

DATE: October 31, 2006

---

In re:

-----

SSN: -----

Applicant for Security Clearance

---

CR Case No. 06-06468

## **DECISION OF ADMINISTRATIVE JUDGE**

**LEROY F. FOREMAN**

### **APPEARANCES**

#### **FOR GOVERNMENT**

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

#### **FOR APPLICANT**

*Pro Se*

### **SYNOPSIS**

Applicant received a Chapter 7 discharge in bankruptcy in 1996 and was divorced shortly thereafter. He began accumulating new delinquent debts almost immediately. He successfully resolved a home mortgage debt in February 2001, but has six delinquent debts totaling \$10,360 dating back to June 1999, none of which are resolved. The security concern based on financial considerations is not mitigated. Clearance is denied.

### **STATEMENT OF THE CASE**

The Defense Office of Hearings and Appeals (DOHA) declined to continue Applicant's security clearance. As required by Department of Defense Directive 5220.6 ¶ E3.1.2 (Jan. 2, 1992), as amended (Directive), DOHA issued a Statement of Reasons (SOR) on April 27, 2006, alleging security concerns under Guideline F (Financial Considerations) of the Directive. Applicant answered the SOR in writing on May 16, 2006 and elected to have the case decided on the written record in lieu of a hearing. Department Counsel submitted the Government's written case on August 2, 2006. A complete copy of the file of relevant material (FORM) was provided to Applicant, who was afforded an opportunity to file objections and submit material to refute, extenuate, or mitigate the disqualifying conditions. Applicant received the FORM on August 8, 2006, but he did not respond. The case was assigned to me on September 25, 2006.

### **PROCEDURAL RULING**

Department Counsel's submission included a motion to amend the SOR ¶ 1.a to correctly reflect the date of Applicant's bankruptcy. The motion is hereby granted.

### **FINDINGS OF FACT**

Applicant is a 53-year-old research engineer for a federal contractor. He has worked for his current employer since July 1980 and has held a clearance since September 1995.

Applicant graduated from college in May 1977, was married in the same month, and divorced in February 1996. He remarried in February 2000.

Applicant and his first spouse jointly filed for bankruptcy and received a discharge on January 25, 1996, in connection with their divorce (SOR ¶ 1.a). Approximately \$55,073 in debts were discharged, including about \$30,000 in credit card debt (FORM Item 6 at 1-2). Applicant reaffirmed the debts for two automobiles and a home mortgage, and those debts were not discharged. (FORM Item 10 at 32).

In June 1999, Applicant's debt of about \$223 to an oil company (SOR ¶ 1.b) was placed for collection (FORM Item 7 at 8). In December 1999, the mortgage on his home was foreclosed (SOR ¶ 1.c) (FORM Item 8 at 3). He paid off the amount due on his home mortgage in February 2001, and received a deed of reconveyance (FORM Item 3 at 3). Starting in June 2001, five more debts totaling about \$10,360 (SOR ¶¶ 1.d-1.h) were charged off or referred for collection (FORM Items 7, 8, and 9).

Applicant executed a security clearance application (SF 86) on October 29, 2003, and he recertified it on June 1, 2004 (FORM Item 4). He disclosed a 1985 shoplifting conviction and two debts that were more than 180 days delinquent; and in Item 43, "General Remarks," he commented, "Due to excessive overcharging of late fees, these accounts were closed and in process [sic] of dispute."

As of the date of his answer to SOR, Applicant had not resolved any of the debts in SOR ¶¶ 1.b and 1.d-1.h. He attributed his indebtedness to court-ordered child support payments, which led to overextended credit cards. He stated he would contact the creditors and attempt to resolve the debts, but recognized that it would take "a significant period of time" to resolve them due to the amounts owed. He provided no specific information regarding his current income and expenses. He presented no additional evidence after receiving the FORM.

### 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. The President has authorized the Secretary of Defense or his designee to grant applicants eligibility for access to classified information "only upon a finding that it is clearly consistent with the national interest to do so." Exec. Or. 10865, *Safeguarding Classified Information within Industry* § 2 (Feb. 20, 1960), as amended and modified. Eligibility for a security clearance is predicated upon the applicant meeting the security guidelines contained in the Directive. 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 (App. Bd. Dec. 19, 2002).

The Directive sets forth adjudicative guidelines for determining eligibility for access to classified information, and it lists the disqualifying conditions (DC) and mitigating conditions (MC) for each guideline. Each clearance decision must be a fair, impartial, and commonsense decision based on the relevant and material facts and circumstances, the whole person concept, and the factors listed in the Directive ¶¶ 6.3.1 through 6.3.6.

A person granted access to classified information enters into a special relationship with the government. The government must be able to have a high degree of trust and confidence in persons with access to classified information. However, 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 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 which disqualify, or may disqualify, the applicant from being eligible for access to classified information. *See Egan*, 484 U.S. at 531. "Substantial evidence" is "more than a scintilla but less than a preponderance." *See v. Washington Metro. Area Transit Auth.*, 36 F.3d 375, 380 (4th Cir. 1994). "[T]he Directive presumes there is a nexus or rational connection between proven conduct under any of the Criteria listed therein and an applicant's security suitability." ISCR Case No. 95-0611 at 2 (App. Bd. May 2, 1996) (quoting DISCR Case No. 92-1106 (App. Bd. Oct. 7,

1993)).

