

DATE: October 10, 2003

In re:

SSN: -----

Applicant for Security Clearance

ISCR Case No. 02-00937

DECISION OF ADMINISTRATIVE JUDGE

JAMES A. YOUNG

APPEARANCES

FOR GOVERNMENT

Juan J. Rivera, Esq., Department Counsel

FOR APPLICANT

Pro Se

SYNOPSIS

Forty-six-year-old applicant had financial problems after he retired from the U.S. Army. He failed to resolve debts totaling over \$35,000 until he filed for Chapter 13 bankruptcy after the Defense Office of Hearings and Appeals declined to grant him a security clearance. He deliberately omitted relevant and material information about these debts from his security clearance application. Clearance is denied.

STATEMENT OF THE CASE

The Defense Office of Hearings and Appeals (DOHA) declined to grant or continue a security clearance for Applicant. On 30 January 2003, DOHA issued a Statement of Reasons (SOR), under the applicable Executive Order⁽¹⁾ and Department of Defense Directive,⁽²⁾ detailing the basis for its decision-security concerns raised under Guideline F (Financial Considerations) and Guideline E (Personal Conduct) of the Directive. Applicant answered the SOR in writing on 18 March and 1 May 2003 and elected to have a hearing before an administrative judge. The case was assigned to me on 14 July 2003. On 11 September 2003, I convened a hearing to consider whether it is clearly consistent with the national interest to grant or continue a security clearance for Applicant. DOHA received the transcript (Tr.) of the proceeding on 29 September 2003. Applicant's Exhibits O, P, and Q were admitted into evidence after the hearing, without objection from Department Counsel.

FINDINGS OF FACT

Applicant is a 46-year-old high school graduate who retired from the U.S. Army in 1996. Ex. 1 at 1, 6; Tr. 9. His transition to civilian life was difficult. He was initially unable to find work and, when he did, the pay was not sufficient to meet his bills. He fell behind on several accounts and stopped making payments. From 1996 when he retired until the date of the hearing, Applicant's salary increased from approximately \$10 to \$23 an hour. Tr. 13. The following chart summarizes the alleged delinquencies and status.

¶	Nature and Amount	Status
1.a.	Delinquent credit card acct \$1917	Part of Chap 13 payment plan
1.b.	Delinquent credit card acct \$13,347	Part of Chap 13 payment plan
1.c.	Delinquent furniture acct \$7,104	Part of Chap 13 payment plan
1.d.	Delinquent credit card acct \$2,330	Part of Chap 13 payment plan
1.e.	Unpaid 1998 judgment \$7,733	Part of Chap 13 payment plan
1.f.	Unpaid federal taxes \$3,500	Part of Chap 13 payment plan
1.g.	Income exceeds monthly expenses \$723	

Applicant never attempted to get any credit counseling. Tr. 32. During his interview with a Defense Security Service agent on 29 May 2001, Applicant was unsure how he was going to meet his financial obligations. He filed for Chapter 13 bankruptcy in May 2003. Ex. A. Applicant pays \$1,023 each month to the court to satisfy his creditors.

On 8 September 1999, Applicant completed a security clearance application (SCA). Ex. 1. Applicant answered "no" to the following questions in the SCA:

37. In the last 7 years, have you had any judgments against you that have not been paid?

39. Are you currently over 90 days delinquent on any 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. The President has restricted eligibility for access to classified information to United States citizens "whose personal and professional history affirmatively indicates loyalty to the United States, strength of character, trustworthiness, honesty, reliability, discretion, and sound judgment, as well as freedom from conflicting allegiances and potential for coercion, and willingness and ability to abide by regulations governing the use, handling, and protection of classified information." Exec. Or. 12968, *Access to Classified Information* § 3.1(b) (Aug. 4, 1995). Eligibility for a security clearance is predicated upon the applicant meeting the security guidelines contained in the Directive.

Enclosure 2 of the Directive sets forth personal security guidelines, as well as the disqualifying conditions (DC) and mitigating conditions (MC) under each guideline. In evaluating the security worthiness of an applicant, the administrative judge must also assess the adjudicative process factors listed in ¶ 6.3 of the Directive. The decision to deny an individual a security clearance is not necessarily a determination as to the loyalty of the applicant. *See* Exec. Or. 10865 § 7. 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.

