

DATE: March 28, 2007

In re:

SSN: -----

Applicant for Security Clearance

CR Case No. 06-12340

DECISION OF ADMINISTRATIVE JUDGE

SHARI DAM

APPEARANCES

FOR GOVERNMENT

Robert E. Coacher, Esq., Department Counsel

FOR APPLICANT

Pro Se

SYNOPSIS

Applicant is a 35-year-old senior engineering analyst who has worked for a federal contractor for the past nine years. From approximately 1998 to the present, Applicant accumulated a significant amount of debt that remains unresolved or unpaid. He did not mitigate the security concerns raised by financial considerations. Clearance is denied.

STATEMENT OF THE CASE

On June 24, 2004, Applicant electronically submitted a security clearance application (SCA). The Defense Office of Hearings and Appeals (DOHA) declined to grant or continue a security clearance for Applicant. As required by Department of Defense Directive 5220.6 ¶ E3.1.2. (Jan. 2, 1992), as amended, DOHA issued a Statement of Reasons (SOR) on November 16, 2006, detailing the basis for its decision-security concerns raised under Guideline F (Financial Considerations) of the 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. Applicant answered the SOR in writing on December 14, 2006, and elected to have a hearing before an administrative judge. The case was assigned to me on January 26, 2007. DOHA issued a Notice of Hearing on February 8, 2007, setting the case for February 28, 2007.

At the hearing, Department Counsel introduced Government Exhibits (GX) 1-3 into evidence without objections. Applicant testified in his case. DOHA received the hearing transcript (Tr.) on March 12, 2007.

FINDINGS OF FACT

Based on the entire record, including Applicant's admissions in his Answer to the SOR and at the hearing, I make the following additional findings of fact:

Applicant is a 35-year-old senior engineering analyst for a federal contractor, who works in a nuclear program. He is married and has four children. He served in the U.S. Navy from September 1990 until May 1998 when he was

honorably discharged. His rank at the time of discharge was a 2nd class petty officer. He has worked for his current employer since May 1998 and held a security clearance since 1990 (Tr. 29).

Paragraph 1 of the SOR alleges Applicant is indebted to seven creditors for delinquent debts, totaling \$11,234. Applicant admitted all of the debts were his and remain unpaid. He began having financial difficulties before he left the Navy in 1998 (Tr. 18; 20). Some of the debts relate to a car purchase and subsequent voluntary surrender of it, and others to marital problems. He also owned a small cleaning business from 1996 to 2003 that failed, leaving him with \$35,000 in unpaid federal taxes and a couple thousand dollars in unpaid state taxes (Tr. 36-36). Over the last several years, he has paid several debts not listed in the SOR (Tr. 47). A May 2006 credit report documents many of his debts (GX 3).

Applicant did not take steps to resolve the debts in the SOR because he believed that his security clearance was revoked when he received the SOR in November 2006 (Tr. 37). When he received the Government's discovery materials in January 2007, he realized that he still had a clearance. If he had known the implications of not resolving the debts listed in the SOR, he would have begun addressing the problems sooner (Tr. 28). He has spoken to debt counselors, but has not set up any repayment plan (Tr. 21). Instead, he opted to work with each creditor directly (Tr. 30). He does not believe his delinquent financial obligations affect his handling classified information (Tr. 48).

Applicant and his wife have a joint monthly net income of about \$5,400 (Tr. 25). After paying their expenses they have some money left each month that could be used to systematically reduce the delinquent debt (Tr. 26).

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 . . . 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 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.

CONCLUSIONS

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

Guideline F - Financial Considerations

The security concern under Guideline F is that the 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.

Based on Applicant's admissions and a May 2006 credit report, the Government established a disqualification under 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*). Applicant has been unable to manage his debts from approximately 1998 to the present.

After the Government raised a security concern, the burden shifted to Applicant to mitigate or rebut the allegations. Six conditions can mitigate security concerns arising from financial difficulties. However, after reviewing all of them, I conclude none apply. (1) Financial Considerations Mitigating Condition (FC C) 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* does not apply because Applicant's problems have been ongoing for at least nine years and do cast doubt on his judgment and reliability. (2) 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*, may offer limited mitigation in view of Applicant's business and marital problems. However, there is no evidence that he acted responsibly in handling the problems at the time they occurred as required under this condition. (3) FC MC 20(c) *the person has received or is receiving counseling for the problem and/or there are clear indications that the problem is being resolved or is under control* cannot apply because Applicant acknowledged that he has not obtained credit counseling and the delinquent debts are neither resolved nor under control. (4) There is no evidence to support the establishment of FC MC 20(d) *the individual initiated a good-faith effort to repay overdue creditors or otherwise resolve debts* because he only recently came to appreciate the importance of resolving the issues in his credit history and has not made a good faith effort to repay the creditors listed on the SOR. (5) Based on his acknowledgment of all of the debts and the absence of documentation indicating that he disputed any debt, FC MC 20(e) *the individual has a reasonable basis to dispute the legitimacy of the past-due debt which is the cause of the problem and provides documented proof to substantiate the basis of the dispute or provides evidence of actions to resolve the issue* cannot be applied. (6) FC MC 20(f) *the affluence resulted from a legal source of income* is not applicable.

Whole Person Analysis

In addition to evaluating the disqualifying and mitigating conditions under each guideline, the adjudicative process requires thorough consideration and review of all available, reliable information about the applicant, past and present, favorable and unfavorable, to arrive at a balanced decision. The essence of scrutinizing all appropriate variables in a case is known as the "whole person" analysis. Directive ¶ E2.2. In evaluating the conduct of the applicant, an administrative judge should consider: (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.

I considered the totality of the evidence in view of the "whole person" concept, including Applicant's age, the fact that he has held a security clearance for more than twenty years, his demeanor while testifying, and candid disclosure about his long-standing financial problems. I also took into account the fact that he was not fully aware of the detrimental effect delinquent debts could have on his job until he received the SOR in October 2006. While Applicant expressed a willingness to continue resolving his financial obligations, he has not yet established a financial plan to pay the debts listed in the SOR or outstanding taxes, which would assure the Government that the similar matters will not recur in the future. Given his current awareness of the impact that his financial situation has on his employment, I believe he will initiate steps to resolve his delinquent obligations. However, at this time all allegations under Paragraph 1 of the SOR are concluded against him. Accordingly, Guideline F is found against him.

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 as follows:

Paragraph 1: Guideline F (Financial Considerations) AGAINST APPLICANT

Subparagraphs 1.a.-1.g: Against Applicant

DECISION

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

Shari Dam

Administrative Judge