

DATE: December 28, 2006

In re:

SSN: -----

Applicant for Security Clearance

CR Case No. 05-16748

DECISION OF ADMINISTRATIVE JUDGE

JACQUELINE T. WILLIAMS

APPEARANCES

FOR GOVERNMENT

Francisco J. Mendez, Jr., Esq., Department Counsel

FOR APPLICANT

Pro Se

SYNOPSIS

Applicant is 62 years old and has worked as a semiskilled laborer for a defense contractor since June 2005. He owes approximately \$14,057 on seven different delinquent accounts. Approximately \$2,895 of the debt represents medical bills for a hospital stay without surgery, which was followed by another hospital stay that included surgery. He denies responsibility for a \$950 telephone bill. A bill that once totaled approximately \$3,000 was sold to a collection agency and is now \$10,212. Applicant has not mitigated the financial considerations security concerns. Clearance is denied.

STATEMENT OF THE CASE

On July 5, 2005, Applicant applied for a security clearance and completed a Security Clearance Application (SF 86).⁽¹⁾ On March 29, 2006, the Defense Office of Hearings and Appeals (DOHA) issued a Statement of Reasons (SOR) to Applicant, pursuant to Executive Order 10865, *Safeguarding Classified Information Within Industry*, dated February 20, 1960, as amended and modified, and Department of Defense Directive 5220.6, *Defense Industrial Personnel Security Clearance Review Program* (Directive), dated January 2, 1992, as amended and modified. The SOR detailed reasons under Guideline F (Financial Considerations) 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 a clearance should be granted or revoked.

In a sworn statement, dated April 12, 2006, Applicant responded to the SOR allegations and elected to have his case decided on the written record in lieu of a hearing.⁽²⁾ Department Counsel submitted the Government's written case on September 13, 2006. A complete copy of the file of relevant material (FORM)⁽³⁾ was provided to Applicant, and he was afforded an opportunity to file objections and submit material in refutation, extenuation, or mitigation. He had 30 days to respond to the FORM, and his response was submitted on August 29, 2006, without an objection by Department Counsel. The case was assigned to me on September 18, 2006.

FINDINGS OF FACT

Applicant admitted the factual allegations pertaining to financial considerations under Guideline F cited in the SOR, subparagraphs 1.a, 1.b, 1.d, through 1.f. He denied the factual allegation set forth in the SOR, subparagraph 1.c. Those admissions are incorporated herein as findings of fact. After a complete and thorough review of the evidence in the record, and upon due consideration of same, I make the following findings of fact:

Applicant is a 62-year-old semiskilled laborer who has worked for a defense contractor since June 2005. He married in 1965 and has two adult children. He immigrated from Mexico to the U.S. in 1988. ⁽⁴⁾ On June 19, 1998, he became a naturalized U.S. citizen. He commenced his community college education in May 1992 and was awarded an associate's degree in May 1993. ⁽⁵⁾

An August 8, 2005, credit bureau report, which serves as the basis of allegations in the SOR, indicated that Applicant had seven open collection accounts, totaling approximately \$14,057. The debts at issue are these:

¶ **1.a/Medical bill (\$44.00)** Account placed for collection in July 2000. This debt does not appear on Applicant's March 9, 2006, ⁽⁶⁾ nor his July 18, 2006, ⁽⁷⁾ credit report. This debt has not been satisfied.

¶ **1.b/Medical bill (\$1,253)** Account placed for collection in March 2002. As of March 9, 2006, this debt had not been satisfied.

¶ **1.c/Telephone bill (\$950)** Applicant denies this account is his. Account was placed for collection in December 2002. As of March 9, 2006, this debt had not been satisfied.

¶ **1.d/AAC (\$10,212)** Account was placed for collection in March 2003. Applicant indicated he had this account for many years. One day he received a letter indicating this account was being closed, and that he needed to pay the balance in full. At that time he owed about \$3,000. The account was sold to a collection agency. The collection agency informed him that he now owed \$6,000, and that amount has escalated to \$10,212. ⁽⁸⁾ Applicant stated that he "tried to make arrangements with them and I offered them to pay them \$150.00 per month and they did not accept my propositions, they said that I need to pay everything/the entire amount in full." ⁽⁹⁾ As of March 9, 2006, this debt had not been satisfied.

