

DATE: March 27, 2007

In re:

SSN: -----

Applicant for Security Clearance

CR Case No. 05-11879

DECISION OF ADMINISTRATIVE JUDGE

MARY E. HENRY

APPEARANCES

FOR GOVERNMENT

Daniel Crowley, Esq., Department Counsel

FOR APPLICANT

Pro Se

SYNOPSIS

Applicant incurred five unpaid debts, which are primarily education loans, one exceeding \$20,000. He is repaying the education loans, on his own initiative or through garnishment. He lives within his financial means. His other unpaid debts are barred under the state statute of limitations. He has mitigated the government's concerns regarding his finances. Clearance is granted.

STATEMENT OF THE CASE

On January 27, 2006, the Defense Office of Hearings and Appeals (DOHA) issued a Statement of Reasons (SOR) to Applicant, pursuant to Executive Order 10865, *Safeguarding Classified Information Within Industry*, dated February 20, 1960, as amended, and Department of Defense Directive 5220.6, *Defense Industrial Security Clearance Review Program* (Directive), dated January 2, 1992, as amended. The SOR 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. Specifically, the SOR set forth security concerns arising under Guideline F (Financial Considerations) of the Directive. DOHA recommended the case be referred to an administrative judge to determine whether a clearance should be granted, continued, denied, or revoked. On February 23, 2006, Applicant submitted a notarized response to the allegations. He requested a hearing.

DOHA assigned this case to me on December 21, 2006, and issued a notice of hearing on January 16, 2007. I conducted a hearing on February 1, 2007. The government submitted four exhibits, which were marked as Government Exhibits 1 through 4 and admitted into evidence. Applicant submitted eight exhibits, which were marked as Applicant Exhibits A through H and admitted into evidence. The hearing transcript was received on February 9, 2007. The record was held open until February 15, 2007 to allow Applicant to submit additional evidence, which he did. His additional evidence is marked as Applicant's Exhibits I and J. The government does not object to the admission of this evidence, which is admitted into the record. Applicant and one witness testified.

FINDINGS OF FACT

Applicant admitted the allegations under Guideline F in subparagraphs 1.a through 1.e of the SOR.⁽¹⁾ Those admissions are incorporated as findings of fact. After a complete review of the evidence in the record and upon due consideration, I make the following findings of fact.

Applicant is a 28-year-old network engineer for a defense contractor. He has worked for this contractor for almost three years. He received his bachelor of science degree in computer science in May 2004. He completed his security clearance application (SF-86) in June 2004.⁽²⁾

Applicant earned \$52,000 in 2006. He received a \$3,000 pay raise at the beginning of this year. His current gross monthly income is \$4,583 and his net monthly pay, after deductions for taxes, garnishment, and insurance, is \$2,383. His monthly expenses include \$475 for rent, \$150 for utilities, including cable, telephone, water, and electric, \$350 for a car payment, \$50 for gasoline, \$100 for food, \$20 for dry cleaning, \$154 for education loans, \$160 for car insurance, \$60 for cell phone, \$13 for satellite radio, and \$150 for miscellaneous expenses, for total monthly expenses of \$1,682, leaving about \$700 available to pay debts.⁽³⁾

Applicant financed some of his college education through private and government education loans. The private bank loan required that he pay the loan interest while attending school. His mother regularly paid the interest on this loan until she lost her job in 2003. Thereafter, she paid one interest payment in 2004. The bank declared the loan in default. After negotiations to bring the loan current failed, the bank filed suit against Applicant and obtained a judgment against him for \$22,024, including interest and fees. The bank instituted garnishment proceedings against Applicant in 2006. Since September 2006, Applicant's pay has been garnished monthly, initially at \$778.19. This amount was increased in January 2007 to \$818.92. Through February 2007, Applicant has paid \$6,306.78 on this debt.⁽⁴⁾

Applicant and his mother have a second loan with the same private bank, in the amount of \$9,474. Payments on this loan were deferred until 2006. He pays his mother \$40 a month towards the monthly loan payment of approximately \$103 a month. The monthly payments are timely and the January 2007 balance on this loan is \$8,280.09.⁽⁵⁾

