

DATE: November 30, 2006

In Re:

SSN: -----

Applicant for Security Clearance

ISCR Case No. 05-11925

DECISION OF ADMINISTRATIVE JUDGE

JOAN CATON ANTHONY

APPEARANCES

FOR GOVERNMENT

Nicole Noel, Esq., Department Counsel

FOR APPLICANT

Pro Se

SYNOPSIS

Applicant has a history of financial difficulties dating back to at least 1994. At his hearing, he admitted he had insufficient resources to pay his basic living expenses and was unable to pay his delinquent debts. Applicant failed to mitigate security concerns under Guideline F, Financial Considerations, of the Directive. 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. On January 27, 2006, under the applicable Executive Order⁽¹⁾ and Department of Defense Directive,⁽²⁾ DOHA issued a Statement of Reasons (SOR), detailing the basis for its decision-security concerns raised under Guideline F (Financial Considerations) of the Directive. Applicant filed an answer to the SOR on February 25, 2006, and elected to have a hearing before an administrative judge. The case was assigned to me September 5, 2006. On October 11, 2006, I convened a hearing to consider whether it is clearly consistent with the national interest to grant or continue a security clearance for Applicant. The Government called no witnesses and submitted eight exhibits (Ex.) for admission to the record (Ex. 1 through 8). The Government's exhibits were admitted to the record without objection. Applicant testified on his own behalf and called no additional witnesses. He submitted three exhibits, which were identified as Applicant's Ex. A through C. Applicant's exhibits were admitted to the record without objection. At the conclusion of Applicant's case, Department Counsel moved to amend the SOR to conform with the evidence adduced in the hearing and offered four additional allegations under Guideline F. Applicant did not object to the Government's motion, and, accordingly, the SOR was amended by including therein four new allegations under Guideline F. I left the record open until close of business October 26, 2006, so that Applicant could answer the new allegations in the amended SOR, and, if he wished, submit additional information for the record. Applicant timely filed an answer to the amended SOR. He also filed five additional exhibits, which were marked as Applicant's Ex. D through H. These exhibits were admitted to the record without objection. On October 19, 2006, DOHA received the transcript (Tr.) of the proceeding.

FINDINGS OF FACT

The amended SOR contains eleven allegations of disqualifying conduct under Guideline F, Financial Considerations. In his answer to the amended SOR, Applicant admitted seven allegations and denied four. He also offered mitigating circumstances. Applicant's admissions are incorporated as findings of fact.

Applicant is 42 years old and employed by a government contractor as a security guard. Applicant has worked for his current employer since March 2006. He earns \$11 per hour. He earned approximately \$35,000 a year in his previous job as a lead mail clerk. Applicant was released from that job in February 2006. Applicant's previous employer sponsored Applicant's security clearance application. Applicant submitted a post-hearing exhibit indicating that on October 14, 2006, he acquired a part-time week-end job as a security guard. (Ex. 1; Ex. F; Tr. 33-34.)

Applicant has been married twice. He married his first wife in July 1988. He has a son, currently 16 years old, and a daughter, currently 12 years old, from his first marriage. Applicant and his first wife were divorced in May 1995, and the two children live with their mother. Applicant married for the second time in September 2000. He and his second wife have no children. They separated in March 2006. (Ex. 1; Tr. 28-30.) Applicant was first granted a security clearance in 1997. (Tr. 57.)

In January 1994, Applicant and his first wife realized they were living beyond their means. Each of them "had about six credit cards apiece and they were all maxed out." The couple filed for bankruptcy. (Ex. 2 at 2.)

