

DATE: September 27, 2006

In re:

SSN: -----

Applicant for Security Clearance

CR Case No. 06-05524

DECISION OF ADMINISTRATIVE JUDGE

ERIN C. HOGAN

APPEARANCES

FOR GOVERNMENT

Melvin A. Howry, Esq., Department Counsel

FOR APPLICANT

Pro Se

SYNOPSIS

On June 17, 2004, Applicant and his wife filed for Chapter 13 bankruptcy. In November 2004, the case was dismissed. No debts were discharged. Applicant has approximately \$12,814 in delinquent consumer debt. He has resolved two of these accounts. A chronic medical condition prevented him from working full-time in 2003. At hearing, Applicant disclosed that he and his wife owe the IRS approximately \$23,000 for tax years 2000 - 2003. They recently entered into a repayment plan. Although he has resolved some of his delinquent accounts, the majority of his debts remain unresolved. His plan to resolve these accounts is too speculative to mitigate the security concern under Guideline F. Aside from a minor incident in 2004, the majority of his criminal offenses occurred over nine years ago. Guideline J is concluded for Applicant. However, a security concern remains under Guideline F. Clearance is denied.

STATEMENT OF CASE

On May 25, 2006, the Defense Office of Hearings and Appeals (DOHA) issued to Applicant a Statement of Reasons (SOR) stating they were unable to find that it is clearly consistent with the national interest to grant or continue a security clearance. This action was taken under Executive Order 10865, dated February 20, 1960, as amended, and DoD Directive 5220.6, dated January 2, 1992, as amended. The SOR, which is in essence the administrative complaint, alleged security concerns under Guideline F, Financial Considerations, and Guideline J, Criminal Conduct.

In a sworn statement dated June 1, 2006, Applicant responded to the SOR allegations and requested a hearing. The case was assigned to me on June 30, 2006. A notice of hearing was issued on July 3, 2006, scheduling the hearing for July 25, 2006. The hearing was conducted as scheduled. The government submitted five exhibits that were marked as Government Exhibits (Gov Ex) 1-5, and admitted without objection. Applicant testified on his own behalf, and submitted 10 exhibits that were marked as Applicant's Exhibit (AE) A- J, and admitted without objection. The record was held open until August 8, 2006, for the submission of additional documents. Applicant timely submitted six additional exhibits that were marked as AE K- P, and admitted without objection. DOHA received the hearing transcript (Tr.) on August 4, 2006.

FINDINGS OF FACT

In his SOR response, Applicant admits the allegations in ¶¶ 1.a through 1.j, 1.n through 1.p, 2.c through 2.e, and 2.g but denies the allegations in ¶¶ 1.k through 1.m, 2.a, 2.b, and 2.f. Applicant's admissions are incorporated herein. In addition, after a thorough and careful review of the pleadings, exhibits, and testimony, I make the following findings of fact:

Applicant is 42 years old and has been employed as a security officer with a Department of Defense contractor since November 2004.⁽¹⁾ He submitted a security clearance application on December 16, 2004.⁽²⁾ He is a high school graduate.⁽³⁾ He has been married since September 1998 and has two sons, ages 12 and 13, and one daughter, age 8.⁽⁴⁾

Financial Considerations

On June 17, 2004, Applicant and his wife filed for bankruptcy protection under Chapter 13. The bankruptcy was dismissed on November 19, 2004. He and his wife still had approximately \$12,814 in delinquent debts. The debts included: a \$571 credit card account (SOR ¶ 1.b); a \$998 credit card account placed for collection in September 2001 (SOR ¶ 1.c); a \$330 medical account placed for collection in August 2003 (SOR ¶ 1.d); a \$525 cable account placed for collection in September 2003 (SOR ¶ 1.e); a \$375 account placed for collection in December 2003 (SOR ¶ 1.f); a \$330 medical account placed for collection in December 2003 (SOR ¶ 1.g); a \$1,443 credit card account placed for collection in January 2004 (SOR ¶ 1.h); a \$59 utility account (SOR ¶ 1.i); a \$193 telephone account placed for collection in April 2004 (SOR ¶ 1.j); a \$3,958 balance owed after an automobile repossession in June 2004 (SOR ¶ 1.k); a \$1,358 account placed for collection in October 2004 (SOR ¶ 1.l); a \$962 judgment entered against Applicant in May 2005 on behalf of an apartment company (SOR ¶ 1.m); a \$524 credit card account placed for collection in November 2005 (SOR ¶ 1.n); a \$436 credit card account placed for collection in December 2005 (SOR ¶ 1.o); and a \$752 credit card account placed for collection in December 2005 (SOR ¶ 1.p).⁽⁵⁾

