

STATEMENT OF THE CASE

The Defense Office of Hearings and Appeals (DOHA) declined to grant or continue a security clearance for Applicant. On April 27, 2007, DOHA issued a Statement of Reasons¹ (SOR) detailing the basis for its decision—security concerns raised under Guideline F (Financial Considerations), Guideline E (Personal Conduct) of the revised Adjudicative Guidelines (AG) issued on December 29, 2005, and implemented by the Department of Defense for SORs issued after September 1, 2006. The revised guidelines were provided to Applicant when the SOR was issued. Applicant answered the SOR on a unknown date, and elected to have a hearing before an administrative judge. The case was assigned to me on August 29, 2007. I scheduled a hearing for October 25, 2007.²

The hearing was convened as scheduled on October 25, 2007, to consider whether it is clearly consistent with the national interest to grant or continue a security clearance for Applicant. Government exhibits (GE 1-5) were admitted. Applicant's exhibits (AE A-J) were admitted into the record without objection. Testimony was taken from Applicant. Applicant had one witness testify on his behalf as reflected in the hearing transcript. The transcript (Tr.) was received on November 5, 2007.

FINDINGS OF FACT

Applicant is a 38-year-old employee of a defense contractor. He graduated from high school in 1987, and attended a Diver's Academy. Applicant has been with his current employer since 2002. He is twice divorced and has two children.³

Applicant's first wife handled the family financial affairs. During this marriage from 1990 until 2001, Applicant had no financial difficulties. His work as an offshore commercial diver caused his absence from home. The period of time varied from several weeks to more than a month for a particular offshore project, and he was on call (24/7). However, his wife handled all the bills and everything was in order. His credit was good and he had no delinquent bills.⁴

Applicant and his first wife divorced in 2001. As a result of the divorce, Applicant paid child support to his wife. When Applicant remarried in 2003, his second wife was to handle the financial affairs due to his continuing employment as a diver. Applicant sent his pay home but his second wife neglected to pay the bills. Not only did she not pay the routine bills, but she did not send the checks

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 (Directive).

²Applicant was not available for a hearing prior to this date. He works off shore drilling and no facilities were available for video teleconference either.

³Tr. 31.

⁴Tr. 24-28.

for the child support to his first wife. Applicant learned about this situation sometime in 2004 or 2005, and resolved the issue by having a payroll deduction for the child support.⁵

Applicant's second wife did not make the mortgage payments on their home for approximately one year. The company called Applicant's home and spoke to his wife. Applicant was totally unaware of the situation. When he arrived home in 2006, he learned that the mortgage company foreclosed on his home and that the home was sold at a sheriff's auction.⁶ At that point in time, Applicant learned about several judgments and saw his credit report. Since July 2006, he has resolved the majority of the delinquent debt.

Applicant had \$39,400 in delinquent debt.⁷ Applicant has paid the delinquent bills and judgments in allegations 1.c, 1.e, 1.f, 1.h, 1.i, 1.j, 1.k, and 1.l in 2005, 2006 and 2007.⁸ Applicant did not have notice of the bills until he looked at a credit report after his security clearance application. The alleged debts in the SOR allegations 1.a and 1.b were listed as "medical account" for a total of \$395. He does not know the origin of the bills.⁹ Allegation 1.d refers to a credit card that his wife opened and used. He has not paid that bill in the amount of \$1,075. He affirms his second wife discharged that bill in her recent bankruptcy.¹⁰ In 2007, Applicant and his wife divorced.

