

DATE: March 30, 2005

In Re:

SSN: -----

Applicant for Security Clearance

ISCR Case No. 02-31959

DECISION OF ADMINISTRATIVE JUDGE

JOAN CATON ANTHONY

APPEARANCES

FOR GOVERNMENT

Braden M. Murphy, Esq., Department Counsel

FOR APPLICANT

Pro Se

SYNOPSIS

Applicant has a history of financial instability and has been financially overextended for several years. He falsified material facts regarding his financial delinquencies on his security clearance application. His continuing financial problems and his lack of candor about them raise serious 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 December 8, 2003, under the applicable Executive Order⁽¹⁾ and Department of Defense Directive,⁽²⁾ DOHA issued a Statement of Reasons (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 January 21, 2004, and requested his case be determined on the record in lieu of a hearing. The Government compiled its File of Relevant Material (FORM) on ay 17, 2004. The FORM contained documents identified as Items 1 through 9. By letter dated May 20, 2004, a copy of the FORM was forwarded to Applicant, with instructions to submit any additional information and/or objections within 30 days of receipt. Applicant received the FORM on May 25, 2004, and his response was due June 25, 2004. Applicant submitted a response to the FORM dated June 18, 2004. Department Counsel did not object to Applicant's submission. On July 6, 2004, the case was assigned to a DOHA administrative judge for a decision. On February 18, 2005, the case was transferred to me for a decision. The transfer occurred because of caseload considerations.

FINDINGS OF FACT

The SOR contains five allegations of disqualifying conduct alleged under Guideline F, Financial Considerations, and two allegations alleged under Guideline E, Personal Conduct. In his answer to the SOR, Applicant admitted all seven allegations. His admissions are incorporated as findings of fact.

Applicant is a 54-year-old planner employed by a defense contractor. He has worked for the same employer since 1973,

and he has held a security clearance since 1974. Applicant and his wife have been married since October 1971. They are the parents of two adult children. In 2001, Applicant's wife was diagnosed with a serious illness which rendered her unable to work. Applicant attributes his financial delinquencies to his wife's illness. (Item 6.)

Applicant has a history of financial problems and admitted an ongoing pattern of financial instability. As of May 29, 2003, he owed approximately \$21,000 in delinquent debts. (Item 1.) Applicant considered filing for bankruptcy and then decided to borrow from his 401K plan to pay his debts. Because he had two outstanding loans against his 401K account, he was not permitted to borrow from the account until one of the debts was paid.. He paid one of the debts. As of June 18, 2004, he still owed approximately \$21,000 in delinquent debts. (Response to FORM.)

In his January 21, 2004, answer to the SOR, Applicant stated he would pay the debts alleged at ¶¶ 1.a., 1.b., 1.c. 1.d., and 1.e. (Item 4.) In his June 18, 2004, response to the FORM, Applicant admitted he had not yet paid the debts but intended to do so.

Applicant provided a signed, sworn statement to a special agent of the Defense Security Service on September 16, 2002. Included with the signed, sworn statement was Applicant's personal financial statement indicating a total net monthly income of \$3,237, total monthly expenses of \$1,287, and monthly payments of \$1,869 on four current debts and one delinquent debt. After paying these debts, Applicant had \$81 remaining. He listed two delinquent accounts on his monthly schedule of payments, but indicated he did not pay on them. He stated a bankruptcy attorney he consulted advised him not to make scheduled payments on his debts if he planned to seek bankruptcy protection. He stopped making scheduled payments to some of his creditors. (Item 6.)

Applicant completed a security clearance application (SF-86) in June 2002. Question 38 on the SF-86 reads as follows: "In the last 7 years, have you been over 180 days delinquent on any debts?" Applicant responded "no" to question 38. Applicant also answered "no" to question 39 on the SF-86. Question 39 asked if he was currently over 90 days delinquent on any debt.

In his signed sworn statement, Applicant admitted a bad debt on an account opened in 1975 and charged off in 2001. He admitted another bad debt that had been placed in collection status by a creditor and he acknowledged bad debts on accounts opened in June 1982, February 1987, and January 1990. (Item 6.)

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

The Government's concern under Guideline F, Financial Considerations, is that individuals who are financially overextended and unable or unwilling to pay their just debts may try to generate funds by engaging in illegal acts. Applicant has a history of not meeting his financial obligations, and this financial history suggests an inability or unwillingness to satisfy his debts, conditions which raise security concerns under subparagraphs E2.A6.1.2.1. and E2.A6.1.2.3. of Guideline F. DOHA's Appeal Board has concluded that "[a] person who is unwilling to fulfill his legal obligations does not demonstrate the high degree of good judgment and reliability required of persons granted access to classified information." ISCR Case No. 98-0810 at 4 (App. Bd. June 8, 2000).

