

DATE: March 19, 2007

In re:

SSN: -----

Applicant for Security Clearance

CR Case No. 06-13915

DECISION OF ADMINISTRATIVE JUDGE

ELIZABETH M. MATCHINSKI

APPEARANCES

FOR GOVERNMENT

Emilio Jaksetic, Esq., Department Counsel

FOR APPLICANT

Pro Se

SYNOPSIS

Applicant owes about \$23,386 in delinquent debt that he lacks the means to repay. His promises to satisfy the debt are not sufficient to mitigate the concerns about his finances. Clearance is denied.

STATEMENT OF THE CASE

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 September 28, 2006, detailing the basis for its decision-security concerns raised 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. Applicant answered the SOR on November 6, 2006, and elected to have a determination on the written record without a hearing. The government submitted a File of Relevant Material (FORM) on December 13, 2006, consisting of six exhibits (Items 1-6).⁽¹⁾ On December 15, 2006, DOHA forwarded a copy of the FORM to Applicant and instructed him to respond within 30 days of receipt.⁽²⁾ Applicant filed no rebuttal by the January 21, 2007 due date. The case was assigned to me on February 22, 2007, to consider whether it is clearly consistent with the national interest to grant or continue a security clearance for Applicant.

FINDINGS OF FACT

DOHA alleged under Guideline F that Applicant owed delinquent debt totaling \$24,313 that had not been paid by August 25, 2006. In his Answer (Item 2), Applicant admitted the indebtedness with the exception of the debts listed in SOR ¶ 1.c (his son was making \$400 monthly payments starting October 27, 2006), ¶ 1.g, and ¶ 1.i (his son's debt). In the FORM, Department Counsel conceded it lacked reliable evidence to rebut Applicant's denials of responsibility for those debts in ¶¶ 1.g and ¶ 1.i. After a thorough consideration of the documentation presented for review, I make the following findings of fact:

Applicant is a 58-year-old high school graduate who has worked as a technician for his current employer since June 2005. He seeks a top secret-level security clearance, which would make him eligible for overseas assignments at a substantial increase in salary.

In about October 1971, Applicant started working for a telephone company as a field technician. One year later, he married his first wife. They had a daughter in October 1975 and a son in March 1977. Applicant gave his son his name so he began to use the suffix "Sr." after his own name. Applicant and his first wife divorced in about February 1991. In May 1991, Applicant married his present spouse and became stepfather to 14-year-old twin daughters and a 16-year-old son.

In October 1997, Applicant accepted an early incentive pension and retired from his employment with the telephone company after 26 years on the job. He was unemployed until May 1998 when he started as a technician for a local firm. Applicant switched jobs in November 1998, and for the next year was employed as an office manager. In October 1999, he became a "BX" operator for a cable wiring company. In June 2000, the family moved to another state and in July 2000, they bought a home for \$239,900. In September 2000, he became an area manager for a dish installation company. After a year on the job, he opted for a career change and became a licensed insurance agent. The work was not profitable personally or financially. In August 2003, he moved to a neighboring state, as he had secured a position as a technician supervisor with a communications company. His spouse stayed behind to sell their home. Eight months later, his spouse, a stepdaughter, and a granddaughter joined him in his new locale even though the house had not yet sold.

By late December 2003, financial accounts began to fall delinquent. The telephone company charged off a wireless account in the amount of \$455 (¶ 1.g). Although Applicant was employed as a general partner in a communications company from June 2004, several accounts were charged off and/or placed for collection over the next year: a \$236 veterinary bill in June 2004 (¶ 1.k); a department store revolving charge debt of \$2,250 (¶ 1.b) and a bank credit card debt of about \$5,090 (¶ 1.d) in August 2004; and consumer credit balances of \$4,813 (¶ 1.e) and \$255 (¶ 1.f) in September 2004. Applicant and his spouse tried to consolidate their debts through a credit counseling service without success. To prevent foreclosure of their home, they stopped paying their mortgage in August 2004. That fall, they sold their home for \$182,000, paying off their first mortgage in full. A second mortgage debt on the residence of \$55,234.87 was cancelled by the lender in November 2004. Applicant was left owing federal taxes of \$11,078.85 that were to be repaid at \$182 per month. Applicant provided no evidence of claimed payments. Financial problems persisted, and unpaid cable television debts of \$202 (¶ 1.j) and \$350 (¶ 1.i) were placed for collection in May and June 2005, respectively. In July 2005, another creditor referred a \$1,003 debt (¶ 1.a) for collection.

