

DATE: March 28, 2007

In Re:

SSN: -----

Applicant for Security Clearance

ISCR Case No. 06-13675

DECISION OF ADMINISTRATIVE JUDGE

JOAN CATON ANTHONY

APPEARANCES

FOR GOVERNMENT

Candace L. Le'i, Esq., Department Counsel

FOR APPLICANT

Pro Se

SYNOPSIS

Applicant's history of financial delinquencies reaches back to the 1990s. As of November 3, 2006, he owed creditors approximately \$13,750 on four accounts that had been charged off or placed for collection. Applicant admitted these debts in his answer to the SOR and claimed three of the four debts were paid in November and December 2006. He also claimed he was making payments to satisfy the fourth debt. Applicant failed to present credible evidence that his debts were being paid or were satisfied. However, his credit report for December 27, 2006, corroborated his statement that he had paid one debt of \$349 in full. Applicant failed to mitigate security concerns under Guideline F, Financial Considerations, of the Directive. 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. On November 16, 2006, under the applicable Executive Order⁽¹⁾ and Department of Defense Directive,⁽²⁾ DOHA issued a Statement of Reasons (SOR), detailing the basis for its decision-security concerns raised under Adjudicative Guideline F (Financial Considerations), promulgated December 29, 2005, and applicable in DoD adjudications of SORs issued as of September 1, 2006, and thereafter. With the SOR, DOHA provided Applicant a copy of the Directive and the applicable Guidelines. Applicant answered the SOR in writing on December 8, 2006, and requested that his case be determined on the record in lieu of a hearing. The Government compiled its File of Relevant Material (FORM) on December 29, 2006. The FORM contained documents identified as Items 1 through 7. By letter dated January 5, 2007, a copy of the FORM was forwarded to Applicant, with instructions to submit any additional information and/or objections within 30 days of receipt. Applicant received the file on January 8, 2007. He did not file any information within the required time period. On February 28, 2007, the case was assigned to me for a decision.

FINDINGS OF FACT

The SOR contains four allegations of disqualifying conduct under the revised Financial Considerations guideline of the

Directive. (SOR ¶¶ 1.a. through 1.d.) Applicant admitted the four allegations and offered mitigating circumstances. Applicant's admissions are admitted herein as findings of fact.

Applicant is 67 years old and a high school graduate. From 1961 to 1963, he served in the U.S. Navy. He was married in 1975 and divorced in 1987. He is the father of one adult child. He attended junior college in 1994-1995 and 1998, but did not take a degree. Since July 1998, he has been employed as a private security officer by a defense contractor. (Item 4; Item 5 at 6.)

Applicant completed a security clearance questionnaire (SF-86) in August 1998. Question 28a on the SF-86 asked if an Applicant had been over 180 days delinquent on a debt in the past 7 years. Question 28b asked if an applicant had been over 90 days delinquent on any debt. Applicant answered "yes" to both questions and reported he owed \$40,736 in credit card debt to seven creditors. He listed the name of a budget planning corporation and indicated he had a five-year plan for paying his delinquent debts. (Item 4 at 9.) The debts alleged in the SOR were charged off or placed for collection in 2004, 2005, and 2006. (Item 1.)

In September 2006, Applicant replied to financial interrogatories sent to him by DOHA. He reported a monthly income of \$2,478, monthly expenses of \$1,070, and total assets of \$25,884. He reported a monthly consolidated debt payment of \$1,032 to the budget planning corporation, \$58 to a second creditor, and a monthly net remainder of approximately \$317. (Item 5 at 3.)

As an attachment to his answer to the SOR, Applicant acknowledged his debts and stated he had resolved them. He stated, in pertinent part: "I have been paying my bills for over three years now and I have two more years to go. . . . I will continue to pay my indebtedness until it is paid off." (Item 3 at 3.)

In his answer to the SOR, Applicant admitted that as of November 3, 2006, he owed a creditor \$798 on a delinquent account charged off as a bad debt in about July 2004. (SOR ¶ 1.a.) He stated he had paid the debt on December 6, 2006. As evidence of payment he provided a photocopy of the face of a check, marked "VOID," made payable to the creditor for \$218.66. A notation in handwriting stated the debt had been paid by check "on TEL." on December 6, 2006. (Item 3 at 6.)

