

DATE: January 13, 2004

In re:

SSN: -----

Applicant for Security Clearance

ISCR Case No. 02-12633

DECISION OF ADMINISTRATIVE JUDGE

JAMES A. YOUNG

APPEARANCES

FOR GOVERNMENT

Jennifer I. Campbell, Esq., Department Counsel

FOR APPLICANT

Pro Se

SYNOPSIS

Applicant's debts were discharged in bankruptcy in 1996. In 1999, he filed a Chapter 13 bankruptcy wage-earners plan. Applicant has been meeting his payments under the plan. Applicant provided deliberately false or misleading information on his security clearance application, on an employment application, and to an investigator concerning a personnel security determination. 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 13 June 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 18 September 2003 and elected to have a hearing before an administrative judge. The case was originally assigned to another administrative judge, but was transferred to me on 14 November 2003. On 10 December 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 30 December 2003.

FINDINGS OF FACT

Applicant is a 34-year-old systems administrator for a defense contractor. He is married and has three children. His wife is attending college.

Applicant filed for bankruptcy under Chapter 7 on 13 September 1996. On 2 January 1997, his liabilities totaling \$14,125 were discharged. On 1 September 1999, Applicant filed for bankruptcy protection under Chapter 13, listing assets of \$21,200 and liabilities totaling over \$36,800. He is currently making monthly payments of \$495 to the trustee.

Applicant completed a security clearance application (SCA) on 3 January 2002, (Ex. 1) that was apparently submitted electronically on 6 January 2002 (Ex. 6). Question 20 of the SCA asked Applicant if, in the previous 10 years, he had ever been fired from a job, quit a job after being told he had been fired, left a job by mutual agreement following allegations of misconduct, left a job by mutual agreement following allegations of unsatisfactory performance, or left a job for other reasons under unfavorable circumstances. Applicant answered that he had not. Ex. 6 at 8. Although Applicant disputes the appropriateness of his discharge, he was fired from a company in approximately May 2000 for insufficient performance. Ex. 3 at 3; Tr. 21-22.

Question 33 of the SCA asked if Applicant had filed a petition for bankruptcy (to include Chapter 13) in the previous seven years. Applicant answered "yes," and listed the 1999 Chapter 13 bankruptcy but failed to list the 1997 Chapter 7 bankruptcy. In a signed, sworn statement he provided a Defense Security Service agent on 13 February 2002, Applicant claimed the reason he filed bankruptcy in 1999 was "due to unemployment." Ex 3 at 1-2. He was, in fact, employed at the time. Ex. 2 at 2.

In April 1997, Applicant was arrested for soliciting a prostitute. Ex. 3 at 2. He pled guilty to the offense and paid a fine of about \$275. Ex. 3 at 3. Applicant filled out an employment application in which he admitted being arrested and convicted but claimed it resulted from an "argument at a party with a drunk person [who] disrespected my wife." *Id.* On his SCA, Applicant was asked in question 26 if, in the previous seven years, he had been arrested for, charged with, or convicted of any offenses not listed elsewhere on the SCA. Applicant was required to list the date, the jurisdiction, and the nature of the offense/action. Applicant noted his arrest, claimed it was a misdemeanor, but did not disclose the nature of the arrest and conviction for soliciting a prostitute.

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 filed for bankruptcy under Chapter 13 in September 1999 (¶ 1.a.) and Chapter 7 in September 1996 (¶ 1.b.). 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 and Applicant's admissions both allegations contained in the SOR. While bankruptcy is a perfectly legal approach to resolving one's debts, it is appropriate to consider the security significance of Applicant's actions that led to the delinquent debts. ISCR Case No. 01-26675 at 3 (App. Bd. Jun. 13, 2003). Filing for a Chapter 13 wage-earners plan three years after having liabilities of over \$14,000 discharged under Chapter 7, demonstrates that Applicant has a history of not meeting his financial obligations (DC E2.A6.1.2.1.) and was unable or unwilling to satisfy his debts (DC E2.A6.1.2.3.). However, it appears Applicant has learned from his bankruptcies. He has been making his Chapter 13 payments for over four years and there are no further delinquencies documented in the record. Applicant has sufficiently mitigated security concerns about his financial situation. He initiated good-faith efforts to pay his overdue creditors (MC E2.A6.1.3.6.) and has in fact been paying them through his Chapter 13 bankruptcy. I find for Applicant.

Guideline E-Personal Conduct

In the SOR, DOHA alleged Applicant falsified his SCA answer to question 33 about his bankruptcies (¶ 2.a.); falsified an employment application (¶ 2.b.); falsified a statement to a DSS agent concerning the reason he filed for bankruptcy protection in 1999 (¶ 2.c.); did not provide "true, complete, and correct" information in answer to question 26 on his SCA concerning his arrest for soliciting a prostitute (¶ 2.d.); and was terminated from employment due to insufficient performance (¶ 2.e.). 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 and Applicant's admissions each of the allegations contained in ¶ 2 of the SOR. In his employment application and the SCA, Applicant failed to tell the "true, complete, and correct" truth. He failed to list his 1996 Chapter 7 bankruptcy on his SCA, he tried to mislead his employer and the Government about the nature of his conviction for soliciting a prostitute, misled the DSS investigator about the reason for his 1999 Chapter 13 bankruptcy, and was terminated from employment for insufficient performance. Any one of these incidents alone might be considered an inadvertent error. But the number of these incidents demonstrates his lack of candor and unreliability. Applicant deliberately omitted, concealed, or falsified answers in his SCA. DC E2.A5.1.2.2. He attempted to mislead the DSS investigator. DC E2.A5.1.2.3. This establishes a pattern of dishonesty. DC E2.A5.1.2.5. None of the mitigating conditions under Guideline E apply. I find against Applicant.

FORMAL FINDINGS

The following are my conclusions as to each allegation in the SOR:

Paragraph 1. Guideline F: FOR APPLICANT

Subparagraph 1.a.: For Applicant

Subparagraph 1.b.: For Applicant

Paragraph 2. Guideline E: AGAINST APPLICANT

Subparagraph 2.a.: Against Applicant

Subparagraph 2.b.: Against Applicant

Subparagraph 2.c.: Against Applicant

Subparagraph 2.d.: Against Applicant

Subparagraph 2.e.: 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.