

DATE: September 11, 2006

In re:

SSN: -----

Applicant for Security Clearance

ISCR Case No. 05-12828

DECISION OF ADMINISTRATIVE JUDGE

PHILIP S. HOWE

APPEARANCES

FOR GOVERNMENT

Julie R. Edmunds, Esq., Department Counsel

FOR APPLICANT

Pro Se

SYNOPSIS

Applicant is 57 years old and married. He works for a defense contractor. He has 18 delinquent debts listed in the SOR, totaling \$14,181. Applicant has not mitigated the financial considerations security concern. 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 December 15, 2005, DOHA issued a Statement of Reasons [\(1\)](#) (SOR) detailing the basis for its decision-security concerns raised under Guideline F (Financial Considerations) of the Directive. Applicant answered the SOR in writing on March 30, 2006. Applicant requested his case be decided on the written record in lieu of a hearing.

On May 30, 2006, Department Counsel submitted the Department's written case. A complete copy of the file of relevant material (FORM) was provided to the Applicant. He was given the opportunity to file objections and submit material in refutation, extenuation, or mitigation. Applicant did not file a response to the FORM. The case was assigned to me on August 1, 2006.

FINDINGS OF FACT

Applicant's admissions to the three SOR allegations in subparagraphs 1.f., 1.l., and 1n. are incorporated as findings of fact. Applicant denied all other allegations stating those debts were paid. After a complete and thorough review of the evidence in the record, and full consideration of that evidence, I make the following additional findings of fact:

Applicant is 57 years old, married, and works for a defense contractor. He has 18 delinquent debts dating from at least 2001. Those debts total \$14,181. (Items 1, 3,5, 6)

A judgment by a water company for \$626.72 against Applicant was docketed December 13, 1999 (SOR subparagraph

1.a). There is no satisfaction of this debt on file as of May 23, 2006. Applicant claims the debt was paid by garnishment of his wages. He provided no documentary evidence to support his claim. This judgment is not shown on the 2004 and 2006 credit reports (CR). The debt remains unsatisfied. (Items 3, 5, 9,10, 12)

A bank credit card issuer obtained judgments against Applicant in March 2004 for \$937.57, then in August 2004 seeking \$1,299 on an original debt of \$1,556.74 (SOR subparagraphs 1.b. and 1.h.). A satisfaction appears in the attachments to Applicant's Answer for the \$937.57 judgment, but not for the other lawsuit. There is a collection letter from an attorney on behalf of the same creditor in January 2005 for a debt with a balance of \$520.20. There are four credit card account debts for that bank creditor shown as settled on the May 2006 credit report. At one time Applicant had six credit card accounts issued by this creditor as shown on the September 2004 CR. On the December 2005 CR he had three credit card accounts with this card issuer still on the record. The delinquent debt for all of Applicant's accounts with this bank are shown on the May 2006 as settled. (Items 5, 7-9, 11, 12)

Applicant owes a cell phone company \$147 (SOR subparagraph 1.c). The debt was sold to a collector. Applicant has not paid this debt. (Items 8, 12)

Applicant owes three medical bills for \$50, \$68, and \$351 (SOR subparagraphs 1.d., 1.e., and 1.r.). He claims he paid most of his wife's medical bills. He has no documentary evidence these debts are paid. The debts remain unpaid. (Items 8, 12)

Applicant owes \$2,038 to a bank (SOR subparagraph 1.f.). He claims another bank now owns the debt and he is making monthly payments, but he has not provided any documentary evidence to support this assertion. The debt remains unpaid as of May 2006 with a balance of \$2,155). (Items 8, 12)

Applicant owes a department store \$19 (SOR subparagraph 1.g). The CR shows he owes this store \$440 as of December 2005, and \$490 as of May 2006. These debts remain unpaid. (Items 8, 9, 12)

Applicant owes \$618 and \$120 on two accounts with another bank credit card issuer (SOR subparagraphs 1.i and 1.j.). Applicant claims he is making payments on these debts. The September 2004 CR shows a third account open with this issuer that was paid according to the May 2006 CR. These two debts remain unpaid, and the balance owed on the second account is now \$858 according to the May 2006 CR. (Items 7-9, 11, 12)

