

DATE: April 23, 2004

---

In Re:

-----

SSN: -----

Applicant for Security Clearance

---

CR Case No. 02-18434

**DECISION OF ADMINISTRATIVE JUDGE**

**JOAN CATON ANTHONY**

**APPEARANCES**

**FOR GOVERNMENT**

Eric H. Borgstrom, Esq., Department Counsel

**FOR APPLICANT**

*Pro Se*

**SYNOPSIS**

Applicant admits financial delinquencies, including bad debts and two judgments entered against him. He failed to report material facts relating to his financial liabilities on the security clearance application he completed and certified on October 1, 2001. Applicant's financial problems and his lack of candor raise security concerns which he is unable to mitigate. 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 August 4, 2003, under the applicable Executive Order <sup>(1)</sup> and Department of Defense Directive, <sup>(2)</sup> 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 August 30, 2003 and elected to have a hearing before an administrative judge. The case was assigned to me on October 27, 2003. On November 20, 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. Without objection from either party, the SOR was amended to show that Applicant executed his personnel security application on October 1, 2001, and not on October 2, 2001. At the conclusion of the hearing, I held the record open until close of business December 4, 2003, so that Applicant could submit additional documentation. By facsimile communication dated December 3, 2003, Applicant filed six additional documents. The documents were identified as Applicant's Exhibits B, C, D, E, F, and G, and were admitted into the record without objection from Department Counsel. DOHA received the transcript (Tr.) of the proceeding on December 1, 2003.

**FINDINGS OF FACT**

The SOR contains 20 allegations of disqualifying conduct. Seventeen allegations related to conduct charged under Guideline F, Financial Considerations, and three allegations related to conduct charged under Guideline E, Personal Conduct. In his answer to the SOR, Applicant admitted nine allegations and denied eight allegations charged under

Guideline F. He admitted, with explanation, the three allegations of disqualifying conduct charged under Guideline E. His admissions are incorporated as findings of fact.

At the time of his hearing, Applicant was 40 years old, married, and the father of two teen-aged daughters. He served in the U.S. Marine Corps for 20 years, retiring in 2001 as a Staff Sergeant (E6). Since retirement, he has been employed as an administrative assistant by a government contractor.

Applicant's financial problems date back many years, and often during his hearing he appeared vague or uncertain about the nature or status of a debt. In his signed, sworn statement, dated April 8, 2002, he described his financial problems as follows:

My financial delinquencies are a result of my poor money management and financial irresponsibility. I am unable to provide any specific details, or a further explanation, other than to state that my poor money management and financial irresponsibility resulted in my financial delinquencies. I was not prepared for this situation and I allowed my accounts to get too delinquent.

Applicant expressed the intention to make arrangements with his creditors to pay off his debts. He did not want to pay off his debts at the cost of further financial instability. He had not sought financial counseling, and he did not have a plan for paying off his debts while meeting his current obligations.

Because of Applicant's long history of financial problems, some of his old debts were sold to new creditors, making tracking the original debts difficult. Two of the debts alleged in the SOR appear to duplicate two other debts alleged and identified as owed to a different creditor. The debt alleged at ¶ 1.a. duplicates the debt alleged at ¶ 1.c. Applicant denied both debts in his answer to the SOR. However, in his signed sworn statement of April 8, 2002, he acknowledged that the creditor identified in ¶ 1.a was the collection agent for the debt identified under the name of the original creditor at ¶ 1.c. Applicant admitted the debt identified at ¶ 1.d, and it was noted by Department Counsel that the debt alleged at ¶ 1.f., which was denied by Applicant, appeared to duplicate the debt alleged at ¶ 1.d. (Tr. 77) Applicant also denied a debt in the amount of approximately \$1,368 alleged in SOR ¶ 1.o. because he did not recognize the name of the creditor. The debt and the creditor appear on the credit report supplied by Applicant, which was dated April 28, 2003 (Ex. 5, at 5.) In testimony Applicant identified the debt as resulting from a credit card he possessed while in the military, and he said his wife was making payments on the debt. (Tr. 43-45.)

The nine unpaid financial obligations admitted by Applicant total approximately \$13,115. Additionally, Applicant owed approximately \$388 for medical treatment of his older daughter. The medical treatment occurred when his daughter, now 17 years old, was three years old. Although Applicant denied owing approximately \$2112 to a bank credit card company, the debt was listed as a charged off account on four credit reports dated October 2001, April 2003, May 2003, and November 2003. (3) In his signed sworn statement, Applicant acknowledged that his last payments to three of the creditors identified on the SOR occurred in 1999. Applicant denied a debt for television reception equipment but was unable to produce receipts to show that the debt had been paid. He denied a judgment owed to a utility company and produced documentation after his hearing to show that he had paid the judgment on March 10, 2003. (Ex. E.) After his hearing Applicant provided evidence to show he had contacted the creditor identified at ¶ 1.e. of the SOR and had received a statement that he owed \$427.38 on the debt and that his last payment had been made in September 2000. (Ex. F.) Applicant provided evidence post-hearing that he had contacted the creditor identified at ¶ 1.b. of the SOR and the creditor had sent him information on how to repay the debt. (Ex. G.) Applicant also provided a partial credit report, dated July 31, 2003, showing the status of some of his debts on the public record. (Ex. D.)

Applicant completed and certified his security clearance application (SF-86) on October 1, 2001. Question 37 on the SF-86 reads: "**Your Financial Record - Unpaid Judgments** In the last 7 years, have you had any judgments against you that have not been paid?" Applicant answered "no" to Question 37 and did not disclose two judgments entered against him in July 1999 and April 2002. (Ex. 5, at 2.)

