

DATE: March 15, 2007

In re:

SSN: -----

Applicant for Security Clearance

CR Case No. 06-17283

DECISION OF ADMINISTRATIVE JUDGE

CLAUDE R. HEINY

APPEARANCES

FOR GOVERNMENT

Richard A. Stevens, Esq., Department Counsel

FOR APPLICANT

George W. Lockwood, Esq.

SYNOPSIS

Applicant had seven delinquent debts totaling approximately \$28,000. One creditor cannot locate any delinquent debt and Applicant awaits a response for another creditor. He has paid the other five debts. The record evidence is sufficient to mitigate or extenuate the negative security implications stemming from his financial considerations. However, Applicant set fire to his home resulting in the death of his wife and stepdaughter. The record evidence is insufficient to mitigate or extenuate the negative security implications related to his criminal conduct. Clearance is denied.

STATEMENT OF THE CASE

On August 30, 2006, the Defense Office of Hearings and Appeals (DOHA) issued a Statement of Reasons (SOR) to Applicant stating that DOHA could not make the preliminary affirmative finding⁽¹⁾ it is clearly consistent with the national interest to grant or continue a security clearance for Applicant. The SOR set forth reasons why a security clearance could not be granted or continued due to financial considerations and criminal conduct security concerns.

On September 22, 2006, Applicant answered the SOR and requested a hearing. On November 3, 2006, I was assigned the case. On November 16, 2006, a Notice of Hearing was issued for the hearing held on November 29, 2006. At the hearing, six government exhibits (Gov Ex) and eight applicant exhibits (App Ex) were admitted and Applicant testified on his own behalf. On December 6, 2006, DOHA received the transcript (Tr.).

FINDINGS OF FACT

The SOR alleges security concerns for financial considerations and criminal conduct. Applicant admits being responsible for the debts and admits he was charged with one count of first degree arson and two counts of second degree murder. He points out that a jury found him not guilty of the charges. The admissions are incorporated herein as findings of fact. After a thorough review of the entire record, I make the following findings of fact.

Applicant is a 43-year-old aeronautical engineer who has worked for a defense contractor since January 2005 and is

seeking to obtain a security clearance.

Applicant incurred a credit card debt (SOR 1.d) that was later reduced to a \$7,302 judgment (SOR 1.a), which he paid in August 2006. (App Ex A). A credit union charged off a \$3,572 debt (SOR 1.b). (Gov Ex 3) In October 2006, Applicant contacted the credit union and was informed the credit union was unable to locate an existing file or outstanding obligation under his name or account number. (App Ex B) Applicant had a \$5,546 department store bill (SOR 1.c) that was charged off. In November 2006, Applicant contacted the creditor and is waiting a response from them. (Tr. 75-76) Applicant incurred a \$1,395 credit card debt (SOR 1.e) that was later reported for collection. In October 2006, Applicant paid this debt. (App Exs C and F). Applicant had an \$8,245 account (SOR 1.f) reported for collection, which he paid in February 2004. (App Ex D) He had a gasoline credit card (SOR 1.g) delinquent in the amount of \$1,543. In November 2006, Applicant paid \$2,517 as full settlement of the debt. (App Ex E) Applicant had a \$156 telephone bill (SOR 1.h) reported for collection, which he paid in September 2005. (App Ex F)

Applicant has \$38,000 in his checking account (Tr. 78) and \$6,000 in his savings account. (Tr. 92) Applicant's current salary is \$96,000 a year. Applicant liquidated approximately \$40,000 from his 401 (k) retirement plan to pay attorney fees. (Tr. 104, 108) Applicant paid \$23,000 for a 1998 Chevy Blazer which was impounded by the police in July 2001. It is now completely paid for, however the police have yet to return the vehicle. (Tr. 87)

In July 2001, there was a fire at Applicant's home, which was investigated by the state fire marshal. (Gov Ex 5) The first floor of the residence sustained heavy heat and smoke damage with direct flame damage confined to the stairway and hall area. All the rooms on the second floor were heavily smoke and heat damaged, with little or no direct flame damage. Applicant's wife of eight years and ten-year-old stepdaughter were sleeping in the upstairs bedrooms. They were both pronounced dead at the hospital. A melted fuel container was found in the house. The fire investigation report ruled out all accidental causes of the fire and classified the cause of the fire as incendiary.

