

DATE: August 29, 2006

In Re:

SSN: -----

Applicant for Security Clearance

CR Case No. 05-15218

DECISION OF ADMINISTRATIVE JUDGE

MARTIN H. MOGUL

APPEARANCES

FOR GOVERNMENT

Candace Le'i, Esq., Department Counsel

FOR APPLICANT

Pro Se

SYNOPSIS

Applicant has one unpaid debt that was incurred as a result of medical treatment that he received for an injury he suffered in 1998, when he was 19 years old. Because of unemployment or underemployment, he has been unable to pay off this debt until recently. The creditor now will not accept payment for this debt and shows that Applicant owes nothing. Since 1998, when Applicant incurred that debt, he has been and remains current on all his other debts, and he has demonstrated a stable and mature outlook about his finances. Mitigation has been shown. Clearance is granted.

STATEMENT OF THE CASE

On March 30, 2006, the Defense Office of Hearings and Appeals (DOHA), pursuant to Executive Order 10865 and Department of Defense Directive 5220.6 (Directive), dated January 2, 1992, issued a Statement of Reasons (SOR) to Applicant which 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 and recommended referral to an Administrative Judge to determine whether clearance should be denied or revoked.

In a signed and sworn statement, dated April 20, 2006, Applicant responded in writing to the SOR allegations. He requested a clearance decision based on a hearing record.

On June 29, 2006, this case was assigned to this Administrative Judge to conduct a hearing and issue a written decision. A Notice of Hearing was issued to the parties on June 29, 2006, and the hearing was held on July 18, 2006.

At the hearing, Department Counsel offered five documentary exhibits (Government Exhibits 1 through 5), and no witnesses were called. Applicant offered two documentary exhibits, (Applicant Exhibits A and B), and offered his own testimony. The record was held open to allow Applicant to offer post hearing exhibits. Applicant offered two additional sets of documents, which have been identified as Applicant's Exhibits C and D. All exhibits were entered into evidence without objection. The transcript (Tr) was received on July 25, 2006.

FINDINGS OF FACT

In the SOR, the Government alleges that a security risk may exist under Adjudicative Guideline F (Financial Considerations) of the Directive. The SOR contains 2 allegations, 1.a. and 1.b., under Guideline F. In his Response to the SOR (RSOR), Applicant admitted both of the SOR allegations. The admitted allegations are incorporated herein as Findings of Fact.

After a complete and thorough review of the evidence in the record, including Applicant's Answer to the SOR, the documents and the live testimony, and upon due consideration of that evidence, I make the following additional Findings of Fact:

Applicant is 27 years old, unmarried and has one 15 month old son. He is an employee of a defense contractor, and he seeks a DoD security clearance in connection with his employment in the defense sector.

Paragraph 1 (Guideline F - Financial Considerations)

The SOR alleges that Applicant currently has two overdue debts, 1.a. and 1.b, under Adjudicative Guideline F. The two debts will be discussed in the order that they were listed in the SOR.

1.a. This overdue debt to Creditor 1 is listed in the SOR in the amount of \$25,455. Applicant testified that this debt was incurred as a result of medical treatment he received for an injury he suffered in 1998, when he was 19 years old. As a result of the injury, Applicant became unemployed, and because he had no health insurance, he was unable to pay off this debt. He consulted a credit counseling company, which advised him that since he could not afford to pay off this debt, he could either file for bankruptcy or simply wait for the bills to no longer be listed on his credit history (Exhibit C).

From 1998 until 2004, when he began his current employment, Applicant has been unemployed or underemployed with no surplus income to resolve this debt. Applicant recently contacted the creditor to try to pay off this debt, and the creditor informed him that they will not accept payment for this debt. A post hearing letter from this creditor, dated July 28, 2006, indicates that Applicant now has a zero balance on this account (Exhibit D).

1.b. This overdue debt to Creditor 2 is listed in the SOR in the amount of \$143. In his RSOR, Applicant admitted that this debt is due and owing. However, during his testimony, he pointed out that this was part of the debt that has been alleged as 1.a., above (Exhibit 2). Department Counsel agreed that this debt was part of 1.a., and therefore, 1.b. was struck as an allegation.

Since Applicant incurred that debt in 1998, he has been and remains current on all his other debts, and he has demonstrated a stable and mature outlook about his finances.

Applicant also submitted 20 letters of reference from many individuals, who have known him well, including his mother, girlfriend, friend, neighbors, co-workers, and supervisor. All of them spoke extremely highly of him as honest, hard working and dependable (Exhibits C and D).

POLICIES

Enclosure 2 of the Directive sets forth adjudicative guidelines that must be carefully considered in evaluating an individual's security eligibility and making the overall common sense determination required. The Administrative Judge must take into account the conditions raising or mitigating security concerns in each area applicable to the facts and circumstances presented. 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, as the guidelines reflect consideration of those factors of seriousness, recency, motivation, *etc.*

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.

Each adjudicative decision must also include an assessment of: (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).

BURDEN OF PROOF

Initially, the Government must prove controverted facts alleged in the Statement of Reasons. If the Government meets that burden, the burden of persuasion then shifts to Applicant to establish his security suitability through evidence of refutation, extenuation or mitigation sufficient to demonstrate that, despite the existence of disqualifying conduct, it is nevertheless clearly consistent with the national interest to grant or continue the security clearance. Assessment of Applicant's fitness for access to classified information requires evaluation of the whole person, and consideration of such factors as the recency and frequency of the disqualifying conduct, the likelihood of recurrence, and evidence of rehabilitation.

A person who seeks access to classified information enters into a fiduciary relationship with the U.S. Government that is predicated upon trust and confidence. Where facts proven by the Government raise doubts about Applicant's judgment, reliability, or trustworthiness, Applicant has a heavy burden of persuasion to demonstrate that he or she is nonetheless security worthy. As noted by the United States Supreme Court in *Department of the Navy v. Egan*, 484 U.S. 518, 531 (1988), "the clearly consistent standard indicates that security-clearance determinations should err, if they must, on the side of denials."

CONCLUSIONS

Having considered the evidence of record in light of the appropriate legal precepts and factors, I conclude the following:

Regarding the Disqualifying Conditions (DC) under Guideline F, I conclude both DC E2.A6.1.2.1., and DC E2.A6.1.2.3 apply, because of Applicant's history of not meeting his financial obligation and his former inability to satisfy his one overdue debt.

However, I find that all of the following Mitigating Conditions (MC) are applicable in this case. MC E2.A6.1.3.1., the behavior was not recent, because the only overdue debt is one from 1998; MC E2.A6.1.3.2., it was an isolated incident, since there was only one overdue debt; MC E2.A6.1.3.3., this debt was the result of an unexpected medical emergency when Applicant was 19 years old and his unemployment made it impossible to pay off this debt; MC E2.A6.1.3.4., Applicant did seek counseling, and he is current on all of his other debts, and finally, MC E2.A6.1.3.6., Applicant did contact the creditor, but they will not accept a payment and show that Applicant has a zero balance on this debt.

Since Applicant incurred that debt in 1998, he has been and remains current on all his other debts, and he has demonstrated a stable and mature outlook about his finances. I, therefore, resolve Guideline F for Applicant.

FORMAL FINDINGS

Formal Findings as required by Section E3.1.25 of Enclosure 3 of the Directive are hereby rendered as follows:

Financial Considerations, Guideline F: For Applicant

Subparagraph 1.a.: For Applicant

Subparagraph 1.b.: For Applicant

DECISION

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

Martin H. Mogul

Administrative Judge