Applicant started his present job as a technician in June 2005. On July 17, 2005, Applicant applied for a top-secret security clearance, executing an electronic questionnaire for national security positions (SF 86 Format). In response to inquiries concerning any financial delinquencies over 180 days in the last seven years (section 28a) or currently over 90 days (section 28b), Applicant disclosed the \$236 veterinary debt (¶ 1.k), the \$55,234 second mortgage, \$5,090 (¶ 1.d), \$4,530 (¶ 1.e), and \$255 (¶ 1.f) in unpaid credit card balances; \$3,008 owed on a retail revolving charge account (¶ 1.b), and \$9,940 on a car loan consigned for his son (¶ 1.c).

In October 2005, a cellular phone provider referred a \$161 balance for collection (¶ 1.h). On October 18, 2005, Applicant was interviewed by a government investigator. He expressed his willingness to resolve his indebtedness. On August 26, 2006, Applicant responded to financial interrogatories from DOHA. He furnished the 1099-C form showing the cancellation of his second mortgage, and asserted he had arranged to make \$182 monthly payments on the federal taxes owed because of the cancellation. Applicant admitted he had not paid anything since August 2004 on his delinquent consumer credit card debt with updated balances of \$4,813 (¶ 1.e), \$255.73 (¶ 1.f), \$7,266 (¶ 1.d), \$2,250 (¶ 1.b), and \$3,250 (¶ 1.m). He also acknowledged owing the \$236 veterinary debt (¶ 1.k), cable television debts of \$202 (¶ 1.j) and \$350 (¶ 1.i), a cellular phone debt of \$161 (¶ 1.h), as well as a \$1,003 balance in collection (¶ 1.a). Applicant expressed his intent to pay his debts as soon as possible, the vet bill by October 2006 and the wireless phone debt of \$161 by November 2006. Applicant admitted that more than \$3,600 was owed on the car loan he cosigned for his son (¶ 1.c), as his son had failed to make the payments. He accepted his responsibility for the loan but lacked the funds to pay it. Applicant indicated the \$472 debt (¶ 1.l) that appeared on his credit report was his son's debt, and the government presented no reliable evidence to the contrary. As for the wireless phone debt of \$455 (¶ 1.g), Applicant provided a

receipt showing he had returned a telephone within a week of its activation and was refunded the purchase price, with the understanding there would be no further charges.

As of November 2006, Applicant maintained his son had made his first of four \$400 monthly payments toward settling his delinquent auto loan for \$1,600.⁽³⁾ Applicant reiterated his intent to repay his delinquent accounts, but he had been unable to make any payments due to inadequate income and his provision of financial assistance for his stepdaughter and granddaughter over the past four years. He was current in his living expenses. Applicant was attempting to get overtime work or a second job to give him the income to address his old debts.

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). 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

Guideline F--Financial Considerations

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. (AG ¶ 18) As of August 2006, Applicant was responsible for about \$23,386 in delinquent debt (¶¶ 1.a, 1.b, 1.c, 1.d, 1.e, 1.f, 1.h, 1.i, 1.j, 1.k, 1.m) that had not been resolved. Potentially disqualifying conditions (DC) 19(a) *inability or unwillingness to satisfy debts* and 19(c) *a history of not meeting financial obligations*, clearly apply. With little or no detail in the record about his income and expenses, a meaningful financial analysis cannot be performed. However, his sizeable credit card debt implicates DC 19(e) *consistent spending beyond one's means, which may be indicated by excessive indebtedness, significant negative cash flow, high debt-to-income ratio, and/or other financial analysis*.