A specially trained dog alerted on the shoes and pants Applicant was wearing as well as the floor mat in his Blazer. Laboratory testing did not disclose the presence of an accelerant on these items. (App Ex H)

In July 2001, Applicant was arrested and charged with one count of first degree arson and two counts of second degree murder. Following a week long trial, Applicant was acquitted of the charges. On July 17, 2001 at 12:30 p.m., Applicant was advised of his rights while being investigated by the country sheriff's department. (Gov ex 4) During the interview, there were three breaks for bathroom use and water. The sheriff investigator told Applicant the fire investigator did not believe it was an accidental fire, but the fire had been set. (Tr. 40) The investigators confronted Applicant a number of times stating they believed Applicant had intentionally set the fire. (Tr. 42) Applicant told the investigators there had been some financial difficulties and he was under stress at work. Applicant told investigators no one was supposed to get hurt that his wife and stepchild were to escape. Applicant had expected the smoke alarms to warn them. During the interview with investigators, Applicant drew a diagram of where he had poured flammable liquid. (Tr. 44)

At 6:55 p.m. (Tr. 38), Applicant wrote a handwritten statement (Gov Ex 4) in which he said he put a mixture of two cycle oil and gasoline on the stairs, lit it using a fire starter used for starting the barbeque grill, and then left to drive to work. He stated he did not intend his wife and stepdaughter to be harmed.

POLICIES

The Directive sets forth adjudicative guidelines to be considered when evaluating a person's eligibility to hold a security clearance. Disqualifying Conditions (DC) and Mitigating Conditions (MC) are set forth for each applicable guideline. Additionally, each decision must be a fair and impartial commonsense decision based upon the relevant and material facts and circumstances, the whole person concept, and the factors listed in Section 6.3 of the Directive. The adjudicative guidelines are to be applied by administrative judges on a case-by-case basis with an eye toward making determinations that are clearly consistent with the interests of national security. The presence or absence of a particular condition or factor for or against clearance is not determinative of a conclusion for or against an applicant. However, the adjudicative guidelines should be followed whenever a case can be measured against this policy guidance. Considering the evidence as a whole, I conclude the relevant guidelines to be applied here are Guideline F, financial considerations, and Guideline J, criminal conduct.

BURDEN OF PROOF

The sole purpose of a security clearance decision is to decide if it is clearly consistent with the national interest to grant or continue a security clearance for an applicant. Initially, the Government must establish, by substantial evidence, that conditions exist in the personal or professional history of the applicant which disqualify, or may disqualify, an applicant from being eligible for access to classified information. The burden of proof in a security clearance case is something less than a preponderance of evidence, although the government is required to present substantial evidence to meet its burden of proof. Substantial evidence is more than a scintilla, but less than a preponderance of the evidence. All that is required is proof of facts and circumstances which indicate an applicant is at risk for mishandling classified information, or that an applicant does not demonstrate the high degree of judgment, reliability, or trustworthiness required of persons handling classified information. Additionally, the government must prove controverted facts alleged in the SOR. Once the government has met its burden, the burden shifts to an applicant to present evidence to refute, extenuate or mitigate the government's case. Additionally, an applicant has the ultimate burden of persuasion to obtain a favorable clearance decision. ⁽²⁾

As noted by the United States Supreme Court in *Department of Navy v. Egan*, 484 U.S. 518, 528 (1988), "no one has a 'right' to a security clearance." A person who has access to classified information enters into a fiduciary relationship with the government based on trust and confidence. The government, therefore, has a compelling interest in ensuring each applicant possesses the requisite judgment, reliability and trustworthiness of one who will protect the national interests. The "clearly consistent with the national interest" standard compels resolution of any reasonable doubt about an applicant's suitability for access to classified information in favor of protecting national security. Security clearance determinations should err, if they must, on the side of denials.

CONCLUSIONS

A person's relationship with his creditors is a private matter until evidence is uncovered demonstrating an inability or unwillingness to repay debts under agreed upon terms. Absent evidence of strong extenuating or mitigating circumstances, an applicant with a history of serious or recurring financial difficulties is in a position of risk that is inconsistent with the holding of a security clearance. An applicant is not required to be debt free, but is required to manage his finances so as to meet his financial obligations.

Financial considerations become a security concern when a person has significant delinquent debts. An individual who is financially overextended is at risk of having to engage in illegal or unethical acts to generate funds to meet financial obligations. Additionally, an individual who is financially irresponsible may also be irresponsible, unconcerned, or careless in their obligations to protect classified information. Behaving responsibly or irresponsibly in one aspect of life provides an indication of how a person may behave in other aspects of life.

The Government has satisfied its initial burden of proof under Guideline F (Financial Considerations). The Applicant admits owing seven debts totaling approximately \$28,000. Disqualifying Conditions (DC) 1 (E2.A6.1.2.1 *A history of not meeting financial obligations*) and 3 (E2.A6.1.2.3 *Inability or unwillingness to satisfy debts*) apply.