In 1996, Applicant moved from City A to his current location. Applicant's only period of unemployment was approximately from January 1997 to June 1997. Although he was employed most of the time from June 1996 to approximately June 2000, Applicant failed to pay child support during that time. He failed to notify City A, where his children and first wife resided, that he had moved away and needed monthly voucher forms to file along with his child support payments. In June 2000, State A tracked down Applicant through his social security number and sought payment of the child and spousal support arrearage by garnishment. Applicant currently pays \$900 a month in child and spousal support, of which he estimates approximately \$450 goes to reducing the arrearage. (Tr.39-44.)⁽³⁾ In a post-hearing submissions, Applicant provided a payment history and a document showing net due child support obligations of \$2,897.61 and a past due support obligation of zero. (Ex. D, Ex. E.)

In September 1999, a judgment (tax lien) in the approximate amount of \$1,800 was issued against Applicant in favor of the tax commission of State A. This lien was satisfied December 20, 2005. In December 1999, a second judgment (tax lien) in the approximate amount of \$2,100 was issued against Applicant in favor of the tax commission of State A, and, in July 2000, a third judgment (tax lien) in the approximate of \$4,800 was issued against Applicant in favor of the tax commission of State A. The second and third liens had not been paid as of November 29, 2005, and, at the time of Applicant's hearing, remained unsatisfied. (Ex. 8; Ex. A, Ex. I.)⁽⁴⁾

In February 2006, after receiving the SOR, Applicant made an agreement with a financial services company to pay the debts alleged at ¶¶ 1.f and 1.g. of the SOR. However, when he lost his higher-paying job and took his current job, he was unable to follow through on payments. He has made no other arrangements to pay the two debts. (Tr. 44-46.) In a post-hearing submission, Applicant said he would pay all of his debts within two or three months if he were able to acquire a higher-paying job and a security clearance. (Ex. G.) In a communication, dated December 13, 2005, one of the three national credit reporting services notified Applicant that the debt identified at ¶ 1.d. of the SOR had been deleted from his credit report following an investigation. (Ex. 3 at 6.)

Applicant's gross monthly income is \$2000. He lives alone. After taxes and child support payments are deducted from his salary, he nets approximately \$460 in take-home pay each month. His rent payment is \$690 per month, and his monthly payment on a car loan is \$300. At the time of his hearing he was 30 days past due on his rent and auto loan. He had been without automobile insurance for approximately four or five months. Additionally, Applicant was 60 days past due on his electric bill and 30 days past due on his gas bill, obligations that totaled approximately \$344. Prior to his hearing, Applicant made application to rental assistance and energy assistance programs in the county where he lived. (Tr. 48-54; Ex. C.)

While Applicant contracted with a financial services company in February 2006 to assist him in paying some of his delinquent bills, he appeared not to have acquired any counseling for planning his expenditures and managing his

financial obligations. When he realized he lacked sufficient funds to pay the debts alleged at ¶¶ 1.f. and 1.g. of the SOR through the program offered by the financial management company, he dropped out of the program. (Tr. 47-48.)

POLICIES

"[No 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 has restricted eligibility for access to classified information to United States citizens "whose personal and professional history affirmatively indicates loyalty to the United States, strength of character, trustworthiness, honesty, reliability, discretion, and sound judgment, as well as freedom from conflicting allegiances and potential for coercion, and willingness and ability to abide by regulations governing the use, handling, and protection of classified information." Exec. Or. 12968, *Access to Classified Information* § 3.1(b) (Aug. 4, 1995). Eligibility for a security clearance is predicated upon the applicant meeting the security guidelines contained in the Directive.

Enclosure 2 of the Directive sets forth personal 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 that the applicant has not met the strict guidelines the President and the Secretary of Defense have established for issuing a clearance.

Initially, the Government must establish, by substantial evidence, conditions in the personal or professional history of the applicant that disqualify, or may disqualify, the applicant from being eligible for access to classified information. *See Egan*, 484 U.S. at 531. The Directive presumes a nexus or rational connection between proven conduct under any of the disqualifying conditions listed in the guidelines and an applicant's security suitability. *See* ICR Case No. 95-0611 at 2 (App. Bd. May 2, 1996).