¶ **1.e/Medical bill (\$71)** The March 9, 2006, credit report indicates that Applicant disputes this bill. Account was placed for collection in January 2005. As of March 9, 2006, this debt had not been satisfied.

¶ **1.f/Medical bill (\$801)** Account was placed for collection in April 2005. As of March 9, 2006, this debt had not been satisfied.

¶ **1.g/Medical bill (\$726)** Account was placed for collection in July 2005. As of March 9, 2006, this debt has not been satisfied.

The record is devoid of Applicant paying any amount toward any of the above-mentioned delinquent debts. Applicant explained that he had good intentions to pay his delinquent debt, but he has been unable to do that. First he got sick and then he got sick again and was admitted to the hospital. ⁽¹⁰⁾

Regarding the aforementioned medical debts that are outstanding, Applicant indicated the following:

I had made payment arrangements with the business office for these medical bills and the arrangement was accepted and I had started making my payments timely and as the schedule agreed upon; then I got a letter from a collection agency stating that my medical bill account had been referred to them, I asked them why if I had not failed any scheduled payments and was paying the agreed upon amount, I was told that I would need to contact the business office where I had made the arrangements . . . So I then went in person to the business office . . . I asked then what will happen to the money I had already paid on the account and they told me they could not give me an answer . . . Then I asked if we could set up a payment plan again to pay off this debt and I was told that I needed to pay the amount in full and I told them that I could not afford to pay the amount owed in full and that all I could do was make it in payments, they denied

this offer.⁽¹¹⁾

At some unknown period, Applicant was hospitalized for gall bladder problems and pain, and tests were conducted. He contends that the doctor told him that he had to have his gall bladder removed. He informed the doctor to go ahead and perform the surgery since he was already in the hospital. For days, he indicated, the doctor would come to see him to tell him that he needed surgery. He was then released from the hospital and the doctor told him to follow-up. Once home, Applicant went to see the doctor who ran the same tests he had done in the hospital. Applicant was once again informed he needed to have gall bladder surgery. Applicant was hospitalized again and his gall bladder was removed. The doctor did not answer his question as to why the surgery was not done when he was initially hospitalized. Applicant believes that the doctor committed fraud.

Applicant was unemployed from January 2004 to March 2004. He was also unemployed from July 2004 through February 2005.

POLICIES

Enclosure 2 of the Directive sets forth adjudicative guidelines to be considered in evaluating a person's eligibility to hold a security clearance. Included in the guidelines are disqualifying conditions (DC) and mitigating conditions (MC) applicable to each specific guideline. Additionally, each security clearance decision must be a fair and impartial commonsense decision based on the relevant and material facts and circumstances, the whole-person concept, along with the factors listed in the Directive. Specifically these are: (1) the nature and seriousness of the conduct and surrounding circumstances; (2) the frequency and recency of the conduct; (3) the age of the applicant; (4) the motivation of the applicant, and the extent to which the conduct was negligent, willful, voluntary, or undertaken with knowledge of the consequences; (5) the absence or presence of rehabilitation; and (6) the probability that the circumstances or conduct will continue or recur in the future. Although the presence or absence of a particular condition or factor for or against clearance is not outcome determinative, the adjudicative guidelines should be followed whenever a case can be measured against the policy guidance.

The sole purpose of a security clearance determination is to decide if it is clearly consistent with the national interest to grant or continue a security clearance for an applicant.⁽¹²⁾ The Government has the burden of proving controverted facts.⁽¹³⁾ The burden of proof is something less than a preponderance of evidence.⁽¹⁴⁾ Once the Government has met its burden, the burden shifts to an applicant to present evidence of refutation, extenuation, or mitigation to overcome the case against him.⁽¹⁵⁾ Additionally, an applicant has the ultimate burden of persuasion to obtain a favorable clearance decision.⁽¹⁶⁾

No one has a right to a security clearance⁽¹⁷⁾ and "the clearly consistent standard indicates that security clearance determinations should err, if they must, on the side of denials."⁽¹⁸⁾ Any reasonable doubt about whether an applicant should be allowed access to sensitive information must be resolved in favor of protecting such sensitive information.⁽¹⁹⁾ The decision to deny an individual a security clearance is not necessarily a determination as to the loyalty of an applicant.⁽²⁰⁾ 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.

