

DATE: August 31, 2006

In re:

SSN: -----

Applicant for Security Clearance

ISCR Case No. 05-12840

DECISION OF ADMINISTRATIVE JUDGE

MICHAEL J. BRESLIN

APPEARANCES

FOR GOVERNMENT

Richard A. Stevens, Esq., Department Counsel

FOR APPLICANT

Sidney H. Kelsey, Jr., Esq

SYNOPSIS

Applicant's financial problems arose from circumstances largely beyond his control, including unexpected unemployment, the need to relocate, and medical problems limiting his wife's ability to work. After moving to get his present job, he was unable to sell his former home or to make the mortgage payments, resulting in foreclosure and remaining debt. Under these circumstances, the delinquencies do not cast doubt on his reliability, trustworthiness, or good judgment. Considering Applicant's character, I find he is not vulnerable to pressure to engage in illegal acts to generate funds. I conclude Applicant mitigated the security concerns arising from his history of failing to meet his financial obligations and inability to satisfy his debts. Clearance is granted.

STATEMENT OF THE CASE

On November 15, 2003, Applicant submitted an application for a security clearance. The Defense Office of Hearings and Appeals (DOHA) declined to grant or continue a security clearance for Applicant under Department of Defense Directive 5220.6, *Defense Industrial Personnel Security Clearance Review Program* (Jan. 2, 1992), as amended (the "Directive"). On January 17, 2006, DOHA issued a Statement of Reasons (SOR) detailing the basis for its decision. The SOR alleges security concerns raised under Guideline F, Financial Considerations, of the Directive.

Applicant answered the SOR in writing on April 12, 2006. He elected to have a hearing before an administrative judge.

The case was originally assigned to another administrative judge. I received the case assignment on May 22, 2006. With the concurrence of Applicant and Department Counsel, I convened the hearing on July 6, 2006. The government introduced Exhibits 1 through 3. Applicant's counsel presented Exhibits A through F and the testimony of two witnesses. Applicant also testified on his own behalf. DOHA received the final transcript of the hearing (Tr.) on July 14, 2006.

FINDINGS OF FACT

Applicant denied the allegations in ¶¶ 1.b and 1.d of the SOR, but admitted the remaining allegations. (Applicant's Answer to SOR, dated April 12, 2006.) Those admissions are incorporated herein as findings of fact. After a complete and thorough review of the evidence in the record, I make the following additional findings of fact.

Applicant is 41 years old. (Ex. 1 at 1.) He is married with children.

Applicant worked in a naval shipyard between about 1988 and 1991. (Tr. at 33.) He obtained a security clearance in 1989, and it was renewed in 1994. (Tr. at 29; Ex. 1 at 7.) In about 1993, Applicant moved to a new state and began working for a private company, specializing in health physics and radiological control. (Ex. 1 at 3; Tr. at 42.)

In 1997, Applicant and his wife purchased a home, secured by a mortgage. (Tr. at 43.) After living in the house for a few years, Applicant and his wife took out a second mortgage to fund some home improvements and pay off existing bills. (Tr. at 44.)

Applicant and his wife entered into a contract to fund annual vacations. (Tr. at 32.) The plan required them to pay \$97.00 per a month in order to take a family vacation each year. Applicant made the required payments at first, but was never able to take a vacation. (Tr. at 32.)

The company began downsizing and Applicant was laid off in about July 2000. (*Id.*; Tr. at 30.) He was unemployed for about one month. (Ex. 1 at 2-3.) Applicant put his house up for sale, but the local economy was depressed and many houses remained unsold at that time. (Tr. at 30.)

Hearing of favorable employment opportunities in his home state, Applicant moved himself and his family to his present location. He began working as a radiological control technician for his current employer, a defense contractor, in September 2001. (Ex. 1 at 2; Tr. at 28.) The new job resulted in a \$12,000.00 cut in annual salary. (Tr. at 33.) Additionally, Applicant was required to return to school for training and re-certification, and therefore did not get the opportunity to work overtime, further reducing his annual income. (Tr. at 33.) Applicant's wife began looking for employment as well, and was later hired as a secretary for their church. (Tr. at 37.) Shortly thereafter, she was diagnosed with a serious illness, and was required to give up her job. (Tr. at 36.)

Applicant and his family lived with his parents at first. (Tr. at 31, 33.) Eventually he decided needed to provide a separate home for his family. (Tr. at 34.) Until that time, Applicant continued making the mortgage and utility payments on his former home. (Tr. at 31.) However, after two years, the home still had not sold. (Tr. at 30.) Applicant and his wife sought financial counseling at his credit union. (Tr. at 45.) Acting upon the advice of their counselor, they decided to rent a home and to discontinue making payments on the former home, knowing it would go to foreclosure. (Tr. at 34, 36.) They elected not to file for personal bankruptcy protection. (Tr. at 45.) Applicant and his wife also stopped paying on the vacation plan, which is the debt listed in ¶ 1.a of the SOR. (Tr. at 46.)