Once the Government establishes a disqualifying condition by substantial evidence, the burden shifts to the applicant to rebut, explain, extenuate, or mitigate the facts. ICR Case No. 01-20700 at 3 (App. Bd. Dec. 19, 2002); *see* Directive ¶ E3.1.15. An applicant "has the ultimate burden of demonstrating that it is clearly consistent with the national interest to grant or continue his security clearance." ICR Case No. 01-20700 at 3.

CONCLUSIONS

Guideline F-Financial Considerations

The Government's concern under Guideline F, Financial Considerations, is that individuals who are financially overextended and unable or unwilling to pay their just debts may try to generate funds by engaging in illegal acts. Applicant has a history of not meeting his financial obligations, and, as the result of his employment circumstances and his financial choices, he has often been unable to timely satisfy his debts. These conditions raise security concerns under subparagraphs E2.A6.1.2.1. and E2.A6.1.2.3. of Guideline F.

In the amended SOR, DOHA alleged that in July 2000, a judgment (tax lien) for \$4,800 was issued against Applicant in favor of a state taxing authority, and, as of November 29, 2005, the judgment had not been paid (¶ 1.a.); that in December 1999, a judgment (tax lien) for \$2,100 was issued against Applicant in favor of a state taxing authority, and, as of November 29, 2005, the judgment had not been paid (¶ 1.b.); and that in September 1999, a judgment (tax lien) for \$1,800 was issued against Applicant in favor of a state taxing authority, and, as of November 29, 2005, the judgment had not been paid. (¶ 1.c.).

DOHA also alleged Applicant owed a debt of \$217 in collection status to a communications company, and, as of November 29, 2005, the debt had not been paid (¶ 1.d.); that he owed a state department of social services approximately \$5,402 in child/spouse support arrearage, and, as of December 7, 2005, the debt had not been paid (¶ 1.e.); that he owed a creditor approximately \$1,863 for an account turned over for collection, and, as of November 29,

2005, the debt had not been paid ¶ 1.f.); and that he owed a creditor approximately \$462 on an account that was 120 days past due, and, as of November 29, 2005, the debt had not been paid (¶ 1.g.).

In the amended SOR, DOHA alleged, and Applicant admitted, he owed approximately \$300 to a creditor on an automobile loan that was 30 days past due, and he was unable to pay the loan (¶ 1.h.); that he owed his landlord approximately \$690 for rent that was 30 days past due, and he was unable to pay the debt (¶ 1.i.); that he owed a utility company approximately \$295 on an account that was currently 60 days past due, and he was unable to pay the debt (¶ 1.j.); and that he owed another utility company approximately \$49 on an account that was 30 days past due, and he was unable to pay the debt (¶ 1.k.).

The Government has established, through Applicant's admissions and the record evidence, a *prima facie* case that Applicant is financially overextended. An applicant who is financially overextended is at risk of having to engage in illegal acts to generate funds. Directive ¶ E2.A6.1.1. Applicant admitted seven of the eleven unsatisfied delinquent financial obligations identified in the SOR, specifically the allegations at ¶¶ 1.e. through 1.g and the allegations at ¶¶ 1.h through 1.k. He denied the allegations at ¶¶ 1.a. through 1.c. Evidence provided by the Government showed that as a result of an investigation by credit reporting company, the allegation at ¶ 1.d. had been deleted from Applicant's credit report. The Government also provided evidence showing the judgment alleged at ¶ 1. c. had been fully satisfied, but the judgments alleged at ¶¶ 1.a. and 1.b. had not been satisfied. Applicant provided credible evidence he was paying down the debt of \$5,402 alleged at ¶ 1.e. of the SOR and, at the time of his hearing, owed approximately \$2,900.

However, Applicant failed to rebut the Government's security concerns that he had a history of not meeting his financial obligations or that he was currently unable or unwilling to satisfy his debts, as specified in disqualifying conditions ¶¶ E2.A6.1.2.1. and E2.A6.1.2.3. of Guideline F.

