

DATE: December 20, 2007

In re:

SSN: -----

Applicant for Security Clearance

ISCR Case No. 07-07181

**DECISION OF ADMINISTRATIVE JUDGE
ERIN C. HOGAN**

APPEARANCES

FOR GOVERNMENT

Gina L. Marine, Esq., Department Counsel

FOR APPLICANT

Pro Se

SYNOPSIS

Security concerns raised about Applicant's history of traffic violations are mitigated due to Applicant successfully completing all sentences related to his traffic violations and demonstrating an increased level of maturity. The security concern raised under financial considerations due to a Chapter 7 bankruptcy discharge in 2004 is also mitigated. Applicant demonstrated that he is currently financially stable. An unforeseen lay-off caused the financial problems which lead to Applicant's bankruptcy. Clearance is granted.

STATEMENT OF CASE

On August 30, 2007, the Defense Office of Hearings and Appeals (DOHA) issued Applicant a Statement of Reasons (SOR) stating they were unable to find that it is clearly consistent with the national interest to grant or continue a security clearance.¹ The SOR, which is in essence the administrative complaint, alleges security concerns under Guideline E, Personal Conduct, and 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.

In a sworn statement dated September 20, 2007, Applicant responded to the SOR allegations and elected to have a hearing before an administrative judge. The case was assigned to me on October 10, 2007. On October 25, 2007, a notice of hearing was sent scheduling the hearing for November 9, 2007. The hearing was held as scheduled. The Applicant waived the 15 day notice requirement provided in the Directive. The government offered three exhibits which were admitted as Government Exhibits (Gov) 1-3 without objection. The record was held open until December 10, 2007, in order to allow Applicant to submit additional documents. Applicant timely submitted a 27 page document that was admitted as AE A without objection. The transcript was received on November 20, 2007.

FINDINGS OF FACT

In his SOR response, Applicant admits to the all of the allegations in the SOR. In addition, after a thorough and careful review of the pleadings and exhibits, I make the following findings of fact.

Applicant is a 28-year-old man employed with a Department of Defense contractor who is applying for a security clearance. He has been with his current employer for over a year. He is single and has no children. In June 2006, he earned a Bachelor's Degree in Electronic Engineering.²

In early 2004, Applicant encountered financial problems as a result of being laid off from his full-time job and the break up of an eight year relationship. He was laid off from his job due to a work force reduction. He found a part-time job in July 2004, but did not find full-time employment until the end of 2004. His annual salary was \$14,000; a substantial reduction from his \$26,000 annual salary from his prior employer.³

On May 18, 2004, Applicant filed for Chapter 7 bankruptcy. He listed total assets of \$1,150, and total liabilities of \$16,963. The bankruptcy was discharged on August 24, 2004.⁴

On December 27, 2006, Applicant completed an Electronic Questionnaire for Investigations Processing (e-QIP) in relation to his employment with the defense contractor. He listed his

¹This action was taken under Executive Order 10865, dated February 20, 1960, as amended, and DoD Directive 5220.6, dated January 2, 1992, as amended and modified (Directive).

² Tr. at 4 - 5.

³ Tr. at 14, 16-17.

⁴ Gov 3.

bankruptcy in response to question 27a.⁵ In response to question 23d "Have you ever been charged with or convicted of any offense(s) related to alcohol or drugs?", he answered "yes" and listed a February 2005, Operating While Intoxicated charge. He also answered "yes" in response to question 23f "In the last 7 years, have you been arrested for, charged with, or convicted of any offense(s) not listed in response to a, b, c, d, or e above? (Leave out traffic fines of less than \$150 unless the violation was alcohol or drug-related.)." He listed a March 2006 arrest for failure to use a turn signal; driving on a suspended license; and possession of cannabis. All charges were dropped except the driving on a suspended license.⁶ The cannabis in the car belonged to another passenger in the car.⁷

Applicant's subsequent background investigation revealed that between March 1996 and August 2004, he was cited for 13 traffic offenses ranging from Failure to Maintain Safety Belts; Speeding; Failure to Obey Signal Device, Operation Without Registration; Operating a Vehicle with License Suspended (Financial).(SOR ¶¶ 1.a -1.m).⁸ Applicant was fined and ordered to pay court costs for each of these offenses. He completed the sentences imposed that were the result of his OUI arrest in February 2005 (SOR ¶ 1.o), and his arrest in March 2006 for Operating a Vehicle with a Suspended License (SOR ¶ 1.n). His driver's license was reissued on April 3, 2007.⁹ He is still paying his attorney fees in relation to the DUI charge and the telephone company for the damage caused when his car ran into a telephone poll. He has learned a lesson and has had no traffic violation since March 2006.¹⁰

Since his bankruptcy, Applicant's financial situation has stabilized. Three months prior to the hearing, he purchased a home. His mother is an accountant and is helping him with his budget and making sure that he spends his money wisely.¹¹ His current budget indicates that he is capable of meeting his monthly expenses. His monthly income is approximately \$3,015.59. In December 2007, his expenses will be approximately \$1,643.37. He will have approximately \$1,372 left over each month after expenses.¹² He has one open credit card which has a current balance of \$300.¹³

⁵ Gov 1.