Applicant's current net monthly income is \$7,500. After expenses, he has a net monthly remainder of \$3,646. He is current on all his bills. He also pays alimony to his second wife.¹¹ Moreover, his bills are paid through an online bill pay. Thus, even when he is offshore, his accounts are automatically paid timely. He does not have to rely on anyone. Applicant can, through technology, monitor his accounts offshore.¹²

In 2005, when Applicant answered Section 27 and Section 28 concerning any judgments or delinquent debts more than 180 days delinquent, he answered "no." He did not know that he had any at that time. His second wife was handling the financial affairs while he was on offshore drilling assignments. He had not received any phone calls or notices in the mail and had reason to believe his wife was handling the bills and home mortgage. Applicant was credible in his explanation at the hearing that he had no intent to deceive the government. He honestly had not seen a credit report and did not know about the debts and judgments. I found his answers reasonable and his testimony credible.

⁵Tr.29-30.

⁶Tr. 33; AE I

⁷GE 2 (2005Credit Bureau Report).

⁸The SOR did not list an allegation 1.g. *See* (AE A-G).

⁹Tr.35.

¹⁰Tr.53.

¹¹AE J (Personal Financial Statement, dated September 18, 2006).

¹²Tr. 58.

POLICIES

“[N]o one has a ‘right’ to a security clearance.”¹³ 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.”¹⁴ The President 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 with the national interest to do so.”¹⁵ An applicant has the ultimate burden of demonstrating that it is clearly consistent with the national interest to grant or continue his or her security clearance. The clearly consistent standard indicates that security clearance determinations should err, if they must, on the side of denials.¹⁶ Any reasonable doubt about whether an applicant should be allowed access to sensitive information must be resolved in favor of protecting such sensitive information.¹⁷ The decision to deny an individual a security clearance is not necessarily a determination as to the loyalty of an applicant. 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.¹⁸

The revised Adjudicative Guidelines set forth potentially disqualifying conditions (DC) and mitigating conditions (MC) under each guideline. Additionally, each security clearance decision must be a fair and impartial commonsense decision based on the relevant and material facts and circumstances, the whole-person concept, along with the adjudicative process factors listed in the Directive and AG ¶ 2(a).

Conditions that could raise a security concern and may be disqualifying, as well as those which would mitigate security concerns, are set forth and discussed in the conclusions section below.

CONCLUSIONS

I have carefully considered all the facts in evidence and the legal standards discussed above. I reach the following conclusions regarding the allegations in the SOR.

Guideline F: Financial Considerations

¹³*Department of the Navy v. Egan*, 484 U.S. 518, 528 (1988).

¹⁴*Id.* at 527.

¹⁵Exec. Or. 10865, *Safeguarding Classified Information within Industry* § 2 (Feb. 20, 1960).

¹⁶ISCR Case No. 01-20700 at 3 (App. Bd. Dec. 19, 2002).

¹⁷*Id.*; Directive, ¶ E2.2.2.

¹⁸Exec. Or. 10865 § 7.

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.

Applicant's history of delinquent debts establishes 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*). His admissions and credit reports confirm the delinquent debts.

I have considered all the Financial Considerations Mitigating Conditions (FC MC), and especially considered 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*), 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*), FC MC 20(c) (*the person received or is receiving counseling for the problem and/or there are clear indications that the problem is being resolved or is under control*), and FC MC 20(d) (*the individual initiated a good-faith effort to repay overdue creditors or otherwise resolve debts*).

Although FC MC 20(a) does not provide a temporal or specific definition of what constitutes "recent" conduct, Applicant's overall conduct with creditors in resolving his debts shows he is now reliable, trustworthy and has good judgment. He has shown sufficient unusual circumstances to establish that his financial problems are "unlikely to recur" under 20(a). Applicant divorced his second wife in 2007. He now has an automatic bill pay that he can monitor offshore. Moreover, Applicant began paying the delinquent bills as soon as he learned of them, beginning in late 2005. He reasonably expected his second wife to be financially responsible, and he acted in a responsible manner. I find that FC MC 20(b) is applicable. FC MC 20(c) is applicable for the reasons stated above. Even though, Applicant did not receive counseling, he has resolved the problem. Finally, Applicant paid all the bills and judgments and the home foreclosure is resolved.¹⁹ He has paid the majority of the debts listed in the SOR. The small debt on his wife's credit card does not constitute an issue as she took responsibility for it in her bankruptcy.