Applicant owes \$46 to another department store (SOR subparagraph 1.k). The December 2005 and May 2006 CR show the debt as owing and charged off by the creditor. (Items 7-9, 12)

Applicant owes another bank credit card issuer \$5,814 (SOR subparagraph 1.l.). The May 2006 CR shows three accounts for Applicant with this bank. One account shows a balance of \$6,244, the second account shows a balance owed of \$3,967, and the third account balance is \$5,814. These debts remain unpaid and delinquent. (Items 7-9, 12)

Applicant owes another department store \$49 (SOR subparagraph 1.m.). In May 2006 the CR shows the balance owed is \$381. (Items 8, 9, 12)

Applicant had a time share condominium interest repossessed when he ceased making payments on the contract in June 2000 (SOR subparagraph 1.N). Applicant admits this repossession, but claims he was deceived by the seller. The balance shown in May 2006 is zero. (Items 7, 9, 12)

In September 2004 Applicant owed another credit card issuer \$377 (SOR subparagraph 1.o.). The December 2005 and May 2006 show accounts with this creditor with a zero balance and paid. (Items 7, 8, 9, 12)

Applicant owed \$217 to a loan company (SOR subparagraph 1.p.). He claims he paid the amount due by installments. He further claims the debt was almost \$3,000. It appears on the 2004 CR, but not on the 2005 and May 2006 CR. On the 2004 CR this loan was secured by household goods, and the creditor wrote it off and closed the account in November 2003. This debt remains owing without documentary evidence from Applicant that he paid the debt. (Items 3, 8, 9, 12)

Applicant denies the telephone company debt of \$358 because he claims he is unaware of it (SOR subparagraph 1.q.).

This debt appears on the 2004 CR, but not the 2005 and 2006 CR, unless it was then in the name of some collector. Applicant submitted no documentary evidence that the debt was paid. This debt remains unpaid. (Tr. 3, 7-9, 12)

Applicant's credit reports show he borrowed money from the same creditor three times to purchase cars, in 1996, again in May 1999, and lastly in 2001. He also leased a car in March 1999. The credit report also shows a car bought in 1993. Each of these debts were paid. He borrowed money on unsecured loans from the same creditor four times between 1995 and 1997. Those loans show a zero balance on the 2004 credit report. His house mortgage was past due two months as of August 2004. He was past due on two utility payments in 1998. (Items 7-12)

Furthermore, in addition to the 1999 water company judgement, Applicant had a judgment against him in 2004. The first lawsuit was filed in May 2004 by an individual seeking \$1,400 repayment by Applicant. He paid that judgment in July 2004. (Items 7-12)

Applicant submitted a series of post-dated checks for February through March 2005 in the amount of \$500 each to a bank creditor. The balance on the account was \$7,118.75. The name on the account is Applicant's spouse. This debt is not listed in the SOR. (Item 7)

Applicant's gross monthly income is \$6,000, including his wife's income, according to his April 29, 2005, affidavit. He has a net income after expenses of only \$50. He claims to spend \$1,000 monthly on paying credit card debt. He claims to spend \$600 monthly on food, and \$400 on entertainment, among the expenses he lists in his affidavit.(Item 7)

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 has 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 the national interest to do so." Exec. Or. 10865, *Safeguarding Classified Information with Industry*

§ 2 (Feb. 20, 1960). Eligibility for a security clearance is predicated upon the applicant meeting the security guidelines contained in the Directive. 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.

The adjudication process is based on the whole person concept. All available, reliable information about the person, past and present, is to be taken into account in reaching a decision as to whether a person is an acceptable security risk. Enclosure 2 of the Directive sets forth personnel security guidelines, as well as the disqualifying conditions (DC) and mitigating conditions (MC) under each guideline that must be carefully considered in making the overall common sense determination required.