The mortgage company initiated foreclosure on the property; Applicant did not respond. In May 2003, Applicant received notice of the mortgage company's motion for default judgment. (Ex. E.) The property was auctioned at a Sheriff's Sale in September 2003. (Ex. F at 3.) Applicant learned that the house sold for \$85,000.00 at auction. (Tr. at 49.) Debt arising from the first and second mortgages remains due after the sale, however the creditors have taken no other action to collect on the debts. (SOR, ¶¶ 1.d and 1.c.)

In December 2005, in response to a request by security investigators, Applicant completed a Personal Financial Statement, listing his income and expenses. (Ex. 3.) The statement indicated Applicant's expenses exceeded his income by \$366.23 each month. (Ex. 3 at 4.) However, the statement listed payments for the second mortgage and the vacation plan totaling over \$400.00 each month which Applicant was not paying. (Tr. at 56, 57.)

At the hearing, Applicant acknowledged the debts that formed the basis for ¶¶ 1.a, 1.c, and 1.d of the SOR, although the amount listed for ¶ 1.d is the original mortgage amount, rather than the deficiency remaining after foreclosure. He denied the debt listed in ¶ 1.b of the SOR, a collection agency pursuing a utility bill from his former residence, insisting that he paid all the utilities when due. (Tr. at 53-54.) Applicant asserted he is current on his regular bills, including his rent and utilities. (Tr. at 36, 58.) He submitted three credit reports that show he is current on most of his financial obligations, other than the accounts listed in the SOR and some small debts. (Exs. B, C, and D.) Applicant indicated he

and his wife intend to talk to a financial counselor about options for resolving their debts, including possible settlement or personal bankruptcy. (Tr. at 52.)

A fellow employee for the defense contractor who has known and worked with Applicant for six years attested to his character for truthfulness and honesty. (Tr. at 20.) A close friend who has known Applicant since 1986 testified that Applicant has an excellent reputation for truth and veracity in the community. (Tr. at 26.) He never knew Applicant to be in financial trouble. (Tr. at 26-27.) Additionally, several co-workers and friends submitted statements attesting to Applicant's outstanding character. (Ex. A.)

POLICIES

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." (*Department of the Navy v. Egan*, 484 U.S. 518, 527 (1988).) In Executive Order 10865, *Safeguarding Classified Information Within Industry* (Feb. 20, 1960), the President set out standards and procedures for safeguarding classified information within the executive branch. The Directive provides more specific procedures and guidelines for analyzing security concerns. To be eligible for a security clearance, an applicant must meet the security guidelines contained in the Directive. Enclosure 2 of the Directive sets forth personnel security guidelines, as well as potentially disqualifying and mitigating conditions under each guideline.

"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.) An administrative judge must apply the "whole person concept," and consider and carefully weigh the available, reliable information about the person. (*Id.*) An administrative judge should consider the following factors: (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. (*Id.*)

Initially, the government must present evidence to establish controverted facts in the SOR that disqualify or may disqualify the applicant from being eligible for access to classified information. (Directive, ¶ E3.1.14.) Thereafter, the applicant is responsible for presenting evidence to rebut, explain, extenuate, or mitigate the facts. (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." (ISCR Case No. 01-20700 at 3 (App. Bd. Dec. 19, 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.)

A person granted access to classified information enters into a special relationship with the government. 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. The decision to deny an individual a security clearance is not a determination as to the loyalty of the applicant. (Exec. Ord. 10865, § 7.) It is merely an indication that the applicant has not met the strict guidelines the President has established for issuing a clearance.

CONCLUSIONS

The security concern under Guideline F, Financial Considerations, is that "An individual who is financially overextended is at risk of having to engage in illegal acts to generate funds." (Directive ¶ E2.A6.1.1.)

Paragraph E2.A6.1.2.1 of the Directive provides that it may be disqualifying if the evidence reveals "[a] history of not meeting financial obligations." Similarly, ¶ E2.A6.1.2.3 provides that an "[i]nability or unwillingness to satisfy debts" may be disqualifying. Applicant failed to meet three significant financial obligations: specifically, the deficiency on his mortgage, SOR ¶ 1.d; the balance due on his second mortgage, SOR ¶ 1.c; and the debt due on the vacation plan, SOR ¶ 1.a. His financial difficulties arose in about 2002 and he is still unable to resolve these outstanding debts. I conclude the available evidence raises these potentially disqualifying conditions.

