

DATE: November 30, 2006

In re:

SSN: -----

Applicant for Security Clearance

CR Case No. 05-12507

DECISION OF ADMINISTRATIVE JUDGE

MARK W. HARVEY

APPEARANCES

FOR GOVERNMENT

Eric Borgstrom, Esq., Department Counsel

FOR APPLICANT

Pro Se

SYNOPSIS

This fifty-three-year-old Applicant had one alleged debt for \$11,772 listed in the SOR. Applicant established payment of this SOR debt through settlement with the creditor and refinancing. His annual pay increased from \$42,000 in 2004 to \$89,000 per year in 2005. He paid his other delinquent credit card debts without refinancing them. The significant overall improvement of his financial situation mitigates security concerns about financial considerations. Clearance is granted.

STATEMENT OF THE CASE

On August 20, 2004, Applicant applied for a security clearance and submitted a Security Clearance Application (SF 86). (1) On June 8, 2006, the Defense Office of Hearings and Appeals (DOHA) issued a Statement of Reasons (SOR) to him, pursuant to Executive Order 10865, *Safeguarding Classified Information Within Industry*, dated February 20, 1960, 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. (2) The SOR alleges security concerns under Guideline F (Financial Considerations). 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 him, and recommended referral to an administrative judge to determine whether a clearance should be granted, continued, denied, or revoked.

In an answer notarized on July 7, 2006, Applicant responded to the SOR allegations, and elected to have his case decided at a hearing. (3) The case was assigned to me on September 21, 2006. His hearing was held on October 27, 2006. DOHA received the transcript on November 13, 2006.

FINDINGS OF FACT

As to the factual allegations, Applicant admitted the debt in SOR ¶ 1.a was delinquent and he was responsible for it. (4)

His admissions are incorporated herein as findings of fact. After a complete and thorough review of the evidence of record, and upon due consideration of same, I make the following additional findings of fact:

Applicant is a 53-year-old⁽⁵⁾ employee of a defense contractor.⁽⁶⁾ Over the last ten years he has worked as an inspector for various defense contractors. The only time he was unemployed from 1993 until the present was for about two months in 1998. Applicant served in the Air Force National Guard from 1971 to 1983, reaching the grade of E-4.⁽⁷⁾ Applicant was married to his current spouse on February 14, 1996.⁽⁸⁾ Applicant has four prior marriages, each ending in divorce: from 1973 to 1977, from 1980 to 1981, from 1982 to 1985, and from 1986 to 1993. He has two children, ages ten and seven (R. 16).

Financial Considerations

From 1998 until 2002, Applicant was paid a weekly retainer of about \$500, and the remainder of his salary was paid semi-annually in amounts ranging from about \$9,000 to \$15,000.⁽⁹⁾ He attributed some of his debt problems to the large lump sum, semi-annual payments, and failure to budget. His most significant financial problem during those five years was due a lack of sufficient income to meet his spending requirements (R. 36-37). From 1998 to 2002, he gradually fell deeper into debt. However, his financial situation changed dramatically in 2005 when he went from employment that paid \$42,000 per year to his current job, which paid him \$89,000 in 2005 (R. 31-32). As to the budgeting problem, for the last two years and currently, his wife paid their bills. She currently uses a well organized system and ensures all of their bills are paid (R. 32-33).

The debt in SOR ¶ 1.a involves a credit card debt of \$11,772 owed to M.⁽¹⁰⁾ His initial debt to M was about \$6,000, but interest charges increased it to the SOR amount (R. 22).

In October 2004, Applicant made an agreement with SD, a debt consolidation company, in which SD agreed to settle and pay the debt in SOR ¶ 1.a as well as three other non-SOR debts. The total of the four debts before negotiating any settlements was \$17,673.⁽¹¹⁾ In return for resolving all four debts, he agreed to pay SD \$310 per month (R. 20-21). He paid SD \$310 per month for seven months beginning in November 2004. *Id.* He decided that SD was retaining too much money before making any payments on his debts; so he cancelled his agreement with SD in mid 2005 (R. 20-21). He then borrowed \$5,000 from GF, which he used to settle and repay the debt to M for \$5,450 (R. 24, Item A). He agreed to pay GF \$210 per month for three years began in July 2006 (R. 24-25, 38-39). His payments to GF are current. In 2005, he paid the three other non-SOR debts on his own without utilizing SD or GF (R. 22-24).

