

DATE: May 17, 2005

In Re:

SSN: -----

Applicant for Security Clearance

CR Case No. 02-11965

DECISION OF ADMINISTRATIVE JUDGE

CHRISTOPHER GRAHAM

APPEARANCES

FOR GOVERNMENT

Nichole Noel, Esq., Department Counsel

FOR APPLICANT

Pro Se

SYNOPSIS

Applicant has a history of unpaid debts. His financial statements indicated an ability to repay old debts, maintain current expenses, with a surplus each month. The record contains no evidence that bills were paid even though he made assurances that they were being paid. He gave false answers on two questions of a security clearance questionnaires. He has not mitigated security concerns over his finances and personal conduct. Clearance is denied.

STATEMENT OF THE CASE

On October 10, 2003, the Defense Office of Hearings and Appeals (DOHA), pursuant to Executive Order 10865, *Safeguarding Classified Information Within Industry*, dated February 20, 1960, as amended and modified, and Department of Defense Directive 5220.6, *Defense Industrial Personnel Security Clearance Review Program* (Directive), dated January 2, 1992, as amended and modified, issued a Statement of Reasons (SOR) to Applicant. The SOR alleged facts under Guideline F (financial considerations) and Guideline E (personal conduct) which detail reasons why DOHA could not make the preliminary affirmative finding under the Directive that it is clearly consistent with the national interest to grant or continue Applicant's security clearance, and recommended referral to an administrative judge to determine whether a clearance should be granted, continued, denied or revoked.

In a sworn written statement, dated November 18, 2003, Applicant responded to the allegations in the SOR and requested a hearing. The case was originally assigned to another administrative judge on September 7, 2004, and due to caseload considerations was re-assigned to me on February 1, 2005. Notice of the hearing was issued March 9, 2005. Applicant had actual notice of the hearing date on or about March 9, 2005, and specifically waived the 15 day written notice requirement. ⁽¹⁾ The transcript was received April 11, 2005.

FINDINGS OF FACT

Applicant has admitted to all 8 SOR allegations pertaining to financial matters under Guideline F (subparagraphs 1.a. through 1.h.), and denied the two allegations of Guideline E (subparagraph 2.a. and b.) Those admissions are incorporated herein as findings of fact. After a complete and

thorough review of the evidence in the record, I make the following additional findings of fact:

Applicant, a single, 54-year old employee of a federal contractor is seeking to obtain a security clearance.⁽²⁾ He was employed by this contractor in February 2001⁽³⁾, and he was unemployed from November 2003 until December 2004.⁽⁴⁾ He has a history of unpaid debts going back to 1998.⁽⁵⁾ The following chart sets forth each unpaid debt alleged in the SOR, the type, amount and the current status.

SOR ¶	DELINQUENT	TYPE DEBT	AMOUNT	CURRENT STATUS
1.a.	February 1999	credit card	\$ 1,092.00	Unpaid ⁽⁶⁾
1.b.	August 1998	county taxes	\$ 152.00	Unpaid ⁽⁷⁾
1.c.	December 2000	county taxes	\$ 127.00	Unpaid ⁽⁸⁾
1.d.	August 1999	county taxes	\$ 78.00	Unpaid ⁽⁹⁾
1.e.	December 1999	county taxes	\$ 149.00	Unpaid ⁽¹⁰⁾
1.f.	December 1998	county taxes	\$ 167.00	Unpaid ⁽¹¹⁾
1.g.	December 1999	collection account	\$ 135.00	Unpaid ⁽¹²⁾
1.h.	December 2000	judgement	\$ 538.00	Unpaid ⁽¹³⁾

(1.a. and 1.h. are the same debt)⁽¹⁴⁾

From the time he signed his security clearance application until the time of his unemployment, nearly 2 ½ years elapsed with no payments to creditors forthcoming. His financial statement indicated an ability to repay old debts, maintain current expenses, with a surplus each month.⁽¹⁵⁾ In his testimony, Applicant stated that he had contacted a law firm to assist him with his creditors.⁽¹⁶⁾ The administrative judge held the record open for 8 days to allow Applicant to contact his law firm and have that firm advise department counsel and the administrative judge as to the status of the work performed on Applicant's behalf.⁽¹⁷⁾ Applicant failed to supplement the record.