Applicant owns two cars. He has a car loan on one car, which he timely pays each month, and he has paid the loan on the other car in full. He is negotiating the payoff of one small debt not listed in the SOR. He admits that he has not paid the four remaining debts listed on the SOR, which total \$1,306. His financial counselor advised that since the debts are small and old, Applicant should just allow the debts to fall off his credit report. If he paid these little debts now, his credit would be negatively impacted. The allegation 1.b debt of \$19 has been delinquent since October 2000. The allegation 1.c debt of \$318 and the allegation 1.e debt of \$690 have been delinquent since 2002. Finally, the allegation 1.d debt of \$279 has been delinquent since March 2004.⁽⁶⁾

Applicant's second level supervisor testified on his behalf. He described Applicant as a reliable and trustworthy engineer. Applicant has developed a very good working relationship with one difficult client. Applicant is an excellent employee, who does not have work issues, such as tardiness or letters of warning, and who meets deadlines. His performance rating is fully consistent with his description.⁽⁷⁾

POLICIES

The Directive sets forth adjudicative guidelines which must be considered in the evaluation of security suitability. An administrative judge need not view the adjudicative guidelines as inflexible ironclad rules of law. Instead, acknowledging the complexities of human behavior, these guidelines, when applied in conjunction with the factors set forth in the adjudicative process provision in Paragraph E2.2., of the Directive, are intended to assist the administrative judge in reaching fair and impartial common sense decisions.

Included in the guidelines are disqualifying conditions and mitigating conditions applicable to each specific guideline. Although the presence or absence of a particular condition or factor for or against clearance is not outcome determinative, the adjudicative guidelines should be followed whenever a case can be measured against this policy guidance. In addition, each security clearance decision must be based on the relevant and material facts and

circumstances, the whole-person concept, and the factors listed in the Directive. Specifically, these are: (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. ⁽⁸⁾

The sole purpose of a security clearance determination is to decide if it is clearly consistent with the national interest to grant or continue a security clearance for an applicant. ⁽⁹⁾ The government has the burden of proving controverted facts. ⁽¹⁰⁾ The burden of proof is something less than a preponderance of the evidence. ⁽¹¹⁾ Once the government has met its burden, the burden shifts to the applicant to present evidence of refutation, extenuation, or mitigation to overcome the case against him. ⁽¹²⁾ Additionally, an applicant has the ultimate burden of persuasion to obtain a favorable clearance decision. ⁽¹³⁾

No one has a right to a security clearance, ⁽¹⁴⁾ and "the clearly consistent standard indicates that security clearance determinations should err, if they must, on the side of denials." ⁽¹⁵⁾ Any reasonable doubt about whether an applicant should be allowed access to sensitive information must be resolved in favor of protecting such sensitive information. ⁽¹⁶⁾ Section 7 of Executive Order 10865 specifically provides industrial security clearance decisions shall be "in terms of the national interest and shall in no sense be a determination as to the loyalty of the applicant concerned." The decision to deny an individual a security clearance is not necessarily a determination as to the allegiance, loyalty, and patriotism of an applicant. ⁽¹⁷⁾ 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.

Based upon a consideration of the evidence as a whole, I find the following adjudicative guideline most pertinent to an evaluation of the facts of this case:

Financial Considerations - Guideline F: An individual who is financially overextended is at risk of having to engage in illegal acts to generate funds. Unexplained affluence is often linked to proceeds from financially profitable criminal acts.

CONCLUSIONS

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

The government has established its case under Guideline F. Applicant has a history of excessive unpaid debt, including education loans, telephone bills and cable bills. Applicant's financial problems clearly fall within the Financial Considerations Disqualifying Conditions E2.A6.1.2.1 (*A history of not meeting financial obligations*) and E2.A6.1.2.3 (*Inability or unwillingness to satisfy debts*).