There are several conditions that could mitigate the security concerns raised by Applicant's remaining financial delinquencies. Applicant's acknowledged financial delinquencies involve long-standing debts, and his inability or unwillingness to pay them is recent. Thus, neither mitigating condition E2.A.6.1.3.1. nor mitigating condition E2.A6.1.3.2. applies.

If a person's financial delinquencies were largely caused by conditions beyond his control, then mitigating condition E2.A6.1.3.3. might apply. While Applicant's income decreased since March 2006, he was nevertheless steadily employed. The record shows that Applicant's financial problems were not caused solely by his lower salary. In the years before he declared bankruptcy in 1994, Applicant was employed full-time and experienced difficulties in satisfying his debts. His loss of a higher paying job in February 2006, while unfortunate, does not explain or mitigate his long-standing financial difficulties and his unwillingness to set aside and save the necessary resources to timely pay his creditors. His financial problems do not appear to be entirely the result of conditions beyond his control. His present precarious financial situation appears to have resulted in part from an inability to view his situation realistically and to act accordingly. Thus, mitigating condition E2.A6.1.3.3. applies only in part.

If a person initiates a good-faith effort to repay overdue creditors or otherwise resolve debts, then mitigating condition E2.A6.1.3.6. might apply. In a post-hearing submission, Applicant stated he would pay all of his debts in a few months if he had a security clearance and was able to make more money. To his credit, Applicant made efforts to clarify the status of several debts alleged on the SOR, and since 2000, he also paid child/spousal support payments that he had allowed to go unpaid for several years. Accordingly, I find that mitigating condition E2.A6.1.3.6. applies in part. However, in determining an individual's security worthiness, the Government cannot rely on the possibility that an applicant might resolve his or her outstanding debts at some future date. ICR Case No. 98-0614 at 5 (App. Bd. Jul. 12, 1999)

Applicant has not sought financial counseling and has not presented clear indications that his financial problems are being resolved or are under control. Therefore, mitigating condition E2.A6.1.3.4. is inapplicable.

The Guideline F allegations at ¶¶ 1.c. and 1.d. of the amended SOR are concluded for Applicant. The allegations at ¶¶ 1.a., 1.b., 1.e., 1.f., 1.g., 1.h., 1.i., 1.j., and 1.k. of the amended SOR are concluded against the Applicant.

In all adjudications, the protection of our national security is the paramount concern. Security clearance decisions are

not intended to assign guilt or to impose further punishment for past transgressions. Rather, the objective of the security clearance process is the fair-minded, common sense assessment of a person's trustworthiness and fitness for access to classified information. Indeed, the "whole person" concept recognizes we should view a person by the totality of his or her acts and omissions, including all disqualifying and mitigating conduct. Having done so, I conclude Applicant should not be entrusted with a security clearance. In reaching my decision, I have considered the evidence as a whole, including the appropriate factors and guidelines in Department of Defense Directive, 5220.6., as amended.

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.: For 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.: Against Applicant

Subparagraph 1.k.: Against 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 continue a security clearance for Applicant. Clearance is denied.

Joan Caton Anthony

Administrative Judge

1. Exec. Or. 10865, *Safeguarding Classified Information within Industry* (Feb. 20, 1960), as amended and modified.
2. Department of Defense Directive 5220.6, *Defense Industrial Personnel Security Clearance Review Program* (Jan. 2, 1992), as amended and modified.
3. A child support account resolution notice on the letterhead of City A, dated February 21, 2006, defined Applicant's child support obligation at \$300 biweekly, plus an additional \$150 biweekly towards paying off the arrears. (Ex. 4.)
4. The evidence was conflicting about whether Applicant still owed the debts identified at SOR ¶¶ 1.a. and 1.b. I weighed Applicant's notations on his credit report of November 29, 2005 (Ex. I.), the statement of the child support enforcement agency (Ex. A), and the information supplied by the judgment creditor, which showed two tax liens outstanding and one paid in full on December 20, 2005 (Ex. 8.). I gave the greatest weight to the documents supplied by

the judgment creditor.