Two of the eight obligations listed in the SOR represent the same obligation. One was a credit card delinquency (SOR 1.d) which was later reduced to judgment (SOR 1.a). Applicant contacted one of the creditors (SOR 1.b) and the credit union's records fails to indicate Applicant owes any delinquent amount. Applicant has paid all but one of the other past due obligations. Applicant had a \$5,546 charged off debt (SOR 1.c) Applicant has contacted this creditor and is awaiting a reply. He has sufficient money in his checking account (\$38,000) or his savings account (\$6,000) to pay this debt. Additionally, even without his checking or saving accounts his annual income of \$96,000 is sufficiently large that the debt could be paid with ease. Mitigating Condition (MC) 6 (E2.A6.1.3.6 *The individual initiated a good-faith effort to repay overdue creditors or otherwise resolve debts*) applies. I find for Applicant as to financial considerations.

The Government has satisfied its initial burden of proof under Criminal Conduct, Guideline J. Under Guideline J, the security eligibility of an applicant is placed into question when that applicant is shown to have a history or pattern of criminal activity creating doubt about his judgment, reliability, and trustworthiness. Willingness to abide by rules is an essential qualification for eligibility for access to the nation's secrets. A history of illegal behavior indicates an

individual may be inclined to break the rules.

Applicant set his house on fire and then left for work. His wife and stepdaughter died in the fire. DC 1 (E2.A10.1.2.1. *Allegations or admission of criminal conduct, regardless of whether the person was formally charged*) and 2 (E2.A10.1.2.2. *A single serious crime or multiple lesser offenses*) apply.

Although he was acquitted of the charge, he did admit to starting the fire. Applicant acknowledged his rights at 12:30 p.m. and approximately six and a half hours later, at 6:55 p.m., he wrote a statement stating he took oil and gasoline, poured them on the steps, and lit them. I do not believe an interview of less than seven hours with three breaks and without evidence of police misconduct was so coercive as to make a person admit to starting a fire in their home when they did not do so. I do not find the investigators' conduct, of repeated stating they believed the Applicant intentionally set the fire, to be unduly coercive.

The fact that laboratory tests show the lack of an accelerant on Applicant's shoes, pants, and floor mat of his vehicle does not prove his innocence. It only proves there was no accelerant on these items.

Mitigating Conditions (MC) 1 (E2.A10.1.3.1. *The criminal behavior is not recent*) does not apply because fire occurred in July 2001, which is recent criminal behavior. MC 2 (E2.A10.1.3.2. *The crime was an isolated incident*) has some applicability, but is insufficient to overcome the seriousness of the fire and deaths. There is no indication Applicant was pressured or coerced into committing the act, so MC 3 (E2.A10.1.3.3. *The person was pressured or coerced into committing the act and those pressures are no longer present in that person's life*) does not apply. Nor is there evidence Applicant did not voluntarily commit the act so MC 4 (E2.A10.1.3.4. *The person did not voluntarily commit the act and/or the factors leading to the violation are not likely to recur*) does not apply.

Applicant was acquitted of the charges, so MC 5 (*Acquittal*) has some applicability. However, without the record of trial or other evidence supporting the acquittal, I do not have sufficient record evidence to overcome Applicant's hand written admission that he poured fuel on the stairs, lit it, and left for work hoping the smoke alarms would alert his wife and step daughter to the danger.

The record is silent as to evidence of rehabilitation. MC6. (E2.A10.1.3.6. *There is clear evidence of successful rehabilitation*) does not apply. I find against the Applicant as to criminal conduct.

In reaching my conclusions I have also considered: the nature, extent, and seriousness of the conduct; Applicant's age and maturity at the time of the conduct; the circumstances surrounding the conduct; Applicant's voluntary and knowledgeable participation; the motivation for the conduct; the frequency and recency of the conduct; presence or absence of rehabilitation; potential for pressure, coercion, exploitation, or duress; and the probability that the circumstance or conduct will continue or recur in the future.

FORMAL FINDINGS

Formal Findings as required by Section 3, Paragraph 7, of Enclosure 1 of the Directive are hereby rendered as follows:

Paragraph 1 Financial Considerations: 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

Subparagraph 1.h: For Applicant

Paragraph 2 Criminal Conduct: AGAINST APPLICANT

Subparagraph 2.a: Against Applicant

DECISION

In light of all 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.

Claude R. Heiny

Administrative Judge

- 1. Required by Executive Order 10865, as amended, and Department of Defense Directive 5220.6 (Directive), dated January 2, 1992, as amended.**
- 2. ISCR Case No. 93-1390 (January 27, 1995) at pp. 7-8; Directive, Enclosure 3, Item E3.1.15**