

STATEMENT OF THE CASE

The Defense Office of Hearings and Appeals (DOHA) declined to grant or continue a security clearance for Applicant. On July 26, 2007, DOHA issued a Statement of Reasons¹ (SOR) 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. Applicant answered the SOR in writing on August 14, 2007, and elected to have a hearing before an administrative judge. The case was assigned to me on August 29, 2007. On September 19, 2007, I convened a hearing to consider whether it is clearly consistent with the national interest to grant or continue a security clearance for Applicant. The Government and the Applicant submitted exhibits that were admitted into evidence, including three exhibits submitted by Applicant after the hearing date but described on the record when he did not have copies available at the hearing. DOHA received the hearing transcript (Tr.) on September 27, 2007.

FINDINGS OF FACT

Applicant admitted all the SOR allegations, except for Subparagraph 1.c. which he denied. His admissions are incorporated as findings of fact. After a complete and thorough review of the evidence in the record, and full consideration of that evidence, I make the following additional findings of fact:

Applicant is 45 years old, married with two children, and works for a defense contractor as a laboratory technician. He started work there in January 1997, and has worked there continuously since 1997. Applicant also served in the Navy for nine years. In the Navy he had a security clearance and was on the personnel reliability program for five years. (Tr. 10, 26, 40, 41; Exhibit 1)

Applicant has six delinquent debts totaling approximately \$16,000. Applicant earns about \$53,000 annually. His wife worked regularly until two years ago, when she lost her \$33,000 annual salaried job. Since then, she worked sporadically, and in September 2007, began a new job paying \$25,000. While she was unemployed, Applicant could not afford to pay the mortgages on his two rental houses. He lives in a third house on which the monthly mortgage payment is \$1,700. One rental house was sold at auction after a mortgage foreclosure. The delinquent debts in Subparagraphs 1.d. and 1.f. (\$8,461 and \$7,247, respectively) pertain to the same rental property. Applicant has not paid anything on those delinquent accounts recently because he claims his salary alone is insufficient to allow him to pay them, his monthly financial obligations, and his son's college tuition. However, after totaling his monthly expenses and comparing them to his income and his wife's additional income, he will have about \$1,000 monthly with which to pay debts. His financial statement submitted in April 2007, to the Government investigator shows no income for his wife and a negative balance monthly of \$114. This financial statement is now outdated. Applicant's cars are fully paid for now. (Tr. 10, 19, 21-30, 35, 36; Exhibits 1-6, A, C, Answer)

¹Pursuant to Exec. Or. 10865, *Safeguarding Classified Information within Industry* (Feb. 20, 1960), as amended and modified, and Department of Defense Directive 5220.6, *Defense Industrial Personnel Security Clearance Review Program* (Jan. 2, 1992), as amended and modified (Directive).

In the week before the hearing, Applicant paid the delinquent debts listed in Subparagraphs 1.c. (cell telephone bill for \$297) and 1.e. (telephone service provider for \$246). (Tr. 15, 40; Exhibits 2-6, A, C)

Applicant has not paid the delinquent medical services debts listed in Subparagraph 1.a. (\$210) and Subparagraph 1.b. (\$288), but committed to doing so when he has the money available. Applicant has health insurance through his employer. He assumed the insurance company paid those bills. His company has changed medical insurance carriers several times in the past five years, and he admitted he should have checked on the status of those debts before the present time. He asserts he may not have been aware of these debts existing before now. (Tr. 19-21, 37, 40, 41; Exhibits 3-6)

Applicant is trying to sell his four-year-old motorcycle. He hopes to obtain \$10,000. He intends to use the money to pay the four unpaid delinquent debts listed in the SOR. (Tr. 34, 38)

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 has 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 the national interest to do so.” Exec. Or. 10865, *Safeguarding Classified Information with Industry* § 2 (Feb. 20, 1960). Eligibility for a security clearance is predicated upon the applicant meeting the security guidelines contained in the Directive. 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.

The adjudication process is based on the whole person concept. All available, reliable information about the person, past and present, is to be taken into account in reaching a decision as to whether a person is an acceptable security risk. Enclosure 2 of the Directive sets forth personnel security guidelines, as well as the disqualifying conditions (DC) and mitigating conditions (MC) under each guideline that must be carefully considered in making the overall common sense determination required.

