

DATE: March 26, 2007

In re:

SSN: -----

Applicant for Security Clearance

CR Case No. 06-08285

DECISION OF ADMINISTRATIVE JUDGE

CAROL G. RICCIARDELLO

APPEARANCES

FOR GOVERNMENT

Jennifer I. Goldstein, Esq., Department Counsel

FOR APPLICANT

Pro Se

SYNOPSIS

Applicant is 40 years old and has worked for a federal contractor for more than eight years. He experienced financial problems when his wife overextended their credit and his wages were garnished for back child support. Applicant has repaid all of the back child support and several other debts. He has sought credit counseling and has a repayment plan for other delinquent debts. Applicant is committed to repaying all of his delinquent debts and has mitigated the security concerns raised under Guideline F. Clearance is granted.

STATEMENT OF CASE

On September 29, 2006, the Defense Office of Hearings and Appeals (DOHA) issued to Applicant a Statement of Reasons (SOR)⁽¹⁾ stating it was unable to find that it is clearly consistent with the national interest to grant or continue a security clearance.⁽²⁾ The SOR, which is in essence the administrative complaint, detailed the basis for its decision-security concerns under Guideline F (financial considerations) of the revised Adjudicative Guidelines (AG) issued on December 29, 2005, and implemented by the Department of Defense effective September 1, 2006. The revised guidelines were provided to Applicant when the SOR was issued.

In a sworn statement dated November 3, 2006, Applicant responded to the SOR allegations. Applicant elected to have his case decided on the written record. Department Counsel's file of relevant material (FORM) is dated November 30, 2006. However, her letter to Applicant forwarding the FORM and verifying the date it was mailed is dated November 29, 2006.⁽³⁾ It was received by Applicant on December 14, 2006. Applicant was afforded an opportunity to file objections and submit material in refutation, extenuation, or mitigation. Applicant responded on January 13, 2007. Department Counsel did not have any objections to the additional material provided by Applicant. The case was assigned to me on January 30, 2007.

FINDINGS OF FACT

Applicant is 40 years old and has worked for a federal contractor for more than eight years. He is divorced and remarried. He has three biological children, ages 20, 19, and 15. He also has two stepchildren, ages 20 and 16. Applicant has held a secret security clearance since 1999.

Applicant admits he owes all the debts listed in the SOR, except ¶ 1.e. He also denies SOR allegation ¶ 1.g. In an undated statement he admits he was attempting to establish credit and had applied for a few credit cards and used them modestly. Unbeknownst to him his wife was applying for additional cards using his name and was spending to the maximum credit limit. These cards were not being paid. When he found out he set up a payment plan and his wife was to submit the payments to the credit card companies.⁽⁴⁾ She did not follow through and the bills remained unpaid. He also had difficulties with his bank due to his wife's overspending and subsequently his account was closed. Since then he has taken control of the family finances. This all occurred prior to 2003, when he received a back child support garnishment order from the state because his son was in their care and custody for a period of five years.⁽⁵⁾

Applicant makes no reference to whether he had been paying child support in the past for his three biological children. He did not provide any explanation as to why if his son was in the care and custody of the state, that it took five years for him to address the financial obligations with the state before garnishment was instituted. Nowhere does Applicant indicate if he is financially supporting his remaining minor biological child.

Applicant has repaid through garnishment the back child support payments he owed.⁽⁶⁾ Applicant has repaid the debts listed in SOR ¶¶ 1.a,⁽⁷⁾ 1.c,⁽⁸⁾ and 1.f.⁽⁹⁾ He has researched the debt listed in SOR ¶ 1.d and found the company went out of business and there is no business contact to resolve this past debt. With regard to the debt listed in SOR ¶ 1.e he claims he does not recognize the debt and he has sought information about it, but there is no record that he owes the debt. He claimed he would continue to research its validity.⁽¹⁰⁾

Applicant disputes that he has a negative cash flow after paying his monthly expenses. He attests that the amounts used to determine his cash flow were based on months when he received lower than average pay and when he had made two payments for overdue debts that are not recurring payments.⁽¹¹⁾ He provided documentation to show his annual earnings for 2006 were \$67,413.47 (before deductions).⁽¹²⁾ This amount averages to \$5,617.78 a month. He has enrolled with a credit counseling service to repay his remaining debts and provided documentation to substantiate his first payment.⁽¹³⁾ He did not provide a list of what debts are being repaid through the credit counseling service. Applicant has paid off some of his debts and is budgeting his income to pay all of his delinquent debts.⁽¹⁴⁾

Applicant's manager considers him to be an exceptional employee and that "his judgment has always been consistent, his initiative is top status, his teamwork attitude is of the highest order and he consistently meets commitments or promises made to others."⁽¹⁵⁾ He is considered ethical and honest and respected by his peers and supervisors.⁽¹⁶⁾ He was recently placed in a critical position and he has proven to be invaluable.⁽¹⁷⁾

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 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). Each security clearance decision "must be a fair and impartial common sense determination based upon consideration of all the relevant and material information and the pertinent criteria and adjudication policy." Directive ¶ 6.3. 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 revised Adjudicative Guidelines set forth potentially 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 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 all the evidence, I find the following adjudicative guideline most pertinent to the evaluation of the facts in this case:

Guideline F- Financial Considerations are a concern because failure or inability to live within one's means, satisfy debts, and meet financial obligations may indicate poor self-control, lack of judgment, or unwillingness to abide by rules and regulations, all of which can raise questions about an individual's reliability, trustworthiness and ability to protect classified information. An individual who is financially overextended is at risk of having to engage in illegal acts to generate funds. Compulsive gambling is a concern as it may lead to financial crimes including espionage. Affluence that cannot be explained by known sources of income is also a security concern. It may indicate proceeds from financially profitable criminal acts.

