

DATE: October 19, 2006

In Re:

SSN: -----

Applicant for Security Clearance

CR Case No. 06-00799

DECISION OF ADMINISTRATIVE JUDGE

JOAN CATON ANTHONY

APPEARANCES

FOR GOVERNMENT

Stephanie C. Hess, Esq., Department Counsel

FOR APPLICANT

Pro Se

SYNOPSIS

Applicant has a history of financial delinquencies and unpaid debts. He currently owes approximately \$50,000 in education loans and more than \$42,000 in consumer debt. In April 2006, Applicant committed to a repayment plan to satisfy his consumer debt, and he intends to pay off his debts in monthly payments of approximately \$1,100 over a period of four years and three months. While Applicant's effort to repay his creditors is a positive sign, his short history of repayment is insufficient to demonstrate he has overcome his history of financial over-extension. Applicant has failed to mitigate Guideline F financial concerns. 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 April 14, 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 answered the SOR in writing on May 1, 2006, and elected to have a hearing before an administrative judge. The case was assigned to me July 19, 2006. On September 20, 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 offered 19 exhibits for admission to the record. The Government's exhibits were identified as Exhibits (Ex.) 1, 2A through 2P, 3, and 4, and they were admitted into evidence without objection. Applicant testified on his own behalf and called no other witnesses. He offered six exhibits for admission to the record, which were identified as Ex. A through F. Applicant's exhibits were admitted into evidence without objection. On September 29, 2006, DOHA received the transcript (Tr.) of the proceeding.

FINDINGS OF FACT

The SOR contains nine allegations of disqualifying conduct under Guideline F, Financial Considerations. In his answer to the SOR, Applicant admitted all nine allegations. His admissions are incorporated as findings of fact.

Applicant is 41 years old, never married, and employed as a bio-systems engineer by a government contractor. He served in the U.S. Army from September 1983 to November 1991. While serving in the Army, Applicant held a security clearance in approximately 1985. From December 1992 until he decided sometime in 1999 to attend college full-time, Applicant worked as a mail clerk for the U.S. Postal Service. (Ex. 1; Tr. 30, 50, 60-61.) During his employment at the Postal Service, he acquired approximately \$20,000 in debt. (Tr. 48.)

In 1996, Applicant enrolled in a community college. In 1999, he enrolled as a full-time student at a university in a nearby city. He hoped to transfer to a Postal Service job in the city where the university was located, but he was unable to do so without losing seniority. To support himself, Applicant occasionally worked part time. His mother also helped him with expenses until she passed away in 2002. He used credit cards to pay his living expenses. In 2004, Applicant was awarded degrees in chemical engineering and physics. He was 39 years old. (Tr. 47-49, 53, 55-56, 57-58.)

After obtaining his degrees, Applicant had difficulty finding employment. He worked at several temporary jobs, and he had trouble paying his debts. When he got behind on his rent, he took out pay-day loans. In January 2005, he sought credit counseling from a debt management firm and began making regular payments to his creditors through the debt management firm. However, after approximately five months, he stopped participating in the repayment program because he did not have enough money to make the payments. In May 2005, Applicant found a job in his field of study. He reasoned that if he was earning more money, he could negotiate repayment plans on his own with his creditors, and it would not be necessary to pay a service fee to the debt management firm to act on his behalf. (Tr. 27-29.) Applicant's education debts, totaling approximately \$50,000, are in deferred status because he lacks sufficient funds to repay them. (Tr. 44-45.)

Since obtaining his first job in his field, Applicant has found another job, which pays better. Applicant's current annual salary is \$60,000. His monthly take-home pay is \$3,268. (Tr. 36, 41.) He also receives a monthly disability payment of \$218 from the Department of Veterans Affairs for a service-connected disability. (Ex. 2N; Tr. 37.)

In April 2006, Applicant again contracted with a debt management firm for assistance in paying his creditors. He entered into an agreement to pay the debt management service \$1,125 each month. At his hearing, he presented exhibits showing he had paid the debt management service \$1,125 each month in May, June, July, and August 2006 to pay down debts owed to ten of his creditors. (Ex. B; Ex. D; Ex. F.) The debt management firm estimated Applicant owed \$42,546.66 in consumer debt and that it would take him four years and three months to pay off all his creditors at the monthly rate of \$1,125. (Ex. B.)

Applicant's rent is \$800 per month; his commuting expenses are \$60 per month; and he spends approximately \$40 a month on dry cleaning. Additionally, Applicant spends \$172 each month on a car payment. His car insurance costs him \$95 per month; he spends approximately \$600 a month on food; and his cell phone costs him \$100 per month. According to his testimony, Applicant's fixed household expenses are approximately \$1,867 per month. (Tr. 37-41.) After paying his fixed expenses and making his monthly payment to the debt management firm, Applicant has an estimated \$450 to \$490 remaining. (Tr. 41.)

Applicant does not have a savings account, although he says he is saving money and putting it in his checking account. He estimates he has a balance of approximately \$200 in his checking account. He has approximately \$1,340 in his 401K account with his present employer. He liquidated his 401K account with his previous employer in order to repay pay-day loans and loans he had received from friends. Applicant also provides his sister with approximately \$50 to \$100 every two weeks when she needs it. (Tr. 41-44.)

Applicant presented evidence showing that a past-due debt of \$76, identified as a collection account in June 2006, had been paid in full on July 17, 2006. (Ex. 2H, Ex. C, Ex. E at 23.)