Applicant resolved the \$59 debt alleged in SOR ¶ 1.i in June 2006.⁽⁶⁾ He settled the \$3,958 account related to the automobile repossession alleged in SOR ¶ 1.k in April 2006.⁽⁷⁾ All of the other debts remain unresolved. He claims that his insurance company should pay the debt that is alleged in SOR ¶ 1.d. It is a medical bill he incurred while out of state visiting his ill father. He is in the process of working with the hospital billing department and his insurance company to get the matter resolved.⁽⁸⁾ He claims the debts in SOR ¶ 1.d and SOR ¶ 1.g are the same.⁽⁹⁾ The debts have two different account numbers.⁽¹⁰⁾

Applicant denies the debts alleged in SOR ¶¶ 1.l and 1.m. He claims these debts are owed to an apartment complex. He maintains he was wrongfully evicted from the apartment complex.⁽¹¹⁾ Applicant submitted a document which indicates he successfully fought an injunction against harassment filed by his landlord.⁽¹²⁾ However, the same document indicates that he plead guilty to forcible detainer. The court imposed a \$962 judgment plus court costs on May 11, 2005.⁽¹³⁾ The judgment is for unpaid rent. This is the debt alleged in SOR subparagraph 1.m. The evidence is inconclusive that the debt in SOR ¶ 1.l is owed to an apartment complex.

Since 2002, Applicant suffers from a medical condition that has interfered with his ability to work. He was unable to work for most of 2003 due to this medical condition. From January 28, 2006, to March 9, 2006, he took a leave of absence related to another contagious medical condition.⁽¹⁴⁾ His poor health has contributed to his financial situation.

In July 2006, Applicant began a part-time job in order to help pay off some of the bills.⁽¹⁵⁾ He hopes to work 18-20 hours a week at his part-time job.⁽¹⁶⁾ He does not have the ability to pay the debts all at once but hopes to pay them one at a time.⁽¹⁷⁾ He and his wife owe the IRS for tax years 2000, 2001, 2002, and 2003.⁽¹⁸⁾ He claims that when he and his wife filed for bankruptcy, they were advised to amend their income tax returns for tax years 2000 - 2003 as joint income tax returns. They had previously filed under "married, filing single" status. This resulted in them owing additional taxes.⁽¹⁹⁾ In May 2006, they entered into a repayment plan with the IRS where \$370 per month (\$185 per pay check) is automatically taken out of Applicant's paycheck. The total amount owed to the IRS is \$23,200.⁽²⁰⁾ The tax debt was not

alleged in the SOR. Applicant raised this issue at the hearing.

Applicant's monthly income is approximately \$2,400 per month. (21) His wife works full-time. Her monthly income is approximately \$1,500 per month. (22) Their monthly expenses include \$1,000 for rent, \$166 for SRP (utilities); \$96 for water and gas; \$400 for food; two car payments of \$489 and \$452; car insurance \$375; gas for cars \$320; cable, phone and Internet \$116; cell phones \$128; clothes/shoes \$400, medical prescriptions \$10, and orthodontics \$50. (23) Their total monthly expenses are \$4,002. Their combined monthly income is approximately \$3,900 per month. Assuming Applicant continues to work his part-time job on average of 20 hours per week, an additional \$580 will be contributed towards the household income. They will have \$480 each month to apply towards their delinquent debts.

Criminal Conduct

Between January 1986 and November 1997, Applicant has been arrested on six occasions.

