

SYNOPSIS

Applicant has been an employee of a defense contractor for about twenty years. He has a history of significant financial problems resulting in bankruptcies in 1991 and 1997, and he is currently unable to pay delinquent debts totaling more than \$16,000.00. Applicant provided no information demonstrating how his current financial problems arose. He entered into a repayment agreement for some obligations shortly before the initiation of the action, but it is too soon to determine if the program will be successful. He falsified his security clearance application by concealing his delinquent debts. Applicant failed to mitigate security concerns arising under the guidelines for financial considerations and personal conduct. Clearance is denied.

STATEMENT OF THE CASE

On August 31, 2005, Applicant submitted an SF 86, Security Clearance Application. The Defense Office of Hearings and Appeals (DOHA) declined to grant or continue a security clearance for Applicant under Executive Order 10865, *Safeguarding Classified Information Within Industry* (Feb. 20, 1960), as amended; Department of Defense Directive 5220.6, *Defense Industrial Personnel Security Clearance Review Program* (Jan. 2, 1992) (the "Directive"), as amended; and the new adjudicative guidelines (AG) promulgated by the President on December 29, 2005, and implemented by the Department of Defense on September 1, 2006. On February 22, 2007, DOHA issued a Statement of Reasons (SOR) detailing the basis for its decision: security concerns raised under the Directive, Guideline F, Financial Considerations, and Guideline E, Personal Conduct.

Applicant answered the SOR in writing on March 18, 2007. He elected to have the matter decided without a hearing.

Department Counsel submitted the government's case in a File of Relevant Material (FORM) dated May 21, 2007. On May 23, 2007, Department Counsel mailed a complete copy of the FORM to Applicant, along with notice of his opportunity to file objections and submit material to refute, extenuate, or mitigate the potentially disqualifying conditions. On June 29, 2007, Applicant received the FORM. He did not submit any additional materials within the specified 30-day period. The case was assigned to me on August 15, 2007.

FINDINGS OF FACT

Applicant admitted the factual allegations in the SOR, but added explanatory comments. (Item 2.) Those admissions are incorporated herein as findings of fact. After a complete and thorough review of the evidence in the record, I make the following additional findings of fact.

Applicant is 59 years old. (Item 4 at 1.) He was married in 1976, and has five children. (*Id.* at 2-3.) In 1987, Applicant began working in his present position as a sheet metal worker for a defense contractor. (*Id.* at 2.)

Applicant and his wife filed jointly for bankruptcy protection in March 1991. (Item 9 at 1.) The bankruptcy court issued a final decree discharging Applicant and his wife from all dischargeable debts in January 22, 1993. (Item 9 at 6.)

He received a Secret security clearance in November 1994. (Item 4 at 5.)

He again filed for bankruptcy under Chapter 7 in December 1997. (Item 10.) His debts were discharged in June 1998. In a statement dated August 1999, Applicant indicated he filed for bankruptcy because of large medical bills resulting from multiple family illnesses. (Item 5.)

Applicant and his wife divorced in March 2000. (Item 4 at 2.) The file contains no information about whether the divorce had an impact on Applicant's finances, other than court-ordered child support.

On August 31, 2005, Applicant signed an SF 86, Security Clearance Application. (Item 4 at 6.) In response to questions 33 and 34, Applicant denied having his wages garnished or filing for bankruptcy within the preceding seven years. (Item 4 at 5.) Answering question 38, he denied having any debts more than 180 days delinquent within the preceding seven years. (*Id.* at 6.) Similarly, in response to question 39, he denied that he then had any debts delinquent for more than 90 days. (*Id.*)

Security investigators obtained a credit bureau report dated October 26, 2005. (Item 7.) The report indicated eight accounts that were seriously delinquent or in a collection status. Investigators obtained a second credit bureau report dated January 26, 2007. (Item 6.) The report listed numerous unpaid accounts.

In about November 2006, a court ordered Applicant's wages garnished in the amount of \$186.00 every two weeks to pay child support. (Item 2.)

In about January 2007, Applicant obtained the assistance of a company providing debt resolution services. (Item 8 at 19, 22.) Under the debt repayment agreement, Applicant pays \$218.00 each month to the company, which takes a monthly fee, then distributes the remainder among the listed creditors.