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 he has not demonstrated a willingness to satisfy his debts. These conditions raise security concerns under Disqualifying Conditions cited at subparagraphs E2.A6.1.2.1. and E2.A6.1.2.3. of Guideline F. ⁽³⁾ DOHA's Appeal Board has concluded that "[a] person who is unwilling to fulfill his legal obligations does not demonstrate the high degree of good judgment and reliability required of persons granted access to classified information." ISCR Case No. 98-0810 at 4 (App. Bd. June 8, 2000).

In the SOR, DOHA alleged that Applicant owed a creditor approximately \$6,133 on an account, and, as of March 1, 2006, the account was past due in the approximate amount of \$120 (¶ 1.a); that he owed a creditor approximately \$7,061 on an account charged off as a bad debt, and, as of March 1, 2006, the debt had not been satisfied (¶ 1.b.); that he owed a creditor approximately \$1,972, and as of March 1, 2006, the debt was 90 days past due in the approximate amount of \$313 (¶ 1.c.); that he owed a creditor approximately \$6,053, and, as of March 1, 2006 the debt was 60 days past due in the approximate amount of \$365 (¶ 1.d.); and that he owed a creditor approximately \$4,623 on an account, and, as of March 1, 2006, the debt was 60 days past due in the approximate amount of \$307 (¶ 1.e.).

DOHA also alleged that Applicant was indebted to a creditor for approximately \$9,085, and, as of March 1, 2006, the debt was 60 days past due in the approximate amount of \$564 (¶ 1.f); that he was indebted to a communications company for approximately \$352, and, as of March 1, 2006, the debt was 60 days past due in the approximate amount of \$287 (¶ 1.g.); that he was indebted to a creditor for approximately \$276, and, as of March 1, 2006, the debt was 30 days past due in the approximate amount of \$30 (¶ 1.h.); and, that he had participated in a credit counseling program between approximately January 2005 and November 2005 and had stopped participating because he had difficulty in maintaining the payment plan (¶ 1.i.).

The Government has established, through Applicant's admissions and the record evidence, a *prima facie* case that Applicant is financially overextended. Applicant provided no persuasive evidence to rebut the financial concerns specified in the SOR and identified as disqualifying conditions under ¶¶ E2.A6.1.2.1. and E2.A6.1.2.3. of Guideline F.

Applicant has a history of financial over-extension, dating back to the 1990s when he worked as a postal clerk and accumulated approximately \$20,000 in debt. Beginning in 1999, he attended college full-time and worked part-time. In order to maintain himself as a full-time student, he used credit cards to pay his living expenses. Applicant has twice sought help from debt management firms in order to systematically repay his creditors. In 2005, he began a repayment program but dropped out when it became apparent to him he did not have enough money to make the payments. In April 2006, he engaged the services of a debt management firm to help him pay his creditors, but at this time it is not certain he will be able to honor his promises to timely pay his creditors. DOHA's Appeal Board has stated that promises to pay one's debts in the future are not a substitute for a clear record of debts actually paid. ISCR Case No. 98-0188 at 3 (App. Bd. Apr. 29, 1999) In determining an individual's security worthiness, the Government cannot rely on the possibility that the applicant might resolve his or her outstanding debts at some future date.

We turn to a review of the several conditions that could mitigate the security concerns raised by Applicant's financial over-extension and delinquencies. Applicant's acknowledged delinquencies date to at least the early 1990s. His 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 some of his financial problems to his inability to find work when he received his college degrees in 2004, and the record shows he was underemployed until about May 2005. 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. Assessing the applicability of this mitigating condition often requires a two-part analysis. First, an administrative judge must review and weigh the existing evidence to determine if the applicant's financial difficulties initially arose from circumstances outside of his or her control. Second, assuming that some or all of the circumstances were beyond the individual's control, the judge may consider whether the applicant acted in a reasonable manner when dealing with those financial difficulties. *See e.g.*, ISCR Case No. 99-0462 at 4 (App. Bd. May 25, 2000); ISCR Case No. 99-0012 at 4 (App. Bd. Dec. 1., 1999).

In assessing the applicability of mitigating condition E2.A6.1.3.3. in Applicant's case, I conclude Applicant's difficulty in finding work in his field from his graduation in 2004 until May 2005, while unfortunate, does not explain or mitigate his long-standing financial difficulties resulting from his use of credit cards, while employed and as a student, to finance his education and living expenses, and his unwillingness for many years to approach his creditors and arrange payment or settlement. His present financial problems do not appear to be primarily the result of conditions beyond his control. Thus, mitigating condition E2.A6.1.3.3. applies only in part.

Applicant presented some evidence that he had received consumer financial credit counseling to help him manage his financial problems, but he did not present clear indications that his financial problems are being resolved or are under control. Therefore, mitigating condition E2.A6.1.3.4. applies only in part. While he presented evidence he had attempted to pay overdue creditors or otherwise resolve his debts, his actions were recent and did not suggest a track record of timely meeting his financial obligations and, therefore, were not persuasive in light of his earlier unfulfilled attempts to resolve his debts. Accordingly, I find mitigating condition E2.A6.1.3.6. inapplicable, and the Guideline F allegations in 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 SO:

Paragraph 1.: Guideline F: 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

Subparagraph 1.h.: Against Applicant

Subparagraph 1.i.: 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. Disqualifying Condition E2.A6.1.2.1. reads: A history of not meeting financial obligations. Disqualifying Condition E2.A6.1.2.3. reads: Inability or unwillingness to satisfy debts.