On June 9, 2005, Applicant provided a personal financial statement (PFS) to a security investigator.⁽¹²⁾ He receives additional money for overtime, and he works a large amount of overtime (R. 19, 21). His PFS indicates his gross salary of \$6,873 per month, and net salary of \$4,498 per month. His spouse's salary was about \$300 per month (R. 27). He had monthly payments of \$1,792, including rent (\$750),⁽¹³⁾ groceries (\$400), car expenses (\$158), utilities (\$320), clothing (\$25), life insurance (\$79) and miscellaneous (\$60). He listed the following debts and payments: car loan totaling \$19,000 with monthly payment of \$514; Sears credit card totaling \$2,400 with monthly payment of \$100; Discovery card totaling \$3,000 with monthly payment of \$100; and SD debt consolidation totaling \$15,000 with monthly payment of \$310. He had assets of \$34,500, which included a car valued at \$21,500. By June of 2005, he was current on his payments on all of his debts.⁽¹⁴⁾

At his hearing, Applicant said his only new credit card had a balance of \$1,500 (R. 29). His savings account contained \$1,500, and his stocks were worth \$8,000 (R. 30). His mortgage payments were current (R. 35-36).

Applicant has not received debt counseling, other than receiving an explanation from a debt consolidation company about what they could do for him (R. 37-38). Their "counseling" focused on settling his debts and explaining their fees. *Id.*

POLICIES

In an evaluation of an applicant's security suitability, an administrative judge must consider Enclosure 2 of the

Directive, which sets forth adjudicative guidelines. In addition to brief introductory explanations for each guideline, the adjudicative guidelines are divided into Disqualifying Conditions (DC) and Mitigating Conditions (MC), which are used to determine an applicant's eligibility for access to classified information.

These adjudicative guidelines are not inflexible ironclad rules of law. Instead, recognizing the complexities of human behavior, an administrative judge should apply these guidelines in conjunction with the factors listed in the adjudicative process provision in Section E2.2, Enclosure 2, of the Directive. An administrative judge's overarching adjudicative goal is a fair, impartial and common sense decision.

Because the entire process is a conscientious scrutiny of a number of variables known as the "whole person concept," an administrative judge should consider all available, reliable information about the person, past and present, favorable and unfavorable, in making a meaningful decision. Specifically, an administrative judge should consider the nine adjudicative process factors listed at Directive ¶ E2.2.1: (1) the nature, extent, and seriousness of the conduct; (2) the circumstances surrounding the conduct, to include knowledgeable participation; (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 pertinent 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.

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." Directive ¶ E2.A6.1.1.

Conditions that could raise a security concern and may be disqualifying, as well as those which could mitigate security concerns, pertaining to this adjudicative guideline are set forth and discussed in the Conclusions section below.

Since the protection of the national security is the paramount consideration, the final decision in each case is arrived at by applying the standard that the issuance of the clearance is "clearly consistent with the interests of national security." In reaching this decision, I have drawn only those conclusions that are reasonable, logical and based on the evidence contained in the record. Likewise, I have avoided drawing inferences grounded on mere speculation or conjecture.

In the decision-making process, facts must be established by "substantial evidence."⁽¹⁵⁾ The government initially has the burden of producing evidence to establish a case which demonstrates, in accordance with the Directive, that it is not clearly consistent with the national interest to grant or continue an applicant's access to classified information. If the government meets its initial burden, applicant then has the burden of persuasion, that is to present evidence in refutation, explanation, extenuation or mitigation sufficient to overcome the doubts raised by the government's case, and ultimately to demonstrate it is clearly consistent with the national interest to grant or continue applicant's clearance.⁽¹⁶⁾

A person who seeks access to classified information enters into a fiduciary relationship with the government predicated upon trust and confidence. It is a relationship that transcends normal duty hours and endures throughout off-duty hours as well. It is because of this special relationship the government must be able to repose a high degree of trust and confidence in those individuals to whom it grants access to classified information. Decisions under this Directive include, by necessity, consideration of the possible risk an applicant may deliberately or inadvertently fail to protect or safeguard classified information. Such decisions entail a certain degree of legally permissible extrapolation as to potential, rather than actual, risk of compromise of classified information.