On January 14, 1986, he was arrested and charged with Theft of Services. (24) He denies this allegation. When he learned that he had a ticket issued to him for this offense, he looked into the ticket. It was for not paying to get on the subway. He states that he was never arrested for this offense. He claims he had lost his wallet and someone else used his identity. (25)

On May 19, 1989, Applicant was arrested and charged with Infliction of Injury on a Spouse or Co-habitant and Infliction of Corporal Injury on a Spouse or Co-habitant. Applicant denies this arrest. An ex-girlfriend invited him over to her apartment. Her new boyfriend was at the apartment. He got into a fight with the new boyfriend. He had been drinking and claims he was detained in order to sober up. He never had to appear in court. The charges were later dropped due to insufficient evidence. (26)

On June 25, 1989, Applicant was arrested for Theft and Giving False Identification. He admits to this offense. He got caught shoplifting a pair of shoes. At the time, he did not have a job or money. He claims the false identification charge came from him not using his first name. He usually uses his middle name rather than his first name. He was found guilty and sentenced to one year probation, 90 days in jail with 88 days suspended. (27)

On July 11, 1991, Applicant was arrested and charged with use/under the influence of a controlled substance - Cocaine. He plead guilty to the amended charge of possession of a narcotic controlled substance. He was ordered to complete a diversion program and the charge was dismissed. On the day of his arrest, Applicant tried Cocaine for the first time. He overdosed and was rushed to the emergency room. He has not used illegal drugs since this incident. (28)

On May 27, 1997, Applicant was arrested and charged with Driving Under the Influence; Possession of Armor/Metal Penetrating Handgun, a felony; Carrying a Concealed Weapon in a Vehicle; and Carrying a Loaded Firearm in a Public Place. He used the handgun for his job as a security officer. He had a permit for the guns but did not have the permit on him when he was arrested. He later showed the permits during his court appearance. The weapons charges were dismissed. He pled guilty to the DUI charge, paid fines, and attended the first offender program. (29)

On November 1, 1997, Applicant was arrested and charged with Battery. The arrest arose from Applicant's wife being upset with him. She wanted him to leave the house. He refused, so she called the police and he was arrested. He claims he did not do anything. The charges were dismissed. (30)

On June 15, 2004, Applicant was charged with Disorderly Conduct. He got into an argument with a tow truck driver after his vehicle was damaged when it was towed. He was also upset that they attempted to repossess his vehicle after he had made arrangements with the creditor to resolve the account. He called police to prevent his car from being towed. He appeared in court and the charges were dismissed. (31)

Applicant admits to being irresponsible in the past. He has matured and has stayed away from trouble. (32) He has no intentions of doing anything wrong against his company or the federal government. He is proud of his job. (33) His

recent performance report indicates that he meets expectations. ⁽³⁴⁾

POLICIES

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." ⁽³⁵⁾ In Executive Order 10865, *Safeguarding Classified Information Within Industry* (Feb. 20, 1960), the President set out guidelines and procedures for safeguarding classified information within the executive branch.

To be eligible for a security clearance, an applicant must meet the security guidelines contained in the Directive. Enclosure 2 of the Directive sets forth personnel security guidelines, as well as the disqualifying conditions and mitigating conditions under each guideline. The adjudicative guidelines at issue in this case are:

Guideline F, Financial Considerations: An individual who is financially overextended is at risk of having to engage in illegal acts to generate funds. ⁽³⁶⁾

Guideline J, Criminal Conduct: A history or pattern of criminal activity creates doubt about a person's judgment, reliability and trustworthiness. ⁽³⁷⁾

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

"The adjudicative process is an examination of a sufficient period of a person's life to make an affirmative determination that the person is eligible for a security clearance." ⁽³⁸⁾ An administrative judge must apply the "whole person concept," and consider and carefully weigh the available, reliable information about the person. ⁽³⁹⁾ An administrative judge should consider the following factors: (1) the nature, extent, and seriousness of the conduct; (2) the circumstances surrounding the conduct, to include knowledgeable participation; (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 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. ⁽⁴⁰⁾