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. Those assessments include: (1) the nature, extent, and seriousness of the conduct; (2) the circumstances surrounding the conduct, and the extent of knowledgeable participation; (3) how recent and frequent the behavior was; (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 pertinent 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 (See Directive, Section E2.2.1. of Enclosure 2). Because each security case presents its own unique facts and circumstances, it should not be assumed that the factors exhaust the realm of human experience or that the factors apply equally in every case. Moreover, although adverse information concerning a single condition may not be sufficient for an unfavorable

determination, the individual may be disqualified if available information reflects a recent or recurring pattern of questionable judgment, irresponsibility, or other behavior specified in the Guidelines.

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. 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). All that is required is proof of facts and circumstances that 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. ISCR Case No. 00-0277, 2001 DOHA LEXIS 335 at **6-8 (App. Bd. 2001). Once the Government has established a *prima facie* case by substantial evidence, the burden shifts to the applicant to rebut, explain, extenuate, or mitigate the facts. *See* Directive ¶ E3.1.15. An applicant "has the ultimate burden of demonstrating that is clearly consistent with the national interest to grant or continue his security clearance. ISCR Case No. 01-20700 at 3 (App. Bd. 2002). "Any doubt as to whether access to classified information is clearly consistent with national security will be resolved in favor of the national security." Directive ¶ E2.2.2. "[S]ecurity clearance determinations should err, if they must, on the side of denials." *Egan*, 484 U.S. at 531. *See* Exec. Or. 12968 § 3.1(b).

Based upon a consideration of the evidence as a whole, I find the following adjudicative guideline most pertinent to an evaluation of the facts of this case:

Guideline F: Financial Considerations: The Concern: 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 could 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. AG ¶18

CONCLUSIONS

Financial Considerations: Applicant incurred about \$16,000 in delinquent debt in 2005 after his wife lost her job. Of the six delinquent debts listed in the SOR, two pertain to mortgage arrearage, and the remaining four debts are each less than \$300. The Disqualifying Conditions (DC) that apply are AG ¶19.a. (inability or unwillingness to satisfy debts), and AG ¶19.c. (a history of not meeting financial obligations).

However, Applicant's financial situation was aggravated by his wife's unemployment status for two years from 2005 to 2007. Now he has repaid two debts, and has two small debts remaining, plus the two mortgage accounts on his one rental property. Applicant has sufficient income with his wife working to repay the two small debts, which he committed to do when he obtains the additional funds. However, he will need more time to resolve the arrearage on the mortgage accounts. When he sells his motorcycle, he intends to use the cash to resolve these debts substantially. The Mitigating Conditions (MC) which apply are AG ¶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), AG ¶20.c. (there are clear indications that the problem is being resolved or is under control), and AG ¶20.d (the individual initiated a good-faith effort to repay overdue creditors or otherwise resolve debts).

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 eligible for a security clearance." ¶ 2(a). "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. "Available, reliable information about the person, past and present, favorable and unfavorable, should be considered in reaching a determination." ¶ 2(a). In evaluating Applicant's case, I have considered the adjudicative process factors listed in the ¶ 2(a).

I considered all the variables regarding his debt problems. I considered the size of the debts, their nature, and the amount, and his wife's subsequent unemployment after they were obligated on the mortgage payments. I also considered that he has not incurred any recent debt he cannot repay on a monthly basis, and is working to repay the four remaining debts. He repaid two of the small debts which were less than \$300 each. Now he can use his wife's income to resolve the two small debts, and work with the mortgagees to repay the arrearage on the mortgage accounts.

Based on his acceptance of responsibility for the debts, his payment of two debts, his commitment to repay the four debts, and current family income, I do not find a potential for coercion, pressure, exploitation, or duress, nor a likelihood the past spending pattern will recur. Applicant was credible, straightforward, and honest in his presentation of his evidence. His evidence was persuasive and he met his burden of proof regarding the MC. Applicant is aware of the consequences of further financial mismanagement may have on his employment.

Therefore, I conclude the financial considerations security concern for Applicant. I also conclude the "whole person concept" analysis for Applicant.

FORMAL FINDINGS

The following are my conclusions as to each allegation in the SOR:

Paragraph 1. 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

DECISION

In light of all of 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.

Philip S. Howe
Administrative Judge