Initially, the Government must establish, by substantial evidence, conditions in the personal or professional history of the applicant that disqualify, or may disqualify, the applicant from being eligible for access to classified information. *See Egan*, 484 U.S. at 531. The Directive presumes a nexus or rational connection between proven conduct under any of the disqualifying conditions listed in the guidelines and an applicant's security suitability. *See* ISCR Case No. 95-0611 at 2 (App. Bd. May 2, 1996).

Once the Government establishes a disqualifying condition by substantial evidence, the burden shifts to the applicant to rebut, explain, extenuate, or mitigate the facts. ISCR Case No. 01-20700 at 3 (App. Bd. Dec. 19, 2002); *see* 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.

CONCLUSIONS

Guideline F-Financial Considerations

In the SOR, DOHA alleged Applicant had several delinquent debts (§§ 1-a. - 1.d.), an unpaid judgment (§ 1.e.), a debt to the IRS of \$3,500 for unpaid taxes for tax years 1998-2000 (§ 1.f.), and monthly income that exceeded his monthly expenses by \$723 (§ 1.g.). An applicant who is financially overextended is at risk of having to engage in illegal acts to generate funds. Directive ¶ E2.A6.1.1.

The Government established by substantial evidence, and Applicant's admissions, the delinquent accounts alleged in §§ 1.a. - 1.f. Applicant has a history of not meeting financial obligations (DC 1) and was either unable or unwilling to satisfy his debts (DC 3). Applicant initiated efforts to resolve his debts by filing for Chapter 13 bankruptcy protection. *See* MC 6. But it took him several years to do so. In May 2001, Applicant suggested to the DSS agent that he might file for bankruptcy. He finally filed for bankruptcy two years later and several months after receiving the SOR. Meanwhile, his financial statement reflected that, after paying all of his other bills and expenses, Applicant was netting \$723 a month. (Ex. 2 at 8) There is no evidence he used this money to pay off any of his delinquent debts. This is not the good-faith effort required by MC 6. Under the circumstances, finding is against Applicant.

The allegation in § 1.g. does not meet any of the disqualifying conditions under Guideline F. It is merely evidence appropriate for consideration as to the guideline's disqualifying and mitigating conditions. Finding is for Applicant.

Guideline E-Personal Conduct

In the SOR, DOHA alleged under Guideline E that Applicant falsified material facts on his SCA by failing to acknowledge an unpaid judgment (§ 2.a.) and debts on which he was more than 90 days delinquent (§ 2.b.). Conduct involving questionable judgment, untrustworthiness, unreliability, lack of candor, dishonesty, or unwillingness to comply with rules and regulations could indicate that the applicant may not properly safeguard classified information. Directive ¶ E2.A5.1.1.

The Government established that Applicant incorrectly answered questions 37 and 39 on his SCA. The open question is whether Applicant did so deliberately. Applicant insists that he did not deliberately omit information on his financial status from his SCA. He claims he believed he did not have to report debts that were charged off and he was unable to locate addresses for other creditors. Tr. 42. He also asserts he did not understand the question about judgments and he was unaware the paperwork he received was a judgment.

In judging Applicant's credibility, I considered the testimony of his character witness and the statements on his behalf admitted into evidence, in addition to his testimony and demeanor. On the other hand, Applicant never provided a credible reason for failing to list his three years of tax delinquencies to the IRS in his answer to question 39. I am convinced Applicant deliberately omitted relevant and material facts from his answers to questions 37 and 39 on his SCA. DC 2. None of the listed mitigating conditions apply. Finding is against Applicant.

FORMAL FINDINGS

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

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.: For Applicant

Paragraph 2. Guideline E: AGAINST APPLICANT

Subparagraph 2.a.: Against Applicant

Subparagraph 2.b.: Against 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.

James A. Young

Administrative Judge

1. Exec. Or. 10865, *Safeguarding Classified Information within Industry* (Feb. 20, 1960), as amended and modified.
2. Department of Defense Directive 5220.6, *Defense Industrial Personnel Security Clearance Review Program* (Jan. 2, 1992), as amended and modified.