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

CONCLUSIONS

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

Based on all the evidence, Financial Considerations Disqualifying Condition (FC DC) 19 (a) (*inability or unwillingness to satisfy debts*) and FC DC 19 (c) (*a history of not meeting financial obligations*), apply in this case. Applicant has a history of delinquent debts and has only recently begun to resolve them.

I have considered all the Financial Considerations Mitigating Conditions (FC MC), and especially considered FC MC 20 (a) (*the behavior happened so long ago, was so infrequent, or occurred under such circumstances that it is unlikely to recur and does not cast doubt on the individual's current reliability, trustworthiness, or good judgment*); FC MC 20 (b) (*the conditions that resulted in the financial problem were largely beyond the person's control (e.g., loss of employment, a business downturn, unexpected medical emergency, or a death, divorce or separation), and the individual acted responsibly under the circumstances*); FC MC 20 (c) (*the person received or is receiving counseling for the problem and/or there are clear indications that the problem is being resolved or is under control*); and FC MC 20 (d) (*the individual initiated a good-faith effort to repay overdue creditors or otherwise resolve debts*).

Applicant has paid some of his delinquent debts recently, but still has some remaining. Therefore I find the debts are recent and not isolated and FC MC 20 (a) does not apply. Sometime prior to 2003, Applicant was establishing credit through credit card purchases. His wife obtained credit cards and they were unable to repay them. When Applicant became aware of the problem he set up a repayment plan, however, he left that plan in the care of his wife, who again did not act responsibly. He eventually took over the family finances. In 2003, Applicant's wages were garnished by the state to repay for the care and custody of his son for a five year period. I do not find that these conditions were beyond Applicant's control. When Applicant became aware his wife was misusing credit cards, he did not immediately take charge of the finances. Instead he permitted his wife to further exacerbate the problem by not following through on the repayment plan and causing their bank account to be closed. I also find that Applicant did not provide mitigating evidence regarding his back child support payment. It is unclear whether he paid child support and why he had not contacted the state before his wages were garnished. I find FC MC 20 (b) does not apply.

Applicant has repaid all of the back child support, has sought financial counseling and set up a repayment plan and made a payment. However, no information was provided to show what debts are included in that plan. He has also repaid many of his debts and has made a firm commitment to resolve the remaining delinquent debts. Other than his debts that were being repaid through garnishment, Applicant has only recently taken the necessary steps to resolve all of his delinquent debts. However, under the circumstances I find he has initiated a good-faith effort to resolve his debts and there are clear indications the problem is being resolved and under control. Therefore I find FC MC 20 (c) and (d) apply.

The Whole Person Analysis

In all adjudications, the protection of our national security is the paramount concern. The objective of the security-clearance process is the fair-minded, commonsense 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.

I considered the whole person in evaluating the case. I considered Applicant's recent efforts to repay his debts. I considered that he took over the family finances and has resolved some of his debts. I also considered his commitment to continue paying his debts and that he has entered a debt consolidation program. I find Applicant has successfully mitigated the security concerns under Guideline F. Therefore, I am persuaded by the totality of the evidence in this case, that it is clearly consistent with the national interest to grant Applicant a security clearance. Accordingly, Guideline F is decided for Applicant.

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 financial considerations (Guideline F) FOR APPLICANT

Subparagraph 1.a. For Applicant

Subparagraph 1.b. For Applicant

Subparagraph 1.c. For Applicant

Subparagraph 1.d. For Applicant

Subparagraph 1.e. For Applicant

Subparagraph 1.f. For Applicant

Subparagraph 1.g. For Applicant

DECISION

In light of all the circumstances presented by the record in this case, it is clearly consistent with the national interest to grant or continue a security clearance for Applicant. Clearance is granted.

Carol. G. Ricciardello

Administrative Judge

1. The Statement of Reason misspells Applicant's first name. It has been corrected in the caption.
2. 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 and modified (Directive).
3. Review of the case file confirms the dates as listed above. These dates obviously do not match up, because Department Counsel could not forward the file before it was completed. It is assumed that Department Counsel likely completed and mailed the FORM on November 29, 2006 and this is merely an administrative error.
4. GE 4.

5. *Id.*

6. Answer; Supplemental Response of January 13, 2007.

7. GE 3, p. 41; GE 8.

8. GE 3, p. 42; GE 6, p. 2, GE 8; Supplemental Response attachment dated January 8, 2007, shows debt paid in full.

9. Supplemental Response attachment dated December 13, 2006, shows debt paid.

10. Answer.

11. Supplemental Response.

12. *Id.*

13. *Id.*

14. Supplemental Response.

15. Answer.

16. *Id.*

17. *Id.*