

DATE: March 8, 2004

In Re:

SSN: -----

Applicant for Security Clearance

ISCR Case No. 01-26360

DECISION OF ADMINISTRATIVE JUDGE

CHARLES D. ABLARD

APPEARANCES

FOR GOVERNMENT

Marc Curry, Esq., Department Counsel

FOR APPLICANT

Pro Se

SYNOPSIS

Applicant is a 47-year-old technician with a defense contractor who incurred approximately \$20,000.00 in debts beginning in 1986 when he assumed responsibility for his children as a single father. In 1998 he changed jobs and became acutely aware of his financial straits including a federal tax lien. He has since paid 80% of his debts, but in filling out his Security Clearance Application (SF 86) in 2000 he did not acknowledge his overdue debts. He has failed to offer any reason for the omission. Clearance is denied.

STATEMENT OF CASE

On April 10, 2003, the Defense Office of Hearings and Appeals (DOHA), pursuant to Executive Order 10865, *Safeguarding 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, 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.

In a sworn written statement dated May 13, 2003, Applicant responded to the allegations set forth in the SOR, and elected to have his case decided on the written record in lieu of a hearing. Department Counsel submitted the Government's written case on September 11, 2003. A complete copy of the file of relevant material (FORM) was provided to Applicant, and he was afforded an opportunity to file objections and submit material in refutation, extenuation, or mitigation. Applicant did not respond and the case was assigned to me on January 8, 2004.

FINDINGS OF FACT

Applicant denied all of the specific allegations in the SOR. After a complete and thorough review of the information in the record, and upon due consideration of same, I make the following additional findings of fact.

Applicant is a 47-year-old technician with a defense contractor who incurred approximately \$20,000.00 in debts beginning in 1986 when he assumed family responsibility as a single father. In 1998 he changed jobs and became acutely aware of his financial straits including a federal tax lien. He has since paid 80% of his debts, but in filling out his Security Clearance Application (SF 86) in 2000 he did not acknowledge his overdue debts as required.

The government agreed in the FORM that the Applicant's answer and documentation provided sufficient information to mitigate all of the financial issues raised under Guideline F since he provided evidence of having paid approximately \$18,000.00 to his creditors leaving a balance due of less than \$2,000.00.

When he completed his SF 86, Applicant had a number of outstanding debts that were 90 and 180 days delinquent. He did not acknowledge these debts on his application answering in the negative to questions 38 and 39 relating to overdue debts.

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 voluntariness of participation; (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. Directive, ¶ E2.2.1. 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 that it is clearly consistent with the national interest to grant or continue the applicant's 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." 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* Executive Order No. 12968 § 3.1(b)

CONCLUSIONS

Upon consideration of all the facts in evidence, and after application of all appropriate legal precepts, factors, and conditions above, I conclude the following with respect to all allegations set forth in the SOR.

Applicant's extensive debts have raised the allegation of violation of Guideline F in that an individual who is financially overextended is at risk of having to engage in illegal acts to generate funds. (E2.A6.1.1.) Conditions that could raise a security concern and maybe disqualifying include a history of not meeting financial obligations (E2.A6.1.2.1.) and evidence of inability or unwillingness to satisfy debts. (E2.A6.1.2.3.) The debts were sufficiently paid to mitigate the allegations concerning financial considerations under Guideline F.

Applicant is alleged to have falsified his SF 86 by failing to disclose debts that were over 90 and 180 days old as required in questions 38 and 39 of the Security Clearance Application (SF 86).

Guideline E raises an issue involving questionable judgment, unreliability, and unwillingness to comply with rules and regulations could indicate that the person may not properly safeguard classified information (E2.A5.1.1.) including a deliberate omission of relevant and material facts from a personnel security application. (E2.A5.1.2.2.)

Applicant failed to report the delinquent debts on his SF 86 and offered no explanation for his failure to do so either in his answer or by providing additional information after receipt of the FORM. No mitigating factors under Guideline E are applicable.

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 not clearly consistent with the national interest to grant clearance to Applicant.

FORMAL FINDINGS

Formal findings as required by the Directive (Par. E3.1.25) 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

Paragraph 2. Guideline E: AGAINST APPLICANT

Subparagraph 2.a.: Against Applicant

Subparagraph 2.b.: Against Applicant

DECISION

After full consideration of all the facts and documents 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.

Charles D. Ablard

Administrative Judge