

DATE: June 18, 2003

In Re:

SSN: -----

Applicant for Security Clearance

ISCR Case No. 02-14249

DECISION OF ADMINISTRATIVE JUDGE

JOAN CATON ANTHONY

APPEARANCES

FOR GOVERNMENT

Marc E. Curry, Esq., Department Counsel

FOR APPLICANT

Pro Se

SYNOPSIS

The Applicant owes approximately \$10,700 in debts. His financial problems date back several years. When Applicant completed his Security Clearance Application (SF-86), he failed to disclose his financial delinquencies of more than 180 days in the previous seven years and any current delinquencies of over 90 days. Applicant admits the existence of the bad debts and has expressed an intention to satisfy them. However, despite his expressed intention to take action in the future, he has failed to put forward specific plans for payment or to demonstrate that he has paid the debts. Clearance is denied.

STATEMENT OF THE CASE

On December 27, 2002, pursuant to Executive Order No. 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, the Defense Office of Hearings and Appeals (DOHA) issued a Statement of Reasons (SOR) to Applicant that specified reasons why DOHA could not make a preliminary affirmative finding under the Directive that it is clearly consistent with the national interest to grant or continue a security clearance for Applicant. DOHA recommended referral to an Administrative Judge to determine whether clearance should be denied or revoked.

In the SOR, the Government alleged that Applicant was disqualified from obtaining a security clearance because of financial considerations (Guideline F) and personal conduct (Guideline E). On January 28, 2003, DOHA received Applicant's response to the SOR. Applicant requested that his case be determined on the record in lieu of a hearing. The Government submitted its File of Relevant Material (FORM) on March 25, 2003. The FORM contained documents identified as Items 1 through 6. By letter dated April 3, 2003, 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 did not submit any information in response to the FORM. On May 20, 2003, the case was assigned to me for a decision.

FINDINGS OF FACT

In his answer to the SOR, Applicant admitted all of the factual allegations involving Guideline F, Financial Considerations and Guideline E, Personal Conduct. Applicant's admissions are incorporated as findings of fact.

After a complete and thorough review of the evidence in the record, and upon due consideration of the same, I make the following additional findings of fact:

Applicant is a 45-year-old employee of a Defense contractor. (Item 4) Applicant's personal history includes three marriages and one child, who is now over 18. (Item 5) Applicant says that his second wife ran up bills and passed bad checks. He attributes some of his financial troubles to a decrease in income in 1999 when he retired from the Navy. (Item 5.)

On April 28, 2000, Applicant executed a Security Clearance Application (SF-86) containing a question numbered 39, which reads as follows:

Your Financial Delinquencies - 90 Days

Are you currently over 90 days delinquent on any debt(s)?

In response to question 39, Applicant answered "no." Applicant also responded "no" to question 38 on his SF-86. Question 38 reads as follows:

Your Financial Delinquencies - 180 Days

In the last 7 years, have you been over 180 days delinquent on any debt(s)?

In a sworn signed statement dated February 27, 2002, Applicant acknowledged five debts identified on a February 8, 2002, credit report as delinquent more than 180 days in the past seven years. Applicant also acknowledged a bad debt identified on the credit report as dating to December 1996. Applicant said that his failure to list the adverse financial information was an oversight. (Item 5) In his answer to the SOR, Applicant admitted falsifying his SF-86 by not reporting the six debts that were delinquent more than 180 days. (Item 3) Applicant's sworn statement includes a budget sheet showing the six debts and scheduled monthly payments to pay them. (Item 5, at 4) Applicant's answer to the SOR indicates that, as of January 24, 2003, Applicant had not initiated payment of the six debts. (Item 3)

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. *See* Directive, Enclosure 2.

In the defense industry, the security of classified information is entrusted to civilian workers who must be counted on to safeguard classified information and material twenty-four hours a day. The Government is therefore properly concerned where available information indicates that an applicant for a security clearance may be involved in conduct that demonstrates poor judgment, untrustworthiness, or unreliability. These concerns include consideration of the potential as well as the actual risk that an applicant may deliberately or inadvertently fail to properly safeguard classified information.