In the SOR, DOHA alleged that Applicant owed approximately \$5,742 to a bank credit card company on a debt that had been charged off in August 2000 and had not been paid as of May 29, 2003 (¶ 1.a.); that he owed approximately \$2,844 to a second bank credit card company on an account that had been charged off in February 2000 and had not been paid as of May 29, 2003 (¶ 1.b.); that he owed approximately \$1,939 on an account that had been reported on his credit report as 120 days past due in the amount of \$738 since about March 2001 and had not been paid as of May 29, 2003 (¶ 1.c.); that he owed a creditor approximately \$3,042 on an account identified for collection in December 2000 and not paid as of May 29, 2003 (¶ 1.d); and that he owed approximately \$7,435 to a department store creditor on an account charged off in March 2001 and not paid as of May 29, 2003 (¶ 1.e.). 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 admitted the financial obligations identified in allegations at ¶¶ 1.a. through 1.e. of the SOR. The Government has established, through the FORM and Applicant's admissions, a *prima facie* case that Applicant is financially overextended. Applicant provided no persuasive evidence to rebut the financial concerns specified in the SOR and identified as disqualifying conditions under ¶¶ E2.A6.1.2.1. and E2.A6.1.2.3. of Guideline F.

We turn to a review of the several conditions that could mitigate the security concerns raised by Applicant's financial delinquencies. Applicant's acknowledged delinquencies involve long-standing debts that continue to be unsatisfied to this day. Thus, neither mitigating condition E2.A.6.1.3.1. nor mitigating condition E2.A6.1.3.2. applies. If a person's financial delinquencies were largely caused by conditions beyond his control, then mitigating condition E2.A6.1.3.3 might apply. While Applicant's wife fell ill with a serious illness in 2001 and was unable to work, this circumstance, while unfortunate, does not explain or mitigate his long-standing financial difficulties, many of which predate 2001. (*See* Item 6.) Thus, mitigating condition E2.A6.1.3.3. does not apply.

The record evidence does not establish that Applicant has sought counseling for his financial problems. While he consulted with an attorney about declaring bankruptcy, he did not follow through and file a petition in bankruptcy. While he indicated he would contact his creditors, he failed to demonstrate he had initiated a good-faith effort to pay them or to resolve or bring under control his financial delinquencies. Thus, neither mitigating condition E2.A6.1.3.4. nor E2.A6.1.3.6. applies to the facts of Applicant's case. Accordingly, the allegations in ¶¶ 1.a. through 1.e. of the SOR are concluded against the Applicant.

Guideline E - Personal Conduct

In the SOR, DOHA alleged Applicant deliberately falsified his answers on his SF-86 to Questions 38 and 39 (¶¶ 2.a. and 2.b.). While Applicant admitted the falsifications, he said he did so because he was contemplating bankruptcy, which is not a mitigating condition. His deliberate misrepresentations cause serious security concerns. Conduct involving questionable judgment, untrustworthiness, unreliability, lack of candor, dishonesty, or unwillingness to

comply with rules and regulations could indicate that an applicant may not properly safeguard classified information. Directive ¶ E2.A5.1.1.

An applicant's responsibility to provide truthful and complete responses to questions on his SF-86 cannot be set aside or ignored. An applicant's financial history is material to a determination of his security worthiness. With respect to the Guideline E conduct alleged in SOR subparagraphs 2.a. and 2.b, Applicant falsified his SF-86 by omitting and concealing relevant and material information about his financial delinquencies in response to questions 38 and 39, bringing his conduct under disqualifying condition E2.A5.1.2.2. He did not make a prompt, good-faith effort to correct the falsification before being confronted with the facts, and thus Mitigating Condition (MC) E2.A5.1.3.3. does not apply. Applicant's falsifications were recent and not isolated incidents, and he did not supply the correct information voluntarily. Thus MC E2.A5.1.3.2. does not apply. While he stated he stopped paying his creditors on the advice of a bankruptcy lawyer, his refusal to supply correct information on his indebtedness on his SF-86 was not based on advice from legal counsel, and thus MC E2.A5.1.3.6. is inapplicable.

Applicant's deliberate concealment of his financial delinquencies increased his vulnerability to coercion, exploitation, or duress, and thus disqualifying condition E2.A5.1.2.4. applies. He has not taken positive steps to reduce or eliminate his vulnerability to coercion, exploitation, or duress, and thus MC E2.A5.1.3.5. does not apply.

With respect to the Guideline E conduct alleged in the SOR, the Government has established its case. Accordingly, the allegations in subparagraphs 2.a. and 2.b. of the SOR are concluded against the Applicant.

In all adjudications, the protection of our national security is the paramount concern. Security clearance decisions are not intended to assign guilt or to impose further punishment for past transgressions. Rather, the objective of the security clearance process is the fair-minded, common sense assessment of a person's trustworthiness and fitness for access to classified information. Indeed, the "whole person" concept recognizes we should view a person by the totality of his or her acts and omissions, including all disqualifying and mitigating conduct. Having done so, I conclude Applicant should not be entrusted with a security clearance. In reaching my decision, I have considered the evidence as a whole, including the appropriate factors and guidelines in Department of Defense Directive, 5220.6, as amended.

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

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.

Joan Caton Anthony

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.