

DATE: October 31, 2006

In Re:

SSN: -----

Applicant for Security Clearance

CR Case No. 05-13636

DECISION OF ADMINISTRATIVE JUDGE

ROBERT J. TUIDER

APPEARANCES

FOR GOVERNMENT

Eric Borgstrom, Esq., Department Counsel

FOR APPLICANT

Pro Se

SYNOPSIS

Financial considerations concerns arose during Applicant's application process for a security clearance. The government alleged he owed 14 creditors in excess of \$15,000.00. Applicant incurred these debts as a result of unemployment, underemployment, and lost time from work after being diagnosed and treated for cancer. Applicant mitigated these debts by either paying his creditors or by incurring the services of a credit counseling service and setting up a payment plan with his remaining creditors. Clearance is granted.

STATEMENT OF THE CASE

The Defense Office of Hearings and Appeals (DOHA) declined to grant or continue a security clearance for Applicant. On April 14, 2006, DOHA issued a Statement of Reasons (SOR) [\(1\)](#) detailing the basis for its decision-security concerns raised under Guideline F (Financial Considerations) of the Directive. Applicant answered the SOR in writing on May 17, 2006, and elected to have a hearing before an administrative judge.

Department Counsel indicated he was ready to proceed on June 20, 2006, and the case was assigned to me on June 28, 2006. On September 18, 2006, DOHA issued a notice of hearing scheduling the case to be heard on October 3, 2006. On September 22, 2006, DOHA issued an amended notice of hearing changing the location of the hearing, but leaving the hearing date the same. The case was conducted as scheduled to consider whether it is clearly consistent with the national interest to grant or continue a security clearance for Applicant.

At the hearing, the government presented three exhibits, which were marked as Government Exhibits (GE) 1 through 3, and admitted without objection. Applicant presented nine exhibits, which were marked as Applicant Exhibits (AE) A through I, and admitted without objection. I left the record open to allow Applicant the opportunity to submit additional matters. Applicant timely submitted two additional exhibits, which were marked AE J and AE K, and admitted without objection. DOHA received the transcript on October 13, 2006.

FINDINGS OF FACT

Applicant's admissions to the SOR allegations are incorporated herein. In addition, after a thorough review of the pleadings, exhibits, and testimony, I make the following findings of fact:

Applicant is a 62-year-old married man. Since February 2004, he has been employed by a defense contractor as the Maintenance and Grounds Supervisor for the defense contractor's entire complex, consisting of six buildings and several acres of grounds. He is also responsible for supervising two subordinates. Applicant seeks a security clearance as a requirement of his employment. He has been married to his current wife since May 1998. He has one biological child, a 38-year-old son, born during his first marriage.

Applicant dropped out of high school after the 9th grade and never earned his GED. At age 17, he enlisted in the U.S. Army in September 1961 and was honorably discharged in September 1964 as a private first class. During his working life, he has been employed in "about everything." Tr. 63. Although eligible to collect social security, he plans to work until he is physically unable to do so. Tr. 63.

The SOR alleges Applicant is in arrears on 14 debts, totaling over \$15,000.00. During the hearing, Applicant successfully mitigated four of the 14 debts alleged (SOR ¶¶ 1.a., 1.b., 1.i., and 1.k.), leaving a total of ten debts unmitigated.

Applicant encountered financial difficulties as a result of helping his 38-year-old son, who lived nearby. In 2001, his son began to experience marital difficulties. His son's marital difficulties became so severe that he began to drink heavily and became suicidal. Applicant stated his son "wanted to do away with himself," and "drank himself into oblivion." His son's home was repossessed and his wife moved in with her paramour. His son also lost his custody case for his two children. Applicant, concerned for his son's personal safety and well being, "physically moved him out of that house on a Saturday and moved him in with us (Applicant and his wife.)" Tr. 51.