In answer to Standard Form 86, **Question 37. Your Financial Record - Unpaid Judgments.** *In the last 7 years, have you had any judgments against you that have not been repaid?*, his answer was "No". In answer to **Question 38. Your Financial Delinquencies - 180 Days.** *In the last 7 years, have you ever been over 180 days delinquent on any debts?*, his answer was "No".⁽¹⁸⁾ He denied that these answers were false but his credit reports show that some of these debts have been outstanding for years, and some were written off as bad debts but he never paid them. *See chart above.* Again, when given the opportunity to mitigate or explain, he was silent.

POLICIES

"[No] one has a 'right' to a security clearance."⁽¹⁹⁾ 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."⁽²⁰⁾ 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 coercion, and willingness and ability to abide by regulations governing use, handling, and protection of classified information."⁽²¹⁾ Eligibility for a security clearance may be adjudicated using 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 factors listed in ¶ 6.3 of the Directive: nature and seriousness of the conduct and surrounding circumstances; frequency and recency of the conduct; age of the Applicant; motivation of

the applicant, and the extent to which the conduct was negligent, wilful, voluntary, or undertaken with knowledge of the consequences involved; absence or presence of rehabilitation; and probability that the circumstances or conduct will continue or recur in the future.

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.⁽²²⁾ 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.⁽²³⁾

Once the Government establishes a disqualifying condition, the burden shifts to the applicant to rebut, explain, extenuate, or mitigate the facts.⁽²⁴⁾ An applicant "has the ultimate burden of demonstrating that it is clearly consistent with the national interest to grant or continue his security clearance."⁽²⁵⁾ A person who has access to classified information enters into a fiduciary relationship with the Government based on trust and confidence. The Government, therefore, has a compelling interest in ensuring each Applicant possesses the requisite judgment, reliability and trustworthiness of one who will protect the national interests as his or his own. The "clearly consistent with the national interest" standard compels resolution of any reasonable doubt about an Applicant's suitability for access in favor of the Government.⁽²⁶⁾ Decisions under this Directive include, by necessity, consideration of the possible risk an applicant may deliberately or inadvertently fail to protect or safeguard classified information. Such decisions entail a certain degree of legally permissible extrapolation as to potential, rather than actual, risk of compromise of classified information.

Applicant's allegiance, loyalty, and patriotism are not at issue in these proceedings. Section 7 of Executive Order 10865 specifically provides industrial security decisions shall be "in terms of the national interest and shall in no sense be a determination as to the loyalty of the applicant concerned." Security clearance decisions cover many characteristics of an applicant other than allegiance, loyalty, and patriotism.

Having considered the SOR allegations and having reviewed the record evidence as a whole, I conclude the relevant adjudicative guidelines to be applied here are those conditions listed under Guideline F (financial considerations) (FC), Directive, ¶ E2.A6.1.1. *An individual who is financially overextended is at risk of having to engage in illegal acts to generate funds. Unexplained affluence is often linked to proceeds from financially profitable criminal acts;* and Guideline E (personal conduct) (PC), Directive, ¶ E2.A5.1.1. *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.*

CONCLUSIONS

Upon consideration of all the facts in evidence, and after application of all appropriate legal precepts, factors, and conditions, including those described briefly above, I conclude the following with respect to each allegation set forth in the SOR:

The Government has established its case under Guideline F. As indicated above, Applicant's financial situation shows unpaid obligations that existed over a long period of time. His financial statements indicate an ability to pay his debts. But the debts listed in the SOR continue to show up on successive credit reports as unpaid. He indicated he had contacted a law firm to resolve questions about the validity of these debts, but when given the opportunity to submit mitigating evidence, he submitted. Failure to pay outstanding financial obligations gives rise to Financial Considerations Disqualifying Condition (FC DC) E2.A6.1.2.1. *(A history of not meeting financial obligations);* and FC DC E2A6.1.2.3. *(Inability or unwillingness to satisfy debts).*