¹⁹The Appeal Board has previously explained what constitutes a "good faith" effort to repay overdue creditors or otherwise resolve debts:

In order to qualify for application of Financial Considerations Mitigating Condition 6, an applicant must present evidence showing either a good-faith effort to repay overdue creditors or some other good-faith action aimed at resolving the applicant's debts. The Directive does not define the term 'good-faith.' However, the Board has indicated that the concept of good-faith 'requires a showing that a person acts in a way that shows reasonableness, prudence, honesty, and adherence to duty or obligation.' Accordingly, an applicant must do more than merely show that he or she relied on a legally available option (such as bankruptcy) in order to claim the benefit of Financial Considerations Mitigating Condition 6.

(internal citation and footnote omitted) ISCR Case No. 02-30304 at 3 (App. Bd. Apr. 20, 2004) (quoting ISCR Case No. 99-9020 at 5-6 (App. Bd. June 4, 2001)).

Guideline E: Personal Conduct

Conduct involving questionable judgment, lack of candor, dishonesty, or unwillingness to comply with rules and regulations can raise questions about an individual's reliability, 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.

On October 27, 2005, Applicant, in response to Section 27 and Section 28 concerning financial delinquencies and judgments, he answered "no." When he responded to the questions, he did not know that the accounts were overdue. He had never received any notices of these accounts as he was working offshore for long periods. He relied on his second wife to assume the responsibility for the financial affairs. She gave him no indication that she was not taking care of the accounts. Applicant never received any notices or phone calls to alert him otherwise.

Under DC 16 (a), the government established that Applicant omitted a material fact from his answer to Section 28. He denied that he deliberately or knowingly falsified an answer to his security clearance application. When a falsification allegation is controverted, the government has the burden of proving it. Proof of an omission, standing alone, does not establish or prove an Applicant's intent or state of mind when the omission occurred. An administrative judge must consider the record evidence as a whole to determine whether there is direct or circumstantial evidence regarding an Applicant's intent or state of mind at the time the omission occurred. For DC 16 (a) (*deliberate omission, concealment, or falsification of relevant and material facts from an personnel security questionnaire.....*) To apply, the government must establish that Applicant's omission was deliberate. I do not find that this omission was a deliberate falsification. I find in favor of Applicant for personal conduct.

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 an acceptable security risk. Available, reliable information about the person, past and present, favorable and unfavorable, should be considered in reaching a determination. In evaluating Applicant's case, I have considered the adjudicative process factors listed in the Directive and AG ¶ 2(a). I have also considered all the evidence, and every finding of fact and conclusion discussed above.

Applicant had a history of good credit and no financial problems until his second marriage. He has worked offshore for almost 20 years for varying periods of time. It is not uncommon for people in his line of duty to have a spouse handle the financial affairs in their absence. His first wife proved such a partner. Applicant's second wife assumed that role, but neglected to pay bills despite the fact that Applicant sent her his salary to do so. She also told Applicant that she was taking care of financial matters. He believed her to his detriment. Applicant addressed the debts as soon as he was made aware of the situation. Applicant separated from his wife and finally divorced in 2007. His bills are now automatically deducted from his account while he is away offshore. He is current on all his bills and pays alimony and child support.

After weighing the disqualifying and mitigating conditions and evaluating all the evidence in the context of the whole person, I conclude Applicant has mitigated the security concerns based on his financial issues, and personal conduct. He is eligible for a security clearance.

FORMAL FINDINGS

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

Paragraph 1. Guideline F: FOR APPLICANT

Subparagraph 1.a:-1.1: For Applicant

Paragraph 2. Guideline E: FOR APPLICANT

Subparagraph 2.a: For Applicant

Subparagraph 2.b: 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.

Noreen A. Lynch
Administrative Judge