Based upon consideration of the evidence, I find the following adjudicative guideline most pertinent to the evaluation of the facts in the 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. Unexplained affluence is often linked to proceeds from financially profitable criminal.

Conditions that could raise a security concern and may be disqualifying, as well as those which would mitigate security concerns, pertaining to the adjudicative guideline, are set forth and discussed in the conclusions below.

CONCLUSIONS

I have carefully considered all the facts in evidence and the legal standards, and I reach the following conclusions.

Financial Considerations

Under Guideline F, a security concern exists for an individual who is financially overextended. The person is at risk of having to engage in illegal or unethical acts to generate funds to meet financial obligations. Similarly, an individual who is financially irresponsible may also be unconcerned, negligent, or careless in properly handling and safeguarding classified information. Applicant has a history of financial problems. His current delinquent debts total approximately \$14,057. Thus, Financial Considerations Disqualifying Conditions (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*) apply.

Various conditions can mitigate security concerns arising from financial difficulties. Applicant denies responsibility for a \$950 telephone bill. Another bill that once was \$3,000 was sold to a collection agency, and the bill is now \$10,212. He did have an indefinite stay in the hospital, which subsequently required another hospitalization with surgery. Moreover, he was unemployed from January 2004 to March 2004 and again from July 2004 through February 2005. Applicant has not participated in financial counseling to assist him in managing his money to pay off these delinquent debts. Thus, I find that Financial Considerations Mitigating Conditions (FC MC) E2.A6.1.3.3 (*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)*) applies. However, FC MC E2.A6.1.3.4 (*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 E2.A6.1.3.6 (*the individual initiated a good-faith effort to repay overdue creditors or otherwise resolve debts*) do not apply. Applicant has not mitigated the Government's case. Accordingly, allegations 1.a through 1.g of the SOR are concluded against Applicant.

I have considered all the evidence in the case. I have also considered the "whole person" concept in evaluating Applicant's risk and vulnerability in protecting our national interests. The amount of delinquent debt, although not negligible, is not that outlandish especially considering that he denies a \$1,000 telephone bill and a bill that was \$3,000 is now more than \$10,000. Applicant should seek financial counseling to learn how to manage his money. Based on the evidence of record, it is not clearly consistent with the national interest to grant Applicant a security clearance. For the reasons stated, I conclude Applicant is not suitable for access to classified information.

FORMAL FINDINGS

Formal Findings for or against Applicant on the allegations set forth in the SOR, as required by Section E3.1.25 of Enclosure 3 of the Directive, are:

Paragraph 1. Guideline F (Financial Considerations): AGAINST APPLICANT

Subparagraph 1.a: Against Applicant

Subparagraph 1.b: Against 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

DECISION

In light of all of the circumstances in the case, it is not clearly consistent with the national interest to grant or continue a

security clearance for Applicant. Clearance is denied.

Jacqueline T. Williams

Administrative Judge

1. Item 4 (Security Clearance Application, dated July 5, 2005).
2. Item 3 (Applicant's Answer, dated July 10, 2006).
3. The Government submitted eight items in support of the allegations in the SOR.
4. Item 5 (Certificate of Immigration, dated June 19, 1998) at 10.
5. *Id.*
6. Item 7 (Credit Report, dated March 9, 2006).
7. Item 8 (Credit Report, dated July 18, 2006).
8. Item 3, *supra*, note 2.
9. Item 5 (DOHA Interrogatory Responses, dated March 2, 2006) at 2.
10. Applicant's Response to the FORM, dated August 29, 2006.
11. Item 3, *supra*, note 2.
12. ISCR Case No. 96-0277 (July 11, 1997) at p. 2.
13. ISCR Case No. 97-0016 (December 31, 1997) at p. 3; Directive, Enclosure 3, ¶ E3.1.14.
14. *Department of the Navy v. Egan*, 484 U.S. 518, 531 (1988).
15. ISCR Case No. 94-1075 (August 10, 1995) at pp. 3-4; Directive, Enclosure 3, ¶ E3.1.15.
16. ISCR Case No. 93-1390 (January 27, 1995) at pp. 7-8; Directive, Enclosure 3, ¶ E3.1.15.
17. *Egan*, 484 U.S. at 531.
18. *Id.*
19. *Id.*; Directive, Enclosure 2, ¶ E2.2.2.
20. Executive Order 10865 § 7.