DOHA issued the SOR on February 22, 2007. In his Answer to the SOR, Applicant indicated that all the creditors listed in the SOR, paragraphs 1.a through 1.k, inclusive, were included in the repayment plan. (Item 2.) However, it appears that the current plan covers only the creditors listed in paragraphs 1.a, 1.b, 1.d, 1.e, and 1.k of the SOR.

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." *Department of the Navy v. Egan*, 484 U.S. 518, 527 (1988). 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. Enclosure 2 of the Directive sets forth personnel security guidelines, as well as the disqualifying conditions and mitigating conditions under each guideline. Conditions that could raise a security concern and may be disqualifying, as well as those which could mitigate security concerns pertaining to this adjudicative guideline, 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 eligible for a security clearance.” (AG, ¶ 2.) An administrative judge must apply the “whole person concept,” and consider and carefully weigh the available, reliable information about the person. (*Id.*) 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. (*Id.*)

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. (Directive, ¶ E3.1.14.) Thereafter, the applicant is responsible for presenting evidence to rebut, explain, extenuate, or mitigate the facts. (Directive, ¶ E3.1.15.) 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 (App. Bd. Dec. 19, 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.)

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. (Exec. Ord. 10865, § 7.) It is merely an indication that the applicant has not met the strict guidelines the President has established for issuing a clearance.

CONCLUSIONS

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

Financial Considerations

The security concern relating to the guideline for Financial Considerations is set out in ¶ 18 of the new adjudicative guidelines:

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.

The guideline notes several conditions that could raise security concerns. Under ¶ 19(a), an "inability or unwillingness to satisfy debts" is potentially disqualifying. Similarly, under ¶ 19(c), "a history of not meeting financial obligations" may raise security concerns. As noted above, Applicant had significant financial problems for many years and he is currently unable to pay or resolve some substantial delinquent debts. I find the available evidence raises these potentially disqualifying conditions.

The guideline also includes several conditions that could mitigate security concerns raised under this guideline. Paragraph 20(a) may apply where "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." The behavior in question is the non-payment of delinquent debts. The financial obligations in question remain unresolved; therefore, I find the behavior is recent. It also appears there were several unpaid debts that accumulated over a period of time; thus, I cannot find this was an infrequent event. Finally, Applicant provided no information about the origin of his current delinquent debts. He has failed to demonstrate they are unlikely to recur. The available evidence does not raise this potentially mitigating condition.

Under ¶ 20(b), it may be mitigating where "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." The available information does not raise this condition. There is no evidence Applicant was unemployed, nor does he suggest that his 2000 divorce caused financial problems. Although medical bills caused or contributed to his bankruptcy in 1997, there is no evidence they were a factor in his current financial problems. Applicant offered no statement or other information shedding any light on his personal circumstances, therefore I am unable to find that this potentially mitigating condition applies.

Evidence that "the person has received or is receiving counseling for the problem and/or there are clear indications that the problem is being resolved or is under control" is potentially mitigating under ¶ 20(c). Similarly, ¶ 20(d) applies where the evidence shows "the individual initiated a good-faith effort to repay overdue creditors or otherwise resolve debts." Applicant submitted documents showing he entered into a debt repayment agreement for five of the twelve debts listed in the SOR (¶¶ 1.a, 1.b, 1.d, 1.e, and 1.k) and made one payment toward the agreement. It is too early to determine that these debts are resolved or under control. The evidence does not raise this potentially mitigating condition.

Guideline E, Personal Conduct

The security concern relating to Guideline E, Personal Conduct, is set out in ¶ 15 of the new adjudicative guidelines:

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.

Paragraph 16(a) provides that it may be disqualifying where the evidence reveals "deliberate omission, concealment, or falsification of relevant facts from any personnel security questionnaire . . . or similar form used to . . . determine security clearance eligibility . . ." The SOR raises several allegations of Applicant's falsification of his Security Clearance Application.

Paragraph 2.a of the SOR alleges Applicant falsified his response to question 34, when he denied having his wages garnished within the preceding seven years. The government asserts Applicant deliberately concealed the wage garnishment described in ¶ 1.1 of the SOR, which Applicant admitted. However, it appears the Security Clearance Application was executed in August of 2005, and the garnishment was imposed in November 2006. Although Applicant seems to admit this allegation, he cannot be said to falsely omit or conceal a garnishment not then in existence.