Initially, the Government must present evidence to establish controverted facts in the SOR that disqualify or may disqualify the applicant from being eligible for access to classified information. ⁽⁴¹⁾ Thereafter, the applicant is responsible for presenting evidence to rebut, explain, extenuate, or mitigate the facts admitted by the applicant or proven by Department Counsel. The applicant has the ultimate burden of persuasion as to obtaining a favorable clearance decision. ⁽⁴²⁾ Any doubt as to whether access to classified information is clearly consistent with national security will be resolved in favor of the national security. ⁽⁴³⁾

A person granted access to classified information enters into a special relationship with the government. The government must be able to repose a high degree of trust and confidence in those individuals to whom it grants access to classified information. The decision to deny an individual a security clearance is not a determination as to the loyalty of the applicant. ⁽⁴⁴⁾ It is merely an indication that the applicant has not met the strict guidelines the President has established for issuing a clearance.

CONCLUSIONS

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

Financial Considerations

Applicant has a history of financial irresponsibility. His poor financial practices resulted in he and his wife filing for Chapter 13 bankruptcy in June 2004. The bankruptcy was dismissed in November 2004. None of his debts were discharged. He has paid two of the debts. He still has approximately \$8,797 in delinquent accounts. He does not have

the money to pay off these delinquent accounts. Under Guideline F, Disqualifying Conditions (FC DC) E2.A6.1.2.1: (*A history of not meeting financial obligations*); and FC DC 3 E2.A6.1.2.3: (*Inability or unwillingness to satisfy debts*) apply to Applicant's case.

The security concern under Guideline F can be mitigated. I find Financial Considerations Mitigating Condition (FC MC) E2.A6.1.3.1: (*The behavior was not recent*) does not apply. Although Applicant has resolved several of his accounts, most of the delinquent accounts remain unresolved. In addition, he recently entered into a repayment plan with the IRS for taxes owed for tax years 2000 - 2003 in the approximate amount of \$23,000. FC MC E2.A6.1.3.2: (*It was an isolated incident*) does not apply based on his numerous delinquent accounts.

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, in part. Applicant has a chronic medical condition which periodically prevents him from working. He was unable to work steadily in 2003. Between the end of January 2006 to March 2006, he was on paid leave related to another illness. While his health issues have complicated his financial situation, his lack of action towards resolving his delinquent accounts remain a concern. The debts alleged in ¶¶ 2.n, 2.o, and 2.p became delinquent in November or December 2005, more than a year after being hired by his current employer.

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 under control*) is not applicable because there is no evidence Applicant has received financial counseling and his financial issues are unlikely to be resolved or under control in the near future.

FC MC E2.A6.1.3.6: (*The individual initiated a good-faith effort to repay overdue creditors or otherwise resolve debts*) applies, in part. In June 2004, Applicant attempted to resolve his financial problems under Chapter 13 bankruptcy. His bankruptcy case was dismissed four months later. Post-bankruptcy, Applicant resolved two of his accounts, SOR ¶¶ 1.i and 1.k, prior to the hearing. At hearing, Applicant presented evidence that he recently entered into repayment plan with the IRS for a \$23,000 debt owed for tax years 2000 to 2003. The government was not aware of this debt prior to the hearing.

While Applicant should be commended for attempting to resolve his delinquent accounts. He still has approximately \$8,797 in unresolved delinquent debt. A few weeks prior to the hearing, he started a part-time job. He hopes to use the money from the part-time job to pay off his delinquent accounts one at a time. A promise to pay in the future is not sufficient to mitigate the concern under financial considerations.

A security concern remains under Guideline F. Given Applicant's history of financial irresponsibility, it is too soon to conclude that Applicant's financial situation is completely under control. I find against him under Guideline F.

Criminal Conduct

Between January 1996 and March 1997, Applicant was arrested on six occasions. He was also charged with Disorderly Conduct in June 2004. His arrest history raises a concern under Guideline J, Criminal Conduct. Criminal Conduct Disqualifying Condition (CC DC) E2.A10.1.2.1 (*Allegations or admission of criminal conduct, regardless of whether the person was formally charged*) and CC DC E2.A10.1.2.2 (*A single serious crime or multiple lesser offenses*) apply to Applicant's case.

