

KEYWORD: Financial; Personal Conduct

DIGEST: Applicant is a network operator for a defense contractor. He had a security clearance but it became inactive when he switched defense contractor employers and no longer needed a clearance. Applicant submitted a security clearance application and a subsequent investigation revealed significant debt. He was discharged in bankruptcy in 1997 except for state and federal taxes. He satisfied the state taxes and tax liens were released. He did not satisfy the federal taxes. He accumulated more debt after bankruptcy that he could not satisfy. Applicant did not list the state tax liens on his security clearance application. Clearance is denied.

CASENO: 02-28883.h1

DATE: 01/31/2005

DATE: January 31, 2005

In Re:

SSN: -----

Applicant for Security Clearance

ISCR Case No. 02-28883

DECISION OF ADMINISTRATIVE JUDGE

THOMAS M. CREAN

APPEARANCES

FOR GOVERNMENT

Edward W. Loughran, Esq., Department Counsel

FOR APPLICANT

Pro Se

SYNOPSIS

Applicant is a network operator for a defense contractor. He had a security clearance but it became inactive when he switched defense contractor employers and no longer needed a clearance. Applicant submitted a security clearance application and a subsequent investigation revealed significant debt. He was discharged in bankruptcy in 1997 except for state and federal taxes. He satisfied the state taxes and tax liens were released. He did not satisfy the federal taxes. He accumulated more debt after bankruptcy that he could not satisfy. Applicant did not list the state tax liens on his security clearance application. Clearance is denied.

STATEMENT OF THE CASE

On May 25, 2004, the Defense Office of Hearing and Appeals (DOHA) issued a Statement of Reasons (SOR) detailing the basis for its decision to not grant a security clearance to Applicant. The action was taken under Executive Order 10865, *Safeguarding Classified Information within Industry* (Feb 20, 1990), 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). Applicant acknowledged receipt of the SOR on June 1, 2004. The SOR alleges security concerns under Guideline F (Financial Considerations), and Guideline E (Personal Conduct) of the Directive.

Applicant answered the SOR in writing on June 6, 2004. He admitted all of the allegations under Guideline F except one and denied the allegation under Guideline E. He elected to have the matter decided on the written record in lieu of a hearing.

Department Counsel submitted the Government's written case on November 4, 2004. Applicant received a complete file of relevant material (FORM) on November 16, 2004, and was provided the opportunity to file objections and submit material to refute, extenuate, or mitigate the disqualifying conditions. His response was due December 17, 2004. As of December 20, 2004, he had not responded. The case was assigned to me on December 29, 2004.

FINDINGS OF FACT

Applicant is a 65-year-old network operator for a defense contractor. He received a security clearance in 1995 but it became inactive after Appellant's then employer did not continue his clearance for the project he was assigned. He submitted a security clearance application on March 11, 2002, as a requirement for employment with his present defense contractor employer.⁽¹⁾ The resulting security clearance investigation revealed financial and personal conduct concerns. Applicant was terminated by his employer when his security clearance was not granted. Applicant is still anticipating his employment by the defense contractor if his security clearance is granted.

Applicant has long-standing indebtedness problems as far back as the mid 1980s. He filed for bankruptcy in 1997 and his debts were discharged. The only debts not discharged and left outstanding were for taxes due the Internal Revenue Service and his state. The state issued a tax lien for 1996 taxes but the lien was released on payment of the taxes in 1999. The state again issued a tax lien for 1997 taxes and the lien was released in 2000 on payment of the taxes. Applicant was making payment on the federal income taxes owed until he lost his job because he did not have a security clearance. He still has tax liens outstanding with the Internal Revenue Service for tax years 1996 and 1997 in the amount of \$37,173.⁽²⁾ Applicant admits that after his discharge in bankruptcy, he accumulated two debts placed for collection in 2002. He was not aware of another debt charged off as a bad debt in 2003.⁽³⁾

In a statement to agents of the Defense Security Service (DSS), Applicant, admitted that prior to his bankruptcy he accumulated debt because of a high spending life style.⁽⁴⁾ After his bankruptcy, he was making progress on paying his debt to the Internal Revenue Service until he lost his job with the defense contractor. He cannot afford to pay his tax liens even though he is paying his current taxes. He has sought employment but does not want to have any long-term employment so he can be free to accept a job with the defense contractor when granted a security clearance. He classifies his current financial situation as uncertain and he is barely able to pay bills and keep his head above water.⁽⁵⁾

On his 2002 security clearance application, Applicant answered "No" to question 36 requesting information on any tax liens in the last 7 years. Applicant did not report the state tax liens for tax years 1996 and 1997. Applicant also answered "No" to question 37 asking if there were any debts delinquent over 180 days in the last 7 years and question 39 asking if there were any current debts delinquent over 90 days.⁽⁶⁾ Applicant had debts in both categories.

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 judgement, 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.

The Directive sets out the adjudicative guidelines for making decisions on security clearances. Enclosure 2 of the Directive sets forth adjudicative guidelines for determining eligibility for access to classified information, and it lists the disqualifying conditions (DC) and mitigating conditions (MC) for each guideline. Each clearance decision must be fair, impartial, and a commonsense decision based on the relevant and material facts and circumstances, the whole person concept, and the factors listed in the Directive ¶ 6.3.1 through ¶ 6.3.6

"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." Directive ¶ E2.2.1. 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: (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 applicant's age and maturity at the time of the conduct; (5) the voluntariness of participation; (6) the presence or absence of rehabilitation and other pertinent behavioral changes; (7) the motivation for the conduct; (8) the potential for pressure, coercion, exploitation, or duress; and (9) the likelihood of continuation of recurrence. Directive ¶¶ E2.2.1.1 through E2.2.1.9.

