

DATE: October 30, 2006

In Re:

SSN: -----

Applicant for Security Clearance

ISCR Case No. 05-15727

DECISION OF ADMINISTRATIVE JUDGE

JOAN CATON ANTHONY

APPEARANCES

FOR GOVERNMENT

Daniel F. Crowley, Esq., Department Counsel

FOR APPLICANT

Pro Se

SYNOPSIS

Applicant, who is 45 years old and single, has a history of financial difficulties. At his hearing, Applicant demonstrated he had recently made progress in paying or arranging to pay some of his debts. While Applicant's recent efforts to satisfy his creditors are laudable, they are not a substitute for a consistent record of timely remedial action. Applicant failed to mitigate security concerns under Guideline F, Financial Considerations, of the Directive. 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 May 18, 2006, under the applicable Executive Order⁽¹⁾ and Department of Defense Directive,⁽²⁾ DOHA issued a Statement of Reasons (SOR), detailing the basis for its decision—security concerns raised under Guideline F (Financial Considerations) of the Directive. Applicant filed an answer to the SOR on June 6, 2006, and elected to have a hearing before an administrative judge. The case was assigned to me June 26, 2006. On September 8, 2006, I convened a hearing to consider whether it is clearly consistent with the national interest to grant or continue a security clearance for Applicant. The Government called no witnesses and submitted eleven exhibits (Ex.) for admission to the record (Ex. 1 through 11). The Government's exhibits were admitted to the record without objection. Applicant testified on his own behalf and called no additional witnesses. He submitted 6 exhibits, which were identified as Applicant's Ex. A through F, and admitted to the record without objection. At the conclusion of the hearing, I left the record open until close of business September 18, 2006, so that Applicant could, if he wished, submit additional information for the record. At Applicant's request, I granted him an enlargement of time until October 10, 2006, to file his post-hearing submissions. Applicant filed four documents, which were identified as Applicant's Ex. G, H, I, and J, and they were admitted to the record without objection. On September 18, 2006, DOHA received the transcript (Tr.) of the proceeding.

On September 18, 2006, Applicant's employer filed, with DOHA, a seven-page document identified as an Employment/Wage Verification Report (verification report) for Applicant for the period July 2, 2000 to September 10, 2006.⁽³⁾ Also attached to the verification report was an unsigned and undated form letter identifying a contact for

follow-up questions regarding the verification report and a contact if the recipient wished to request a future garnishment. It was unclear who had requested the verification report or whether Applicant's employer had provided a copy of the report to Applicant. Accordingly, I served Applicant and Department Counsel with copies of the verification report and attached letter and requested that each party advise me, no later than close of business October 10, 2006, whether he objected to the admission of these documents to the record. Neither party objected, and, accordingly, the verification report and the attached letter were admitted to the record as Applicant's Ex. K.

FINDINGS OF FACT

The SOR contains seven allegations of disqualifying conduct under Guideline F, Financial Considerations. In his answer to the SOR, Applicant admitted five allegations and denied two. He also offered mitigating circumstances. Applicant's admissions are incorporated as findings of fact.

Applicant is 45 years old, single, and employed by a government contractor as a temporary employee doing full-time work. Applicant has worked for his current employer for approximately four years, sometimes in intermittent or part-time work. For the past two years, he has worked full-time as an administrative assistant. (Ex. 2, Ex. K; Tr. 59-61.)

Applicant attended college for one year. He worked for several employers as a graphic artist from 1988 until 2001. He was first granted a security clearance in 1989. (Ex. 2; Tr. 35-36; 60.)

From 1988 to 1999, Applicant worked for one employer as a graphic artist. At some time during that employment, Applicant decided to go into business for himself in order to make a higher income. He kept his job, but became involved in real estate ventures, specifically buying houses and selling them quickly ("flipping"). Applicant's real estate ventures caused him to become financially over-extended. He was unable to make the monthly payments on an automobile lease he had acquired. In March 1999, he petitioned for Chapter 7 bankruptcy, listing total assets of \$30,540 and total liabilities of \$23,527.74. The automobile he had leased was included in the bankruptcy. (Ex. 4; Tr. 41-42.) The bankruptcy court granted Applicant's petition for a release from his dischargeable debts on July 10, 1999 (Ex. 2, Ex. 4; Tr. 36-38.)

In August 1999, Applicant was laid off from his job as a graphic artist. He received \$5,000 in severance pay from his employer, and he also collected unemployment insurance. (Tr. 56-57.) Applicant found part-time employment with another graphic arts firm in August 1999 and worked for the firm for about eight months. He then acquired a job with another graphic arts firm, and he worked there from April 2000 to June 2001. From June 2001 to March 2002, he was unemployed. He began working for his present employer in March 2002. (Tr. 38-40.)

