

KEYWORD: Financial; Personal Conduct

DIGEST: Applicant has a history of financial instability and has been financially overextended for several years. While he was able to show his answers to Question 39 on his SF-86 were not falsifications, his continuing financial problems raise serious security concerns. Clearance is denied.

CASENO: 02-19376.h1

DATE: 03/07/2005

DATE: March 7, 2005

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In Re:

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SSN: -----

Applicant for Security Clearance

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ISCR Case No. 02-19376

**DECISION OF ADMINISTRATIVE JUDGE**

**JOAN CATON ANTHONY**

**APPEARANCES**

**FOR GOVERNMENT**

Jennifer I. Campbell, Esq., Department Counsel

**FOR APPLICANT**

*Pro Se*

**SYNOPSIS**

Applicant has a history of financial instability and has been financially overextended for several years. While he was able to show his answers to Question 39 on his SF-86 were not falsifications, his continuing financial problems raise serious security concerns. 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 18, 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 September 24, 2003, and requested his case be determined on the record in lieu of a hearing. The Government compiled its File of Relevant Material (FORM) on December 30, 2003. The FORM contained documents identified as Items 1 through 10. By letter dated January 5, 2004, 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's response was due February 22, 2004. Applicant did not submit a response to the FORM. On March 5, 2004, the case was assigned to me for a decision. On October 19, 2004, I received an unsolicited copy of a document, identified as an adverse information report, sent by Applicant's employer to the Defense Industrial Security Clearance Office (DISCO). The document was dated September 22, 2004. The sender of the document was not identified, and there was no indication that the document had been provided to Applicant.

By Order dated February 2, 2005, I transmitted copies of the document to Applicant and Department Counsel and

requested they advise me no later than February 16, 2005, whether the document should be entered in the record of this case. Applicant did not respond by February 16, 2005, and has not, to date, responded to my order. By letter filed February 16, 2005, Department Counsel denied forwarding the adverse action report to me, and recommended including the report as relevant evidence in the record of the case, provided the record was still open. Department Counsel served Applicant with her recommendation, but Applicant has not filed a response. I conclude it was error for the unknown sender to forward the document to me. The document contained information that was not specifically alleged in the SOR. Accordingly, I will not open the record to include it as an exhibit or item in this case, and I will not consider it in any way in my decision.

### **FINDINGS OF FACT**

The SOR contains ten allegations of disqualifying conduct. Seven allegations are charged under Guideline F, Financial Considerations and three allegations are charged under Guideline E, Personal Conduct. In his answer to the SOR, Applicant admitted seven allegations and denied three allegations. His admissions are incorporated as findings of fact.

Applicant is a 56-year-old senior environmental test technician employed by a defense contractor. He has worked for the same employer since 1978 and has held a security clearance since 1988. He and his wife have been married for 34 years. He is the father of four adult children.

Applicant has a history of financial problems. In 1987 his employer was served with an adverse information report showing Applicant had been served with a tax lien, resulting in garnishments totaling \$4,443.88. (Item 7) In a signed sworn statement dated May 17, 1988, Applicant acknowledged court-ordered child support, several tax delinquencies, and delinquent accounts. He stated he was able to handle his financial obligations and did not anticipate future problems. (Item 5.)

Applicant admits an on-going pattern of financial instability. Since April 2002, he has owed \$302 to a creditor. That account is now in collection status. He owes \$83 to a creditor on an account opened in November 2001. The account has been charged off since June 2002. Applicant owes \$1,078 to a creditor on an account identified as past due since March 2003. Applicant made an agreement with the creditor to pay off the account in installments of \$182.32 per month, but has not done so. Applicant is indebted to a creditor for \$6,871 for a vehicle that was repossessed.

Applicant denied responsibility for debts identified at 1.e. and 1.f. of the SOR. The debt alleged at subparagraph 1.e. of the SOR is for \$39.00 and the debt alleged at subparagraph 1.f. is for \$48.00. Both debts are listed as collection accounts on Applicant's April 16, 2003 credit report. Applicant denies allegation 1.g. of the SOR which alleges he is financially capable of paying the debts set forth in subparagraphs 1.a. through 1.f. of the SOR. Applicant says he was in an

automobile accident in April 2002 that caused financial hardship until July 2002 that made it impossible for him to pay his debts. However, he failed to provide documentation on the financial impact of his accident.

Applicant completed and signed a security clearance application (SF-86) on January 8, 2001.

Question 39 on the SF-86 reads as follows:

**"Your Financial Delinquencies - 90 Days**

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

Applicant responded "no" to Question 39. In his answer to the SOR, he admitted allegations he was 90 days delinquent on two accounts in May 1997 and 90 days delinquent on one account in November 1996.

Applicant's wife was unemployed from January through April 2002. After his automobile accident, Applicant could not work for a period of time. It was necessary for him to pay \$250 per week to rent a replacement vehicle while his car was repaired. He claimed he had insufficient funds to pay the car rental and his on-going debts.

In May 2003, in response to interrogatories from DOHA, Applicant indicated he had a net remainder each month of \$1,100 after paying his fixed expenses.