The scope of an administrative judge's decision is limited. Applicant's allegiance, loyalty, and patriotism are not at issue in these proceedings. 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." Security clearance decisions cover many characteristics of an applicant other than allegiance, loyalty, and

patriotism.

CONCLUSIONS

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

Guideline F (Financial Considerations)

The government has met its initial burden under Guideline F. Applicant's initial failure to pay the debt in SOR ¶ 1.a is of concern, especially in light of his desire to have access to the nation's secrets. Under Guideline F (Financial Considerations), "[a]n individual who is financially overextended is at risk of having to engage in illegal acts to generate funds." Directive ¶ E2.A6.1.1. A person who fails or refuses to pay long-standing debts or is financially irresponsible may also be irresponsible or careless in his or her duty to protect classified information.

Two Financial Considerations Disqualifying Conditions (FC DC) could raise a security concern and may be disqualifying in this case. FC DC 1 applies where an applicant has a history of not meeting his or her financial obligations. Directive ¶ E2.A6.1.2.1. FC DC 3 applies where an applicant has exhibited inability or unwillingness to satisfy debts. Directive ¶ E2.A6.1.2.3. Applicant's actions in initially failing to satisfy his outstanding financial obligations give rise to FC DC 1 and 3. The debt listed in SOR ¶ 1.a became delinquent as a result of Applicant's poor impulse control and money management.

A security concern based on financial problems can be mitigated by substantial evidence under FC MC 1 where "the behavior was not recent" or under FC MC 2 where "it was an isolated incident." Directive ¶¶ E2.A6.1.3.1, E2.A6.1.3.2. I considered FC MC 1 and 2, but decided that neither mitigating condition fully applied because there are four delinquent debts that were part of the debt consolidation involving SD and three debts were not paid until 2005. Moreover, the debt in SOR ¶ 1 was not paid until July 26, 2006, which is very recent.

Applicant did not disclose any information to support consideration of FC MC 3, "the conditions that resulted in the behavior were largely beyond the person's control (e.g., loss of employment, a business downturn, unexpected medical emergency, or a death, divorce or separation)." Directive ¶ E2.A6.1.3.3. His financial difficulties remain largely unexplained. He remained gainfully employed since 1998. He does not cite any of the enumerated potential conditions that may arise and result in unexpected financial problems. His comments about insufficient income until his pay doubled in 2005 to \$89,000 per year explain why the four debts became and remained delinquent, but they do not warrant application of FC MC 3.

A security concern can be mitigated under FC MC 4 where "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." Directive ¶ E2.A6.1.3.4. Applicant did not receive financial counseling, and FC MC 4 does not apply. *See* ISCR Case No. 04-07360 at 2, 7-8 (App. Bd. Sep. 26, 2006) (discussing the necessity and degree of financial counseling necessary before FC MC 4 may be applied).

FC MC 6 can mitigate a security concern arising from financial problems when "the individual initiated a good-faith effort to repay overdue creditors or otherwise resolve debts," (FC MC 6). The Appeal Board has defined the concept of good faith, as requiring "a showing that a person acts in a way that shows reasonableness, prudence, honesty, and adherence to duty or obligation." ISCR Case No. 02-30304 at 3 (App. Bd. Apr. 20, 2004).

Applicant has made great strides in reducing his credit debt, and has gained control of his financial situation. He showed overall significant improvement in his financial situation. The debt in SOR ¶ 1.a was settled and M was ultimately paid. I conclude that some credit under FC MC 6 is warranted. *See* ISCR Case No. 04-07360 at 2, 3 (App. Bd. Sep. 26, 2006) (indicating when a mitigating condition cannot be fully applied, "some credit" is still available under that same mitigating condition).

