

DATE: November 30, 2006

In Re:

SSN: -----

Applicant for Security Clearance

CR Case No. 06-03329

DECISION OF ADMINISTRATIVE JUDGE

CHARLES D. ABLARD

APPEARANCES

FOR GOVERNMENT

Nicole L. Noel, Esq., Department Counsel

FOR APPLICANT

Pro Se

SYNOPSIS

Applicant failed to mitigate security concerns arising from delinquent debts of approximately \$15,000 owed to twelve creditors. Applicant incurred the debts between four and six years ago and is waiting for the statute of limitations to run to clear them from his credit reports. Applicant is single, employed in a well paying job with no major financial obligations, and has \$3,000 in savings yet he declines to contact the creditors to attempt to work out a settlement. Clearance is denied.

STATEMENT OF CASE

On June 9, 2006, the Defense Office of Hearings and Appeals (DOHA), pursuant to Executive Order 10865, *Safeguarding Classified Information Within Industry*, 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, 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. DOHA recommended the case be referred to an administrative judge to determine whether a clearance should be granted, continued, denied, or revoked.

On June 26, 2006, Applicant responded to the SOR allegations and requested a hearing. The matter was assigned to me on September 1, 2006. A notice of hearing was issued on September 5, 2006, for a hearing on September 18, 2006, and it was held that day. The government offered four exhibits and Applicant offered three into evidence and all were accepted. The transcript was received on September 27, 2006. The record was left open until November 17, 2006, for submission of additional evidence from Applicant. Nothing was received.

FINDINGS OF FACT

Applicant incurred delinquent debts of approximately \$15,000 to 12 creditors. After a complete review of the record, I make the following additional findings of fact:

Applicant is a 30-year-old employee of a major defense contractor who has done network maintenance for the company since June 2004.

Applicant offered proof of payment of two of the smaller debts and declared his willingness to pay a third he is investigating to determine if it is valid. They are as follows:

SOR 1.h.-Paid \$68 for a medical account (Exh. 4);

SOR 1.k.-Paid \$116 for cable service (Exh. A attached to Answer);

SOR 1.l.)-Recent dental work in 2006 for \$127 possibly not covered in full by insurance. He is investigating and will pay if debt is owed.

Two of the debts (SOR 1.d. and e.) are duplicates for a computer purchased while he was in school. He asserts that this debt and the other eight remaining debts totaling over \$12,000 were incurred four to six years ago and the statute of limitations of his state either has run or is about to run so he cannot be sued for them. He believes they will soon be dropped from his credit report. He does not want to open discussions with any of them since such is likely to extend the statute of limitations and he will again be liable for them.

The origin of the majority of the remaining delinquent debts for \$7,700 were for medical expenses connected with an accident on a dirt bike resulting in hospitalization and surgery. There has been no effort to settle with the hospital and other medical service providers. The remainder of the delinquent debts totaling approximately \$4,300.00 is for credit card debt. The first (SOR 1.c.) for \$1,590 was incurred in 2000 for less than \$100 but escalated with late charges and interest. The second (SOR 1.e.) for \$2,699 was incurred in 2000 for the computer he used in school until it no longer worked. He did not pay for it because he was in school with little income and then his accident occurred. No effort has been made to resolve the debt since he became employed.

Applicant's salary last year was \$48,000. He is saving money to buy a house and now has almost \$3,000 in cash savings. He is single and lives with his father to whom he pays no rent but he did pay \$700 per month when he was a renter. He expects to rent again and move out of his father's home. His grandmother purchased a 2003 truck for him and he makes payments to her of \$500 per month. He received some credit counseling in 2000 but not since that time. He is well regarded by his supervisor (Exh. B).

POLICIES

"[N]o 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.

An evaluation of whether the applicant meets the security guidelines includes consideration of the following factors: (1) the nature, extent, and seriousness of the conduct; (2) the circumstances surrounding the conduct; (3) the frequency and recency of the conduct; (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 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.