A security concern based on financial problems can be mitigated in several ways. Applicant's debt problems have been ongoing for a number of years, are not recent, and are not an isolated incident. Thus, he has not established a mitigating condition under Financial Considerations Mitigating Conditions (FC MC) E2.A6.1.3.1 (*The behavior was not recent*) and E2.A6.1.3.2 (*It was an isolated incident*).

Applicant's major debt involves three educational loans, both private and government. His largest private loan required that he pay interest on the loan while attending school. His mother paid this interest until she lost her job in 2003. Thereafter, only one more interest payment was made. To his credit, in 2005, he attempted to negotiate a payment which would make this delinquent private loan current and avoid court action, but was unable to do so. Applicant is entitled to partial credit under FC MC E2.A6.1.3.3 (*The conditions that resulted in the behavior were largely beyond the person's control*) because he was in school and not employed full-time, his mother lost her job and could no longer pay the interest on this loan, and before the entry of a judgment, he attempted to negotiate a settlement on one delinquent loan, events which impacted his initial ability to make the required interests payments and make his monthly payments.

Applicant spoke with a friend, who is a financial counselor, about his debt problems. The financial counselor advised Applicant not to pay the old, small debts listed in the SOR, but to concentrate on his large debts. He is paying his current and delinquent education debts, some voluntarily and some through garnishment, but has decided not pay his old, smaller debts, which creditors are barred from collecting by the applicable statute of limitations. Thus, FC MC E2.A6.1.3.4 (*The person has received or is receiving counseling for the problem and there are clear indications that the problem is being resolved or is under control*) applies.

Applicant has not incurred any additional, delinquent indebtedness after graduating from college. He and his mother pay on one private education loan monthly. He worked out a repayment plan for his government education loans and has started making his payments. While garnishment of his wages is not evidence of good faith, I note that he is paying the majority of his education debt through garnishment. He made a good faith effort to pay his other education debt and to keep current with his bills. FC MC E2.A6.1.3.6 (*The individual initiated a good faith effort to repay overdue creditors or otherwise resolve debts*) applies partially. [\(18\)](#)

Whole Person Analysis

Protection of our national security is of paramount concern. Security clearance decisions are not intended to assign guilt or to impose further punishment for past transgressions. Rather, the objective of the adjudicative process is the fair-minded, commonsense assessment of a person's trustworthiness and fitness for access to classified information. Thus, in reaching this decision, I have considered the whole person concept in evaluating Appellant's risk and vulnerability in protecting our national interests.

Three of Applicant's four remaining small debts are more than four years old. Under the applicable state Statute of Limitations, these creditors have three years from the date of his last payment to seek payments of these debts. They are now legally barred from collecting these long overdue debts. The creditors right to collect the \$279 debt expires in March 2007. Thus, he does receive some credit for the application of the 3-year state statute of limitations, which applies to four of his unpaid SOR debts. *See* State Code, Courts and Judicial Proceedings, Ann. § 5-501. The State Court of Appeals succinctly explained the societal and judicial value of application of the statute of limitations:

The adoption of statutes of limitations reflects a policy decision regarding what constitutes an adequate period of time for a person of reasonable diligence to pursue a claim. Such statutes are designed to balance the competing interests of each of the potential parties as well as the societal interests involved. Thus, one of the purposes of such statutes is to assure fairness to a potential defendant by providing a certain degree of repose. This is accomplished by encouraging promptness in prosecuting actions; suppressing stale or fraudulent claims; avoiding inconvenience that may stem from delay, such as loss of evidence, fading of memories, and disappearance of witnesses; and providing the ability to plan for the future without the uncertainty inherent in potential liability. Another basic purpose is to prevent unfairness to potential plaintiffs exercising reasonable diligence in pursuing a claim. Still another purpose is to promote judicial economy.