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. Those assessments include: (1) the nature, extent, and seriousness of the conduct; (2) the circumstances surrounding the conduct, and the extent of knowledgeable participation; (3) how recent and frequent the behavior was; (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 (See Directive, Section E2.2.1. of Enclosure 2). Because each security case presents its own unique facts and circumstances, it should not be assumed that the factors exhaust the realm of human experience or that the factors apply equally in every case. Moreover, although adverse information concerning a single condition may not be sufficient for an unfavorable determination, the individual may be disqualified if available information reflects a recent or recurring pattern of questionable judgment, irresponsibility, or other behavior specified in the Guidelines.

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. 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* ISCR Case No. 95-0611 at 2 (App. Bd. May 2, 1996). All that is required is proof of facts and circumstances that indicate an applicant is at risk for mishandling classified information, or that an applicant does not demonstrate the high degree of judgment, reliability, or trustworthiness required of persons handling classified information. ISCR Case No. 00-0277, 2001 DOHA LEXIS 335 at **6-8 (App. Bd. 2001). Once the Government has established a *prima facie* case by substantial evidence, the burden shifts to the applicant to rebut, explain, extenuate, or mitigate the facts. *See* Directive ¶ E3.1.15. An applicant "has the ultimate burden of demonstrating that is clearly consistent with the national interest to grant or continue his security clearance. ISCR Case No. 01-20700 at 3 (App. Bd. 2002). "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* Exec. Or. 12968 § 3.1(b).

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

Guideline F: Financial Considerations: *The Concern*: An individual who is financially overextended is at risk of having to engage in illegal acts to generate funds. E2.A6.1.1

CONCLUSIONS

The burden of proof is on Applicant to show the Mitigating Conditions in the Directive apply in his case. He has the burden of showing that his financial situation is not a security risk. The evidence should be precise so it can be clearly seen that Applicant has resolved each delinquent debt listed in the SOR if one or more Mitigating Conditions were to apply. Yet in this case, when Applicant's Answer and attachments are compared and contrasted to the credit reports showing the existing debts, Applicant's statements and his documents do not persuade me he has resolved his debts. Therefore, his financial situation remains a security risk.

Disqualifying Conditions (DC) 1 (A history of not meeting financial obligations E2.A6.1.2.1) and DC 3 (Inability or unwillingness to satisfy debts E2.A6.1.2.3) apply. Applicant has a history of spending money and not being able to repay his debts in a timely fashion. Also, he has been sued three times in that period for unpaid debts. While incurring all his debts, he bought or leased four cars in the past ten years, and repaid those debts. But if he had planned his spending better, he might have used the money on debt repayment instead of buying. At the same time, he opened many credit card accounts with five different card issuing banks, on which he carried balances that he then could not repay, and which appear on his CR in the file.

There are no Mitigating Conditions applicable here. Applicant failed to meet his burden of proof to show he made a good-faith effort to resolve his unpaid debts. He had no documentation to support his claims of payment. Even the judgment satisfaction document he submitted pertained to only one credit card account, and he never connected that document to a specific credit card account. Account after account on the CR was still shown as due and owing, written off by the creditor, or in collection. Therefore, after thoroughly reading and analyzing all of the evidence in the file submitted to me, I conclude this financial considerations security concern against Applicant.

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: For Applicant

- Subparagraph 1.c: Against Applicant
- Subparagraph 1.d: Against Applicant
- Subparagraph 1.e: Against Applicant
- Subparagraph 1.f: Against Applicant
- Subparagraph 1.g: Against Applicant
- Subparagraph 1.h: For Applicant
- Subparagraph 1.i: Against Applicant
- Subparagraph 1.j: Against Applicant
- Subparagraph 1.k: Against Applicant
- Subparagraph 1.l: Against Applicant
- Subparagraph 1.m: Against Applicant
- Subparagraph 1.n: For Applicant
- Subparagraph 1.o: For Applicant
- Subparagraph 1.p: Against Applicant
- Subparagraph 1.q: Against Applicant
- Subparagraph 1.r: 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.

Philip S. Howe

Administrative Judge

1. Pursuant to Exec. Or. 10865, *Safeguarding Classified Information within Industry* (Feb. 20, 1960), as amended and modified, and Department of Defense Directive 5220.6, *Defense Industrial Personnel Security Clearance Review Program* (Jan. 2, 1992), as amended and modified (Directive).