

KEYWORD: Financial; Personal Conduct

DIGEST: Applicant has a history of not meeting his financial obligations. He failed to mitigate the personnel security concerns raised by his failure to pay his debts in a timely manner and his deliberate omission from his security clearance application of relevant and material information concerning those debts. Clearance is denied.

CASENO: 02-08522.h1

DATE: 07/21/2004

DATE: July 21, 2004

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In re:

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SSN: -----

Applicant for Security Clearance

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ISCR Case No. 02-08522

**DECISION OF ADMINISTRATIVE JUDGE**

**JAMES A. YOUNG**

**APPEARANCES**

**FOR GOVERNMENT**

Francisco J. Mendez, Esq., Department Counsel

**FOR APPLICANT**

### **SYNOPSIS**

Applicant has a history of not meeting his financial obligations. He failed to mitigate the personnel security concerns raised by his failure to pay his debts in a timely manner and his deliberate omission from his security clearance application of relevant and material information concerning those debts. 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 1 October 2003, DOHA issued a Statement of Reasons [\(1\)](#) (SOR) 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 21 October 2003 and 14 January 2004 and elected to have a hearing before an administrative judge. The case was assigned to me on 22 March 2004. I originally docketed the hearing for 13 April 2004, but granted Applicant a continuance at his counsel's request. On 11 May 2004, 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 hearing transcript (Tr.) on 20 May 2004.

### **FINDINGS OF FACT**

Applicant is a 41-year-old senior engineering specialist for a defense contractor. He graduated from a military service academy and served as a U.S. military officer for five years. He is married and has five children. He is well respected by his supervisor for his outstanding duty performance and his excellent rapport with the company's military clients.

In June 1997, a civil complaint was filed against Applicant for over \$5,000 for an unpaid credit card debt. A default judgment was entered against Applicant. Applicant's wages were garnished for \$6,245. The debt was paid by June 2000.

On 20 December 1999, Applicant completed a security clearance application (SCA). Ex. 2. Question 38 asked if, in the previous seven years, Applicant had been delinquent more than 180 days on any debts. Applicant answer "no." *Id.* at 9; SOR ¶ 1.k. In addition to the garnishment of his pay for the default judgment, Applicant incurred several other debts totaling more than \$16,000 that were delinquent more than 180 days when he completed his SCA.

After Applicant completed his SCA, three additional default judgments were entered against him. In July 2000, a summons was issued concerning Applicant's delinquent debt to a retail store for approximately \$1,950. Applicant submitted an answer to the complaint disputing its validity. Ex. A at 4-5. On 24 August 2000, the court entered a default judgment against Applicant. Ex. A at 38; SOR ¶ 1.l. Applicant did not pay the judgment so his wages were garnished.

In September 2001, a complaint was issued against Applicant and his wife for a debt in the amount of \$8,000 his wife had incurred and failed to pay. Applicant's wife was served a summons on the complaint. Ex. A at 15. A default judgment for over \$8,000 was entered against Applicant and his wife on 24 September 2001. Ex. A at 17. In October 2003, a complaint for more than \$1,685 was filed against Applicant on behalf of a national bank for an account in Applicant's name. Ex. A at 26, 28. Applicant's wife was served with the summons. The court entered judgment against Applicant for more than \$2,000. Applicant refuses to pay the creditors holding judgments against him until they prove to him he is responsible for the debt. Tr. 150.

## 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 personnel 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 delinquent debts (¶¶ 1.b.-1.j.) totaling more than \$25,000, had an unsatisfied judgment for over \$8,000 (¶ 1.a.), and had his wages garnished to satisfy two civil judgments(¶¶ 1.k., 1.l.) totaling about \$7,000. 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 each of the allegations in the SOR. Applicant has a history of not meeting his financial obligations (DC E2.A6.1.2.1.) and is unable or unwilling to satisfy his debts (DC E2.A6.1.2.3.). None of the mitigating conditions listed under the guideline apply. Applicant refuses to acknowledge his responsibility for his financial situation. Instead, he blames his wife, the mail, and the bank. He asserts that his wife handled the couple's finances until he had his pay garnished for a delinquent debt she never told him about. Yet, after he took over the finances more delinquencies and judgments occurred. Applicant then blamed his wife for failing to carry out his instructions about contacting creditors. He claims the bank did not send them monthly account statements for nine months before they changed banks. Even now, he refuses to accept a court's judgment of delinquency. Applicant expects the plaintiff-creditors who won judgments against him by default to prove to establish to his satisfaction that he owes the debt despite the fact a court has ruled that he does. After carefully listening to the testimony of Applicant and his wife and observing their demeanors, I conclude neither is a credible witness. Although from the record it appears Applicant has paid some of his delinquent debts, his failure to pay them in a timely manner demonstrates he has been financially overextended in the past and has a poor prognosis for financial stability in the future. I find against

Applicant.

## **Guideline E-Personal Conduct**

In the SOR, DOHA alleged Applicant deliberately falsified his SCA by denying that in the past seven years he had any debts that were delinquent more than 180 days. 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 by substantial evidence that Applicant failed to disclose in his SCA his unpaid judgments and delinquent debts. Proof Applicant omitted this information from his SCA shifted the burden to Applicant to explain the omissions sufficiently to negate a finding of knowing and deliberate falsification. *See* ISCR Case No. 02-23133 at 5 (App. Bd. Jun. 9, 2004). Applicant failed to do so. He deliberately omitted relevant and material information from his SCA. DC E2.A5.1.2.2. His claim he was unaware of his delinquent debts when he completed his SCA is not credible as his wages were already being garnished to satisfy a creditor's judgment. Although not alleged in the SOR, Applicant's admission that he refused to sign a financial release for the Defense Security Service agent investigating his case is more evidence Applicant was trying to hide his financial difficulties. None of the mitigating conditions apply. I find 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.: 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

Paragraph 2. Guideline E: AGAINST APPLICANT

Subparagraph 2.a.: 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. Pursuant 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 and modified (Directive).