

DATE: December 21, 2007

In Re:)	
)	
-----)	ISCR Case No. 06-24337
SSN: -----)	
)	
Applicant for Security Clearance)	

**DECISION OF ADMINISTRATIVE JUDGE
CHARLES D. ABLARD**

APPEARANCES

FOR GOVERNMENT

Nichole Noel, Esq. , Department Counsel

FOR APPLICANT

Pro Se

SYNOPSIS

_____ Applicant, an employee of a government contractor, encountered financial difficulties when he moved from one state to another to take his employment only to have limited work available for him much of the time. His wife was unemployed after the birth of a child. Although they are now both employed and are in credit counseling to resolve their delinquent debts, not enough time has elapsed to take sufficient action to justify the grant of a clearance at this time. Clearance is denied.

STATEMENT OF CASE

_____ On or about March 6, 2007, the Defense Office of Hearings and Appeals (DOHA), pursuant

to Executive Order 10865, *Safeguarding Classified Information Within Industry*, as amended and modified, and Department of Defense Directive 5220.6, *Defense Industrial Personnel Security Clearance Review Program* (Directive), dated January 2, 1992, as amended and modified, and subject to the revised Adjudicative Guidelines effective September 1, 2006, issued a Statement of Reasons (SOR) to Applicant which detailed reasons why DOHA could not make the preliminary affirmative finding under the Directive that it is clearly consistent with the national interest to grant or continue a security clearance for Applicant. DOHA recommended the case be referred to an administrative judge to determine whether a clearance should be granted, continued, denied, or revoked.

On March 29, 2007, Applicant responded to the SOR allegations and did not request a hearing. He later made a request for a hearing. The matter was assigned to me on August 21, 2007. A notice of hearing was issued on August 30, 2007, for a hearing on September 13, 2007, and held that day. The government offered four exhibits and Applicant offered two exhibits. The record was left open for 30 days and extended another 15 days for additional information to be supplied. The transcript was received on September 24, 2007. Applicant provided post-hearing submissions on October 15, 2007, and October 29, 2007.

FINDINGS OF FACT

_____ Applicant admitted all of the eleven SOR allegations totaling \$132,000 relating to delinquent debts. After a complete review of the record, I make the following additional findings of fact:

Applicant is a 32-year-old employee of a defense contractor working as a senior network engineer since October 2005.

The allegations alleged in the SOR indicates the following from testimony and documentary evidence submitted in the record:

1. Par. 1.a.: Real estate mortgage foreclosure before 2006 on a former home in another state valued at \$110,000.
2. Par. 1.b.: Real estate second mortgage foreclosure of \$12,700 regarding same home.
3. Par. 1.c.: Credit card debt for household expenses of \$6,285 charged off.
4. Par. 1.d.: Credit card debt for \$1,042 charged off. Applicant promised in his interrogatory (Exh. 2) to pay \$50 per month but was unable to do so.
5. Par. 1.e.: Credit card debt of \$961.
6. Par. 1.f.: Credit card debt of \$362 charged off.
7. Par. 1.g.: Credit card debt of \$577 for household expenses being collected by a collection agency.

8. Par. 1.h.: Collection account of \$495 for a medical device ordered by Applicant which he attempted to return but he held it too long.

9. Par. 1.i.: Back child support totaling \$800 for a six-year-old child from his former marriage which is being paid through bi-weekly garnishment of wages when he is working.

Applicant started having financial problems arising from a move from one state to another in June 2005 when he took his present position. He was unemployed and under-employed for periods beginning in 2006 (Tr. 23). At the time of the hearing he had been on leave without pay since May 2007 and had an hourly job at a store. Since then he has been brought back on the payroll with his company. He has never held a security clearance, but works for a company that primarily does classified work. He is able to do unclassified work but it is often not full time. He is now on a project which lasts until August 2008 (Exh. D p. 2). His wife was unemployed in 2001 for approximately 18 months after the birth of their child (Tr. 25) and did not return to work until 2003. In 2004 their debts had accumulated to the point that they could not resolve them and stopped paying on them (Tr. 25). She is now employed and her monthly take home pay is approximately \$2,000. They have had credit counseling and are working with the counselor to schedule payment of their delinquent debts that accumulated during the periods of unemployment (Exh. A). Most of this activity has occurred since the hearing. In addition to the delinquent debts cited in the SOR, at the time of the hearing he was behind one to two months on his current bills such as cell phone, utilities, and auto insurance (Tr. 34-36).