**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 this 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 that Applicant was indebted to a creditor for \$302 and the debt had not been paid as of April 16, 2003 (¶ 1.a.); that he was indebted to an insurance company for a charged-off debt of \$83, which had not been paid as of April 16, 2003 (¶ 1.b.); that in April 2003, he had entered into a payment agreement with a debtor to make six monthly payments of \$182.32 on a total debt of \$1,078, but has not made the monthly payments (¶ 1.c.); that he was indebted to a creditor for approximately \$6,871 for a repossessed vehicle and had not paid the debt as of May 2003 (¶ 1.d.); that he was indebted to a creditor for \$44 on an account placed for collection and had not paid the debt as of April 16, 2003 (¶ 1.e.); that he was indebted to a creditor in the approximate amount of \$48 and had not paid the debt as of April 16, 2003 (¶ 1.f.); and that he had made little effort to resolve his debts, even though his personal financial statement, completed May 5, 2003, indicated he had a net remainder of \$1,102 after paying his fixed monthly expenses (¶ 1.g.) An applicant who is financially overextended is at risk of having to engage in illegal acts to generate funds. Directive ¶ E2.A6.1.1.

Applicant admitted the financial obligations identified in allegations at ¶¶ 1.a. through 1.d. of the SOR. While he denied the debts alleged at ¶¶ 1.e. and 1.f. of the SOR, they appear as past due collection accounts on his report of credit dated April 16, 2003 (Item 9, at 6.) He also denied the SOR allegation at ¶ 1.g. that he had \$1,102 remaining after paying his fixed monthly expenses that could be used to pay his financial delinquencies. The allegation is based on Applicant's own statement of his financial resources as of May 5, 2003. (Item 10, at 11.) The Government has established, through the FORM, Applicant's admissions, his credit reports of October 17, 2001 (Item 8) and April 16, 2003 (Item 9), 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. If a person's financial delinquencies were largely caused by conditions beyond his control, then mitigating condition E2.A6.1.3.3 might apply. While Applicant's wife was unemployed for four months and he was involved in an automobile accident in 2002, these circumstances, while unfortunate, do not explain or mitigate his long-standing financial difficulties. (*See* Item 8, Applicant's report of credit dated October 17, 2001.) Thus, mitigating condition E2.A6.1.3.3. does not apply.

The record evidence does not establish that Applicant has sought counseling for his financial problems. While he provided some evidence that he had contacted or attempted to contact his creditors, he failed to demonstrate he had followed through on payment agreements he had agreed to. 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 in subparagraphs 1.a., 1.b., 1.c., 1.d., 1.e., 1.f., and 1.g. of the SOR are concluded against the Applicant.

## **Guideline E - Personal Conduct**

In the SOR, DOHA alleged Applicant raised concerns under Guideline E, Personal Conduct, by falsifying material facts on his SF-86 by answering "no" to question 39 on his SF-86 and failing to disclose he had fallen 90 days past due on two accounts in May 1997 (¶¶ 2.a.i. and 2.a.ii) and one account in November 1996 (¶2.a.iii.) Guideline E conduct, which involves questionable judgment, untrustworthiness, unreliability, lack of candor, dishonesty, or unwillingness to comply with rules and regulations, could indicate an applicant may not properly safeguard classified information. Directive ¶ E2.A5.1.1.

Applicant answered the SOR allegations by denying he had falsified his answer to Question 39. In his answer to the allegations in ¶¶ 2.a.i, 2.a.ii., and 2.a.iii of the SOR, he admitted being 90 days past due on the three accounts in 1996 and 1997. However, Question 39 reads: "Are you currently over 90 days delinquent on any debts?" (Emphasis added.)

(3) Applicant answered Question 39 on the SF-86 by denying he was currently over 90 days past due on any debts. In answering the allegations in the SOR referencing Question 39, Applicant admitted past delinquencies and pointed out he had paid them. Applicant's confusion is understandable. The Guideline E allegations in the SOR are inaccurately framed and pose a conundrum. The Government has not made its case and has failed to establish the Guideline E conduct alleged in the SOR. Accordingly, the Guideline E allegations are concluded for the Applicant.

In all adjudications, the protection of our national security is the paramount concern. Security clearance decisions are not intended to assign guilt or to impose further punishment for past transgressions. Rather, the objective of the security clearance process is the fair-minded, common sense assessment of a person's trustworthiness and fitness for access to classified information. Indeed, the "whole person" concept recognizes we should view a person by the totality of his or her acts and omissions, including all disqualifying and mitigating conduct. Having done so, I conclude Applicant should not be entrusted with a security clearance. In reaching my decision, I have considered the evidence as a whole, including the appropriate factors and guidelines in Department of Defense Directive, 5220.6, as amended.

### **FORMAL FINDINGS**

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

Paragraph 1. Guideline F: AGAINST APPLICANT

Subparagraph 1.a.: Against 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

Paragraph 2. Guideline E: FOR APPLICANT

Subparagraph 2.a.i.: For Applicant

Subparagraph 2.a.ii: For Applicant

Subparagraph 2.a.iii: 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 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. Question 38 on the SF-86 reads: "In the past 7 years, have you been over 180 days delinquent on any debts?"