Directive, ¶ E2.2.1. Security clearances are granted only when "it is clearly consistent with the national interest to do so." Executive Order No. 10865 § 2. *See* Executive Order No. 12968 § 3.1(b).

Initially, the Government must establish, by something less than a preponderance of the 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. The applicant then bears the burden of demonstrating it is clearly consistent with the national interest to grant or continue a security clearance. "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. "[S]ecurity clearance determinations should err, if they must, on the side of denials." *Egan*, 484 U.S. at 531. *See* Executive Order No. 12968 § 3.1(b).

CONCLUSIONS

Upon consideration of all the facts in evidence, and after application of all appropriate adjudicative factors, I conclude the following with respect to all allegations set forth in the SOR:

Applicant's delinquent debts prompted the allegation of security concern under Guideline F since an individual who is financially overextended is at risk of having to engage in illegal acts to generate funds. (E2.A6.1.1.) Conditions that could raise a security concern and may be disqualifying include a history of not meeting financial obligations (E2.A6.1.2.1.) and evidence of inability or unwillingness to satisfy debts. (E2.A6.1.2.3.) Mitigating Conditions (MC) might include the fact that the conditions that resulted in the behavior were largely beyond the person's control (E2.A6.1.3.3.) and the person has initiated a good faith effort to repay overdue creditors or otherwise resolve debts. (E2.A6.1.3.6.)

Applicant's dirt bike accident was the major contributing factor to his extensive debts. While the accident may have been beyond his control and the debts that arose therefrom could not have been paid at the time, since his employment with few obligations they could have been paid or settled during the past two and one half years. His cash savings also could be applied to the settlement of the accounts if he chose to do so. However, he has elected to rely on the statute of limitations and the likelihood that the debts will be dropped from his credit reports.

While an applicant is not required under Guideline F to totally resolve all delinquent debts to justify the grant of a security clearance, in view of the fact that these medical and credit card debts constituting the bulk of his delinquent debts have not been resolved and are four to six years old, I cannot conclude that either of the mitigating conditions are applicable. From the evidence offered at the hearing it appears Applicant has sufficient assets to make significant headway in resolving the debts yet he has decided not to do so.

In all adjudications the protection of our national security is of paramount concern. Persons who have access to classified information have an overriding responsibility for the security concerns of the nation. The objective of the security clearance process is the fair-minded, commonsense assessment of a person's trustworthiness and fitness for access to classified information.

The "whole person" concept recognizes we should view a person by the totality of their acts and omissions. Each case must be judged on its own merits taking into consideration all relevant circumstances, and applying sound judgment, mature thinking, and careful analysis. Applicant impressed me at the hearing as a competent young man who acknowledged his obligations but preferred not to address the issues to resolve them but to rely on the passage of time to provide him a good credit rating. He was given almost two months after the hearing to make some efforts at resolution and advise me but did not provide a response.

After considering all the evidence in its totality, and as an integrated whole to focus on the whole person of Applicant, I conclude that it is premature to grant a security clearance at this time.

FORMAL FINDINGS

Formal findings as required by the Directive (Par. E3.1.25) are as follows:

Paragraph 1. Guideline F: AGAINST APPLICANT

Subparagraph 1.a.: Against Applicant

Subparagraph 1.b.: Against Applicant

Subparagraph 1.c.: Against Applicant

Subparagraph 1.d.: For Applicant

Subparagraph 1.e.: Against Applicant

Subparagraph 1.f.: Against Applicant

Subparagraph 1.g.: Against Applicant

Subparagraph 1.h.: For Applicant

Subparagraph 1.i.: Against Applicant

Subparagraph 1.j.: Against Applicant

Subparagraph 1.k. For Applicant

Subparagraph 1.l. For 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 renew a security clearance for Applicant. Clearance is denied.

Charles D. Ablard

Administrative Judge