Applicant admitted in his answer to the SOR that he owed a creditor \$9,074 on an account placed for collection in about January 2005, and, as of November 3, 2006, the account had not been satisfied. (SOR ¶ 1.b.) He also stated he had paid the debt in November 2006. As evidence he provided a photocopy of the face of a check, dated November 6, 2006, made payable to the creditor for \$145.78. The creditor's statement, dated October 21, 2006, indicated a balance of \$145.78. The statement was annotated, in hand-writing, "PAID IN FULL." Two additional notations appeared on the photocopy. One notation reads "Paid in Full" and the other reads "This check was sent back to me." (Item 3 at 5.)

Applicant admitted in his answer to the SOR that he owed a creditor approximately \$3,532 on an account placed for collection in about October 2006 and, as of November 3, 2006, the account had not been paid. (SOR ¶ 1.c.) In his answer, he stated the bill was being paid in four equal installments, and he presented photocopies of the faces of four voided checks made payable to the creditor. Each of the four checks was made out for \$892. One voided check was dated December 8, 2006, the date Applicant completed and mailed his answer to the SOR. The other three voided checks were dated January 15, 2007, February 15, 2007, and March 15, 2007. (Item 3 at 7-8.)

Applicant also admitted a debt of \$349 to a creditor for a delinquent account, charged off in about October 2006, which had not been satisfied as of November 3, 2006. (SOR ¶ 1.d.) In his answer he stated: "This account is paid off Nov. 30, 2006." He also stated: "[Creditor] was paid off Nov. 30, 2006 by debit card on phone. Paid \$349." (Ex. 3 at 6.)

Applicant's credit report of November 3, 2006 listed the four debts as unpaid. (Item 7 at 1- 2.) His credit report of December 27, 2006 listed the debts alleged in the SOR at ¶¶ 1.a., 1.b., and 1.c. as unpaid. The entry on the credit report for the debt alleged at ¶ 1.d. reads: "Paid Charge Off" on the December 27, 2006 credit report.

POLICIES

"[No 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 restricted eligibility for access to classified information to United States citizens "whose personal and professional history affirmatively indicates loyalty to the United States, strength of character, trustworthiness, honesty, reliability, discretion, and sound judgment, as well as freedom from conflicting allegiances and potential for coercion, and willingness and ability to abide by regulations governing the use, handling, and protection of classified information." Exec. Or. 12968, *Access to Classified Information* § 3.1(b) (Aug. 4, 1995). Eligibility for a security clearance is predicated upon the applicant meeting the security guidelines contained in the Directive.

By Memorandum dated August 30, 2006, the Under Secretary of Defense directed implementation of revised Adjudicative Guidelines for Determining Eligibility for Access to Classified Information (AG), promulgated December 29, 2005, and effective September 1, 2006, as modified. The revised AG replaced the guidelines published in Enclosure 2 to DoD Directive 5220.6 and Appendix 8 to DoD 5200.2-R and apply to all adjudications and other determinations in which a SOR had not been issued by September 1, 2006. Accordingly, since the SOR in this case was issued November 16, 2006, the revised AG apply.

The revised AG set forth personal security guidelines, as well as the 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 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 that 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 that disqualify, or may disqualify, the applicant from being eligible for access to classified information. *See Egan*, 484 U.S. at 531. The Directive presumes a nexus or rational connection between proven conduct under any of the disqualifying conditions listed in the guidelines and an applicant's security suitability. *See* ISCR Case No. 95-0611 at 2 (App. Bd. May 2, 1996).

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 (App. Bd. Dec. 19, 2002); *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.

CONCLUSIONS

Guideline F-Financial Considerations

An Applicant's failure to live within his 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. *See* revised AG F 18.

In the SOR, DOHA alleged Applicant was responsible for four delinquent debts in the amount

of approximately \$13,750, which had not been satisfied as of November 3, 2006. The allegations raised security concerns under two Guideline F disqualifying conditions, AG F 19(a) and AG F 19(c).⁽³⁾ Applicant admitted responsibility for the financial delinquencies, and he offered information indicating he had paid some of the debts after receiving the SOR on November 16, 2006. The information he offered was not of sufficient probity to rebut the Government's allegations.

Through Applicant's admissions and the record evidence, the Government established that Applicant had a history of not meeting his financial obligations and was unable or unwilling to satisfy his debts as specified in AG F 19(a) and AG F 19(c). Applicant's assertion that he had paid the debt alleged at SOR ¶ 1.d. was corroborated by his December 27, 2006

credit report. I conclude the allegation at ¶ 1.d. for Applicant.

