

DATE: November 7, 2003

In re:

SSN: -----

Applicant for Security Clearance

ISCR Case No. 02-31796

DECISION OF ADMINISTRATIVE JUDGE

JAMES A. YOUNG

APPEARANCES

FOR GOVERNMENT

Marc Curry, Esq., Department Counsel

FOR APPLICANT

Pro Se

SYNOPSIS

Twenty-nine-year-old Applicant incurred several debts between 1995 to 2003 that he did not pay and did not list as delinquent on his security clearance application. Applicant failed to dispel financial considerations, personal conduct, and criminal conduct security concerns. 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 4 August 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), Guideline E (Personal Conduct), and Guideline J (Criminal Conduct) of the Directive. Applicant answered the SOR in writing on 27 August 2003 and elected to have a hearing before an administrative judge. The case was assigned to me on 3 October 2003. On 27 October 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 4 November 2003.

FINDINGS OF FACT

Applicant is 29 years old. Ex. 1 at 1. In 1988, he retired from the U.S. Navy as an E-9 (the highest enlisted grade) after 21 years of service. *Id.* at 3. He has worked for his current employer, a defense contractor, since his retirement.

The following chart summarizes the status of the financial security concerns alleged in ¶ 1 of the SOR:

¶	Nature and Amount	Status	Record
1.a.	Collection acct from 2000 for \$50	Still not paid	Tr. 12

1.b.	Collection acct from 2002 for \$317	Still not paid	Tr. 12
1.c.	Collection acct from 1998 for \$125	Still not paid	Tr. 12
1.d.	Collection acct from 1998 for \$590	Still not paid	Tr. 12
1.e.	Collection acct from 1996 for \$135	Still not paid	Tr. 12
1.f.	Collection acct from 1996 for \$577	Still not paid	Tr. 12
1.g.	Collection acct from 1996 for \$51	Still not paid	Tr. 12
1.h.	Collection acct from 1999 for \$237	Still not paid	Tr. 12
1.i.	Collection acct from 2000 for \$50	Still not paid	Tr. 12
1.j.	Collection acct from 2001 for \$50	Still not paid	Tr. 12
1.k.	Collection acct from 1999 for \$190	Still not paid	Tr. 12; Ans
1.l.	Collection acct from 2000 for \$230	Still not paid	Tr. 12; Ans
1.m.	Collection acct from 1998 for \$115	Still not paid	Tr. 12; Ans
1.n.	Collection acct from 1996 for \$163	Still not paid	Tr. 12; Ans
1.o.	Collection acct from 2002 for \$50	Still not paid	Tr. 12; Ans
1.p.	Collection acct from 2000 for \$25	Still not paid	Tr. 12; Ans
1.q.	Judgment from 1997 for \$305	Still not paid	Tr. 12; Ans
1.r.	Collection acct from 1995 for \$373	Still not paid	Tr. 12; Ans
1.s.	Collection acct from 1995 for \$193	Still not paid	Tr. 12; Ans
1.t.	Collection acct from 1995 for \$428	Still not paid	Tr. 12; Ans
1.u.	Collection acct from 1995 for \$223	Still not paid	Tr. 12; Ans
1.v.	Collection acct from 1996 for \$115	Still not paid	Tr. 12; Ans

Applicant completed his security clearance application (SCA) on 28 September 2000. Ex. 1. At the end of the SCA, Applicant certified that his answers were true and correct to the best of his knowledge and belief, and acknowledged that a knowing and willful false statement was punishable under 10 U.S.C. § 1001. He answered "no" to the following questions contained in the SCA.

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

38. In the last 7 years, have you been over 180 days delinquent on any debts?

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 failed to pay delinquent debts that had been placed for collection (¶¶ 1.a. - 1.v., except 1.q.), and a judgment that had not been satisfied (¶ 1.q.) An applicant who is financially overextended is at risk of having to engage in illegal acts to generate funds. Directive ¶ E2.A6.1.1.

Applicant has a history of not meeting his financial obligations. DC E2.A6.1.2.1. He was unable or unwilling to satisfy his debts. DC E2.A6.1.2.3. Applicant freely admits that he has not paid any of these debts. Although some of these debts were medical bills incurred as a result of his gall bladder problems during a time he did not have any health insurance (*see* MC E2.A6.13.3), it does not appear he has made any effort to pay any of his bills. He thinks declaring bankruptcy will have too adverse an effect on his credit rating and has not taken it upon himself to see a credit counselor (*see* MC E2.A6.1.3.4). Under the circumstances, there is no cause to believe Applicant will pay off his debts in the near future. Finding is against Applicant.

Guideline E-Personal Conduct

In the SOR, DOHA alleged Applicant falsified material facts on his SCA by answering "no" to questions 39 (¶ 2.a.), 38 (¶ 2.b), and 37 (¶ 2.c.). Conduct involving questionable judgment, lack of candor, or dishonesty could indicate that the person may not properly safeguard classified information. Directive ¶ E2.A5.1.1.

Applicant inaccurately answered questions 37, 38, and 39 on his SCA. The question is whether it was deliberate. Deliberate omissions, concealment, or falsification of relevant and material facts from an SCA is a condition that could raise a security concerns and may be disqualifying. DC E2.A5.1.2.2. After carefully listening to his testimony and observing his demeanor, Applicant failed to convince me the omissions from his SCA were not deliberate. Finding is against Applicant.

Guideline J-Criminal Conduct

In the SOR, DOHA alleged Applicant violated 18 U.S.C. § 1001 by falsifying his SCA. (¶ 3.a.). 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 to knowingly and willfully make any materially false, fictitious, or fraudulent statement or representation in any matter within the executive branch of the Government of the United States. 18 U.S.C. § 1001. Security clearances are within the jurisdiction of the executive branch of the Government of the United States. *See Egan*. Applicant asserts he answered questions 37, 38, and 39 "no" because he did not think his debts were important enough to list. Under all the circumstances, Applicant failed to convince me that he did not knowingly and willfully falsify his SCA. An applicant may be disqualified if allegations of criminal conduct are raised against him. DC E2.A10.1.2.1. As Applicant falsified three separate questions, the crime was not an isolated incident. *See* MC

E2.A10.1.3.2. None of the other 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.-1.v.: Against Applicant

Paragraph 2. Guideline E: AGAINST APPLICANT

Subparagraph 2.a.: Against Applicant

Subparagraph 2.b.: Against Applicant

Subparagraph 2.c.: Against Applicant

Paragraph 3. Guideline J: AGAINST APPLICANT

Subparagraph 3.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. 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.