

KEYWORD: Financial; Personal Conduct

DIGEST: Applicant is a security officer for a contractor providing security service to the Department of State. Applicant has delinquent debts past due over 180 days and unpaid judgments. Applicant stated that the delinquent debts have been or would be satisfied. Applicant was provided an opportunity to present documentary information the debts had been satisfied but he has not presented such information. Applicant provided incomplete answers on his security clearance application. Applicant did not know some of the debts were past due over 180 days or that there was a tax lien placed against him. His incomplete answers on the security clearance application were not deliberate nor intended to deceive or conceal information from the government. Clearance denied.

CASENO: 02-16346.h1

DATE: 03/04/2005

DATE: March 4, 2005

In Re:

SSN: -----

Applicant for Security Clearance

ISCR Case No. 02-16346

DECISION OF ADMINISTRATIVE JUDGE

THOMAS M. CREAN

APPEARANCES

FOR GOVERNMENT

Robert E. Coacher, Esq., Department Counsel

FOR APPLICANT

Pro Se

SYNOPSIS

Applicant is a security officer for a contractor providing security service to the Department of State. Applicant has delinquent debts past due over 180 days and unpaid judgments. Applicant stated that the delinquent debts have been or would be satisfied. Applicant was provided an opportunity to present documentary information the debts had been satisfied but he has not presented such information. Applicant provided incomplete answers on his security clearance application. Applicant did not know some of the debts were past due over 180 days or that there was a tax lien placed against him. His incomplete answers on the security clearance application were not deliberate nor intended to deceive or conceal information from the government. Clearance denied.

STATEMENT OF THE CASE

On June 9, 2004, the Defense Office of Hearing and Appeals (DOHA) issued a Statement of Reasons (SOR) detailing the basis for its decision to not grant a security clearance to Applicant. The action was taken under Executive Order 10865, *Safeguarding Classified Information within Industry* (February 20, 1990), as amended and modified, and Department of Defense Directive 5220.6, *Defense Industrial Personnel Security Clearance Review Program* (January 2, 1992), as amended and modified (Directive). Applicant acknowledged receipt of the SOR on June 30, 2004. The SOR alleges security concerns under Guideline F (Financial Considerations) and Guideline E (Personal Conduct) of the Directive.

Applicant answered the SOR in writing on July 9, 2004. He admitted six and denied six of the allegations under Guidelines F and denied the allegations under Guideline E. He requested a hearing before an administrative judge and the request was received by DOHA on July 21, 2004. Department Counsel was prepared to proceed with the case on October 18, 2004, and the case was assigned to another administrative judge on October 20 2004, and reassigned to me on December 8, 2004. A notice of hearing was issued on January 6, 2005, and the hearing was held on February 1, 2005. Six government exhibits, eleven Applicant exhibits, and the testimony of Applicant and two Applicant witnesses were received during the hearing. The record was held open until February 18, 2005, for Applicant to submit additional documentary information. No additional information from Applicant was received as of February 22, 2005. The transcript was received on February 9, 2005.

FINDINGS OF FACT

Applicant is a 36-year-old security officer for a contractor providing security services for the Department of State. Applicant submitted a security clearance application on May 12, 2000. Applicant responded "no" to question 27c asking if he had in the last 7 years any lien placed against him for taxes or other debts. Applicant responded "no" to question 28a asking if he had in the last 7 years been over 180 days delinquent on any debts.⁽¹⁾ A credit report showed Applicant had 12 delinquent debts, some more than 180 days past due, judgments against him, and liens for unpaid taxes.⁽²⁾ In 2002, Applicant informed the security agent from the Office of Personnel Management that he would immediately satisfy all of the debts.⁽³⁾

There are 12 delinquent debts listed as allegations under Guideline F in the SOR. Debts 1a in the SOR is a medical bill for treatment Applicant received as a result of an accident. Debt 1b in the SOR is the same debt with an additional charge for interest incurred on the debt. These are the same debt and debt 1b will be considered the delinquent debt. At the hearing, Applicant stated he would immediately satisfy this debt.⁽⁴⁾ No documentary information has been received confirming he has satisfied the debt.

Debt 1c in the SOR is a state tax lien for unpaid taxes. The debt was satisfied in February 2004.⁽⁵⁾

Debt 1d in the SOR is a wireless telephone bill. Applicant stated at the hearing that he would immediately satisfy this debt.⁽⁶⁾ No documentary information from Applicant has been received that the debt has been satisfied.

Debt 1e in the SOR is a loan for \$440. The latest credit report for Applicant shows the debt is now for \$78.⁽⁷⁾ Applicant stated he would satisfy the debt.⁽⁸⁾ No documentary information has been received that the debt has been satisfied.

Debt 1f in the SOR is another telephone bill that Applicant stated at the hearing would be satisfied.⁽⁹⁾ No documentary information has been received that the debt has been satisfied.

