

DATE: September 23, 2003

In re:

SSN: -----

Applicant for Security Clearance

ISCR Case No. 02-08451

DECISION OF ADMINISTRATIVE JUDGE

JAMES A. YOUNG

APPEARANCES

FOR GOVERNMENT

Marc Curry, Esq., Department Counsel

FOR APPLICANT

Pro Se

SYNOPSIS

Applicant has a long history of not meeting his financial obligations. He failed to file federal income tax returns for years 1994-98 and state income tax returns for years 1994-2001. He deliberately falsified his answers on two security clearance applications to questions concerning his financial condition. 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 18 December 2002, 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-failure to meet the criminal conduct (Guideline J), financial considerations (Guideline F), and personal conduct (Guideline E) personnel security guidelines of the Directive. Applicant answered the SOR in writing on 10 March 2003 and elected to have a hearing before an administrative judge. The case was assigned to me on 14 July 2003. On 19 August 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 26 August 2003.

FINDINGS OF FACT

Applicant is a 50-year-old employee of a defense contractor. Ex. 2 at 1. He retired from the U.S. Navy in 1993 after 22 years of service. Tr. 13.

In 1992, while serving as a Navy recruiter, Applicant filed for Chapter 7 bankruptcy and had over \$30,000 in debts discharged.. Tr. 34-36. Despite getting a new financial start, Applicant continued to have financial problems. He was unemployed from December 1998-March 1999. Ex. 2 at 2. His wife has had considerable medical problems, the cost of which has caused some of his financial problems. Tr. 39. Applicant's nieces and their husbands were shot to death, leaving Applicant to care for their two minor children. Ex. 4 at 3.

Applicant failed to file federal income tax returns for years 1994-1998. Applicant failed to file his state income tax returns for years 1994-2001. Ex. 5 at 4-5.

Applicant submitted security clearance applications (SCA) on 14 April 1999 (Ex. 1) and 6 Feb 2001 (Ex. 2). Question 37 of both SCAs asked Applicant if, in the previous seven years, he had any judgments against him that had not been paid. Applicant answered, "no." In 1996, a judgment was entered against Applicant for a delinquent debt on his telephone bill.

Question 38 of both SCAs asked Applicant if, in the previous seven years, he had been more than 180 days' delinquent on any debts. Applicant answered, "no." Applicant was more than 180 days in arrears on many debts, including those listed in ¶ 2 of the SOR.

Question 39 of both SCAs asked Applicant if he was then over 90 days' delinquent on any debts. Applicant answered, "no." At the times he submitted the SCAs, Applicant was then more than 90 day's delinquent on some of the debts listed in ¶ 2 of the SOR.

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 J-Criminal Conduct

In the SOR, DOHA alleged Applicant failed to file federal income tax returns for years 1994-98 and state income tax returns for years 1994-2001 (¶¶ 1.a. - 1.m.) and violated 18 U.S.C. § 1001 by falsifying answers to questions on his SCA (¶ 1.n.). A history or pattern of criminal activity creates doubt about an applicant's judgment, reliability, and

trustworthiness. Directive ¶ E2.A10.1.1.

It is a criminal offense for any person required to make a federal income tax return to willfully fail to make such return. 26 U.S.C. § 7203. Although the SOR claims this is a felony, it is in fact a misdemeanor. It is also a misdemeanor for any individual required to make a state income tax return to willfully fail to do so. The Government established by substantial evidence that Applicant engaged in multiple criminal acts by willfully failing to file his federal and state income tax returns. DC 1. I am convinced Applicant knew of his duty to file the income tax returns and willfully failed to do so. In fact, he claims to have completed at least one of the returns electronically, but "never sent it in. They were taking taxes anyway. I just didn't file." Tr. 38. None of the mitigating conditions listed under the guideline apply. Finding is against Applicant.

Guideline F-Financial Considerations

In the SOR, DOHA alleged Applicant filed for bankruptcy in 1992 (¶ 2.a.), had numerous delinquent debts that had not been satisfied (¶¶ 2.b. - 2.f. and 2.i., 2.m. - 2.o.), and several delinquent debts that he did not intend to pay (¶¶ 2.g., 2.h., 2.j., 2.k.). 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 that Applicant has a history of not meeting his financial obligations. DC 1. He has been unwilling or unable to satisfy his debts. DC 3. Applicant admitted the debts, but provided information that he had paid several of the debts and was making good-faith efforts to resolve others. MC 6. Some of Applicant's debts were the result of his wife's illness, his temporary loss of work, and the murders that led him to accept the children of his nieces into his home. These are conditions that were largely beyond Applicant's control. MC 3. Nevertheless, Applicant's attitude towards his debts was rather cavalier. He did not pay his cable television bill because, although it was in his name, he wanted the "kids" to take responsibility as they were the ones who wanted it. Applicant still has not paid this bill and has instead moved on to satellite television. Tr. 54. Finding is against Applicant.

Guideline E-Personal Conduct

In the SOR, DOHA alleged Applicant deliberately falsified his answers to questions 37-39 on his SCAs submitted on 14 April 1999 (¶¶ 3.a. - 3.c.) and 6 February 2001 (¶¶ 3.d. - 3.f.). Under Guideline E, conduct involving questionable judgment, untrustworthiness, unreliability, lack of candor, dishonesty, or unwillingness to comply with rules and regulations could indicate that the person may not properly safeguard classified information. Directive ¶ E2.A5.1.1.

The Government established by substantial evidence that Applicant omitted relevant and material facts from his SCAs about his financial condition, specifically his unpaid judgments, debts delinquent over 180 days, and debts delinquent over 90 days. Applicant claims that he did not purposefully lie. He just is not good with forms. When he was in the Navy, administrators always took care of paperwork for him. Tr. 23. He asserts that he will not betray his country. Tr. 12-14.

After careful consideration of his testimony and his demeanor, I am convinced Applicant deliberately omitted the information from his SCA. It just is not reasonable to believe that a former sailor with over 22 years of service did not understand what was being asked on the SCAs. Finding is against Applicant.

FORMAL FINDINGS

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

Paragraph 1. Guideline J: AGAINST APPLICANT

Subparagraphs 1.a. - 1.n.: Against Applicant

Paragraph 2. Guideline F: AGAINST APPLICANT

Subparagraphs 2.a. - 2.o. Against Applicant

Paragraph 3. Guideline E: AGAINST APPLICANT

Subparagraphs 3.a. - 3.f. 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.