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, 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. "[T]he Directive presumes there is a nexus or rational connection between proven conduct under any of the Criteria listed therein and an applicant's security suitability." ISCR Case No. 95-0611 at 2 (App. Bd. May 2, 1996) (quoting DISCR Case No. 92-1106 (App. Bd. Oct. 7, 1993)).

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 (App. Bd. Dec. 19, 2002). "[S]ecurity clearance determination should err, if they must, on the side of denials." *Egan*, 484 U.S. at 531; *see* Directive ¶ E2.2.2.

CONCLUSIONS

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

Under Guideline F (Financial Considerations), a security concern exists for an individual who is financially irresponsible. An individual who is financially irresponsible may also be irresponsible, unconcerned, or careless in their obligations to protect classified information. Behaving responsibly or irresponsibly in one aspect of life provides an indication of how a person may behave in other aspects of life. Directive ¶ E2.A6.1.1. Under Guideline E (Personal Conduct), a security concern exists for conduct involving questionable judgment, untrustworthiness, unreliability, *lack of candor, dishonesty*, or unwillingness to comply with rules or regulations. Any of these characteristics in a person could indicate that the person may not properly safeguard classified information. Directive ¶ E2.A5.1.1.

Applicant's debts bring the matter within Financial Consideration Disqualifying Condition Directive ¶ E2.A6.1.2.1 (*a history of not meeting financial obligations*); and Directive ¶ E2.A6.1.2.3 (*inability or unwillingness to satisfy debts*). Applicant has long-standing debts even though some were discharged in bankruptcy. He made laudable efforts to pay the state tax liens but he has not been able to satisfy his debts to the Internal Revenue Service. He also accumulated more delinquent debt since his discharge in bankruptcy. His financial situation is unclear and he does not have the ability to satisfy his debts. I conclude the financial consideration disqualifying conditions have been established.

The Financial Consideration Mitigating Conditions that should be considered for Applicant's financial situation are: Directive ¶ E2.A6.1.3.1 (*the behavior was not recent*); Directive ¶ E2.A6.1.3.2 (*it was an isolated incident*); Directive ¶ E2.A6.1.3.3 (*the conditions that resulted in the behavior were largely beyond the person's control (e.g., loss of employment, business downturn, unexpected medical emergency, or a death, divorce or separation)*); and Directive E2.A6.1.3.6 (*the individual initiated a good-faith effort to repay overdue creditors or otherwise resolve debts*). Applicant's debts are not recent or isolated. Applicant has debt since the mid 1980s which he satisfied in bankruptcy in 1997. He did not pay all of his overdue taxes to the Internal Revenue Service after being released from his other obligations. He continued to accumulate delinquent debt after bankruptcy. While he may have lost his employment because of losing his security clearance, he made no attempt to get employment that would enable him to pay his overdue obligations. His debts are not beyond his control and he has not made a good faith effort to pay all of his creditors. I conclude Applicant has not mitigated the financial consideration security concerns.

Applicant's failure to list the state tax liens in response to questions 36 on the security clearance application bring the matter under Personal Conduct Disqualifying Conditions Directive ¶ E2.A5.1.2.2 (*the deliberate omission, concealment, or falsification of relevant and material facts from any personnel security questionnaire*). Applicant stated he did not list the liens because they had been released by the state on payment and he did not think they needed to be listed. The question is clear and unambiguous, and asks for any liens in the last 7 years. His explanation is insufficient to overcome a determination that his false answer was knowing and deliberate with the intent to deceive. While not listed as an allegation in the SOR, he also did not correctly answer questions 37 and 38 concerning debts past due over 180 days and 90 days. This is a further indication of his intent not to reveal the true nature of his financial situation. I conclude the disqualifying condition has been established.

The Personal Conduct Mitigating Conditions that should be considered for Applicant are Directive ¶ ¶ E2.A5.1.3.3 (*the individual made prompt, good-faith efforts to correct the falsification before being confronted with the facts*); and Directive ¶ E2.A5.1.3.4 (*omission of material facts was caused or significantly contributed to by improper or inadequate advice of authorized personnel, and the previously omitted information was promptly and fully provided*). Applicant did not make a good-faith effort to correct the facts until confronted. Even then, he tried to rationalize away his false response. He did not ask or seek advice on answering the questions and omitted the information on his own. I conclude Applicant has not mitigated the disqualifying conditions under Guideline E.

I carefully considered all of the circumstances in light of the "whole person" concept. I conclude Applicant is not eligible for access to classified information.

FORMAL FINDINGS

Formal findings For or Against Applicant on the allegations in the SOR, as required by Section E3.1.25 of Enclosure 3 of the Directive, 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 Applicat

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.

Thomas M. Crean

Administrative Judge

1. Item 6 (Security Clearance Applicant, March 11, 2002), 1.
2. Item 8 (Applicant statement of April 15, 2002), 3-7.
3. Item 8 (Applicant's statement, April 15, 2002), 5.
4. Item 9 (Applicant statement, April 26, 2002), 4.
5. Item 8 (Applicant statement, April 15, 2002), 5.
6. Item 6 (Security Clearance Application, March 11, 2002), 8-9.