Debt 1g in the SOR is for a car loan that Applicant stated has been satisfied.⁽¹⁰⁾ Applicant has presented no documentary information the debt has been satisfied.

Debts 1h and 1i are for debts incurred at approximately the same time and for almost the same amount. Applicant claims the debts are the same but provided no documentary information the debts were the same. Applicant also stated the debts would be satisfied⁽¹¹⁾ but has provided no documentary information the debts are satisfied. Without documentary information from the Applicant, the debts are considered separate debts and have not been satisfied.

Debts 1j, 1k, and 1l are for bank credit cards listed on the original government credit report⁽¹²⁾ but not on the latest government credit report.⁽¹³⁾ Applicant responded to the credit reporting agencies challenging the listing of these debts on the original government credit report as not belong to him. The credit reporting agencies confirmed the debts did not belong to Applicant and the debts were removed from the latest reports.⁽¹⁴⁾ They are not the Applicant's debts.

When Applicant completed his security clearance application, he did not know the nature of a tax lien. He knew he owed taxes because he had not filed his tax return. Notice of a tax lien was sent to an old address for Applicant. He did not know a lien for past due taxes had been placed against him until so advised by the security investigators. When he learned of the lien, he satisfied the debt.⁽¹⁵⁾ When he completed the security clearance application, Applicant knew he had delinquent debt past due more than 90 days and so indicated on his security clearance application. He did not know some of the delinquent debts were more than 180 days past due.⁽¹⁶⁾

POLICIES

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."⁽¹⁷⁾ 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 judgement, 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."⁽¹⁸⁾ Eligibility for a security clearance is predicated upon the applicant meeting the security guidelines contained in the Directive.

The Directive sets out the adjudicative guidelines for making decisions on security clearances. Enclosure 2 of the Directive sets forth adjudicative guidelines for determining eligibility for access to classified information, and it lists the disqualifying conditions (DC) and mitigating conditions (MC) for each guideline. Each clearance decision must be fair, impartial, and a commonsense decision based on the relevant and material facts and circumstances, the whole person concept, and the factors listed in the Directive ¶ 6.3.1 through ¶ 6.3.6

"The adjudicative process is an examination of a sufficient period of a person's life to make an affirmative determination that the person is eligible for a security clearance."⁽¹⁹⁾ An administrative judge must apply the "whole person concept," and consider and carefully weigh the available, reliable information about the person.⁽²⁰⁾ An administrative judge should consider: (1) the nature, extent, and seriousness of the conduct; (2) the

circumstances surrounding the conduct, to include knowledgeable participation; (3) the frequency and recency of the conduct; (4) the applicant's age and maturity at the time of the conduct; (5) the voluntariness of participation; (6) the presence or absence of rehabilitation and other pertinent behavioral changes; (7) the motivation for the conduct; (8) the potential for pressure, coercion, exploitation, or duress; and (9) the likelihood of continuation of recurrence. ⁽²¹⁾

A person granted access to classified information enters into a special relationship with the government. The government must be able to repose a high degree of trust and confidence in those individuals to whom it grants access to classified information. The decision to deny an individual a security clearance is not necessarily a determination as to the loyalty of the applicant. ⁽²²⁾ 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 present evidence to establish controverted facts in the SOR that disqualify or may disqualify the Applicant from being eligible for access to classified information. ⁽²³⁾ Thereafter, Applicant is responsible for presenting evidence to rebut, explain, extenuate, or mitigate 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⁾ "[T]he Directive presumes there is a nexus or rational connection between proven conduct under any of the Criteria listed therein and an applicant's security suitability." ⁽²⁶⁾ "Any doubt as to whether access to classified information is clearly consistent with national security will be resolved in favor of the national security." ⁽²⁷⁾

CONCLUSIONS

I carefully considered all of the facts in evidence and the legal standards discussed above. I reach the following conclusions regarding the allegations in the SOR:

Under Guideline F (Financial Conditions), a security concern exists for an individual who is financially irresponsible. An individual who is financial irresponsible may also be irresponsible, unconcerned, or careless in their obligations to protect classified information. Behaving responsibly or irresponsibly in one aspect of life provides an indication of how a person may behave in other aspects of life. ⁽²⁸⁾ Applicant's delinquent debts brings the matter within Financial Considerations Disqualifying Conditions Directive ¶ E2.A6.1.2.2 (*a history of not meeting financial obligations*); and Directive ¶ E2.A6.1.2.3 (*inability or unwillingness to satisfy debts*). Even after the debts not attributed to Applicant and the duplicate debts are not considered, there is still delinquent debts incurred as far back as 1999 attributed to the Applicant. At the hearing, Applicant had either not satisfied all of the delinquent debts or did not have documentary information to verify he had satisfied some of the delinquent debts. He stated he would immediately satisfy all debts. He was provided an opportunity to satisfy the debts and provide documentation of all debts satisfied. He has not provided the documentation he stated he would provide. Applicant had also told security agents in 2002, he would satisfy the debts but as of the hearing he had not done so. I conclude the Financial Consideration disqualifying conditions have been established for debts 1b, 1d, 1e, 1f, 1g, 1h, and 1i.