After his discharge in bankruptcy, Applicant continued to have financial difficulties. He owed a telephone service provider \$566 for an account placed in collection in about August 2002. At his hearing and in post-hearing submissions, he provided evidence of payment of \$166 on the account in June 2006. (Ex. B, Ex. G, Ex. J.) Applicant also owed a television provider \$110 on an account placed for collection in about November 2002. At his hearing, Applicant provided evidence showing the account had been paid in full in May 2006. (Ex. C; Ex. 11; Tr. 44.) Applicant also submitted evidence showing he had contested a debt to a medical provider for \$2,318, and the debt had been removed from his credit report. (Ex. A; Tr. 42.)

Applicant owed his state of residence approximately \$2,522 in taxes, penalties, and interest for tax years 2000 and 2001. In April 2003, the state filed a Notice of Lien of Judgment against Applicant for failure to pay the tax debt. Applicant began to make payments on the debt but allowed the payments to lapse when he experienced some difficulties in his job situation. (Tr. 33.) Additionally, Applicant owed his state approximately \$1,543 in taxes, penalties, and interest for the tax years between 1999 and 2003, and the state filed a Notice of Lien of Judgment against him on February 3, 2005 for non-payment of that debt. At his hearing, Applicant testified he made an oral agreement in July 2006 to pay the combined debt of \$4,720.56 in installments of \$221.65 per month, and he provided evidence of a payment of \$250 in August 2006. (Tr. 44-45; Ex. E.)

Applicant's gross income is \$3200 per month. His net take-home pay each month is approximately \$2,268. He lives with his sister and pays \$200 per month in rent. His other fixed expenses total approximately \$500. Applicant recently purchased a new truck, because he found his existing vehicle was too small. His monthly payments on the new truck are

\$500. Since July 2005, he has been paying by payroll deduction approximately \$200 a month on past-due federal taxes. (Ex. 7; Tr. 46-51.) Applicant has not sought credit counseling to assist him in the management of his finances. (Tr. 51-52.)

POLICIES

"[No 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 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." Exec. Or. 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.

Enclosure 2 of the Directive sets forth personal security guidelines, as well as the disqualifying conditions (DC) and mitigating conditions (MC) under each guideline. 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. 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. *See Egan*, 484 U.S. at 531. 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).

Once the Government establishes a disqualifying condition by substantial evidence, the burden shifts to the applicant to rebut, explain, extenuate, or mitigate the facts. ISCR Case No. 01-20700 at 3 (App. Bd. Dec. 19, 2002); *see* 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.

CONCLUSIONS

Guideline F-Financial Considerations

The Government's concern under Guideline F, Financial Considerations, is that individuals who are financially overextended and unable or unwilling to pay their just debts may try to generate funds by engaging in illegal acts. Applicant has a history of not meeting his financial obligations, and, as the result of his employment circumstances and his financial choices, he has often been unable to timely satisfy his debts. These conditions raise security concerns under subparagraphs E2.A6.1.2.1. and E2.A6.1.2.3. of Guideline F.

In the SOR, DOHA alleged that Applicant petitioned for Chapter 7 bankruptcy in about March 1999 and was released from dischargeable debts on July 10, 1999 (¶ 1.a.); that he owed an automobile company approximately \$13,174 on an account charged off as a bad debt in about February 1999, and, as of March 5, 2005, this debt had not been satisfied (¶ 1.b.); that he owed a medical provider approximately \$2,318 on an account placed for collection in about May 2002, and, as of January 6, 2006, the account had not been satisfied (¶ 1.c.); that he owed a communications company approximately \$566 on an account placed for collection in about August 2002, and, as of June 27, 2005, the debt had not been satisfied (¶ 1.d.); that he owed a creditor \$110 on an account placed for collection in about November 2002, and, as of January 6, 2006, the debt had not been satisfied (¶ 1.e.); that he owed his state of residence \$2,522 in taxes, penalties, and interest for tax years 2000 and 2001, that a Notice of Lien of Judgment was filed against him on April 10, 2003, for non payment of his state tax debt, and, as of January 6, 2006, the debt had not been satisfied (¶ 1.f.); and that he owed

his state of residence \$1,543 in taxes, penalties, and interest for the tax years between 1999 and 2003, that a Notice of Lien of Judgment was filed against him on February 3, 2005, for non-payment of his state tax debt, and, as of January 6, 2006, the debt had not been satisfied (¶ 1.g.).