Pierce v. Johns-Manville Sales Corp., 550 A.2d 1155 (1988); *see also Supik v. Bodi, Nagle, Dolina, Smith & Hobbs*, 834 A.2d 170, 177 (2003). [\(19\)](#)

Elimination of his smaller, delinquent debt through the statute of limitations has ended his potential vulnerability to improper financial inducements because he is no longer "financially overextended" because of these debts. However, his initial decision not to pay his education loans weighs against him. Since then, he has taken responsibility for his two government education loans by negotiating a consolidation of the loans and a reasonable repayment plan. He attempted in good faith to resolve the over due indebtedness on his large private education loan, but could not reach an acceptable resolution with the creditor. As a result, the creditor obtained a judgment against him, which is being paid through the garnishment of his salary. Since graduating from college three years ago, he has been gainfully employed. His employer compliments his works skills and ethics, particularly his success in working with one challenging customer. Applicant has been responsible about his other bills and has not developed any new outstanding debts. He has matured and demonstrated a better understanding of his financial responsibilities. In weighing all the factors in this case, there is little likelihood of a reoccurrence of his past debt problems. Since his debt is being resolved, the potential for pressure, coercion, exploitation or duress from a foreign power is non-existent. Applicant has mitigated the government's

concerns about his finances. Accordingly, for the reasons stated, I find that it is clearly consistent with the national interest to grant a security clearance to Applicant.

FORMAL FINDINGS

Formal findings For or Against Applicant on the allegations set forth in the SOR, as required by Section E3.1.25 of Enclosure 3 of the Directive, are:

SOR ¶ 1-Guideline F : FOR APPLICANT

Subparagraph a-e: For Applicant

DECISION

In light of all of the circumstances presented by the record in this case, it is clearly consistent with the national interest to grant a security clearance for Applicant. Clearance is granted.

Mary E. Henry

Administrative Judge

1. Applicant's response to the SOR, dated February 23, 2006, at 1.
2. Government Exhibit 1 (Applicant's security clearance application, dated June 9, 2004) at 1-2; Tr. at 24.
3. Applicant Exhibit I (Leave and earning statements from August 2006 through January 2007) at 5-6; Tr. at 28-29, 49-54.
4. Applicant Exhibit D (Copy of Judgment creditor's monthly reports, dated November 30, 2006 and January 5, 2007) at 1-2; Applicant Exhibit I, *supra* note 3, at 1-6; Tr. at 26, 38-41.
5. Applicant Exhibit H (Copies of education loan payment notices) at 1-2; Tr. at 28-29.
6. Government Exhibit 3 (Credit report, dated November 20, 2005) at 1; Applicant Exhibit C (Copies of monthly car loan payment notices); Applicant Exhibit E (Settlement Offer, dated October 26, 2006); Tr. at 25, 29, 30, 42-43, 45, 51.
7. Applicant Exhibit A (Performance evaluation, dated February 27, 2005); Applicant Exhibit B (Performance evaluation, dated December 10, 2006); Tr. at 58-63.
8. Directive, ¶ E2.2.1.1. through E2.2.1.9.
9. ISCR Case No. 96-0277 at 2 (App. Bd. Jul. 11, 1997).
10. ISCR Case No. 97-0016 at 3 (App. Bd. Dec. 31, 1997); Directive, ¶ E3.1.14.
11. *Department of the Navy v. Egan*, 484 U.S. 518, 528 (1988).
12. ISCR Case No. 94-1075 at 3-4 (App. Bd. Aug. 10, 1995); Directive, ¶ E3.1.15.
13. ISCR Case No. 93-1390 at 7-8 (App. Bd. Jan. 27, 1995, Decision and Reversal Order); Directive, ¶ E3.1.15.
14. *Egan*, 484 U.S. at 531.
15. *Id.*
16. *Id.*; Directive, ¶ E2.2.2.

17. Executive Order No. 10865 § 7.

18. *See* ISCR Case No. 04-07360 at 2 (App. Bd. Sept. 26, 2006) (stating partial credit was available under FCMC 6 for debts being resolved through garnishment).

19. Reliance on the statute of limitations does not show a good faith resolution of delinquent debts. *See* ISCR Case No. 99-9020 (App. Bd. Dec. 1, 1999). Based on all "the facts and circumstances surrounding [his] conduct in incurring and failing to satisfy the debt in a timely manner", ISCR Case No. 01-09691 at 3 (Mar. 27,2003), I conclude he not act in bad faith.