⁶ *Id.*

⁷ Tr. at 15, 31.

⁸ Answer to SOR (The government provided no evidence in support of SOR ¶¶ 1.a -1.o. However, Applicant admitted the allegations in his response to the SOR. As a result, the government was not required to present evidence pertaining to allegations which Applicant has admitted. Directive ¶ E3.1.14.)

⁹ Tr. at 28-32.

¹⁰ Tr. at 33.

¹¹ Tr. at 22.

¹² AE A at 12-15.

¹³ Tr. at 24.

Two weeks prior to the hearing he took out a \$5,000 home improvement loan. He will be required to pay \$154/month over the next 60 months beginning in December.¹⁴

Applicant's recent performance evaluation which closed out on September 27, 2007, states that he is fully successful in his job. His manager "has confidence in his abilities." He notes that Applicant is still learning and will expand his knowledge within the next year.¹⁵ Several of Applicant's best friends wrote letters on his behalf. A co-worker who has worked with Applicant since 2002, states Applicant is dependable and trustworthy. He further adds that he is "organized efficient, extremely competent and has an excellent rapport with people..."¹⁶ Another co-worker who has known him for 15 years states that he is trustworthy, efficient and timely.¹⁷ Two other individuals made similar favorable comments.¹⁸

POLICIES

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."¹⁹ In Executive Order 10865, *Safeguarding Classified Information Within Industry* (Feb. 20, 1960), the President set out guidelines and procedures for safeguarding classified information within the executive branch.

To be eligible for a security clearance, an applicant must meet the security guidelines contained in the Directive. The revised Adjudicative Guidelines, approved by the President on December 29, 2005 and implemented by the Department of Defense, effective September 1, 2006, sets forth personnel security guidelines, as well as the disqualifying conditions and mitigating conditions under each guideline. The adjudicative guidelines at issue in this case are:

Guideline E - Personal Conduct: Conduct involving questionable judgment, lack of candor, dishonesty, or an unwillingness to comply with rules and regulations can raise questions about an individual's reliability and trustworthiness, and ability to protect classified information. Of special interest is any failure to provide truthful and candid answers during the security clearance process or any other failure to cooperate with the security clearance process.²⁰

¹⁴ Tr. at 26; AE A at 16-27..

¹⁵ AE A at 6-11.

¹⁶ AE A at 2.

¹⁷ AE A at 4.

¹⁸ AE A at 3, 5.

¹⁹ *Department of the Navy v. Egan*, 484 U.S. 518, 527 (1988).

²⁰ Revised AG, dated August 2006, ¶15.

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.²¹

Conditions that could raise a security concern and may be disqualifying, as well as those which could mitigate security concerns pertaining to these adjudicative guidelines, are set forth and discussed in the conclusions below.

“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.”²² An administrative judge must apply the “whole person concept,” and consider and carefully weigh the available, reliable information about the person. An administrative judge should consider the following factors: (1) the nature, extent, and seriousness of the conduct; (2) the circumstances surrounding the conduct, to include knowledgeable participation; (3) the frequency and recency of the conduct; (4) the individual’s age and maturity at the time of the conduct; (5) the extent to which participation is voluntary; (6) the presence or absence of rehabilitation and other permanent 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.²³

Initially, the Government must present evidence to establish controverted facts in the SOR that disqualify or may disqualify the applicant from being eligible for access to classified information.²⁴ Thereafter, the applicant is responsible for presenting evidence to rebut, explain, extenuate, or mitigate the facts admitted by the applicant or proven by Department Counsel. The applicant has the ultimate burden of persuasion as to obtaining a favorable clearance decision.²⁵ “Any doubt concerning personnel being considered for access to classified information will be resolved in favor of the national security.”²⁶

A person granted access to classified information enters into a special relationship with the government. The government must be able to repose a high degree of trust and confidence in those individuals to whom it grants access to classified information. The decision to deny an individual a security clearance is not a determination as to the loyalty of the applicant. It is merely an indication that the applicant has not met the strict guidelines the President has established for issuing a clearance.