With Applicant's only son now living with him and his wife, his immediate goal was to "[slow] him down on his drinking but I couldn't stop him." Tr. 52. Unfortunately, his son's situation worsened when he began looking for his estranged wife, threatened to kill her boyfriend, and continued to speak of suicide. Tr. 53-54. Applicant made the decision to relocate his son to a different location hoping a change of environment would get him back on track. Applicant, his wife, and Applicant's son moved from New York to North Carolina.

Applicant's plan was for him and his wife to stay with his son in North Carolina long enough to ensure he was stable and move back to New York. Before moving to North Carolina, Applicant and his wife rented out their duplex to two different renters. Unfortunately, one of the renters immediately defaulted after moving in. As a landlord, Applicant was also responsible for costly utilities, which included heat. After moving to North Carolina, Applicant was either unemployed or underemployed, and he and his wife lived off their credit cards.

The change of location had a positive affect on Applicant's son. He secured employment, stabilized his drinking, found a new girlfriend, and developed a positive outlook. After two years in North Carolina, Applicant and his wife returned to New York. During their two years in North Carolina, they lost their house in New York to foreclosure, and incurred the debt identified in SOR ¶¶ 1.a. through 1.n. Before Applicant and his wife moved to North Carolina, they were financially solvent.

When Applicant and his wife returned to New York, he had been unemployed for nine months. His wife was able to secure a minimum wage job at a hospital. Tr. 72. Their financial situation required them to move twice and they had to replace their car when it failed. Applicant secured employment with his present employer in February 2004 and he was diagnosed with prostate cancer in 2005, which required him to miss 12 weeks of work. Tr. 69. His wife presently works part-time at a local dry cleaners.

Applicant's Program Manager of Information Technology testified and submitted a reference letter on his behalf. His Program Manager provided compelling favorable testimony in support of Applicant, attesting to his honesty, reliability, and integrity. He pointed out Applicant is responsible for the oversight and processing of high value government equipment. Applicant's Program anager, who has experience in handling financial matters, offered to assist Applicant in

resolving his remaining unpaid debt. Tr. 78-91, AE G.

Post-hearing, Applicant retained the services of a credit counseling service with the help of his Program Manager. The credit counseling service was able to contact the remaining ten creditors and set up a payment plan for all of them (¶¶ 1.c., 1.d., 1.e., 1.f., 1.g., 1.h., 1.j., 1.l., 1.m., and 1.n). Applicant had become discouraged when trying to do this on his own. The payment plan begins on November 15, 2006, with Applicant paying \$625.00 per month until the debts are satisfied. The credit counseling service also provided Applicant with assistance on better money management. AE's J and K.

Several other senior representatives from Applicant's employer submitted reference letters on his behalf. The letters were very favorable and establish the point Applicant is very well regarded as an individual and as an employee. He has a demonstrated record of being a solid and trusted employee with a superb work ethic. AE's E, F, H, and I.

POLICIES

The adjudicative guidelines in the Directive are not a set of inflexible rules of procedure. Instead, they are to be applied by administrative judges on a case-by-case basis with an eye toward making determinations that are clearly consistent with the interests of national security. In making overall common sense determinations, administrative judges must consider, assess, and analyze the evidence of record, both favorable and unfavorable, not only with respect to the relevant adjudicative guidelines, but in the context of factors set forth in section E 2.2.1. of the Directive. The government has the burden of proving any controverted fact(s) alleged in the SOR, and the facts must have a nexus to an applicant's lack of security worthiness.

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. Although the presence or absence of a particular condition for or against clearance is not determinative, the specific adjudicative guidelines should be followed whenever a case can be measured against this policy guidance.

BURDEN OF PROOF

As noted by the United States Supreme Court in *Department of Navy v. Egan*, 484 U.S. 518, 528 (1988), "no one has a 'right' to a security clearance." 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." Executive Order 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.