Paragraph 1.b of the SOR alleges Applicant is in arrears on a debt to a collection agency in the amount of \$180.00 for utilities for his former home after he moved out. Applicant denies the debt, asserting he paid those debts. I find Applicant's assertions credible; in the absence of other evidence, I find the alleged debt does not raise a security concern.

Paragraph 1.e of the SOR alleges Applicant is unable to satisfy his monthly debts as evidenced by a personal financial statement completed in December 2005. I note the financial statement in question took into consideration payments on his second mortgage and his vacation plan totaling more than \$400.00 each month. In fact, Applicant was not making those payments. I find the personal financial statement was not accurate and does not properly reflect Applicant's ability to pay his ordinary monthly expenses. I conclude the allegation in ¶ 1.e does not raise a security concern.

Security concerns arising from an applicant's financial difficulties can be mitigated. Under the Directive, ¶ E2.A6.1.3.1, it may be mitigating where "the behavior was not recent." The behavior in question includes Applicant's failure to pay or otherwise resolve the delinquent debts. Applicant has been unable to pay or resolve a some outstanding debts for several years. Applicant has not presented evidence sufficient to raise this mitigating condition.

Paragraph E2.A6.1.3.2 of the Directive provides that it may be mitigating where the financial difficulty "was an isolated incident." The three substantial debts arose at about the same time, due to the same set of circumstances. Other than these debts, Applicant's financial history is generally good, although not perfect. I am persuaded that this mitigating condition applies.

Under ¶ E2.A6.1.3.3, it may be mitigating where, "[t]he 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)." Applicant's financial problems arose as a result of conditions largely beyond his control. First, the unexpected unemployment that resulted from his employer's downsizing substantially reduced his income and required Applicant to relocate his family to a new state. Furthermore, the economic depression in the local area made it impossible to sell his former home. Additionally, his wife's medical problems prevented her from continuing to work, further reducing their income. I conclude the available evidence raises this mitigating condition.

Proof that "[t]he 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," may be mitigating, under ¶ E2.A6.1.3.4 of the Directive. Applicant testified that he sought the advice of financial counselors regarding his circumstances. However, he did not present evidence showing that his financial problems are being resolved or are under control. This potentially mitigating condition is not raised.

Paragraph E2.A6.1.3.6 of the Directive states it may be mitigating where, "[t]he individual initiated a good-faith effort to repay overdue creditors or otherwise resolve debts." Applicant did not provide any evidence of his attempts to resolve the debts listed in the SOR, other than his unsuccessful attempt to sell his former home. At the time of the hearing, he had not formulated a plan for addressing these debts, although his ability to do so is obviously hampered by the pendency of this action. Applicant failed to present evidence raising this potentially mitigating condition.

The "Whole Person" Concept

I considered the potentially disqualifying and mitigating circumstances in light of the "whole person" concept, as required by ¶ E2.2.3 of the Directive. In every case, this involves a careful balancing of the many factors the weigh in favor and against the grant of a clearance.

I note Applicant is a mature individual with many years of service as an employee of a defense contractor. (Directive, ¶ E2.2.1.4.) He successfully held a security clearance for many years. His financial problems arose from circumstances largely beyond his control, including unexpected unemployment, a need to relocate, and medical problems limiting his wife's ability to work. (Directive, ¶ E2.2.1.1 and E2.2.1.2.) The problems arose under such circumstances that they are unlikely to recur, and they do not cast doubt on Applicant's current reliability, trustworthiness, or good judgment. However, he still faces substantial delinquent debt and he does not have a plan to resolve it; therefore, there is a likelihood that his financial problems will continue for some time. (Directive, ¶ E2.2.1.9.) At the same time, I recognize that he has acted reasonably under the circumstances, considering his diminished means. Of course, substantial, unpaid

obligations might create some concern that Applicant could be placed in a position of having to engage in illegal acts to generate funds. I note that his largest creditor received the proceeds from the foreclosure, and that none of the three remaining creditors have attempted to collect on the delinquent debts, reducing the concern. I also considered carefully the positive statements from his co-workers and friends, praising his honesty and integrity. I find the debts create minimal potential for pressure, coercion, exploitation, or duress, and that, because of his history of service and personal character, he would not be vulnerable to improper influence. (Directive, ¶ E2.2.1.8.) I conclude Applicant mitigated the security concerns arising from his history of failing to meet his financial obligations and inability to satisfy his debts.

FORMAL FINDINGS

My conclusions as to each allegation in the SOR are:

Paragraph 1, Guideline F: FOR APPLICANT

Subparagraph 1.a: For Applicant

Subparagraph 1.b: For Applicant

Subparagraph 1.c: For Applicant

Subparagraph 1.d: For Applicant

Subparagraph 1.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 or continue a security clearance for Applicant. Clearance is granted.

Michael J. Breslin

Administrative Judge