Several conditions could mitigate the security concerns raised by Applicant's remaining financial delinquencies. Unresolved financial delinquency might be resolved if it 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. (AG F 20(a)). Additionally, unresolved financial delinquency might be mitigated if the conditions that resulted in the financial problem were largely beyond the person's control, such as loss of employment, a business downturn, unexpected medical emergency, or a death, divorce, or separation, and the individual acted responsibly under the circumstances. (AG F 20(b).) Still other mitigating circumstances that might be applicable include evidence 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 (AG F 20(c)). or the individual has initiated a good-faith effort to repay overdue creditors or otherwise resolve debts (AG F 20(d)).

Applicant's acknowledged financial delinquencies occurred recently and are numerous. There is evidence in the record to suggest the circumstances that caused Applicant's delinquencies might occur in the future. Applicant did not submit documentary evidence from his creditors to support his claims that he had paid them. Accordingly, AG F 20(a) does not apply as a mitigating condition. Nothing in the record suggests that Applicant's unresolved financial delinquencies were largely beyond his control, and thus AG F 20(b) is inapplicable. Although Applicant sought the assistance of a budget planning corporation in consolidating some of his debts for payment, he provided no evidence he sought or received financial counseling, and, accordingly, AG F 20(c) is inapplicable. Applicant represented that he had paid three of his delinquencies in November and December of 2006 and would pay the fourth debt in four installments between December 2006 and March 2007. However, he failed to provide evidence to substantiate his representations that he had, in good faith, paid his creditors.

Applicant's actions to pay his creditors were recent and did not suggest a track record of timely meeting his financial obligations. Additionally, his promises to pay one of his creditors in the future was not persuasive. Promises to take actions in the future are not a substitute for a documented track record of remedial actions. ISCR Case No. 98-0188 at 3 (April 29, 1999.) In determining an individual's security worthiness, the Government cannot rely on the possibility that an applicant might resolve his or her outstanding debts at some future date. ISCR Case No. 98-0614 at 5 (App. Bd. Jul. 12, 1999). Accordingly, I find mitigating condition AG F 20(d) is inapplicable.

Whole Person Analysis

The revised AG and the Directive require that the adjudicative process in a security clearance case not only assess conduct under the adjudicative guidelines, but it must also reflect a careful weighing of a number of variables known as the whole person concept. The factors to be considered in a whole person analysis include the nature, extent, and seriousness of the conduct; the circumstances surrounding the conduct, to include knowledgeable participation; the frequency and recency of the conduct; the individual's age and maturity at the time of the conduct; the extent to which participation is voluntary; the presence or absence of rehabilitation and other pertinent behavioral changes; the motivation for the conduct; the potential for pressure, coercion, exploitation, or duress; and, the likelihood for continuation or recurrence.

Applicant is a mature adult who has a history of financial over-extension. To his credit, he developed a plan to repay his some of his creditors. Even as he did that, however, he accrued new debts that led to delinquencies.

Applicant's history of not meeting his financial obligations and his inability to pay his debts raises a security concern because it suggests a lack of good faith and unreliability. Since he has not sought consumer credit counseling or assistance in learning how to manage his finances, Applicant has failed to demonstrate his delinquencies will not continue to be security concerns in the future.

In all adjudications, the protection of our national security is the paramount concern. Security clearance decisions are not intended to assign guilt or to impose further punishment for past transgressions. Rather, the objective of the security clearance process is the fair-minded, common sense assessment of a person's trustworthiness and fitness for access to classified information. Indeed, the "whole person" concept recognizes we should view a person by the totality of his or

her acts and omissions, including all disqualifying and mitigating conduct. Having done so, I conclude Applicant should not be entrusted with a security clearance. In reaching my decision, I have considered the evidence as a whole, including the appropriate factors and guidelines in Department of Defense Directive, 5220.6., as amended. Accordingly, SOR allegation 1.d. is concluded for Applicant. Allegations 1.a. through 1.c. are concluded against Applicant.

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.: Against Applicant

Subparagraph 1.d.: For Applicant

DECISION

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

Joan Caton Anthony

Administrative Judge

1. Exec. Or. 10865, *Safeguarding Classified Information within Industry* (Feb. 20, 1960), as amended and modified.
2. Department of Defense Directive 5220.6, *Defense Industrial Personnel Security Clearance Review Program* (Jan. 2, 1992), as amended and modified.
3. AG F 19(a) reads: "Inability or unwillingness to satisfy debts." AG F 19(c) reads: "A history of not meeting financial obligations."