In response to Question 38 on the SF-86, Applicant denied being 180 days delinquent on any debts in the past seven years and did not disclose the debts alleged in the SOR that were delinquent for 180 days. Applicant also answered "no" to Question 39 on the SF-86. Question 39 asks if an applicant is currently 90 days delinquent on any debt. Applicant did

not identify the debts alleged in the SOR that were 90 days delinquent as of October 1, 2001.

Applicant admitted, with explanation, the Guideline E allegations regarding his false responses to Questions 37, 38, and 39 on the SF-86. He denied deliberately falsifying his answers. He knew of his debts and the judgments entered against him when he filed his SF-86, but he did not think his financial situation was the Government's concern or significant in determining his security worthiness. He also was embarrassed about his financial situation and didn't want others to know about it. (Tr. 54; Ex. 2, at 4.)

## 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 his 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 Applicant had delinquent accounts referred for collection (¶¶ 1.a., 1.d., 1.f., 1.g., 1.j., 1.k., 1.l., and 1.o.); charged-off accounts (¶¶ 1.b., 1.c., 1.e., 1.h., 1.i., and 1.m.); a past due account (1.n.); and two judgments (¶¶ 1.p. and 1.q.) An applicant who is financially overextended is at risk of having to engage in illegal acts to generate funds. Directive ¶ E2.A6.1.1.

In a post-hearing submission, Applicant provided evidence to show that he had paid one of the judgments. <sup>(4)</sup> There was also persuasive evidence to show that allegations at ¶¶ 1.a. and 1.c. of the SOR referred to the same debt and Applicant knew that when he prepared and signed his sworn statement in April 2002. Thus, the allegations at SOR ¶¶ 1.a. and 1.p. are concluded for the Applicant.

Because he had no records of payment or communications from creditors, Applicant was unable to establish that the debts alleged at SOR ¶ 1.d. and 1.f. were one and the same. The status of these debts notwithstanding, the Government has established, through Applicant's own 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 which 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.

The record shows that Applicant retired from military service in 2001 and became employed as a civilian immediately upon retirement. Nothing in the record suggests that Applicant's financial problems were beyond his control when employed by the military or as a civilian. Thus, mitigating condition E2.A6.1.3.3. does not apply.

Applicant has not sought counseling for his financial problems, and there is little indication that he has developed and implemented a practical plan for resolving his indebtedness and avoiding further indebtedness. While Applicant provided some evidence that he had contacted or attempted to contact his creditors, he failed to produce sufficient persuasive records to demonstrate that payment plans he proposed had actually been accepted by the creditors. 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 of debt in subparagraphs 1.b., 1.c., 1.d., 1.e., 1.f., 1.g., 1.h., 1.I, 1.j., 1.k., 1.l., 1.m., 1.n., 1.o., and 1.q. 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 37 (¶ 2.a.); 38 (¶ 2.b.); and 39 (¶ 2.c.). 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.

With respect to the Guideline E conduct alleged in SOR subparagraphs 2.a., 2.b., and 2.c., the Government has established its case. Applicant's assertions that he did not intend to falsify his responses to Questions 37, 38, and 39 are not credible in light of his awareness of his financial problems over a period of several years and his creditors' many attempts to put him on notice of delinquent debts. Additionally, Applicant stated his failure to list his financial delinquencies was attributable to his belief that his finances were not relevant to the Government's determination of his security worthiness, that he didn't understand why he should reveal personal information on the SF-86, and that he was embarrassed about his delinquencies and reluctant to list them. Applicant's statements reveal that he failed to answer Questions 37, 38, and 39 completely, truthfully, and correctly, and this raises a security concern under ¶ E2.A5.1.2.2 of Guideline E.

Applicant's concealment of information he considered embarrassing or negative could make

him vulnerable to coercion or blackmail. ¶ E2.A5.1.2.4. His conduct raises additional concerns under ¶ E2.A5.1.2.5. because it suggests a pattern of dishonesty or rule violation. Applicant's reticence to reveal the truth about his conduct suggests that, under some circumstances, he may put his interests before those of the Government. It is well established that embarrassment is not a mitigating condition under the Directive. ISCR Case No. 99-0557 at 3 (App. Bd. July 10, 2000).

Mitigating condition E2.A5.1.3.1. does not apply to this case. The information withheld by Applicant is pertinent to a determination of his judgment, trustworthiness, and reliability. Two other mitigating conditions 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.A5.1.3.2. While Applicant supplied some of the correct information about his financial delinquencies when questioned by a special agent of the Defense Security Service in April 2002, his falsifications were not isolated incidents and they are recent. Mitigating condition E2.A5.1.3.3. is also inapplicable, since Applicant did not make prompt good faith efforts to correct the falsification before being confronted with the facts. Accordingly, the allegations in subparagraphs 2.a., 2.b., and 2.c. of the SOR are concluded against the Applicant.

### **FORMAL FINDINGS**

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

#### Paragraph 1. Guideline F: AGAINST APPLICANT

Subparagraph 1.a.: For Applicant

Subparagraph 1.b.: Against Applicant

Subparagraph 1.c.: Against 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.: Against Applicant

Subparagraph 1.k.: Against Applicant

Subparagraph 1.l.: Against Applicant

Subparagraph 1.m.: Against Applicant

Subparagraph 1.n.: Against Applicant

Subparagraph 1.o.: Against Applicant

Subparagraph 1.p.: For Applicant

Subparagraph 1.q.: Against Applicant

#### Paragraph 2. Guideline E: AGAINST APPLICANT

Subparagraph 2.a.: Against Applicant

Subparagraph 2.b.: Against Applicant

Subparagraph 2.c.: 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.
3. *See* Government's Exhibits 4, 5, 6, and 7.
4. In post-hearing submissions, Applicant provided some evidence that he and his wife were attempting to contact creditors to arrange payment. No specific comprehensive payment plans were presented, however.