The Financial Considerations mitigating condition that applies to Applicant is Directive ¶ E2.A6.1.3.6 (*the individual initiated a good-faith effort to repay overdue creditors or otherwise resolve debts*). Applicant stated to both the security agents and at the hearing that he had satisfied or would immediately satisfy his delinquent debts. He was provided the opportunity to satisfy the debts and provide documentary information the delinquent

debts were satisfied. He has not presented information debts have been satisfied. I conclude he did not make a good-faith effort to pay creditors and he has not mitigated the security concerns under Guideline F.

Under Guideline E (Personal Conduct), a security concern exists for conduct involving questionable judgment, untrustworthiness, unreliability, lack of candor, dishonesty, or unwillingness to comply with rules and regulations. Any of these characteristics in a person could indicate that the person may not properly safeguard classified information.⁽²⁹⁾ When he completed his security clearance application and answered "no" to the questions concerning liens, Applicant did not know there was a tax lien. He knew he did not file a tax return but did not know there was a tax lien. He had not received any notice of the lien because the notice was sent to the wrong address. Applicant did not know he had delinquent debts past due over 180 days when he completed the application. He knew he was behind on some bills but did not know he had bills past due over 180 days. I conclude Applicant did not deliberately provide false or incorrect answers to the questions and his conduct does not fall under Personal Conduct Disqualifying Condition Directive ¶ E2.A5.1.3.3 (*the deliberate omission, concealment, or falsification of relevant and material facts from any personnel security questionnaire*).

I carefully considered all of the circumstances in light of the "whole person" concept. I conclude Applicant is not eligible for access to classified information.

FORMAL FINDINGS

Formal findings for or against Applicant on the allegations in the SOR, as required by Section E3.1.25 of Enclosure 3 of the Directive, are:

Paragraph 1, Guideline F.: AGAINST APPLICANT

Subparagraph 1.a.: For Applicant

Subparagraph 1.b.: Against Applicant

Subparagraph 1.c.: For Applicant

Subparagraph 1.d.: Against Applicant

Subparagraph 1.e.: Against Applicant

Subparagraph 1.f.: Against Applicant

Subparagraph 1.g.: Against Applicant

Subparagraph 1.h.: Against Applicant

Subparagraph 1.i.: Against Applicant

Subparagraph 1.j.: For Applicant

Subparagraph 1.k.: For Applicant

Subparagraph 1.l.: For Applicant

Paragraph 2, Guideline E.: FOR APPLICANT

Subparagraph 2.a.: For Applicant

Subparagraph 2.b.: For Applicant

DECISION

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

Thomas M. Crean

Administrative Judge

1. Government Exhibit 1 (Questionnaire for National Security Positions, SF 86, dated May 12, 2000).
2. Government Exhibit 5 (Credit Report, dated August 12, 2003).

3. Government Exhibit 3 (Applicant's statement to security agents, dated April 15, 2002), at 2.
4. Tr. 19-21.
5. Applicant Exhibit A (Record of court action satisfying judgement, dated February 12, 2004); and Tr. 22.
6. Tr. 23-25.
7. Applicant Exhibit B (Credit Report, dated January 20, 2005), at 9-10.
8. Tr. 26-27.
9. Tr. 27-28.
10. Tr. 30-32.
11. Tr. 32-34.
12. *Id.*, Government Exhibit 5.
13. Government Exhibit 4 (Credit Report, dated April 23, 2004).
14. Tr. 34-37.
15. Tr. 43-45.
16. Tr. 55-57.
17. *Department of the Navy v. Egan*, 484 U.S. 518 (1988).
18. Exec. Or. 12968, *Access to Classified Information* § 3.1 (b) (Aug. 4, 1995).
19. Directive ¶ E2.2.1.
20. *Id.*
21. Directive ¶¶ E2.2.1.1 through E2.2.1.9.
22. *See* Exec. Or. 10865 § 7.
23. Directive ¶ E3.1.14.
24. ISCR Case No. 01-20700 at 3 (App. Bd. Dec. 19, 2002); *see* Directive ¶ E3.1.15.
25. ISCR Case No. 01-20700 at 3 (App. Bd. Dec. 19, 2002).
26. ISCR Case No. 95-0611 at 2 (App. Bd. May 2, 1996) (quoting DISCR Case No. 92-1106 (App. Bd. Oct. 7, 1993))
27. *Egan*, 484 U.S. at 531; *see* Directive ¶ E2.2.2.
28. Directive ¶ E2.A6.1.1.
29. Directive ¶ E2.A5.1.1.