Paragraph 2.b of the SOR alleges Applicant deliberately falsified his response to question 38 by denying he had been over 180 days delinquent on any debts within the preceding seven years. The SOR lists the debts in ¶¶ 1.b, 1.e, 1.f, 1.h, 1.i, 1.j, and 1.k, as being wrongfully omitted from the clearance application. Unfortunately, some of these debts were first reported in the 2007 credit bureau report; several of them did not exist at the time of the clearance application. Comparing the debts alleged in ¶ 2.b against the debts over 180 days delinquent in the credit bureau report dated October 2005, it appears the debts listed in ¶¶ 1.e, 1.f, 1.h, 1.j, and 1.k should have been reported. Further complicating matters, in his answer to the SOR, Applicant wrote, "I admit—over 7 years." It is not clear what he meant by that response; perhaps he believed that if the original debt was incurred more than seven years before the application, it did not need to be reported. If that is his assertion, it is not persuasive. First, the question is straight forward and uncomplicated, and clearly requires reporting of any debt delinquent within the seven year period. More significantly, only one of the five debts that should have been reported (¶ 1.k) was incurred more than seven years before Applicant completed the application. Considering Applicant's financial history (including his previous bankruptcies), the number of unpaid debts, and their recency, I am not persuaded Applicant forgot or overlooked these debts.

Paragraph 2.c of the SOR alleges Applicant falsified his response to question 39 by denying that he had any debts then over 90 days delinquent. Unfortunately, the SOR again alleges Applicant failed to report certain debts, including some that did not arise until after he executed the clearance application. Nonetheless, there were some delinquent debts at the time Applicant signed the clearance application. In his answer, Applicant wrote, "I admit—unaware." However, considering Applicant's financial history (including his previous bankruptcies), the number of unpaid debts, and their recency, I am not persuaded Applicant forgot or overlooked these debts.

Paragraph 2.d of the SOR alleges Applicant falsified his security clearance application by failing to disclose that he had filed for bankruptcy within the preceding seven years. In his Answer to the SOR, Applicant wrote, “I admit—over 7 years,” seeming to indicate he did not report the bankruptcy because it was filed over seven years before he executed the application. It appears Applicant filed a petition for bankruptcy in December 1997—more than seven years before he signed the Security Clearance Application in August of 2005. I find Applicant did not falsify his answer to question 33.

Whole Person Concept

I considered carefully all the potentially disqualifying and mitigating conditions in this case in light of the “whole person” concept, keeping in mind that any doubt as to whether access to classified information is clearly consistent with national security must be resolved in favor of national security. I considered the nature, extent, and seriousness of the conduct. The available evidence shows Applicant has a history of significant financial problems. Although he has been discharged in bankruptcy twice—most recently in 1998—he again amassed unpaid debts. Applicant provided no information demonstrating how his most recent financial problems arose; therefore, I cannot assess the likelihood of continuation or recurrence. He entered into a repayment agreement for some of his debts very shortly before the initiation of this action and made at least one payment, but the repayment agreement is so recent it is impossible to predict its success. Considering all the evidence, I conclude Applicant has not met his burden of demonstrating that it is clearly consistent with the national interest to grant him a security clearance.

FORMAL FINDINGS

My conclusions as to each allegation in the SOR are:

Paragraph 1, Guideline F: **AGAINST APPLICANT**

Subparagraph 1.a:	Against Applicant
Subparagraph 1.b:	Against Applicant
Subparagraph 1.c:	Against Applicant
Subparagraph 1.d:	Against Applicant
Subparagraph 1.e:	Against Applicant
Subparagraph 1.f:	Against Applicant
Subparagraph 1.g:	Against Applicant
Subparagraph 1.h:	Against Applicant
Subparagraph 1.i:	Against Applicant
Subparagraph 1.j:	Against Applicant
Subparagraph 1.k:	Against Applicant
Subparagraph 1.l:	Against Applicant
Subparagraph 1.m:	Against Applicant
Subparagraph 1.n:	Against Applicant

Paragraph 2, Guideline E: **AGAINST APPLICANT**

Subparagraph 2.a:	For Applicant
Subparagraph 2.b:	Against Applicant
Subparagraph 2.c:	Against Applicant
Subparagraph 2.d:	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 or continue a security clearance for Applicant. Clearance is denied.

Michael J. Breslin
Administrative Judge