The criminal conduct concern can be mitigated. I find that Criminal Conduct Mitigating Condition (CC MC) E2.A10.1.3.1 (*The criminal behavior was not recent*) applies. Most of Applicant's offenses occurred over nine years ago. Although he was charged with Disorderly Conduct in June 2004, considering the circumstances behind the offense, I find this to be of minor concern.

CC MC E2.A10.1.3.2 (*There is clear evidence of successful rehabilitation*) also applies. Four of the offenses occurred between 1986 to 1991. Two other offenses occurred in 1997. Applicant is a family man now with different priorities. He has not been arrested in over nine years and does not intend to commit any criminal conduct in the future.

Applicant has mitigated the criminal conduct concern. I find for Applicant under Guideline J.

In all adjudications, the protection of our national security is the paramount concern. The objective of the security-clearance process is the fair-minded, common sense assessment of a person's life to make an affirmative determination that the person is eligible for a security clearance. Indeed, the adjudicative process is a careful weighing of a number of variables in considering the "whole person" concept. It recognizes that we should view a person by the totality of their acts, omissions, motivations and other variables. Each case must be adjudged on its own merits, taking into consideration all relevant circumstances, and applying sound judgment, mature thinking, and careful analysis.

In reaching my decision, I considered all the evidence provided and also considered the "whole person" concept in evaluating Applicant's risk and vulnerability in protecting our national interests. Applicant failed to mitigate the security concerns under Guideline F based on his financial history. Therefore, I am persuaded by the totality of the evidence in this case that it is not clearly consistent with the national interest to grant Applicant a security clearance.

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: 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: For Applicant

Subparagraph 1.j: Against Applicant

Subparagraph 1.k: For Applicant

Subparagraph 1.l: Against Applicant

Subparagraph 1.m: Against Applicant

Subparagraph 1.n: Against Applicant

Subparagraph 1.o: Against Applicant

Subparagraph 1.p: Against Applicant

Paragraph 2. Guideline J: FOR APPLICANT

Subparagraph 2.a: For Applicant

Subparagraph 2.b: For Applicant

Subparagraph 2.c: For Applicant

Subparagraph 2.d: For Applicant

Subparagraph 2.e: For Applicant

Subparagraph 2.f: For Applicant

Subparagraph 2.g: For Applicant

DECISION

In light of all of the circumstances in this case, it is not clearly consistent with the national interest to grant or continue a security clearance for Applicant. Clearance is denied.

Erin C. Hogan

Administrative Judge

1. Tr. at 5, 40, 69.

2. Gov. Ex. 1.

3. Tr. at 6.

4. Tr. at 81-82.

5. Gov Ex 2, 4, and 5.

6. Tr. at 54: AE N.

7. Tr. at 55, AE J.

8. Tr. at 43-44.

9. Tr. at 49-51.

10. *See* Gov Ex 2 at 6;

11. Tr. at 55-56.

12. AE I.

13. *Id.* at 6.

14. Tr. at 37-40, 78; AE A; AE C; AE L.

15. Tr. at 42, 47, 84; AE F.

16. Tr. at 84.

17. Tr. at 46.

18. AE B.

19. Tr. at 34-37.

20. AE E.
21. AE D.
22. Tr. at 84-85.
23. AE O.
24. Gov Ex 3 at 2.
25. Tr. at 59-61.
26. Tr. at 61-63; Gov Ex 3 at 2.
27. Tr. at 63-68; Gov Ex 3 at 2.
28. Tr. at 68-69, 91-92; Gov Ex 3 at 1.
29. Tr. at 69-70; Gov Ex 3 at 1.
30. Tr. at 71-74; Gov Ex 3 at 1.
31. Tr. at 74-75.
32. Tr. at 76.
33. Tr. at 98.
34. AE M.
35. *Department of the Navy v. Egan*, 484 U.S. 518, 527 (1988).
36. Directive, ¶ E2.A6.1.1.
37. Directive, ¶ E2.A10.1.1.
38. Directive, ¶ E2.2.1.
39. *Id.*
40. *Id.*
41. Directive, ¶ E3.1.14.
42. Directive, ¶ E3.1.15.
43. Directive, ¶ E.2.2.2.
44. Exec. Ord. 10865, § 7.