An evaluation of whether the applicant meets the security guidelines includes consideration of a number of variables known as the whole person concept. In evaluating the relevance of an individual's conduct, the administrative judge must consider the following factors: (1) the nature, extent, and seriousness of the conduct; (2) the circumstances surrounding the conduct; (3) the frequency and recency of the conduct; (4) the individual's age and maturity at the time of the conduct; (5) the voluntariness of participation; (6) the presence or absence of rehabilitation and other behavioral changes; (7) the motivation for the conduct; (8) the potential for pressure, coercion, exploitation, or duress; (9) the likelihood for continuation or recurrence. Directive, ¶ E2.2.1. Security clearances are granted only when "it is clearly consistent with the national interest to do so." Exec. Or. 10865 § 2. *See* Exec. Or. 12968 § 3.1(b).

Adjudicative Guidelines F, Financial Considerations (Attachment 6 to Enclosure 2), and E, Personal Conduct (Attachment E to Enclosure 2), are most pertinent to this case. The security concern identified under Guideline F is that a person who is financially overextended can be pressured to engage in illegal acts to generate funds. Conditions that could raise a security concern in this case and which may be disqualifying include:

E2.A6.1.2.1. A history of not meeting financial obligations;

E2.A6.1.2.3: Inability or unwillingness to satisfy debts;

Relevant conditions that could mitigate security concerns about the Applicant's financial problems include:

E2.A6.1.3.1. The behavior was not recent;

E2.A6.1.3.2. It was an isolated incident;

E2.A6.1.3.3. The conditions that resulted in the behavior were largely beyond the person's control (e.g. loss of employment, a business downturn, unexpected medical emergency, or a death, divorce or separation);

E2.A6.1.3.6: The individual initiated a good-faith effort to repay overdue creditors or otherwise resolve debts.

The relevant provisions of Guideline E which apply to the facts of this case are:

E2.A5.1.1. The Concern: 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.

A condition that could raise a security concern and may be disqualifying is:

E2.A5.1.2.2. The deliberate omission, concealment, or falsification of relevant and 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.

In this case, the following condition could mitigate security concerns :

E2.A5.1.3.2: The falsification was an isolated incident, was not recent, and the individual has subsequently provided correct information voluntarily.

Burden of Proof

An applicant's admission of the information in specific allegations relieves the Government of having to prove those allegations. If specific allegations and/or information are denied or otherwise controverted by the applicant, the Government has the initial burden of proving those controverted facts alleged in the Statement of Reasons. If the Government meets its burden (either by an applicant's admissions or by other evidence) and establishes conduct that creates security concerns under the Directive, the burden of persuasion then shifts to the applicant to present evidence in refutation, extenuation or mitigation sufficient to demonstrate that, despite the existence of conduct that falls within

specific criteria in the Directive, it is nevertheless clearly consistent with the interests of national security to grant or continue a security clearance for the applicant.

A person seeking access to classified information enters into a fiduciary relationship with the Government based upon trust and confidence. Where the facts proven by the Government or admitted by the applicant raise doubts about the applicant's judgment, reliability, or trustworthiness, the applicant has a heavy burden of persuasion to demonstrate that he or she is nonetheless security worthy. In *Egan*, 484 U.S. at 531, the Supreme Court concludes that "[t]he clearly consistent standard indicates that security clearance determinations should err, if they must, on the side of denials." Accordingly, doubts against an applicant's security worthiness are to be resolved against the applicant.

CONCLUSIONS

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

Subparagraph 1.a. of the SOR alleges, under Guideline F, Financial Considerations, that Applicant is indebted to a military exchange for a returned check and on a collection account in the approximate amount of \$1,862, and that the indebtedness had not been paid as of February 8, 2002. Subparagraph 1.b. of the SOR alleges that Applicant was indebted to a bank in the amount of \$5,852 on an amount charged off as a bad debt in about October 1997 and that as of February 8, 2002, the debt had not been paid. Subparagraph 1.c. of the SOR alleges that Applicant was indebted to a provider of telephone services in the amount of \$289 and, that as of February 8, 2002, the debt had not been paid. Subparagraph 1.d. of the SOR alleges that Applicant was indebted to a second provider of telephone services in the amount of \$242 and that, as of February 8, 2002, this debt had not been paid. Subparagraph 1.e. of the SOR alleges that Applicant owed a debt on an account in the amount of \$2,481 that had been referred for collection in August 1998 and that, as of February 8, 2002, the debt had not been paid. Subparagraph 2.a. of the SOR alleges, under Guideline E, Personal Conduct, that Applicant falsified material facts on the SF-86 which he executed on April 28, 2000, when he responded "no" to Questions 38 and 39 and failed to list the debts set forth in subparagraphs 1.a. through 1.e. of the SOR.

