

DATE: January 31, 2007

In re:

SSN: -----

Applicant for Security Clearance

ISCR Case No. 06-07320

ECISION OF ADMINISTRATIVE JUDGE

JACQUELINE T. WILLIAMS

APPEARANCES

FOR GOVERNMENT

Daniel F. Crowley, Esq., Department Counsel

FOR APPLICANT

Pro Se

SYNOPSIS

Applicant is a 52-year-old machinist employed by a defense contractor since June 2004. He has a history of not meeting his financial obligations. He has six outstanding debts totaling approximately \$32,304, and \$29,736 of that amount represents delinquent child support. Applicant has not mitigated the financial considerations security concerns. Clearance is denied.

STATEMENT OF THE CASE

On September 17, 2004, Applicant applied for a security clearance and completed a Security Clearance Application (SF 86).⁽¹⁾ On June 30, 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.

Applicant responded to the SOR allegations in a document sworn to on August 10, 2006 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 October 18, 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 chose not to respond. The case was assigned to me on December 1, 2006.

MOTION TO AMEND THE STATEMENT OF REASONS

The Government moved to amend the SOR by adding subparagraphs as follows:

1.d. You are indebted to a medical creditor on an account that has been placed for collection in the approximate amount of \$970. As of May 8, 2006, this debt had not been paid.

1.e. You are indebted to a medical creditor on an account that has been placed for collection in the approximate amount of \$1,000. As of May 8, 2006, this debt had not been paid.

1.f. You are indebted to a medical creditor on an account that has been placed for collection in the approximate amount of \$426. As of May 8, 2006, this debt had not been paid.

The Government argued that these amendments are supported by the evidence to the SOR, which was sent to Applicant, together with the FORM. Applicant has not responded to the FORM. Therefore, in the absence of objection, the Government's request to amend the SOR as set forth above is granted.

FINDINGS OF FACT

Applicant admitted all the factual allegations pertaining to financial considerations under Guideline F cited in the SOR, subparagraphs 1.a through 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 52-year-old machinist who has worked for a defense contractor since June 2004. He attended college in September 1976 and was awarded a degree in February 1978. Applicant is married. He divorced his first wife in 1979. He has children, although he does not indicate them on his SF 86.

A May 8, 2006, credit bureau report, which serves as a basis for allegations in the SOR, indicated that Applicant has six delinquent debts, totaling approximately \$32,304. The debts at issue are these:

¶ **1.a/TV debt (\$86)** This account has been placed for collection. As of May 8, 2006, this debt has not been paid.

¶ **1.b/TV debt (\$86)** This account has been placed for collection. As of May 8, 2006, this debt has not been paid.

¶ **1.c/Child Support Enforcement (\$29,736)** This debt is for delinquent child support. Question 34 of his SF 86 stated (*Your Financial Record - Wage Garnishments In the last 7 years, have you had your wages garnished for any reason*). He answered "yes" and noted that in 1998 his paycheck was garnished for child support. He indicated that "[t]he original date that the garnishment started was in 1998/02 (EST). The child support is not paid." The record does not indicate if his pay is currently being garnished for child support. As of May 8, 2006, this debt had not been paid.

¶ **1.d/Medical creditor (\$970)** This account has been placed for collection. As of May 8, 2006, this debt has not been paid.

¶ **1.e/Medical creditor (\$1,000)** This account has been placed for collection. As of May 8, 2006, this debt has not been paid.

¶ **1.f/Medical creditor (\$426)** This account has been placed for collection. As of May 8, 2006, this debt has not been paid.

The record is silent as to Applicant's financial history, including his salary and expenses, or why child support is significantly delinquent. **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.⁽⁴⁾ The Government has the burden of proving controverted facts.⁽⁵⁾ The burden of proof is something less than a preponderance of evidence.⁽⁶⁾ 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.⁽⁷⁾ Additionally, an applicant has the ultimate burden of persuasion to obtain a favorable clearance decision.⁽⁸⁾

No one has a right to a security clearance⁽⁹⁾ and "the clearly consistent standard indicates that security clearance determinations should err, if they must, on the side of denials."⁽¹⁰⁾ Any reasonable doubt about whether an applicant should be allowed access to sensitive information must be resolved in favor of protecting such sensitive information.⁽¹¹⁾ The decision to deny an individual a security clearance is not necessarily a determination as to the loyalty of an applicant.⁽¹²⁾ 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 guidelines 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 acts.

CONCLUSIONS

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

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. The delinquent debts listed on Applicant's credit report total approximately \$32,304. 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 has the burden of presenting evidence to establish mitigating circumstances. In this case, he has not shown that any potentially mitigating conditions apply. Thus, I find that none of the available Financial Considerations Mitigating Conditions applies.

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. Applicant is financially irresponsible when it comes to paying child support. In balancing all the information of record, I conclude Applicant has not mitigated the security concerns arising from his financial difficulties. Based on the evidence of record, 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 (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

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, signed September 17, 2004).
2. Item 2 (Applicant's Answer, dated August 10, 2006).
3. The Government submitted six items in support of the allegations in the SOR.
4. ISCR Case No. 96-0277 (July 11, 1997) at p. 2.
5. ISCR Case No. 97-0016 (December 31, 1997) at p. 3; Directive, Enclosure 3, ¶ E3.1.14.
6. *Department of the Navy v. Egan*, 484 U.S. 518, 531 (1988).
7. ISCR Case No. 94-1075 (August 10, 1995) at pp. 3-4; Directive, Enclosure 3, ¶ E3.1.15.
8. ISCR Case No. 93-1390 (January 27, 1995) at pp. 7-8; Directive, Enclosure 3, ¶ E3.1.15.
9. *Egan*, 484 U.S. at 531.
10. *Id.*
11. *Id.*; Directive, Enclosure 2, ¶ E2.2.2.
12. Executive Order 10865 § 7.