"Whole Person" Analysis

In addition to the enumerated disqualifying and mitigating conditions as discussed previously, I have considered the general adjudicative guidelines related to the whole person concept under Directive provision E2.2.1. As noted above, Applicant's history of financial problems, is counterbalanced by his strong efforts to take corrective action and gain a sound financial foundation. E2.2.1.1. His actions concerning the initial delinquent debt situation were knowledgeable and voluntary. E2.2.1.2. He is 53-years old, and sufficiently mature to be fully responsible for his conduct. E2.2.1.4. He credibly stated that he had changed his financial habits and now exercises self-discipline and sound financial practices. Most importantly, his income has doubled and he has not increased his debts. On the contrary, he has paid his delinquent debts, and his current debts are not excessive. E2.2.1.9. After weighing the disqualifying and mitigating conditions, all the facts and circumstances, in the context of the whole person, I conclude he has mitigated the security concerns pertaining to financial considerations.

Substantial evidence supports Applicant's security eligibility and suitability. I take this position based on the law, as set forth in *Department of Navy v. Egan*, 484 U.S. 518 (1988), my "careful consideration of the whole person factors"⁽¹⁷⁾ and supporting evidence, my application of the pertinent factors under the Adjudicative Process, and my interpretation of my responsibilities under Enclosure 2 of the Directive. Applicant has mitigated or overcome the government's case. For the reasons stated, I conclude Applicant is eligible for access to classified information.

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:

Paragraph 1, Guideline F: FOR APPLICANT

Subparagraph 1.a: For Applicant

DECISION

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

Mark W. Harvey

Administrative Judge

1. Item 1 (Electronic Security Clearance Application (SF 86)), is dated August 20, 2004 on pages 1 and 9. There is no allegation of falsification of the SF 86.
2. Item 8 (Statement of Reasons (SOR), dated June 8, 2006) at 1. Item 8 is the source for the remainder of this paragraph.
3. Item 9 (Applicant's response to SOR, notarized July 7, 2006).
4. *Id.*
5. Item 1, *supra* note 1, question 1, at 1.
6. *Id.*, questions 6.1 to 6.3, at 1-2 and R. 16-18 are the sources for the first three sentences of this paragraph. The quality of his employment performance was not characterized.
7. *Id.*, question 11, at 5.
8. *Id.*, question 8, at 3-4, is the source for the facts in the remainder of this paragraph, unless otherwise stated.
9. Item 3 (statement to Special Investigator for the Office of Personnel Management, dated June 9, 2005), at 1 is the

source for the facts in this paragraph.

10. Item 9, *supra* note 3, and R. 18.

11. Item 4, (Applicant's response to DOHA interrogatories, dated January. 10, 2006), at 13.

12. Item 3 (Form 154, Personal Financial Statement (PFS), dated June 9, 2005) at 7. This PFS is the source for all the information in this paragraph, except as otherwise stated.

13. At the hearing, he said he had been paying a mortgage of \$1,071 for six months (R. 27-28). He paid \$500 for his down payment on the house (R. 39).

14. *Id.* at 4.

15. "Substantial evidence [is] such relevant evidence as a reasonable mind might accept as adequate to support a conclusion in light of all the contrary evidence in the record." ISCR Case No. 04-11463 at 2 (App. Bd. Aug. 4, 2006) (citing Directive ¶ E3.1.32.1). "This is something less than the weight of the evidence, and the possibility of drawing two inconsistent conclusions from the evidence does not prevent [a Judge's] finding from being supported by substantial evidence." *Consolo v. Federal Maritime Comm'n*, 383 U.S. 607, 620 (1966). "Substantial evidence" is "more than a scintilla but less than a preponderance." *See v. Washington Metro. Area Transit Auth.*, 36 F.3d 375, 380 (4th Cir. 1994).

16. "The Administrative Judge consider[s] the record evidence as a whole, both favorable and unfavorable, evaluate[s] Applicant's past and current circumstances in light of pertinent provisions of the Directive, and decide[s] whether Applicant ha[s] met his burden of persuasion under Directive ¶ E3.1.15." ISCR Case No. 04-10340 at 2 (App. Bd. July 6, 2006). The burden of disproving a mitigating condition never shifts to the government. *See* ISCR Case No. 02-31154 at 5 (App. Bd. Sep. 22, 2005).

17. *See* ISCR Case No. 04-06242 at 2 (App. Bd. June 28, 2006).