Through Applicant's own admissions, the Government established a *prima facie* case that Applicant was financially overextended and had deliberately omitted evidence of his longstanding indebtedness from his SF-86. Applicant has admitted the financial delinquencies specified in the SOR and identified as disqualifying conditions under ¶¶ E2.A.6.1.2.1 and E2.A6.1.2.2 of Guideline F.

None of the conditions that could mitigate the security concerns raised by Applicant's financial delinquencies apply to the facts of this case. Applicant's acknowledged delinquencies involve a returned check and five long-standing debts which continue to be unpaid to this day. Thus, neither mitigating condition E2.A.6.1.3.1, nor mitigating condition E3.A.6.1.3.2 applies. While Applicant argues that a reduction in his salary upon retirement from military service and the spending habits of a former wife caused some of the financial delinquencies, the record shows otherwise. Applicant's SF-86 shows that he retired from the military service in 1999, whereas two of the larger debts listed in the SOR occurred several years before Applicant retired from military service. Applicant and his second wife were divorced in 1991, several years before the delinquencies identified in the SOR occurred. Thus, mitigating condition E2.A6.1.3.3 is inapplicable. Finally, mitigating condition E2.A6.1.3.6 is inapplicable because Applicant's debts remain outstanding and nothing in the record indicates that he has initiated a good-faith effort to repay his creditors or to otherwise resolve his debts. In his signed statement of February 27, 2002, Applicant indicated that he intended to work out payment schedules with his creditors to pay the debts. However, the record does not show that he has taken any action to pay or otherwise resolve his indebtedness. A promise to take action in the future, however sincere, is not a substitute for evidence that the Applicant is taking specific and timely steps to address his delinquent debts. *See* ISCR Case No. 01-03055 (App. Bd. Mar. 21, 2002). Accordingly, allegations in subparagraphs 1. a. through 1.e. of the SOR are concluded against the Applicant.

With respect to Guideline E, Personal Conduct, the Government has also established its case. In subparagraph 2.a. of the SOR the Government alleges that, in executing his response to questions 38 and 39 on the SF-86, Applicant deliberately

failed to disclose his financial delinquencies, thus raising a security concern under subparagraph E2.A8.1.2.2 of Guideline E. Applicant admits he did not disclose his delinquent debts in his responses to Questions 38 and 39. In his sworn statement, dated February 27, 2002, he avers that his omission was through oversight and that he overlooked some of the financial questions on the SF-86. Even so, Applicant completed the certification at the end of the SF-86 and attested, by his signature, that his responses to all questions on the form were true, complete, and correct to the best of his knowledge and belief and that he understood that a knowing and willful false statement made in response to any of the questions was punishable under section 1001 of Title18, United States Code.

Only one mitigating condition under Guideline E might be applicable to the instant case. The security concern raised by Applicant's disqualifying conduct could be mitigated if the falsification was an isolated incident, was not recent, and if the Applicant subsequently provided the correct information voluntarily. ¶E2.A5.1.3.3. While Applicant supplied the correct information when questioned by a special agent of the Defense Investigative Service, the subject falsifications on Applicant's SF-86 were not isolated incidents and they are recent. Accordingly, allegations in subparagraph 2.a. of the SOR are concluded against the Applicant.

In my evaluation of the record, I have carefully considered each piece of evidence in the context of the totality of evidence and under all of the Directive guidelines that were generally applicable or might be applicable under the facts of the case. Under the whole person concept, I conclude that Applicant has not successfully overcome the Government's case opposing his request for a DoD security clearance.

FORMAL FINDINGS

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

Paragraph 1, Financial Considerations (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

Paragraph 2, Personal Conduct (Guideline E): **AGAINST THE APPLICANT**

Subparagraph 2.a.: 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 a security clearance for the Applicant. Clearance is denied.

Joan Caton Anthony

Administrative Judge