Applicant submits most of his debts are the result of "lengthy unemployment in his field of experience" after he retired early from his job with the telephone company. The majority of his financial problems coincided with his relocation and the costs of maintaining two households for eight months starting in August 2003. With no information of record as to his expenses, the extent of the financial impact cannot be determined. It is noted that he fell behind despite his pension. The length of time it took to sell his home is an extenuating circumstance contemplated within mitigating condition (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)*, but Applicant must have acted responsibly under the circumstances for ¶ 20(b) to apply in his favor. After the sale of his home, the second mortgage debt was cancelled by the lender, so Applicant was relieved of a significant financial burden. He subsequently exhibited poor financial judgment in allowing cable television and cellular phone accounts to go to collection (¶¶ 1.h, 1.i, 1.j), and in failing to take timely steps to address most of his debts once he obtained stable employment with a defense contractor. 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 applies only to the debts in ¶ 1.c (his son had entered into a settlement with the creditor), ¶ 1.1 (never his responsibility), and ¶ 1.g (he cancelled the contract in time with return of the phone).

During a subject interview In October 2005, Applicant was placed on notice that the government was concerned about his delinquencies, and he expressed a willingness to satisfy his debts. Yet he had paid only very minor debts, a \$21 telephone debt and a \$65 medical debt (not alleged), by August 2006. These efforts are not sufficient for either MC ¶ 20(c) *the person has received or is receiving counseling for the problem, and there are clear indications that the problem is being resolved or is under control*, or MC ¶ 20(d) *the individual initiated a good-faith effort to repay overdue creditors or otherwise resolve debts*. As of November 2006, he had not obtained overtime work or a second job that would give him the financial means to pay his debts in the near future. He has not incurred any new delinquencies since October 2005, but this alone is not enough to show a favorable change in financial habits. A promise to attend to his debts as soon as he is able, however sincere, is not a substitute for a track record of repayment. *See, e.g., ISCR Case No. 99-0447, App. Bd. July 25, 2000 at p. 3 (promise to take remedial steps in future concerning delinquent debts is not evidence of reform or rehabilitation)*. Security significant financial pressures persist given the extent of his unresolved debt.

Whole Person Analysis

"The adjudicative process is an examination of a sufficient period of a person's life to make an affirmative determination that the person is an acceptable security risk." AG ¶ 2(a) Some of his accounts have been delinquent since August/September 2004 (¶ 2(a)(1) *the nature, extent, and seriousness of the conduct*). Applicant's candor about the debts weighs in his favor, but his inattention to his indebtedness raises concerns as to whether he will put his self-interest ahead of his obligations (¶ 2(a)(6) *the presence or absence of rehabilitation and other pertinent behavioral changes*). Little confidence can be placed in his promises to repay his debts when he is still looking for income to repay them. On the evidence before me, I am unable to conclude that it is clearly consistent with the national interest to grant him access.

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: For Applicant

Subparagraph 1.h: Against Applicant

Subparagraph 1.i: Against Applicant

Subparagraph 1.j: Against Applicant

Subparagraph 1.k: Against Applicant

Subparagraph 1.l: For Applicant

Subparagraph 1.m: Against 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.

Elizabeth M. Matchinski

Administrative Judge

1. Included as Item 5 was a credit report dated June 7, 2006. Department Counsel indicated it would not rely on the credit report in support of the SOR allegations due to identification problems (all entries under Applicant's social security number and birthdate but some listed under his name as "Jr." and others as "Sr."). Applicant has a son with the same first and last name (a Jr.). *See* Item 4. The credit report was considered by me to the extent it could be determined to provide reliable financial record information not adverse to the Applicant.
2. In its correspondence forwarding the SOR to Applicant, DOHA Columbus erroneously notified Applicant he would have 20 days in which to submit his written response to the documentary information supporting the SOR. (See Item 2) In the FORM, and in correspondence forwarding the FORM to Applicant, Applicant was properly notified that he had 30 days from receipt of the FORM to file any objections or information for consideration.
3. Applicant provided a confirmation number for the payment when he answered the SOR (Item 3).