The Government has established, through Applicant's admissions and the record evidence, a *prima facie* case that Applicant is financially overextended. While bankruptcy can be an indicator of financial over-extension, it is a legitimate and legal method of resolving certain types of indebtedness. It is not a disqualifying condition under Guideline F, and, accordingly, I conclude the allegation at ¶ 1.a. for Applicant. At his hearing, Applicant provided persuasive evidence showing that the automobile debt alleged at ¶ 1.b. of the SOR had been discharged in his bankruptcy action in July 1999. He also provided credible evidence establishing that he had contested a medical debt alleged at ¶ 1.c. of the SOR, and it had been removed from his credit report. He also provided credible evidence that he had paid in full a debt of \$110 alleged at ¶ 1.e. in May 2006. I conclude the allegations at ¶¶ 1.b., 1.c., and 1.e. for Applicant.

However, Applicant failed to rebut the Government's security concerns that he had a history of not meeting his financial obligations or that he was unable or unwilling to satisfy his debts, as specified in disqualifying conditions ¶¶ E2.A6.1.2.1. and E2.A6.1.2.3. of Guideline F.

We turn to a review of the several conditions that could mitigate the security concerns raised by Applicant's remaining financial delinquencies. Applicant's acknowledged financial delinquencies involve long-standing debts, and his inability or unwillingness to pay them is recent. Thus, neither mitigating condition E2.A.6.1.3.1. nor mitigating condition E2.A6.1.3.2. applies.

Applicant attributed his financial delinquencies to a period of unemployment and under-employment occurring between August 1999 and March 2002. For the past two years, he has been employed full-time.

If a person's financial delinquencies were largely caused by conditions beyond his or her control, then mitigating condition E2.A6.1.3.3. might apply. The record shows that Applicant's financial problems were not caused solely by his job loss in 1999, and his subsequent period of unemployment and under-employment. In the years before he declared bankruptcy in 1999, Applicant worked full-time and experienced difficulties in satisfying his debts. His loss of a good job in 1999, while unfortunate, does not explain or mitigate his long-standing financial difficulties and his unwillingness to set aside and save the necessary resources to timely pay his creditors. His financial problems do not appear to be entirely the result of conditions beyond his control. Thus, mitigating condition E2.A6.1.3.3. applies only in part.

If a person initiates a good-faith effort to repay overdue creditors or otherwise resolve debts, then mitigating condition E2.A6.1.3.6. might apply. To his credit, Applicant made efforts to clarify the status of several debts alleged on the SOR, and in recent months he also paid, or made arrangements to pay, his remaining debts. Applicant's commitment to pay his state tax liens in the future shows good intent, although he agreed to pay his tax debts in the past and was unable to do so. Accordingly, I find that mitigating condition E2.A6.1.3.6. applies in part. However, promises to take actions in the future are not a substitute for a documented track record of remedial actions. ISCR Case No. 98-0188 at 3 (April 29, 1999.) In determining an individual's security worthiness, the Government cannot rely on the possibility that an applicant might resolve his or her outstanding debts at some future date. ISCR Case No. 98-0614 at 5 (App. Bd. Jul. 12, 1999)

Applicant has not sought financial counseling and has not presented clear indications that his financial problems are being resolved or are under control. Therefore, mitigating condition E2.A6.1.3.4. is inapplicable, and the Guideline F allegations at ¶¶ 1.d., 1.f., and 1.g. of the SOR are concluded against the Applicant.

In all adjudications, the protection of our national security is the paramount concern. Security clearance decisions are not intended to assign guilt or to impose further punishment for past transgressions. Rather, the objective of the security clearance process is the fair-minded, common sense assessment of a person's trustworthiness and fitness for access to classified information. Indeed, the "whole person" concept recognizes we should view a person by the totality of his or her acts and omissions, including all disqualifying and mitigating conduct. Having done so, I conclude Applicant should not be entrusted with a security clearance. In reaching my decision, I have considered the evidence as a whole, including the appropriate factors and guidelines in Department of Defense Directive, 5220.6., as amended.

FORMAL FINDINGS

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

Paragraph 1.: Guideline F: AGAINST APPLICANT

Subparagraph 1.a.: For Applicant

Subparagraph 1.b.: For Applicant

Subparagraph 1.c.: For Applicant

Subparagraph 1.d.: Against Applicant

Subparagraph 1.e.: For Applicant

Subparagraph 1.f.: Against Applicant

Subparagraph 1.g.: 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.

Joan Caton Anthony

Administrative Judge

1. Exec. Or. 10865, *Safeguarding Classified Information within Industry* (Feb. 20, 1960), as amended and modified.
2. Department of Defense Directive 5220.6, *Defense Industrial Personnel Security Clearance Review Program* (Jan. 2, 1992), as amended and modified.
3. The verification report listed Applicant's actual weekly employment as commencing in December 2002. His most recent week of employment was listed as ending September 3, 2006.