Notwithstanding the fact that the financial statements indicated an ability to pay debts with a surplus on hand, Applicant has not made a good-faith effort to pay down his debts. He testified about hiring a law firm to assist him in resolving these debts with various creditors but did not produce any evidence when given an opportunity to supplement the record. His actions do not rise to the level necessary to satisfy FC MC E2A6.1.3.6. *(The individual initiated a good-faith effort to repay overdue creditors or otherwise resolve debts).* I conclude SOR allegations 1.a. through 1.h. against

Applicant.

The Government also alleged that Applicant falsely answered two questions on his security clearance application, by omitting that he had unpaid judgments and delinquent debts greater than 180 days. The credit reports and his admissions demonstrate that he had an unpaid judgment and debts delinquent in excess of 180 days. These false statements come under Guideline E, Personal Conduct Disqualifying Condition (PC DC) E2.A5.1.2.2. (*the deliberate omission, concealment, or falsification of relevant material facts from any personnel security questionnaire, personal history statement, or similar form used to conduct investigations, determine employment qualifications, award benefits or status, determine security clearance eligibility or trustworthiness, or award fiduciary responsibilities*). Applicant offered no rebuttal. He did not supplement the record to mitigate these allegations when given the opportunity. No mitigating conditions are applicable. I conclude SOR allegations 2.a. and b. against the Applicant.

FORMAL FINDINGS

Formal findings For or Against Applicant on the allegations set forth in the SOR, as required by ¶ E3.1.25 of Enclosure 3 of the Directive, are:

Paragraph 1. Guideline F: AGAINST THE APPLICANT

Subparagraph 1.a. Against the Applicant

Subparagraph 1.b. Against the Applicant

Subparagraph 1.c. Against the Applicant

Subparagraph 1.d. Against the Applicant

Subparagraph 1.e. Against the Applicant

Subparagraph 1.f. Against the Applicant

Subparagraph 1.g. Against the Applicant

Subparagraph 1.h. Against the Applicant

Paragraph 2. Guideline E: AGAINST THE APPLICANT

Subparagraph 2.a. Against the Applicant

Subparagraph 2.b. Against the Applicant

DECISION

In light of all the circumstances presented by the record in this case, it is not clearly consistent with the national interest to grant or continue Applicant's security clearance. Clearance is denied.

Christopher Graham

Administrative Judge

1. Transcript at 4-6.

2. Government Exhibit (hereafter "GE") 1 (*Applicant's Application for National Security Clearance SF86 May 4, 2001*) at 1-3.

3. Item 7 (*Applicant's Statement dated July 12, 2002*) at 1.

4. Transcript at 21.

5. GE 3-6 (*Credit Reports Dated June 14, 2001; January 12, 2002; May 15, 2003; and March 31, 2005*).

6. *Id.*

7. *Id.*

8. *Id.*

9. *Id.*

10. *Id.*

11. *Id.*

12. *Id.*

13. *Id.*

14. Tr. at 17.

15. GE 2 (*Applicant's Responses to Interrogatories and Attachments dated May 6, 2003*) at 1-7.

16. Tr. at 14, 16, 42, 56 and 57.

17. Tr. at 58-59.

18. GE 1 (*Applicant's Application for National Security Clearance SF86 May 4, 2001*) at 6-7.

19. See *Department of the Navy v. Egan*, 484 U.S. 518, 528 (1998).

20. *Id.*, at 527.

21. Exec. Or. 12968, *Access to Classified Information* § 3.1(b) (Aug. 4, 1995).

22. *Egan, supra*, at 531.

23. See *ISCR Case No. 95-0611* at 2 (App. Bd. May 2, 1996).

24. See *ISCR Case No. 01-20700* at 3 (App. Bd. Dec. 19, 2002).

25. *Id.*, at 3.

26. See *Egan*; Directive ¶ E2.2.2.