Initially, the government must establish, by substantial evidence, that conditions exist in the personal or professional history of the applicant which disqualify, or may disqualify, the applicant from being eligible for access to classified information. *See Egan*, 484 U.S. at 531. All that is required is proof of facts and circumstances which 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. Where the facts proven by the government raise doubts about an applicant's judgment, reliability or trustworthiness, then the applicant has the ultimate burden of establishing his security suitability with substantial evidence in explanation, mitigation, extenuation, or refutation, sufficient to demonstrate that despite the existence of guideline conduct, it is clearly consistent with the national interest to grant or continue his security clearance.

Security clearances are granted only when "it is clearly consistent with the national interest to do so." *See* Executive Orders 10865 § 2 and 12968 § 3.1(b). "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 "The clearly consistent standard indicates that security clearance determinations should err, if they must, on the side of denials." *See Egan*, 484

U.S. at 531. Doubts are to be resolved against the applicant.

CONCLUSIONS

Guideline F - Financial Considerations

In the SOR, DOHA alleged Applicant had 14 delinquent debts (§§ 1.a. through 1.n.) in excess of \$15,000.00. *The Concern: An individual who is financially overextended is at risk of having to engage in illegal acts to generate funds.* Directive ¶ E2.A6.1.1.

The government established its case under Guideline F by Applicant's admissions and evidence submitted. His inability to satisfy his outstanding financial obligations gives rise to Financial Considerations Disqualifying Condition (FC DC) E2.A6.1.2.1. (*A history of not meeting financial obligations*); and FC DC E2.A6.1.2.3. (*Inability or unwillingness to satisfy debts*).

Applicant encountered substantial unforeseen financial challenges later in life. His indebtedness stemmed from assisting his only biological son's recovery from a potentially life threatening situation. Not wishing to see his son deteriorate further as a result of drinking and depression following the break-up of his marriage, Applicant decided the best treatment for his son was a "change of scenery." Applicant risked everything to help his son. The end result was favorable for Applicant's son, but financially disastrous for Applicant and his wife. They lost their home and were buried in debt as they entered their retirement years.

Although Applicant attempted to resolve his debts to the best of his ability, it was clear he was overwhelmed with the process. He successfully mitigated four debts at the time of hearing leaving ten debts unmitigated at the conclusion of the hearing. Through his Program Manager's intervention, Applicant was able to locate a competent and reliable credit counseling service. This service was able to do in short order what Applicant was unable to do since his April 2006 SOR. Applicant's remaining creditors have been contacted and payment arrangements have been made.

Although Applicant's payment plan with the credit counseling service began post-hearing, I do not detect recalcitrance on his part to pay his creditors. The evidence clearly establishes that Applicant is a trustworthy, responsible and reliable. Applicant was financially challenged following periods of unemployment, underemployment, and time lost following his diagnosis and treatment for prostate cancer. The lessons learned and financial hardships Applicant recently experienced have not been lost on him.

The above facts give rise to Financial Considerations Mitigating Conditions (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)*; FC MC 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*; and FC MC 6: *the individual initiated a good-faith effort to repay overdue creditors or otherwise resolve debts*; apply. The mitigating Conditions outweigh the Disqualifying Conditions. I conclude for Applicant on this concern.

In reaching my decision I have applied the facts and circumstances presented in this case using the "whole person" concept as required by the Directive. There is no record evidence suggesting Applicant, who is now 62 years old, was previously irresponsible in his financial affairs. When faced with dealing with a deleterious situation involving his only biological son, he and his wife chose to risk all to help him. They did so at a severe financial cost to themselves.

Although one could arguably view Applicant's approach to resolving his financial situation as "too little too late," it is clear to me based on his education and background, he did the best he could. It is also evident Applicant is a proud individual reluctant to ask for help - even to his own detriment. Fortunately for him, his Program Manager had the wherewithal and belief in Applicant as an individual to help him. Taken as a whole, it is my "common sense" determination Applicant has demonstrated he is trustworthy and responsible, and that granting a clearance to Applicant is appropriate.

FORMAL FINDINGS

The following are my conclusions as to each allegation in the SOR:

Paragraph 1. Guideline F: FOR APPLICANT

Subparagraphs 1.a.-1.n.: 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.

Robert J. Tuider

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.