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; *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 (App. Bd. Dec. 19, 2002). "[S]ecurity clearance determinations should err, if they must, on the side of denials." *Egan*, 484 U.S. at 531; *see* Directive ¶ E2.2.2.

## CONCLUSIONS

### **Guideline F (Financial Considerations)**

Under this guideline, "[a]n individual who is financially overextended is at risk of having to engage in illegal acts to generate funds." Directive ¶ E2.A6.1.1. A person who fails or refuses to pay long-standing debts or is financially irresponsible may also be irresponsible or careless in his or her duty to protect classified information. Two disqualifying conditions (DC) under Guideline F could raise a security concern and may be disqualifying in this case. DC 1 applies where an applicant has a history of not meeting his or her financial obligations. Directive ¶ E2.A6.1.2.1. DC 3 applies where an applicant has exhibited inability or unwillingness to satisfy debts. Directive ¶ E2.A6.1.2.3. Applicant's financial history raises DC 1 and DC 3.

Since the government produced substantial evidence to raise DC 1 and DC 3, the burden shifted to Applicant to produce evidence to rebut, explain, extenuate, or mitigate the facts. Directive ¶ E3.1.15. Applicant has the burden of proving a mitigating condition, and the burden of disproving it is never shifted to the government. *See* ISCR Case No. 02-31154 at 5 (App. Bd. Sep. 22, 2005).

A security concern based on financial problems can be mitigated by showing the delinquent debts were not recent (MC 1) or were isolated incidents (MC 2). Directive ¶¶ E2.A6.1.3.1., E2.A6.1.3.2. Applicant has multiple delinquent debts that are not resolved. I conclude MC 1 and MC 2 are not established.

Security concerns arising from financial problems can be mitigated by showing they are the result of conditions "largely beyond the person's control" (MC 3). Directive ¶ E2.A6.1.3.3. Even if Applicant's financial difficulties initially arose due to circumstances beyond his control, it is appropriate to consider whether he acted in a reasonable manner when dealing with his financial difficulties. ISCR Case No. 02-02116 at 4 (App. Bd. Sep. 25, 2003).

Applicant's divorce and court-ordered child-support payments were beyond his control. However, his financial slate was wiped clean, except for the debts he chose to reaffirm, shortly before his divorce. He is a college graduate who has worked for his current employer for more than 25 years. While he successfully resolved his home mortgage debt, he has been accumulating other delinquent debts since June 1999. Much of his indebtedness is credit card debt and, by his own admission, late charges. He has offered no information regarding his current family income and expenses. I conclude he has not carried his burden of establishing MC 3.

A mitigating condition (MC 4) applies when an applicant "has received or is receiving counseling for the problem and there are clear indications that the problem is being resolved or is under control." Directive ¶ E2.A6.1.3.4. MC 4 is not established because there is no indication Applicant has sought financial counseling.

A security concern arising from financial problems can be mitigated by showing a good-faith effort to resolve debts (MC 6). Directive ¶ E2.A6.1.3.6. The concept of good faith "requires a showing that a person acts in a way that shows reasonableness, prudence, honesty, and adherence to duty or obligation." ISCR Case No. 99-0201, 1999 WL 1442346 at \*4 (App. Bd. Oct. 12, 1999). Evidence of past irresponsibility is not mitigated by payment of debts only under pressure of qualifying for a security clearance. Applicant's first mention of efforts to resolve his delinquent debts was in his answer to the SOR. His last documented effort to resolve a debt was in February 2001, when he resolved the home mortgage debt. I resolve SOR ¶ 1.c, pertaining to that debt, in his favor. There is no evidence of any concrete efforts to resolve any other debts after February 2001. I conclude MC 6 is not established.

### **"Whole Person" Analysis**

In addition to considering the specific disqualifying and mitigating conditions under each guideline, I have also considered the following in my "whole person" analysis: (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 applicant'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. *See* Directive ¶¶ E2.2.1.1 through E2.2.1.9.

Applicant is a well-educated adult who has been steadily employed for more than 25 years. He has held a security clearance for more than ten years, apparently without incident. However, he has been in financial difficulty almost continuously since he received a Chapter 7 bankruptcy discharge in 1996. He has presented no evidence of changes in financial behavior, without which there is strong likelihood of continued financial difficulties. He is vulnerable to pressure, coercion, exploitation, or duress.

After weighing the disqualifying and mitigating conditions under Guideline F, and evaluating all the evidence in the context of the whole person, I conclude Applicant has not mitigated the security concerns based on based on financial considerations. Accordingly, I conclude he has not carried his burden of showing that it is clearly consistent with the national interest to grant him a security clearance.

### **FORMAL FINDINGS**

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

Paragraph 1. Guideline F: AGAINST APPLICANT

Subparagraph 1.a: Against Applicant

Subparagraph 1.b: Against Applicant

Subparagraph 1.c: For 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

### **DECISION**

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

LeRoy F. Foreman

Administrative Judge