²¹ Revised AG, dated August 2006, ¶ 18.

²² Revised AG, dated August 2006, ¶ 2(a).

²³ *Id.*

²⁴ Directive ¶ E3.1.14.

²⁵ Directive ¶ E3.1.15.

²⁶ Revised AG, dated August 2006, ¶ 2(b).

CONCLUSIONS

I have carefully considered all the facts in evidence and the legal standards. I make the following conclusions.

Personal Conduct

Applicant's extensive history of traffic violations raise a security concern under the personal conduct guideline. He was issued 15 traffic citations over a ten year period between March 1996 and March 2006. Personal Conduct Disqualifying Condition (PC DC) ¶ 16(c) (*credible adverse information in several adjudicative issue areas that is not sufficient for an adverse determination under any other single guideline, but which, when considered as a whole, supports a whole-person assessment of questionable judgment, untrustworthiness, unreliability, lack of candor, unwillingness to comply with rules and regulations, or other characteristics indicating that the person may not properly safeguard protected information*) applies. Applicant's extensive history of traffic violations raises questions about his judgment, trustworthiness, and willingness to comply with rules and regulations.

While Applicant's traffic offense history is extensive, he was in his late teens when he first started to incur traffic offenses. He is now more mature and responsible. He has completed all of his court requirements. He has not had an additional traffic offense in 20 months. For these reasons, Personal Conduct Mitigating Condition (PC MC) ¶ 17(c) (*the offense is so minor, or so much time has passed, or the behavior, is so infrequent, or it happened under such unique circumstances that it is unlikely to recur and does not cast doubt on the individual's reliability, trustworthiness, or good judgment*) applies.

Financial Considerations

In 2004, Applicant experienced financial difficulties which resulted in his filing a Chapter 7 bankruptcy. 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*) applies.

The concern under Financial Considerations can be mitigated. Applicant's financial situation has been stable since his bankruptcy discharge in March 2004. He has been able to purchase a home and is not over extended on credit card debt. Financial Considerations Mitigating Condition (FC MC) ¶ 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*) applies.

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*) applies in that Applicant ultimately decided for bankruptcy due to being laid off and unemployed for several months. In addition, he incurred additional expenses after an eight year relationship ended.

He has demonstrated that he is now financially stable. The circumstances leading to the bankruptcy were beyond his control and he acted responsibly under the circumstances.

FC MC ¶ 20(d) (*the individual initiated a good-faith effort to repay overdue creditors or otherwise resolve debts*) applies. Applicant resolved his delinquent debts through bankruptcy which is a legal way to resolve one's debts. He has not incurred additional delinquent debt since his bankruptcy discharge. His current financial situation is stable.

In all adjudications, the protection of our national security is the paramount concern. The objective of the security clearance process is the fair-minded, commonsense assessment of a person's life to make an affirmative determination that the person is eligible for assignment to sensitive duties. Indeed, the adjudicative process is a careful weighing of a number of variables in considering the "whole person" concept. It recognizes that we should view a person by the totality of their acts, omissions, motivations and other variables. Each case must be adjudged on its own merits, taking into consideration all relevant circumstances, and applying sound judgment, mature thinking, and careful analysis.

I have considered all the evidence and the "whole person" in evaluating Applicant's security worthiness. I considered Applicant's current financial situation, the circumstances beyond his control which led to his filing for bankruptcy, the favorable recommendations from friends and co-workers, and his ownership of his past problems indicating a growth in maturity. Applicant is financially stable and has a plan in place to avoid financial problems in the future. The security concerns raised under financial considerations and personal conduct are mitigated. Based on the evidence in the record, it is clearly consistent with the national interest to grant Applicant a security clearance. Clearance is granted.

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:

Paragraph 2. Guideline E:	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
Subparagraph 1.i:	For Applicant
Subparagraph 1.j:	For Applicant
Subparagraph 1.k:	For Applicant
Subparagraph 1.l:	For Applicant
Subparagraph 1.m:	For Applicant

Subparagraph 1.n:	For Applicant
Subparagraph 1.o:	For Applicant
Paragraph 2. Guideline F:	FOR APPLICANT
Subparagraph 2.a:	For Applicant

DECISION

In light of all of the evidence presented by the record in this case, it is clearly consistent with the national interest to grant Applicant a security clearance. Clearance is granted.

Erin C. Hogan
Administrative Judge