, DOHA alleged Applicant had delinquent debts totaling more than \$32,000 that had been charged off as bad debts (¶¶ 1.a-1.d, 1.f) and one delinquent debt for \$535 that was in collection status (¶ 1.e). Four of the debts totaling

more than \$22,500 were charged off in 1999. In his Answer, Applicant admitted each of the allegations.

Applicant began experiencing financial problems after he retired from the Air Force due to unspecified personal and family problems on which he declined to elaborate. In an 8 September 2003 signed, sworn statement, Applicant attributed his financial problems to "irresponsible spending habits and poor money management." Ex. 2 at 2. He did not timely file tax returns for tax years 1999-2005. The IRS levied a tax lien for more than \$14,000 against him. In August 2006, shortly before the hearing, Applicant met with a tax preparer and submitted returns for tax years 1999-2005. After the hearing, he intended to resubmit those returns as the preparer had incorrectly checked Applicant's filing status as single instead of head of household. The tax returns as currently prepared call for a refund of about \$9,800. ⁽¹⁾ A personal financial statement Applicant prepared in September 2003 shows he had \$1,491 remaining after paying his monthly bills. He "guesstimates" that he currently has between \$1,500 and \$1,800 remaining after paying his monthly bills, on a net income of about \$4,200 a month.

Applicant consulted an attorney who planned to file a Chapter 13 bankruptcy petition for Applicant two days after the hearing. The attorney referred Applicant to a credit counseling service (CCS). Applicant met with the CCS on one occasion for a group session, during which general principles of personal finance were discussed, but no effort was made to consider Applicant's individual financial situation.

Applicant asserted he tried to contact some of his creditors by telephone but was unsuccessful. He has not written any letters to them. He claims the creditor for the debt alleged in ¶ 1.d cannot find any information indicating Applicant has a delinquent debt with them. He claims he plans to resolve all of his debts.

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. The President authorized the Secretary of Defense or his designee to grant applicants eligibility for access to classified information "only upon a finding that it is clearly consistent with the national interest to do so." Exec. Or. 10865, *Safeguarding Classified Information within Industry* § 2 (Feb. 20, 1960). Each security clearance decision "must be a fair and impartial common sense determination based upon consideration of all the relevant and material information and the pertinent criteria and adjudication policy." Directive ¶ 6.3. An applicant "has the ultimate burden of demonstrating that it is clearly consistent with the national interest to grant or continue his security clearance." ISCR Case No. 01-20700 at 3 (App. Bd. Dec. 19, 2002).

Enclosure 2 of the Directive sets forth personnel security guidelines, as well as the disqualifying conditions (DC) and mitigating conditions (MC) under each guideline. In evaluating the security worthiness of an applicant, the administrative judge must also assess the adjudicative process factors listed in ¶ 6.3 of the Directive. The decision to deny an individual a security clearance is not necessarily a determination as to the loyalty of the applicant. *See* Exec. Or. 10865 § 7. It is merely an indication the applicant has not met the strict guidelines the President and the Secretary of Defense have established for issuing a clearance.

CONCLUSIONS

In the SOR, DOHA alleged Applicant had delinquent debts totaling more than \$32,000 that had been charged off as bad debts (¶¶ 1.a-1.d, 1.f) and one delinquent debt for \$535 that was in collection status (¶ 1.e). In his Answer, Applicant admitted each of the allegations.

An applicant who is financially overextended is at risk of having to engage in illegal acts to generate funds. Directive ¶ E2.A6.1.1. Failure or inability to live within one's means, satisfy debts, and meet financial obligations may indicate poor self-control, lack of judgment, or unwillingness to abide by rules and regulations, all of which can raise questions about an individual's reliability, trustworthiness and ability to protect classified information. The Government established each of the allegations in the SOR. Applicant has a history of not meeting his financial obligations (DC E2.A6.1.2.1) and is unable or unwilling to satisfy his debts (DC E2.A6.1.2.3).

An applicant may mitigate financial considerations security concerns by establishing that the behavior was not recent (MC E2.A6.1.3.1); it was an isolated incident (MC E2.A6.1.3.2); the conditions that resulted in the behavior were largely beyond the applicant's control; (MC E2.A6.1.3.3); the applicant has received or is receiving counseling for the problem and there are clear indications that the problem is being resolved or is under control (MC E2.A6.1.3.4); or the individual initiated a good-faith effort to repay overdue creditors or otherwise resolve debts (MC E2.A6.1.3.6).

Applicant failed to establish any of these mitigating conditions. As there are several debts still delinquent, they are recent and not isolated. Applicant failed to establish that his debts resulted from conditions largely beyond his control--his refusal to discuss his personal and family problems left me no evidence on which I could base a finding that the mitigating condition had been raised. Although he received some generalized financial counseling, there is no evidence his problem is being resolved or is under control, or that he made a good-faith effort to pay his creditors.

Whole Person Analysis

"The adjudicative process is an examination of a sufficient period of a person's life to make an affirmative determination that the person is eligible for a security clearance." Directive E2.2.1. "Available, reliable information about the person, past and present, favorable and unfavorable, should be considered in reaching a determination." *Id.* In evaluating Applicant's case, I have considered the adjudicative process factors listed in the Directive ¶ E2.2.1.

Applicant is a mature, experienced, and highly valued member of the contractor's team. Since at least 2003, he has reported significant income--\$1,491 to \$1,800--remaining at the end of each month. But he has done little to resolve his long-standing delinquent debts. His belated efforts still have not resolved any debts and his bankruptcy had not been filed by the time of the hearing. After carefully considering all the evidence, the disqualifying and mitigating conditions, and the adjudicative process factors, I conclude Applicant failed to mitigate the financial considerations security concerns.

FORMAL FINDINGS

The following are my conclusions as to each allegation in the SOR:

Paragraph 1. Guideline F: AGAINST APPLICANT

Subparagraph 1.a: Against Applicant

Subparagraph 1.b: Against Applicant

Subparagraph 1.c: Against Applicant

Subparagraph 1.d: Against Applicant

Subparagraph 1.e: Against Applicant

Subparagraph 1.f: Against Applicant

DECISION

In light of all of the circumstances in this case, it is not clearly consistent with the national interest to grant or continue a security clearance for Applicant. Clearance is denied.

James A. Young

Administrative Judge

1. In the SOR, DOHA did not allege Applicant failed to file his federal income tax returns. As it was not alleged, I have not considered this evidence as establishing any disqualifying condition.