Since the conclusion of the hearing, Applicant has submitted information in his first post-hearing submission (Exh. C) showing that he continues the credit counseling and is making direct deposits of \$169 each month to them to resolve the accounts listed in Exh. A. In his second post-hearing submission (Exh. D) he submitted further information indicating that he and his credit counselor are working with the mortgage holders on the home foreclosure and some progress is being made to resolve those debts. He also submitted information from his employer showing that his monthly take home pay is approximately \$3,000 but he may earn as much as \$4,500.

_____Applicant is well regarded in his company by his supervisor for his commitment to his job and his skills in performing them (Exh. B).

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. An evaluation of whether the applicant meets the security guidelines includes consideration of the following factors: (1) the nature, extent, and seriousness of the conduct; (2) the circumstances surrounding the conduct; (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 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. Revised Adjudicative Guidelines (AG ¶ 2 a). Security clearances are

granted only when “it is clearly consistent with the national interest to do so.” Executive Order No. 10865 § 2. *See* Executive Order No. 12968 § 3.1(b).

_____ Initially, the Government must establish, by something less than a preponderance of the evidence, that conditions exist in the personal or professional history of the applicant which disqualify, or may disqualify, the applicant from being eligible for access to classified information. *See Egan*, 484 U.S. at 531. The applicant then bears the burden of demonstrating it is clearly consistent with the national interest to grant or continue a security clearance. “Any doubt as to whether access to classified information is clearly consistent with national security will be resolved in favor of the national security.” (AG ¶ 2 b) “[S]ecurity clearance determinations should err, if they must, on the side of denials.” *Egan*, 484 U.S. at 531. *See* Executive Order No. 12968 § 3.1(b).

CONCLUSIONS

Upon consideration of all the facts in evidence, and after application of all appropriate adjudicative factors under the revised Adjudicative Guidelines (AG) and factors in the Directive, I conclude the following with respect to all allegations set forth in the SOR:

Applicant’s delinquent debts prompted the allegation of security concern under Guideline F because an individual who is financially overextended is at risk of having to engage in illegal acts to generate funds (AG ¶ 18). Conditions that could raise a security concern and may be disqualifying include a history of not meeting financial obligations (AG ¶ 19 c) and evidence of inability or unwillingness to satisfy debts. (AG ¶ 19 a)

Mitigating Conditions (MC) that might apply include the fact that the behavior happened so long ago or 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 ¶ 20 a), or the conditions that resulted in the behavior were largely beyond the person’s control and that the person acted responsibly (AG ¶ 20 b), or the person has received counseling for financial problems and there are clear indications that the problem is being resolved or is under control (AG ¶ 20 c).

The fact that Applicant was unemployed and underemployed for two years was partially the cause of his delinquent debts. His salary is being withheld to pay one creditor for child support but that is the only delinquent debt that now is being resolved. He is working to resolve other debts and both he and his wife are now employed which may resolve the delinquent debt issues for them. However, it is too soon to conclude that they are fully on the path to financial stability. Thus, I conclude that neither mitigating condition is applicable at this time.

In all adjudications, the protection of our national security is of paramount concern. Persons who have access to classified information have an overriding responsibility for the security concerns of the nation. The objective of the security clearance process is the fair-minded, commonsense assessment of a person’s trustworthiness and fitness for access to classified information.

The “whole person” concept recognizes we should view a person by the totality of his acts and omissions. Each case must be judged on its own merits taking into consideration all relevant

circumstances, and applying sound judgment, mature thinking, and careful analysis. Applicant did not take action as soon as he might have. He acknowledged his slowness to take corrective action at the hearing. However, he seems now to be on the right track to effectively resolve the issues with the help of their counselor. Although he has taken the appropriate initial steps to resolve the delinquent debts, that process is still in the early stages so it is premature to grant a clearance based on the information submitted.

After considering all the evidence in its totality, and as an integrated whole to focus on the whole person of Applicant, I conclude that it is premature to grant a security clearance.

FORMAL FINDINGS

Formal findings as required by the Directive are as follows:

_____ 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
Subparagraph 1.g.:	For Applicant
Subparagraph 1.f.:	For Applicant
Subparagraph 1.g.:	For Applicant
Subparagraph 1.h.:	For Applicant
Subparagraph 1.i.:	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 a security clearance for Applicant. Clearance is denied.

Charles D. Ablard
Administrative Judge